

Licensee Standard

WHOLESALE AND SOPHISTICATED CLIENTS

Direction Advice Group

Version 2.0

AIM

This Licensee Standard will assist you to:

- Understand when you can treat a client as a wholesale client and when you must treat a client as a retail client.
- Understand your obligations when dealing with wholesale clients including the documents and record keeping required .

ACCREDITATION

Advisers are required to gain written authorisation from the licensee prior to treating any clients as wholesale. Advisers should contact the licensee if they wish to be authorised to provide advice to wholesale clients.

- Read this licensee standard and participate in a compliance interview with the Licensee to confirm a satisfactory level of understanding of the requirements; and
- Maintain a satisfactory compliance history.. A satisfactory history is either 2 years of A ratings or Green with no amber ratings.

WHAT IS A RETAIL CLIENT?

In simple terms all clients are retail clients unless the client satisfies one of the wholesale clients tests.

However, where a product or service is related to any of the following, advice must be provided to a person as a retail client:

- Superannuation and pension products; or
- Retirement Savings Accounts (RSA); or
- General insurance products.

The following protections are afforded to retail clients:

- Financial Services Guide (FSG)
- Statement of Advice (SoA)
- Fee Disclosure Statement (FDS)
- Product Disclosure Statement (PDS)
- Access to lodge complaints with the Australian Financial Complaints Authority (AFCA). However Treasury notes that AFCA continues to accept complaints from wholesale investors and can over turn a classification.
- Access to the Compensation Scheme of Last Resort (CSLR) is available only to eligible retail clients. If a client is classified as wholesale and that classification is later found to be invalid, they may be treated as a retail client, and the firm and its advisers may face complaints, regulatory action and liability as if retail obligations had applied. For this reason, wholesale classification must be assessed carefully, supported by current evidence, and documented before any wholesale services are provided

Further, when you provide financial advice to a retail client, you must amongst other things:

- Comply with the best interests duty and appropriate advice obligations; and
- Prioritise the client's interests ahead of your own and any associates or related entities, and
- Not receive conflicted remuneration in relation to the services that you provide to them.

WHAT IS A WHOLESALE CLIENT?

The law presumes your clients are retail clients unless you can prove one of the five (5) wholesale client exemptions below apply: Not all tests apply in all situations. A client may indicate a desire to be treated as wholesale, however, advisers are permitted to ask the retail client whether they would like to be treated as retail.

A wholesale client definition typically requires the client to meet one of the following tests:

- The personal wealth test
- The professional investor test
- The business test
- The product price/value test

plus

- The sophisticated investor test to ensure the client has the financial literacy and financial experience required to be treated as wholesale

However- **clients should meet the sophisticated investor test in addition to one of the other tests e.g. personal wealth test. This is designed to reduce the risk that unsophisticated clients or entities are not inappropriately treated as wholesale clients**

Test	Description
The sophisticated investor test	• A person is assessed as having sufficient experience and knowledge to be considered a 'sophisticated investor'. Refer to the next page for further information. • Generally the sophisticated investor test alone is insufficient. An exception may be requested from the licensee.
The personal wealth test	• Net assets of at least \$2.5 million; or • Gross annual income for each of the last two financial years of at least \$250,000 • <i>Must be verified by an Accountant's Certificate</i>
The professional investor test	• Includes (but is not limited to).¹ – A trustee of a superannuation product with more than \$10 million in net assets; or – A SMSF with more that \$2.5 million in net assets²; or

¹ A professional investor also includes other definitions including AFSLs, APRA regulated bodies, listed entities etc.

