



IFP Wholesale Client Policy

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Contents

| | | |
|-----------|--|-----------|
| 1 | Background and purpose of document | 4 |
| 1.1 | Background | 4 |
| 1.2 | Purpose | 4 |
| 2 | Wholesale client tests | 4 |
| 2.1 | Wholesale client tests | 4 |
| 3 | Code of Ethics overlay in treating a client as wholesale client | 6 |
| 3.1 | Can you treat a person as a wholesale client once they meet the wholesale client test? | 6 |
| 4 | What happens if a client qualifies as a wholesale client? | 7 |
| 4.1 | Exempt documentation | 7 |
| 4.2 | Risks of treating a person as a wholesale client | 7 |
| 5 | Requirements to prove wholesale client status | 7 |
| 5.1 | Documentation requirements to prove wholesale client status | 7 |
| 6 | Companies and Trusts as wholesale clients | 9 |
| 6.1 | Companies and Trusts as wholesale clients | 9 |
| 7 | Aggregating joint investors | 9 |
| 7.1 | Can you aggregate joint investors? | 9 |
| 8 | Wholesale client and Superannuation (excluding SMSF) | 9 |
| 8.1 | A client must be treated as a retail client for superannuation (except SMSF) | 9 |
| 9 | Wholesale client and SMSF (ASIC Media Release 14-191) | 9 |
| 9.1 | Providing advice to clients who are trustees of an SMSF | 9 |
| 10 | Licensee Requirements | 10 |
| 10.1 | Wholesale Client Checklist | 10 |
| 10.2 | Wholesale Client Acknowledgement | 10 |
| 10.3 | Wholesale Client File (New & Existing) | 10 |

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1 Background and purpose of document

1.1 Background

- (a) Wholesale clients may have access to a wider range of investments, but they do not enjoy all the consumer protections that apply to retail clients.
- (b) The Corporations Act assumes that all clients are 'retail clients' in relation to financial services provided to them, unless one of the specific 'wholesale client' tests below is satisfied.
- (c) The wholesale client tests apply only to products which are not general insurance, superannuation or retirement savings account products. Those other products have specific tests which are not included for the purposes of this document.

1.2 Purpose

The purpose of this document is to set out the Legislative and Licensee requirements for:

- (a) Determining whether a client is a retail client or a wholesale client;
- (b) Documentation in relation to treating a client as a wholesale client; and
- (c) How to treat a client (wholesale or retail) in specific scenarios.

2 Wholesale client tests

2.1 Wholesale client tests

| Test | Qualification |
|-------------------------------------|---|
| The price / value test (s761(7)(a)) | <p>A person will be a wholesale client where the price or value of the financial product (single investment) being acquired is at least AU\$500,000. For the purposes of this test, the relevant value is the amount 'advised or recommended by the adviser', not the amount requested by the client (Storm Financial case).</p> <p>The price or value can be calculated as:</p> <ul style="list-style-type: none">• for a single transaction; or• the total instalment payments made under a prior arrangement. <p>For example, the recommendation to acquire securities of a specific company in excess of \$500,000 in value. In limited circumstances, you can aggregate the value across different SOAs, but the various pieces of advice must relate to the same single point in time.</p> |

