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FK/CORR4394-6767379-2

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29 September 2023

By email: misreview@treasury.gov.au
Director, Investment Funds Unit
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The Treasury
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Dear Sir/Madam

Corrs submission to the review of the regulatory framework for managed investment schemes: Consultation Paper (August 2023)

Introduction

Corrs' Financial Sponsors Group is a leading fund formation and financial services legal practice, advising Australian and foreign clients on the full spectrum of complex and ever-changing financial services regulatory matters. The team advises domestic and international clients on everything they need to operate in Australia and offshore.

Leveraging our experience as practitioners advising fund managers and wealth firms, we are writing to provide submissions in connection with certain wholesale client threshold tests (Chapter 1 of the Consultation Paper).

We are happy to provide Treasury with input on other aspects of the Consultation Paper.

Introductory comments

Since the wholesale client thresholds were introduced in 2001, Australia has experienced significant economic, social, and technological changes in addition to natural inflation. Moreover, a shift to digitalisation has improved ease of access for investors to a broad range of financial products. It is appropriate to consider whether the wholesale client thresholds remain fit for purpose.

Any changes to the wholesale client thresholds should facilitate efficiency, flexibility and innovation in the provision of financial products and services, balanced against promoting market confidence and informed investors, and in accordance with the objectives of Chapter 7 of the *Corporations Act 2001* (Cth) (**Corporations Act**).

1. Should the financial threshold for the product value test be increased? If so, increased to what value and why?

The financial threshold for the product value test is already sufficiently high. The amount continues to be a suitable proxy for or indicator of investor sophistication. A large step up in the financial threshold for the product value test may cause an unnecessary burden on issuers of products to institutional investors who do not neatly fall within the definition of 'professional investor', but make investments of at least \$500,000 per investment.

We suggest that any adjustments to the product value test be:

- limited to a codified indexation regime; and
- periodically reviewed and adjusted by regulation as appropriate. The Government may consider forming a committee to review the financial thresholds for the product value test and individual wealth tests at various intervals.

2. Should the financial thresholds for the net assets and/or gross income in the individual wealth test be increased? If so, increased to what value and why?

It is appropriate to consider whether the financial thresholds for net assets and gross income in the individual wealth test remain fit for purpose.

Adjusting for inflation

We suggest that any adjustments to net assets and gross income be:

- limited to a codified indexation regime; and
- periodically reviewed and adjusted by regulation as appropriate.

If it is the case that assets and income increase in value over time at different rates, the Government may consider applying different rates of indexation which may reflect this differential.

Modifying the net assets formula for accountant certificate purposes

We do not agree with the potential exclusion of a person's principal residence or superannuation balance for the purposes of the individual wealth related accountant certification category. This would substantially and unnecessarily reduce the universe of persons who should qualify as wholesale clients (and impacting legitimate access to a broad investment universe). Such a change would be substantially out of step with overseas peer regimes. In particular, although the UK rules exclude the principal residence and superannuation balance of a person relying on the UK equivalent category, the minimum net asset amount needed for a UK investor to qualify is £250,000 compared to the current \$2.5 million Australian investor threshold.

Definition of use of a financial product 'in connection with a business'

It is recommended that the ambiguous condition that a 'financial product, or the financial service, not be provided for use in connection with a business' be removed or amended to clarify that it is not intended to capture the activities of an investment company or vehicle.

Certification of clients as a wholesale client

The specific requirement for 'accountant' certification of clients as wholesale clients under the net assets or gross income test is unnecessarily narrow.

It is recommended that Treasury expand options for certification, for example, the following may be considered acceptable:

- employer's certification as to income (for example, by a business that is not a small business);
- issuer self-certification by reliance on copies of the most recent tax returns (or notice of assessment) evidencing income exceeding the \$250,000 income threshold amount; or
- certification from a wealth platform that the investor's investible wealth held on the platform exceeds the threshold amount.

Self-managed Superannuation Funds

There is a need for clarity when it comes to the position of self-managed superannuation funds, being a substantial part of the investor universe.

We recommend that section 761G(6) be amended to definitively provide that:

- if an 'individual' wholesale client is a trustee of a self-managed superannuation fund (**SMSF**); or
- where the SMSF has a corporate trustee, at least half of the (individual) directors are wholesale clients,

the 'SMSF' is to be considered a wholesale client when being pre-qualified for investment into a financial product.

If an individual otherwise qualifies as a wholesale client in their own right, it should follow that their SMSF is also a wholesale client, in particular, given it is subject to the same directing mind. The position under current law is ambiguous.

Yours faithfully

Corrs Chambers Westgarth



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