² [14-191MR Statement on wholesale and retail investors and SMSFs](#)

Test	Description
	– A person who has or controls gross assets of at least \$10 million (including any assets held by an associate or under a trust that the person manages).³ • <i>Must be verified by an Accountant's Certificate</i>
The business test	• Advice is provided about a financial product or service for use in connection to a business that has more than 20 employees – or a manufacturing business with more than 100 employees.
The product price/value test	• The price or value of a single investment (excluding life insurance and superannuation funds) being acquired, disposed of or advised on, is equal to or exceeds \$500,000

Sophisticated investor test

A client can only be treated as sophisticated where each of the following applies:

1. The client has previous experience in using and investing in financial products that allows them to assess:

- The merits of the product or service
- The value of the product or service
- The risk associated with holding the product
- The client's own information needs
- The adequacy of the information provided by the Licensee, adviser or product provider

NOTE: This can be documented within the Wholesale client checklist and contemporaneous file notes

To determine if a client can be treated as sophisticated, advisers should ask the client a series of questions to determine their level of financial literacy and financial experience. **These MUST be recorded in file notes and the Wholesale client checklist. Things to consider are:**

- The types of financial products they have previously invested in
- The amount of money they have invested
- Whether they are familiar with industry jargon or the different types of financial products
- Whether they are aware of the different types of risks associated with each financial product
- The client's occupation and qualifications (e.g. have they worked in financial industry before or held high level roles within large corporations).

NOTE: All trustees of the SMSF (or director of a corporate trustee) must be a sophisticated investor to treat the entity as a wholesale client.

2. A written statement has been provided to the client before or at the time the advice is provided listing the reasons why the Adviser is satisfied that the client has relevant investment experience.

NOTE: This requirement can be satisfied by utilising the Wholesale client confirmation letter.

3. The client signs a written acknowledgement before or at the time of the advice that:

- A Product Disclosure Statement (PDS) has not been given to them; and
- No other document that is required to be provided to retail clients, has been provided to them; and
- No other obligations relating to retail clients apply.

³ Excludes where the trustee is a company.

NOTE: This requirement can be satisfied by utilising the Wholesale Implementation form.

WHOLESALE ADVICE FRAMEWORK

Requirements	
Obligations that apply	- Advisers must manage conflicts of interest including disclosing interests or arrangements - Act efficiently, honestly and fairly - Comply with Privacy requirements including obtaining consent to share client information
Obligations that do not apply	Comply with Best Interest Duty
AML/CTF identification requirements	Anti-money laundering and counter terrorism financing (AML/CTF) identification procedures are required including risk assessment.
File notes and correspondence	- Contemporaneous and detailed file notes should be maintained after each discussion with the client that involves financial product advice or services. - Advisers should maintain copies of correspondence between the client and/or product provider. - Product application forms should be maintained on file.
Financial Services Guide (FSG)	- An FSG is not required, however you may provide this to the client at the first meeting before it is determined whether the client will be treated as wholesale or retail. - This document must be avoided once the client has been confirmed as wholesale.
Client Fact Find and Client risk profile questionnaire (CRP)	- A Fact Find and CRP are not required; however, you may utilise the Fact Find at the first meeting before it is determined whether the client will be treated as wholesale or retail - This document should be avoided once the client has been confirmed as wholesale. These documents may confuse a client into believing they are being treated as a retail client.
Advice documents	- Advice documents such as the Statement of Advice (SoA) and Record of Advice (RoA) must be avoided when treating a client as wholesale. These documents are only required for retail clients. Utilising these documents may confuse a client into believing they are being treated as retail. - As an alternative, advisers should utilise the Wholesale implementation acknowledgement form to document the actions being carried out.
Giving a Product Disclosure Statement (PDS)	- Providing a copy of the PDS is not required. - A PDS may be provided if the client requests. - A wholesale client should be able to locate a PDS, read and understand the PDS without assistance from the adviser.
Approved Product List (APL)	Advisers must ensure the products recommended are on the APL. Where the adviser may want to recommend a product that is not on the APL, the adviser must request a restricted approval from the Licensee.
Service Agreements, Fee Disclosure Statements (FDS) and Fee Consent	- There is no requirement to have a service agreement or provide annual reviews for wholesale clients. - Services may be provided on a one off or a continuing basis. - Fees may be charged on a one off or continuing basis. Advisers should not enter an 'Ongoing Fee Arrangement', which is defined as a fee

Requirements	
	arrangement with a retail client (that continues for more than 12 months). The arrangement may be referred to simply as a 'Fee Agreement'. • An FDS must not be provided. • The requirement to obtain a 'Fee Consent' generally does not apply to wholesale clients. Product issuers may require documentation including a current accountant certificate (or they may treat the client as a retail client).