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|--|---|
| <p>High net worth test (ss761(7)(c)) 761G(7)(ca)</p> | <p>A person will be a wholesale client where:</p> <ul style="list-style-type: none"> (a) the financial product is not provided for use in connection with a business; and (b) the person provides a copy of a certificate given within the preceding 2 years by a qualified accountant recognised in Australia that states that the person has: <ul style="list-style-type: none"> • net assets of at least AU\$2.5 million; or • gross income for each of the last 2 financial years of at least AU\$250,000. <p>In determining the net assets and gross income tests above, the net assets or gross income of a company or trust controlled by the person may be included (reg 7.6.02AC).</p> <p>A person will also be a wholesale client where the financial product is acquired by a company or trust, and the person controlling the company or trust has net assets or gross income meeting the tests set out in paragraphs (i) or (ii) above (reg 7.6.02AB).</p> <p>Where the accountant providing the certificate and the representative are one and the same person, consultation and approval with the Licensee must take place prior to the delivery of services and treatment of the client as a Wholesale Client.</p> <p>For SMSFs, please refer to section 10.1 below.</p> |
| <p>The business test (s761G(7)(b))</p> | <p>A person will be a wholesale client where the financial product is acquired for use in connection with a business that is not a 'small business' (i.e., for manufacturing companies, the business employs less than 100 people, for any other company, less than 20).</p> |
| <p>The professional investor test (s761G(7)(d))</p> | <p>The person is a wholesale client if they are a 'professional investor', defined in section 9 of the Corporations Act as one of the following:</p> <ul style="list-style-type: none"> • a financial services licensee (holder of an AFSL) • a body regulated by APRA (other than a trustee of a superannuation fund or superannuation type fund); • a body registered under the Financial Corporations Act 1974 (Cth); • a trustee of a superannuation fund or superannuation type fund which has net assets of at least AU\$10 million; • the person has or controls gross assets of at least AU\$10 million (including any assets held by an associate or under a trust that the person manages); • a body corporate, or an unincorporated body that carries on the business of investment in financial products and makes offers or invitations to the public in specified circumstances; or • a foreign entity that if it was established or incorporated in Australia would be covered by one of the preceding paragraphs. |

| | |
|--|--|
| The sophisticated investor test (s761GA) | <p>A person will be a wholesale client where the provider of the financial product or financial service:</p> <ul style="list-style-type: none"> • is an Australian financial services licensee; • is satisfied on reasonable grounds that the person has previous experience in using financial services and investing in financial products that allows them to assess the merits, value, risks, their own information requirements and the adequacy of information provided and the client receives before, or at the time when, the product or advice is provided, a written statement of the reasons for being satisfied as to those matters; and • the client signs a written acknowledgment before, or at the time when, the product or service is provided that: <ul style="list-style-type: none"> (a) the licensee has not given the client a Product Disclosure Statement; and (b) the licensee has not given the client any other document that would be required to be given to the client under the Corporations Act if the product or service were provided to the client as a retail client; and (c) the licensee does not have any other obligation to the client under the Corporations Act that the licensee would have if the product or service were provided to the client as a retail client. • Note: The financial product or service must not be provided for use in connection with a business. |
|--|--|

3 Code of Ethics overlay in treating a client as wholesale client

3.1 Can you treat a person as a wholesale client once they meet the wholesale client test?

- (a) If the adviser is authorised to provide personal advice to retail clients as well as wholesale clients, the adviser is subject to the *Financial Planners and Advisers Code of Ethics 2019* (Code of Ethics).
- (b) Under the Code of Ethics, advisers are expected to ascertain the relevant client's level of financial knowledge and be satisfied that the client has sufficient financial literacy to determine the benefits, risks, advantages/disadvantages and consequence of a financial decision before the adviser can treat the person as a wholesale client. This is an additional expectation under the Code of Ethics (Standard 1 and Standard 2).
- (c) The Code of Ethics takes the view that if an adviser treats a client as a wholesale client by relying solely on the accountant's certificate (and not considering their competence in financial matters), the adviser will breach Standard 1 of the Code of Ethics. Equally, the Code of Ethics considers that the adviser would also be in breach of Standard 2 by circumventing the requirement to provide retail clients with disclosure documents and comply with the best interest's duty and related obligations.

