

WHOLESALE CLIENTS

The Corporations Act 2001 (Cth) 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 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;

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.

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

- 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.

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.