WHOLESALE CLIENT DOCUMENT REQUIREMENTS

See the Appendix for copies of the documents.

Document	Requirements
Wholesale client checklist	• This checklist should be maintained within the client file. • Each section should be reviewed and checked before proceeding with treating the client as wholesale.
Wholesale accountant's certificate	• Advisers must ensure that an accountant has signed either the Licensee's Accountant's Certificate template, or a relevant accounting body wholesale Accountant's Certificate template. • Where the adviser is also the accountant, they must have another accountant complete the certificate. This could be another accountant within the business or an external accountant. • The Accountant's Certificate must be received before proceeding with treating the client as wholesale. • The Accountant's Certificate must be dated within the previous 2 years to be considered valid.⁴ • The Accountant's Certificate must be retained on file.
Wholesale client confirmation letter	• The letter includes privacy permissions and TFN consent. • The contents of the letter must be explained to the clients to ensure they fully understand what being treated as wholesale means and what protections they are waiving in comparison to being treated as retail. • A contemporaneous and detailed file note of the discussion must be maintained on file. • A signed copy of the letter must be received before proceeding with treating the client as wholesale.
Wholesale implementation form	• Advisers are required to utilise the Wholesale implementation form as a record of the client agreeing to implement the financial product advice. • The Wholesale implementation form includes the reasons why the adviser is satisfied that the client has relevant investment experience to be treated as sophisticated and includes disclosures of any applicable conflict of interest. • Advisers should avoid any terminology that may mislead a client into believing they are being treated as retail (e.g. do not include references to acting in their best interest).
	• Before any wholesale service is provided, the adviser must: a. Identify the specific test relied on (product value, assets/income, professional investor, or sophisticated investor under s761GA). b. Obtain and file current supporting evidence (for example, an accountant's certificate dated within two years, c. Make and record a reasonable assessment of the client's financial literacy, investing experience and understanding of risk. d. Explain in plain language the protections the client forgoes, and have

Document	Requirements
	detailed and file notes with client quote and obtain a signed acknowledgement. e. Have the classification approved by Compliance/Responsible Manager Nick Rose/Jason McFadden].
File Notes	• In order to offer Wholesale Advice, the Adviser must be able to compile, comprehensive and detailed and accurate file notes of any discussions. Ideally these will be recorded and electronically stored. The standard of these file notes would expected to be of high quality and comprehensive from a compliance perspective. Detailed file notes with conversations recording clients own words, recording client quotes as to the retail protections lost and the process explained.

OTHER CONSIDERATIONS

Risks related to incorrectly classifying clients as wholesale

It can be dangerous to assume that just because a client meets the wholesale wealth test that the client should be treated as wholesale/sophisticated. Some clients may inherit large portfolios however may not have the financial experience or knowledge to understand them. Others may have previous investment experience with managed funds and shares but may not have the financial knowledge to understand more complex products and strategies. It is for this reason that advisers need to take care when classifying clients as wholesale and continue to re-check their level of knowledge, especially when recommending more complex products or strategies.

ASIC has stated that it will take action where clients are miscategorised as wholesale. Meeting a technical test (for example, holding an accountant's certificate) is not, on its own, sufficient evidence that wholesale treatment is appropriate. AFCA may accept complaints from clients classified as wholesale and may treat a client as retail where classification was not validly established.

Some issues that can occur with mis-classifying a client as wholesale are:

- Classifying a trustee of an SMSF as wholesale where the SMSF does not have \$10 million in net assets in accordance with the required professional investor test ([refer Financial Ombudsman Services \(FOS\) Case 202248](#))
- Incorrectly assessing a client as sophisticated due to their qualification and previous experience. [Queensland Court of Appeal case of Delmenico v Brannelly & Anor \[2008\] QCA 74.](#)
- Including information or using documentation that is used when providing advice to retail clients (e.g. explaining the risks, describing cooling off periods, providing FSGs and SoAs etc)
- Providing a recommendation on a superannuation or RSA product, which must be provided to retail clients only
- Failure to adequately document discussions regarding the differences between retail and wholesale clients.
- Failure to maintain complete correct documentation as detailed in this document.