4 What happens if a client qualifies as a wholesale client?

4.1 Exempt documentation

- (a) If the client qualifies as a wholesale client, the adviser is not required to meet the requirements that apply to a retail client. This includes providing the following documentation:

| Document | Circumstance |
|--|--|
| Financial services guide | Providing a FSG before a financial service is to be or is likely to be provided to the client |
| Statement of advice | Providing a SOA when personal advice is being provided to the client |
| Product disclosure statement | Providing a PDS when a financial product is being offered to a retail client |
| Fee disclosure statement and Opt-In Renewal Notice | Providing a FDS and Opt-In Renewal notice at the anniversary of the ongoing fee arrangement and the Opt In renewal period. |

- (b) However, more importantly, a wholesale client will not have the right to compensation and complaint handling arrangements like other retail clients. The reason for this is that wholesale clients are expected to have a greater level of knowledge, which in turn means that they are expected to be able to look after their own interests to a greater extent. (Please note, AFCA can use their sole discretion to hear a complaint lodged by a Wholesale or Sophisticated Investor.)

4.2 Risks of treating a person as a wholesale client

- (a) Whilst the reforms introduced under FOFA may apply only to retail clients, advisers to wholesale clients nevertheless owe a duty of care to their clients under common law.
- (b) Importantly, just because a client may qualify as a 'wholesale client' under the high net worth test, it does not mean they have the requisite knowledge, experience and confidence to make investment and financial decisions. For example, a person may qualify as a wholesale client because they have received a substantial inheritance, but they nonetheless lack the requisite knowledge and expertise to make investment decisions. Therefore, advisers must use their professional judgment in each case in determining whether to characterise a client as a 'wholesale client'.

5 Requirements to prove wholesale client status

5.1 Documentation requirements to prove wholesale client status

To confirm that a client qualifies as a 'wholesale' client, the following documentation must be obtained before financial services are provided to the client.

The onus is on the adviser to ensure the evidence prove the client's wholesale status is retained on file. If evidence is not received and recorded, the client must be treated as a retail client.

| Wholesale Client Test | Documentation required |
|---------------------------------|--|
| The price / value test | Evidence to prove that at the time the advice is sought, the client has \$500,000 to invest in the single asset. This might include bank statements and current asset allocation valuations. |
| High net worth test | Accountant's Certificate that: |
| High income test | <ul style="list-style-type: none"> • is completed by a qualified accountant; • is no more than 2 years old; and • is not issued by an accountant who is also the financial adviser of the client (i.e. the same person) unless approved by the Licensee. |
| The business test | <p>A declaration from the business that:</p> <ul style="list-style-type: none"> • declares the financial product is acquired for use in connection with a business • declares that the business is not a small business (i.e., for manufacturing companies the business employs less than 100 people, for any other company, less than 20). • is in the name of the company and signed by the sole director; company secretary and one director or two directors. |
| The professional investor test | <ul style="list-style-type: none"> • A declaration from the investor that they meet the requirements stated in section 3 above; and • Evidence showing how the investor meets the relevant requirement in section 3 above. |
| The sophisticated investor test | <ul style="list-style-type: none"> • Evidence that the adviser is satisfied on reasonable grounds that the person has previous experience in using financial services and investing in financial products that allows them to assess the following: <ul style="list-style-type: none"> a) the merits of the product or service; b) value of the product or service; c) risks associated with holding the product; d) the clients own information requirements; and e) adequacy of information provided to the client • the client signs a written acknowledgment before, or at the time when, the product or service is provided that: <ul style="list-style-type: none"> a) the licensee has not given the client a Product Disclosure Statement; b) the client has not been given any other document that would be required to be given to the client under the Corporations Act, if the product or service were provided to the client as a retail client; and c) the licensee does not have any other obligation to the client under the Corporations Act that the licensee would have if the product or service were provided to the client as a retail client. |

6 Companies and Trusts as wholesale clients

6.1 Companies and Trusts as wholesale clients

Where the financial service is acquired by a company or a trust, the company or trust will meet the wholesale client test if the person who controls the company or trust qualifies as a wholesale client.

To determine whether a person has 'control', the Corporations Act states that an entity 'controls' another if the first entity has the capacity to determine the outcome of decisions about the second entity's financial and operating policies. In determining whether the first entity has this capacity, you must consider:

- (a) the practical influence the first entity can exert (rather than the rights it can enforce) is the issue to be considered; and
- (b) any practice or pattern of behaviour affecting the second entity's financial or operating policies is to be considered (even if it involves a breach of an agreement or a breach of trust).

