

NATIONAL SECRETARIAT  
Level 7, 34 Hunter Street, SYDNEY NSW 2000  
GPO Box 1595, SYDNEY NSW 2001  
Telephone: (02) 9221 1983  
Facsimile: (02) 9221 2639  
E-mail: [association@trustcorp.org.au](mailto:association@trustcorp.org.au)  
Website: [www.trustcorp.org.au](http://www.trustcorp.org.au)



4 March 2011

Dr Richard Sandlant  
Future of Financial Advice  
Department of Treasury  
Langton Crescent  
Canberra ACT 2600

Dear Dr Sandlant

**Wholesale and Retail Investors:  
Future of Financial Advice**

The TCA is the peak representative body for the trustee corporations industry in Australia.

It represents 16 organisations, comprising all 8 regional Public Trustees and the great majority of the private licensed trustee companies.

TCA members provide a wide range of services:

- traditional trustee company services such as deceased estate administration, powers of attorney and management of various types of trusts
- administration of superannuation funds
- operation of managed investment schemes
- various corporate trustee roles in the debentures, securitisation and custody areas

We are pleased to have the opportunity to comment on the options paper *Wholesale and Retail Clients: Future of Financial Advice*

**Comments**

Which investors need protection?

We support the basic premise that adequate protection and disclosure should be provided to financial services clients who need it.

ANZ Trustees  
Australian Executor Trustees  
Equity Trustees  
National Australia Trustees  
New South Wales Trustee and Guardian  
Perpetual  
Public Trustee for the Australian Capital Territory  
Public Trustee for the Northern Territory  
The Public Trustee of Queensland  
Public Trustee South Australia  
The Public Trustee Tasmania  
Public Trustee Western Australia  
Sandhurst Trustees  
State Trustees Victoria  
Tasmanian Perpetual Trustees  
The Trust Company

The system of classifying clients should be kept as simple as possible, while allowing appropriate flexibility, to give industry reasonable certainty.

On this basis, we favour retaining the current system which distinguishes between retail and wholesale clients.

The general product limit above which clients are classified as wholesale should be raised from \$500,000 to \$1 million, and reviewed periodically.

Further, we feel that persons who would be classified as retail investors on the above definition should be able to invest in wholesale products if they first meet a subjective "sophisticated investor" test based on their assets and income, and on their experience and ability to understand the product.

We do not agree that *"using wealth as a proxy of financial literacy will be appropriate for most cases"*.

We believe that many clients who suddenly acquire a significant amount through inheritance, the sale of their home or access to their superannuation find themselves in a position where they may make significant financial decisions for which they are not equipped.

On the other hand, we recognise that licensees may be reluctant to apply a 'sophisticated investor' test because of the legal risks posed to licensees in making the required experience assessment.

#### Traditional trustee company services

*As noted in the consultation paper, the "definition of retail client for general insurance differs from the definition of retail client for superannuation products and retirement saving accounts products and for traditional trustee company services as well as for other financial products. The point of these different definitions is to reflect the different value placed on and risks associated with particular products, but could be confusing to investors, issuers or licensees."*

For the purposes of s761G (6A) of the *Corporations Act*, regulation 7.1.17C says a traditional trustee company service is not provided to a person as a retail client if the person to whom the service is provided is, inter alia, a 'professional investor' (as defined in s9 of the Act), which include a person controlling at least \$10 million.

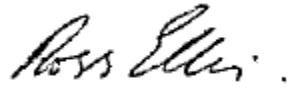
We believe that the \$10 million figure is an unreasonably high threshold, and does not seem consistent with the \$500,000 cap linked to the value of most products under the retail client test at s761G.

Further, ASIC is proposing that when a complaint is brought by a client who has directly engaged the services of the trustee company (eg: a settlor of a trust), an EDR scheme, consistent with most other financial services and products, should be able to handle the traditional trustee company service complaint if the value of the claim does not exceed \$500,000.

However, when a traditional service complaint is brought by a beneficiary, ASIC is proposing that an EDR scheme should be able to handle the complaint if the value of the claim does not exceed \$10m.

We firmly believe that setting the complaint limit for a beneficiary at the \$10m level used to define a professional investor is inappropriate.

Yours sincerely

A handwritten signature in black ink that reads "Ross Ellis". The signature is written in a cursive style with a small flourish at the end.

Ross Ellis

Executive Director