Existing clients

Advisers must take care where a client who has been previously treated as retail wishes to commence being treated as wholesale. It is very important to keep contemporaneous and detailed file notes of the discussion to switch from retail to wholesale.

Advisers must ensure they clearly explain to the clients the protections they will lose by being treated as wholesale.

Clients who no longer meet the wholesale test or wish to revert to retail

There may be instances where a client no longer meets the wholesale test (e.g. net assets drop below \$2.5 million), the adviser feels they are not as sophisticated as previously assessed, or where a client elects to revert to being treated as retail.

In these situations, once again it is important that advisers keep contemporaneous and detailed files notes of the discussion and have the client sign a letter confirming that they understand that going forward they will be treated as retail.

The adviser would then need to revert to treating the client as retail including providing the client with an updated FSG, completing a fact find and CRPs and providing the client with an SoA when providing personal financial product advice.

Exceptions to these Licensee Standards

The Licensee understands that there may be limited situations where an adviser may request an exception to these Licensee Standards (where allowable by law). Requests should be directed to Nick Rose or Jason McFadden

FREQUENTLY ASKED QUESTIONS (FAQS)

Q: Can I treat my client as both a retail client and a wholesale client?

A: A person is either a wholesale client or a retail client when an adviser is providing a particular financial product or service. Legally a person can be both type of client at the same time in relation to different products and services, but this is complicated and treating a person as both wholesale and retail increases the risk of a misunderstanding about the obligations that apply. Advisers should consider the type of advice and services they provide to their client to determine if retail or wholesale overall better meets their requirements.

For example, if you typically provide advice on their superannuation fund, it is more likely the client should be treated as retail. If the client usually only requires advice on their non-superannuation investments, they may be treated as wholesale.

Q: Can I include the value of my client's home in their net assets when considering the wealth test.

A: Generally the home is included, but remember it is the net value. The accountant will determine what assets can be considered.

Q: Do I have to treat a client as retail when providing personal insurance advice?

A: No, if a client meets the eligibility test you can treat them as a wholesale client when giving personal insurance advice. You should consider if they have the financial literacy and experience in these types of products.

Q: Can I give advice to a client (who meets the wholesale test) to make contributions to their SMSF (which meets the wholesale test) without an SoA?

A: No, as the advice is provided to the member about their interest in a superannuation product, even where the contribution is to an SMSF, an SoA is required. It does not matter that the member and the trustee are the same person, and they and the SMSF meet the wholesale client definition. Advice relating to a superannuation product is always treated as advice to a retail client.

RESOURCES

- [14-191MR Statement on wholesale and retail investors and SMSFs | ASIC](#)
- [Corporations Act s761G](#) - Meaning of retail client and wholesale client
- [Corporations Act s761GA](#) - Meaning of retail client--sophisticated investors
- [Corporations Act Reg 7.1.28](#) - Retail clients and wholesale clients: assets and income

QUERIES & FURTHER INFORMATION

Additional queries should be directed to [\[insert responsible person and contact information\]](#).

Version	Date	Changes
V1.1	30/06/2021	
V2.0	18/04/2024	Expand available wholesale tests including allowing SMSFs with \$2.5 million to be treated as wholesale. Remove requirement to maintain a wholesale client register Added guidance on service agreements, FDS and consent obligations Updated templates/appendices

A. APPENDIX

A.1 Wholesale Accountant's Certificate

GUIDANCE: The Wholesale Accountant's Certificate is required to be verified and signed by an Accountant prior to treating the client as a wholesale/sophisticated client. Where the adviser is also the client's accountant, this must be completed by another accountant (which could be an accountant within the same business). The Wholesale Accountant's Certificate only remains valid for 2 years. Accountants may also utilise their own Wholesale Accountant's Certificate template as approved by their relevant association. Remove guidance prior to completing.