7 Aggregating joint investors

7.1 Can you aggregate joint investors?

For the purposes of meeting the wholesale client test, you cannot aggregate joint investors (See Storm Financial case). For example, in the case of a husband and wife, you cannot aggregate their joint investments together to meet the price/value test. Each investor must be considered individually as to whether they meet the wholesale client test.

8 Wholesale client and Superannuation (excluding SMSF)

8.1 A client must be treated as a retail client for superannuation (except SMSF)

If you provide a financial service (including advice) to a client relating to a superannuation product or Retirement Savings Account (RSA), you are required to treat that client as a retail client unless the client is the trustee of a:

- (a) superannuation fund (except SMSF);
- (b) an approved deposit fund;
- (c) pooled superannuation trust or public sector superannuation scheme;

that has net assets of at least \$10 million.

9 Wholesale client and SMSF (ASIC Media Release 14-191)

9.1 Providing advice to clients who are trustees of an SMSF

- (a) Ordinarily, where the financial service relates to a superannuation product, a trustee of a SMSF will be classified as a retail client under the Corporations Act unless the fund holds net assets of at least \$10 million at the time the service is provided.

- (b) However, if your client is the trustee of an SMSF and the client themselves (ie. the corporate trustee or the individual trustee) qualifies as a wholesale investor (under one of the tests above, commonly the net worth test), ASIC has confirmed that:
- it will not act if the person providing the advice determines that the trustee is a wholesale client based on the general test mentioned above (e.g. if the trustee has net assets of at least \$2.5 million), rather than applying the higher \$10 million net asset test.
 - This 'no action' approach will not affect any private rights of action that may be available to third parties (e.g. at AFCA or in a court). Advisers providing financial services to trustees of SMSFs need to make their own commercial decisions after considering the legal risks. If you require further guidance, please contact the Licensee.

10 Licensee Requirements

10.1 Wholesale Client Checklist

When classifying a client as a Wholesale Client, a Wholesale Client Checklist must be completed for each client, and held on file. This Checklist indicates the relevant Wholesale Client category and the documentation required.

It is a Licensee Requirement that this Checklist be completed prior to assisting the client in a wholesale manner, and then every two (2) years thereafter and retained in the client file.

The Wholesale Client Checklist is available on the IFP website www.iplan.com.au, or by contacting compliance@iplan.com.au

10.2 Wholesale Client Acknowledgement

Along with the required legislative documentation for supporting a client's classification as a Wholesale Client, the client must also sign a Wholesale Client Acknowledgement. This acknowledgement outlines the client's understanding and agreement to be classified as a Wholesale Client.

As with the Wholesale Client Checklist, the Wholesale Client Acknowledgement must be completed by the client prior to providing service in the first instance to the client, and then every two (2) years. A copy of each Wholesale Client Acknowledgement must be retained in the client file.

The Wholesale Client Acknowledgement document is available on the IFP website www.iplan.com.au, or by contacting compliance@iplan.com.au

10.3 Wholesale Client File (New & Existing)

Though there is no requirement to provide an FSG, SOA, PDS, FDS or Renewal Notice, it is expected that all correspondence relating to services provided to the Wholesale Client is retained on the client file and made available upon request to the Licensee.

Where the Wholesale Client has entered into an ongoing fee arrangement with the Adviser, a copy of this agreement must be retained on the file.

At a minimum, it is expected that the client file for a Wholesale Client (new and existing) will contain the following:

- All file notes recording questions from the client, information provided by the Adviser and records of meetings and conversations between the Adviser and the client;
- Where applicable, a Client Service Agreement;
- Client fee consent / invoices;
- Copies of correspondence with product providers;
- Correspondence between the client and the Adviser;
- Accountant's Certificate every two (2) years;
- Other documentation required to confirm client meets the Wholesale Client definition (Refer to Section 5 of this Policy);
- Wholesale Client Checklist every two (2) years;
- Wholesale Client Acknowledgement every two (2) years.