



## ARE YOU A RETAIL OR WHOLESALE INVESTOR?

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We are often asked by clients whether they are a retail or wholesale investor.

The distinction between a wholesale and a retail investor in financial services law is an important one. Given that a key purpose of financial services laws is consumer protection, the level of regulation is much higher where fund managers like Folkestone are dealing with retail investors, compared to dealing with wholesale investors.

Wholesale investors are considered to be more financially savvy and informed, and have experience in investing and protecting their interests and therefore do not need all of the consumer protections that apply for retail investors.

Whether an investor is a retail or wholesale investor is particularly important for Folkestone as we offer both retail and wholesale managed funds and the disclosure requirements for these two types of managed funds will typically be different. For example, a retail managed fund requires a Product Disclosure Statement (PDS) to be issued to potential investors. There are specific content requirements for a PDS to ensure it contains information that might reasonably be expected to have a material influence on the person's decision to invest in the fund.

A wholesale fund may not require a PDS and instead potential investors can be provided with an Information Memorandum (IM). IM's are not regulated and there are no specific content

requirements.

The rationale is that people who are considered a wholesale/potential investor are more likely to be able to evaluate offers of securities or interests in a fund without needing the protections of a regulated disclosure document like a PDS.

Given the importance of the retail client consumer protections, the Australian Securities and Investments Commission (ASIC) may take regulatory action where a fund manager mis-classifies their clients.

### WHAT IS THE DIFFERENCE BETWEEN RETAIL AND WHOLESALE MANAGED FUNDS?

Retail managed funds are generally designed to cater for individual investors with minimum investment amounts ranging from \$1,000. For example, the Folkestone Maxim A-REIT Securities Fund has a minimum investment amount of \$5,000 and Folkestone's unlisted real estate income funds typically have a minimum investment of \$20,000.

Wholesale managed funds are generally designed to cater for professional investors with significantly higher minimum investment amounts, typically in excess of \$100,000 per fund. For example, Folkestone's unlisted real estate development funds which have a higher risk/return profile than our income funds, generally have a minimum investment of \$100,000 and are typically issued under an IM.

### WHO IS A RETAIL INVESTOR?

A retail investor covers anyone who does not come within the definition of a wholesale investor for the purposes of providing a financial product or financial service under section 761G(5), (6), (6A) or (7) or section 761GA of the Corporations Act 2001 (Cth) (Corporations Act).

### WHO IS A WHOLESALE INVESTOR?

Set out below are the most common circumstances where a person will be considered to be a wholesale investor.

#### a) *Investor who meets the net assets/income or the price/value test* - Section 761G(7) of the Corporations Act defines this as:

- A person or entity that has obtained an accountant's certificate within the preceding six months stating that the client:
  - (a) has net assets of at least \$2.5 million, or
  - (b) has a gross income for each of the last two financial years of at least \$250,000;
- A person or entity that is controlled by a person or entity that meets the requirements of (a) or (b) above;
- A person or entity who invests where the entry price of the product is at least \$500,000.



**b) Professional investor** – Section 9 and 761G(7)(d) of the Corporations Act defines a professional investor as one or more of the following:

- A financial services licensee;
- A body regulated by APRA, other than a trustee of any of the following (within the meaning of the Superannuation Industry (Supervision) Act 1993):
  - a) a superannuation fund;
  - b) an approved deposit fund;
  - c) a pooled superannuation fund;
  - d) a public sector superannuation scheme;
- A body registered under the Financial Corporations Act 1974;
- The trustee of:
  - a) a superannuation fund;
  - b) an approved deposit fund;
  - c) a pooled superannuation trust; or
  - d) a public sector superannuation scheme;

within the meaning of the Superannuation Industry (Supervision) Act 1993 and the fund, trust or scheme has net assets of at least \$10 million;

- A person or entity who controls at least \$10 million (including any amount held by an associate or under a trust that the person manages);

- A listed entity or related body corporate of a listed entity;
- An exempt public authority;
- A body corporate or an unincorporated body that:
  - a) Carries on the business of investment in financial products, interests in land or other investments; and
  - b) For those purposes, invests funds received (directly or indirectly) following an offer or invitation to the public, within the meaning of section 82 of the Corporations Act, the terms of which provided for the funds subscribed to be invested for those purposes;
- A foreign entity that, if established or incorporated in Australia, would be covered by one of the preceding paragraphs.

## WHAT ABOUT SELF-MANAGED SUPERANNUATION FUNDS (SMSFs) – ARE THEY A RETAIL OR WHOLESALE INVESTOR?

On 8 August 2014, ASIC provided much needed clarity around the treatment of wholesale and retail classifications for trustees of SMSFs.

An SMSF can now be classified as wholesale if the trustee of an existing superannuation fund who receives advice about how to invest the fund's assets meets the wholesale investor general test mentioned above (e.g. if the trustee has net assets of at least \$2.5 million, or income of \$250,000 a year for the past

two financial years, or be making an investment worth a minimum \$500,000), rather than applying the higher \$10 million net asset test. ASIC will adopt a similar approach to a trustee who subscribes for financial products on behalf of an existing fund.

## CONCLUSION

It's important that we ascertain if you are a retail or wholesale investor, so that we can make sure that:

1. you receive proper disclosure about our funds; and
2. we receive all of the necessary documentation to confirm your status as either a retail or wholesale investor.

If you're unsure about whether you are a retail or wholesale investor, please speak to your financial adviser, accountant or other professional advisor.



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