

Wholesale Client Definition Guide

The following is a list of categories of wholesale clients pursuant to the *Corporations Act 2001* (Cth) and the *Corporations Regulations 2001* (Cth). It is noted that this is a guide only and may change without notice.

1. Product Value Test

- 1.1. Where the price for the provision of the financial product, or the value of the financial product to which the financial service relates, equals or exceeds \$500,000, the person will be a wholesale client.¹
- 1.2. In calculating the \$500,000 amount, amounts invested by the person, their associates and controlled or wholly owned bodies corporate can be aggregated, if the interests are issued at or around the same time.²

Conditions/exclusions

- 1.3. The following are excluded in calculating the \$500,000 threshold:
 - (a) superannuation sourced money (see below);³ and
- 1.4. an amount deposited in a deposit account will not generally be regarded as part of the 'price' paid to acquire or purchase the financial product;⁴ and
 - (a) amounts loaned by the scheme operator or their associate to the investor.⁵

2. Individual Wealth Test

- 2.1. A person satisfies the individual wealth test when they have obtained a professional accountant's certificate stating that the client has:
 - (b) net assets of at least \$2.5 million; or
 - (c) gross income over the past 2 financial years of at least \$250,000 per annum, will be a wholesale client.⁶

¹ Corporations Act 2001 (Cth) ('CA') s 761G(7)(a); Corporations Regulations 2001 (Cth) ('CR') reg 7.1.19.

² CR reg 7.1.17B.

³ CA s 761G(6).

⁴ CR reg 7.1.18(3).

⁵ CR reg 7.1.18(4).

⁶ CA s 761G(7)(c); CR regs 7.1.28(1), 7.1.28(2).

Conditions/exclusions

- 2.2. The wholesale client certificate must be obtained from a qualified accountant prior to the provision of financial services. As at the date of this document, qualified accountants include members of:

Within Australia

Chartered Accountants Australia and New Zealand (designations: CA, ACA & FCA)
CPA Australia (designations: CPA and CFPA); and
Institute of Public Accountants (designations: AIPA, MIPA & FIPA) . .

Outside Australia⁷

The American Institute of Certified Public Accountants
Association of Chartered Certified Accountants (United Kingdom)
Canadian Institute of Chartered Accountants
Institute of Chartered Accountants of New Zealand
The Institute of Chartered Accountants in England and Wales
The Institute of Chartered Accountants in Ireland, and
The Institute of Chartered Accountants of Scotland

- 2.3. The certificate cannot be more than 24 months old at the time of investment.⁸
- 2.4. In calculating net assets or gross income, assets and income of a company or trust controlled by the person may be included.⁹

3. Professional Investor Test

- 3.1. A person or entity satisfies the professional investor test if they are:¹⁰

- (a) a holder of an Australian financial services licensee (**AFSL**);
- (b) a body regulated by APRA, excluding the trustee of a superannuation fund, approved deposit fund, pooled superannuation trust or public sector superannuation scheme 3 (self-managed superannuation funds are a superannuation fund for this purpose and are primarily regulated by the ATO and not APRA and therefore do not fall within this category);
- (c) the trustee of a superannuation fund (which includes self-managed superannuation funds), approved deposit fund, pooled superannuation trust or public sector superannuation scheme and the fund, trust or scheme has net assets of at least \$10 million (i.e. for a superannuation fund to be a professional investor it must have net assets of at least \$10 million);

⁷ CA s 88B; ASIC Corporations (Qualified Accountant) Instrument 2016/786.

⁸ CA s 761G(7)(c); CR reg 7.6.02AF.

⁹ CR regs 7.6.02AB, 7.6.02AC.

¹⁰ CA s 9.

- (d) a body registered under the Financial Sector (Collection of Data) Act 2001 (Cth);
- (e) a person who has or controls gross assets of at least \$10 million in gross assets (including assets held by an associate or under a trust the person manages/controls);
- (f) a listed entity or related body corporate of a listed entity;
- (g) an exempt public authority;
- (h) a company or unincorporated body which:
 - (i) carries on a business of investing in financial products, interests in land or other investments; and
 - (ii) invest funds raised from offers to the public for such purpose; and
- (i) a foreign entity which, if established or incorporated in Australia, would fall within one of the preceding paragraphs.

3.2. A professional investor, and a wholly-owned subsidiary of a professional investor which is a body corporate, is a wholesale client.¹⁴

4. Sophisticated Investor Test

4.1. A person satisfies the sophisticated investor test when an Australian Financial Services (AFS) licensee is satisfied on reasonable grounds that the client has previous experience in using financial services and investing in financial products that allows the client to assess:¹¹¹²

- (a) the merits of investing in the product;
- (b) the value of investing in the product;
- (c) the risks associated with investing in the product;
- (d) their own information needs; and
- (e) the adequacy of the information given to them by the licensee and the product issuer.

Conditions/exclusions

4.2. The certificate must be in writing and:

- (a) set out the reasons for which the financial services licensee reasonably believes the person is a sophisticated investor,¹³ and
- (b) include an acknowledgment by the person that:

¹¹ CA ss 761G(4), 761GA.

¹² CA s 761GA.

¹³ CA s 761GA(e)

- (i) the product they are acquiring in is not for use in connection with a business;¹⁴
- (ii) they:
 - (A) have not received a Product Disclosure Statement or any other document that would be required to be given to the client under Chapter 7 of the *Corporations Act 2001* (Cth) if the product or service were provided to the client as a retail client (including a product disclosure statement);¹⁵ or
 - (B) are not owed any other obligations by the financial services licensee under Chapter 7 of the *Corporations Act 2001* (Cth); that they would otherwise be entitled to if they were retail clients.¹⁶

5. Small Business Test

5.1. The small business test is used when the financial product or service is provided for use in connection with a business that is not a small business. If the financial product, or financial service, is provided for use in connection with a business that is not a small business, the investor will be a wholesale client.¹⁷

5.2. A small business is:

- (a) in the case of a business which manufactures goods, a business employing less than 100 people;¹⁸ or
- (b) in the case of any other type of business, a business employing less than 20 people.¹⁹

6. Controlled entities

6.1. A company or trust controlled by a wholesale client is taken to be a wholesale client.²⁰

6.2. A related body corporate of a company which is a wholesale client is taken to be a wholesale client.²¹

¹⁴ CA s 761GA(c)

¹⁵ CA ss 761GA(f)(i), 761GA(f)(ii).

¹⁶ CA s 761GA(iii).

¹⁷ CA s 761G(7)(b).

¹⁸ CA s 761G(12)(b).

¹⁹ CA s 761G(12)(a).

²⁰ CR regs 7.6.02AB, 7.6.02AC.

²¹ CR reg 7.6.02AD.