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Legal

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Wholesale Clients

The Corporations Act draws a distinction between "retail clients" and "wholesale clients" for the purposes of the financial services licensing and disclosure provisions in Chapter 7 of the Corporations Act. Section 761G(4) of the Corporations Act states that a financial product or a financial service is provided to, or acquired by, a person as a wholesale client if it is not provided to, or acquired by, the person as a retail client.

Section 761G (1) of the Corporations Act states that a financial product or service is provided to a person as a retail client unless sections 761G (5), (6), (7) or section 761GA provide otherwise.

In summary, an entity is a wholesale client if:

- 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; or
- The financial product, or financial service, is provided for use in connection with a business that is not a "small business"; or
- The financial product or service is not provided for use in connection with a business and the person acquiring the financial product or service provides a certificate from a qualified accountant, obtained within the prior 2 years¹, that he or she:
 - Has net assets of at least \$2.5 million²; or
 - Has a gross income for each of the past 2 financial years of at least \$250,000; or
- The investor is a "professional investor" or a "sophisticated investor"³.

Companies or trusts will be wholesale clients if they are controlled by persons who are wholesale clients⁴.

For the purposes of the test in the second bullet point above, a "small business" is a business which has less than 20, or, if it is a manufacturing

¹ Section 761G (7) (c) of the Corporations Act, as amended by regulation 7.6.02AF of the Corporations Regulations 2001 (the **Regulations**).

² The net assets of a company or trust controlled by such a person may be included – section 761G (7) (c) (i) of the Corporations Act, as amended by regulation 7.6.02AC of the Regulations.

³ Sections 761G (7) and 761GA of the Corporations Act.

⁴ Section 761G (7) (ca) of the Corporations Act, inserted by regulation 7.6.02AB of the Regulations.

business, has less than 100, employees⁵.

For the purposes of the test in the sixth bullet point above, an investor will be a "professional investor" if that person falls into one of the following categories:

- Financial services licensees;
- Bodies that are regulated by APRA (other than a trustee of certain superannuation funds and schemes). This category generally includes banks, general insurance companies, life companies, credit unions and friendly societies;
- Bodies registered under the Financial Corporations Act 1974 (Cth);
- Trustees of certain superannuation trusts or schemes within the meaning of the Superannuation Industry (Supervision) Act 1993 that have net assets of at least \$10 million;
- Persons who have or control gross assets of at least \$10 million (including any assets held by an associate or under a trust that the person manages)⁶;
- A listed entity, or a related body corporate of a listed entity;
- An exempt public authority;
- An investment company, being a body corporate or unincorporated body which carry on the business of investing in financial products, interests in land or other investments, and which invest funds received directly or indirectly following offers or invitations to the public, the terms of which provided for the funds subscribed to invested accordingly; or
- A foreign entity that, if established or incorporated in Australia, would be covered by one of the above paragraphs⁷.

Professional investors

Professional investors are investors who possess sufficient experience, knowledge and expertise to make their own investment decisions and properly assess the risks that they incur. We consider the following investors professional investors:

- credit institution;
- an investment firm;
- any other authorised or regulated financial institution;
- an insurance company;
- a collective investment scheme or the management company of such a scheme;
- a pension fund or the management company of a pension fund;
- a commodity or commodity derivatives dealer;
- a local;
- any other institutional investor;
- in relation to MiFID or equivalent third country business a large undertaking meeting two of the following size requirements on a company basis
 - balance sheet total of EUR 20,000,000;
 - net turnover of EUR 40,000,000;
 - own funds of EUR 2,000,000;
- in relation to business that is not MiFID or equivalent third country business a large undertaking meeting any of the following conditions:
 - a body corporate (including a limited liability partnership) which has (or any of whose holding companies or subsidiaries has) (or has had at any time during the previous two years) called up share capital or net assets of at least £5 million (or its equivalent in any other currency at the relevant time);
 - an undertaking that meets (or any of whose holding companies or subsidiaries meets) two of the following tests:
 - a balance sheet total of EUR 12,500,000;
 - a net turnover of EUR 25,000,000;
 - an average number of employees during the year of 250;
 - a partnership or unincorporated association which has (or has had at any time during the previous two years) net assets of at least £5 million (or its equivalent in any other currency at the relevant time) and calculated in the case of a limited partnership without deducting loans owing to any of the partners;

⁵ Section 761G (12) of the Corporations Act.

⁶ Paragraph (e) of the definition of professional investor in section 9 of the Corporations Act, as modified by regulation 7.6.02AE of the Regulations.

⁷ Section 9 of the Corporations Act.

- a trustee of a trust (other than an occupational pension scheme, SSAS, personal pension scheme or stakeholder pension scheme) which has (or has had at any time during the previous two years) assets of at least £10 million (or its equivalent in any other currency at the relevant time) calculated by aggregating the value of the cash and designated investments forming part of the trust's assets, but before deducting its liabilities;
- a trustee of an occupational pension scheme or SSAS, or a trustee or operator of a personal pension scheme or stakeholder pension scheme where the scheme has (or has had at any time during the previous two years):
 - at least 50 members; and
 - assets under management of at least £10 million (or its equivalent in any other currency at the relevant time);
- a national or regional government, including a public body that manages public debt at national or regional level, a central bank, an international or supranational institution (such as the World Bank, the IMF, the ECB, the EIB) or another similar international organisation; or
- another institutional investor whose main activity is to invest in financial instruments (in relation to the firm's MiFID or equivalent third country business) or designated investments (in relation to the firm's other business). This includes entities dedicated to the securitisation of assets or other financing transactions.

Individual and retail investors are generally not categorised as professional investors.

Accredited investor

Accredited Investors are as defined in Rule 501 of the Securities Act 1933.

Professional client

Professional clients are as defined in Article 4(1)(10) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.

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