Wholesale Client | Certificate by a Qualified Accountant

Corporations Regulations 2001 reg 7.1.28

Client Information

Name of Person or Entity: _____

Address of Person or Entity: _____

Accountant Declaration

I certify that the Person or Entity whose details are set out above:

- ☐ Person has net assets of at least \$2.5 million; or
- ☐ Person has gross income for each of the last 2 financial years or at least \$250,000
- ☐ Entity (e.g. SMSF trustee, company trustee or family trust) has net assets of at least \$10 million/\$2.5million

I declare that I comply with my professional body's continuing professional education requirements.

Member of Professional Body: _____

Membership Designation: _____

Signature of Accountant: _____

Name of Accountant:

Date of Issue:

Address of Accountant:

B. WHOLESALE CLIENT CONFIRMATION LETTER

GUIDANCE: The Wholesale Client Acknowledgement Letter is required to be signed by the client prior to treating the client as a wholesale/sophisticated client. The adviser must explain the contents of the letter and ensure the client fully understands. This discussion must be documented within file notes. Please personalise the red text and delete this guidance prior to providing to the client.

<Date>

<Client Name>

<Address>

<Suburb, State, Post Code>

Dear <Client>

Wholesale client confirmation letter

This letter is to confirm your desire and agreement to be treated as a wholesale investor, effective the date you sign this letter.

Based on our discussions I am satisfied that you have the relevant financial literacy and experience that allows you to assess your own needs, the information I provide you and the merits, value and risks of financial products because <insert reasons>.

As such we would like to formalise this arrangement by signing the declaration below.

Client Declaration

IMPORTANT NOTE: You should read the declaration below carefully before signing. If you are unsure about anything, please ask me.

I agree and understand that because of being treated as a wholesale investor I acknowledge that:

- I have the financial literacy and financial experience to make my own decisions regarding my investments without the need for retail personal financial advice; and
- I have reduced protections in comparison to retail clients and do not have access to an external independent dispute resolution scheme such as the Australian Financial Complaints Authority; and
- I understand that regulations such as the requirement to act in the best interests of the client do not apply to wholesale investors; and
- My adviser is not required to provide me with Statement of Advice; and
- My adviser is not required to provide me with a Product Disclosure Statement (PDS), but may at my request; and
- I understand and acknowledge I am entirely responsible for my investment decisions.

I give permission for my information to be disclosed to and used by those who will be involved in providing or implementing financial advice to me, including:

- The Licensee
- Financial product providers that my financial adviser recommends to me
- Service providers engaged to provide financial planning-related services including but not limited to paraplanning, compliance, administration, estate planning and financial services software. <This includes service providers located outside of Australia, including New Zealand, Japan, South Africa, USA, member states of the European Union, India, Vietnam, Thailand and the Philippines >.

- Companies involved in communicating the information to any of the above parties, such as by electronic mail services, cloud storage services and/or document creation services.
 - My permission extends to electronic communication of the information provided and for record keeping purposes.
- ☐ I give permission to receive marketing and advertising materials on products, services, events, promotions and offers from my adviser and their related parties.
- ☐ I give permission for the information I have provided and related documents to also be disclosed to the following people/parties (e.g. name of my spouse / solicitor / accountant / offshore provider including country):

I give permission for my tax file number (TFN) to be collected and retained by my adviser and the Licensee in order to provide me with financial services. I understand that:

- my TFN may need to be provided to authorised recipients of TFNs under the Superannuation Industry (Supervision) Act 1993, the Retirement Savings Accounts Act 1997 and/or under taxation legislation or social security laws, and
- while it is not an offence to refuse to disclose my TFN, non-disclosure can delay the provision of those financial services and/or may result in taxation implications.

