

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
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Dear Committee Secretary

Wholesale investor and wholesale client tests

Thank you for the opportunity to comment wholesale investor test for offers of securities (Section 708 of Chapter 6D of the Corporations Act 2001) and the wholesale client test for financial products and services (Sections 761G & 761GA of Chapter 7 of the Act) (referred to collectively as 'the wholesale investor/client tests').

We have made broader comment regarding wholesale investment in the context of the original Treasury review of the regulatory framework for managed investment schemes ("the MIS"). The broader discussion of MIS rules, gives context to the wholesale investment comments.

The UDIA is the development industry's most broadly representative industry association with more than 2,000+ member companies – spanning top tier global enterprises, expert consultants, small-scale developers and local governments. The development industry is critical to the Australian economy, contributing 1.307 million jobs (11% of Australia's full time employment) and \$360 billion in GDP annually (9% of total GDP).

UDIA National supported the review of the MIS regulatory regime being undertaken by Treasury and outlines below some comments on aspects of the review that touch upon our industry as related to this inquiry.

1. Wholesale Client Thresholds

In UDIA National's view these thresholds are well understood and are, in general, applied appropriately and consistently in an Australian context. As such, we don't see any significant need to increase the various thresholds or to complicate the tests by providing for the exclusion of certain assets.

If such exclusions are deemed appropriate, they must be clearly defined and capable of sensible implementation. The desire to appropriately protect investors needs to be balanced against the imposition of a prohibitive burden on the scheme promoter.

If there are any future concerns around integrity of process and documentation, the answer is not raising the thresholds as this will simply exclude people from investing in opportunities without addressing the process. If concerns are identified, they should be addressed by specifically ensuring the documentation and offer process uphold a suitable standard of information for wholesale investors.

This means providing basic awareness that the investor must do their own investigation and ensuring compliance with existing process and documentation standards for this class of asset.

To be clear, we do not think that there needs to be substantially different rules, only that rigor is applied to ensuring standards are upheld and where there is a lack of compliance, appropriate penalties are put in place.

As noted above, the thresholds themselves are understood and applied appropriately – they should not be altered to introduce unnecessary complexity.

2. Suitability of Scheme Investments

UDIA National's view is that we need to maintain a balance between appropriate regulation and ensuring retail investors can access a wide range of investment options.

Focusing on real estate investment, we consider that real estate as an asset class is relatively straightforward and well understood. We would be happy to consider the following discourse related issues in a real estate context:

- a) clear guidance on the liquidity available within the fund;
- b) a requirement to include clear examples disclosing how the fund investments operate and the associated risks;
- c) detailed description of financial aspects including leverage and any related party transactions, fees or other arrangements.

ASIC having an ability to refuse registration might itself increase the risk that investors consider registration to involve some level of ASIC approval. We think it is difficult to draw ASIC into issues involving an initial consideration of commercial viability and prefer a regime based on disclosure and intervention powers.

This is similar to the overall principles we would expect in the wholesale investment class – highlighting the continuity of concepts across the entire investment regime.

3. Scheme Governance

UDIA National's views can be summarised as follows across all investment types:

- a) ASIC should have the power to direct a responsible entity to amend a scheme constitution to meet the minimum content requirement.
- b) There should be a general requirement to have a compliance plan which is tailored to the individual scheme and this should be signed off by an appropriately qualified auditor.
- c) Auditors should be required to meet minimum qualitative standards. We consider that our proposal under b) above might help to sharpen the ongoing audit process and are happy to consider further initiatives in this area.
- d) Careful consideration be given to a requirement to have external board members. External board members are not of themselves a guarantee of improved governance outcomes.

4. Replacement of Responsible Entities

UDIA National as a general matter, supports the existing voting regimes relating to RE's and would be willing to consider changes designed to facilitate due diligence by an incoming RE and to prevent existing RE's from being inappropriately embedded in a scheme.

5. Right to withdrawal

Real estate schemes are generally regarded as non-liquid and requests for withdrawal are dealt with in accordance with the provisions included in the scheme documents. Subject to our comments under 2) above, we see no reason to change these outcomes.

6. Commonwealth and State regulation on Real Property Investments

Whilst UDIA National accepts that dual jurisdictional responsibility creates complexity, experience suggests that we are unlikely to see changes in this area. In our view, the only real option is to ensure that there is appropriate disclosure of the different regulatory regimes and the associated risks.

7. Regulatory Cost Savings

UDIA National's overarching view is that irrespective of wholesale or retail environments, the most cost effective regulatory reform involves a streamlined and focussed approach - preserving existing rules and processes that are working, (as identified above) and avoid "improving" rules outside of rectifying specific, identified problems.

As a principle, UDIA National recommends minimising changes to avoid the risk of creating a patchwork of rules.

Please do not hesitate to contact the UDIA National Head of Policy and Government Relations - Andrew Mihno on 0406 454 549 to discuss this further.



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