Client acknowledgement

Client 1 signature			
Signature			
Full name		Date	
Client 2 signature			
Signature			
Full name		Date	

If you require additional information or have any queries, please feel free to contact the office on

<XXXXXXXXXXXX>

Regards,

<Adviser>

<Business Name>

<Adviser contact information>

A.3 Wholesale Implementation Form

GUIDANCE: The Wholesale implementation form is required to be utilised before or at the time of implementing advice to a wholesale/sophisticated client. This is confirming that the client agrees to implement the advice. Please personalise the red text and delete this guidance prior to providing to client.

<Date>

<Client Name>

<Address>

<Suburb, State, Post Code>

Dear <Client>,

Wholesale implementation form

This document is a confirmation that you agree to implement the following:

- <insert product and strategic advice recommendations>

Disclosure of any potential conflict of interest <delete if not applicable>

The following benefits, interests or associations may be capable or reasonably seen to be capable of influencing my advice. It includes payments or benefits to the Business, and associated entity and/or I.

- < e.g. referral party that pays a referral fee, or related party that may benefit from referrals>

Implementation consent

IMPORTANT NOTE: You should read the declaration below carefully before signing. If you are unsure about anything, please ask me.

I agree to the implementation of the advice as described within this form and acknowledge that:

- I am being treated as a **wholesale investor** and agree that I have the **financial literacy and experience** to make my own decisions regarding my investments
- My adviser is **not required to provide me with a Statement of Advice**
- I have **reduced protections in comparison to retail clients** and do not have access to an external dispute resolution scheme such as the Australian Financial Complaints Authority
- I understand that regulations such as **the requirement to act in the best interests of the client does not apply** to wholesale investors
- My adviser is not required to provide me with a **Product Disclosure Statement (PDS)**, but may have at my request
- I understand and acknowledge **I am entirely responsible for my investment decisions.**

Client acknowledgement

Client 1 signature			
Signature			
Full name		Date	
Client 2 signature			

Client 1 signature			
Signature			
Full name		Date	

If you require additional information or have any queries, please feel free to contact the office on
 <XXXXXXXXXXXX>

Regards,

<Adviser>

<Business Name>

<Adviser contact information>

A.4 Wholesale Client Checklist

Client name:

Date assessed as wholesale:

Wholesale client test								
Select one of the following, <u>plus</u> the sophisticated investor test								
☐	Personal wealth test	Net assets of \$2.5 million – <i>accountant's certificate required</i>						
☐	Personal wealth test	Gross annual income of at least \$250,000 for each of the last two financial years – <i>accountant's certificate required</i>						
☐	Professional investor test (SMSF)	Net assets of \$10 million/\$2.5 million – <i>accountant's certificate required</i>						
☐	Sophisticated investor test	More than 20 employees – or a manufacturing business with more than 100 employees.						
☐	Price/product value test	The price/value of a single investment (excluding life insurance and superannuation funds) is equal to or exceeds \$500,000.						
☐	Sophisticated investor test	Assessed that the client has sufficient financial literacy, knowledge and experience						
Financial Product (ensure all are checked – this should be assessed each time advice is provided)								
☐	Type	The financial product is not a general insurance, superannuation or retirement savings account product.						
☐	Approved Product List (APL)	The financial product is on the APL						
Required documentation (ensure all are checked)								
☐	Accountants certificate Date: _____	Is there a valid accountant's certificate on file and has it been issued within the last 2 years? – <i>the adviser must not act as the accountant</i>						
☐	Wholesale confirmation letter Date: _____	Is there a signed wholesale client letter, confirming the client understands and agrees with being classified as wholesale?						
Required evidence (ensure all are checked)								
☐	Investment experience	Has the adviser assessed the client's previous investment experience and financial knowledge? Has this been documented in file notes? Previous products invested in: <table border="1"> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> </table>						
☐	Financial literacy	Does the client have a high level of financial literacy? Consider their current or previous occupations. Has this been documented in file notes? Notes: <table border="1"> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> </table>						

Wholesale client test		
☐	Source of funds	Has the source of funds been identified and documented? Does the source impact on the wholesale treatment (e.g. recent inheritance, borrowed funds)? Notes:
Adviser Notes Section		