

## ■ Schedule One - FMCA

### Wholesale Investors

**Wholesale investor** criteria under the exclusion categories of schedule 1, Clauses 3(2)(a) – (c) and (3)(3)(a)-(b)(ii) of the FMCA

A. Schedule 1, Clause 3(2)(a): An “investment business” as defined in Schedule 1, clause 37 of the FMCA:

1. A person is an investment business if the person is-

- a. an entity whose principal business consists of 1 or more of the following
  - i. investing in financial products; or
  - ii. acting as an underwriter; or
  - iii. providing a financial adviser service (within the meaning of section 9 of the Financial Advisers Act 2008) in relation to financial products; or
  - iv. providing a broking service (within the meaning of section 77b of the Financial Advisers Act 2008) in relation to financial products; or
  - v. trading in financial products on behalf of other persons; or
- b. a registered bank; or
- c. an NBDT; or
- d. a licensed insurer (within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010); or
- e. a manager of a registered scheme, or a discretionary investment management service, that holds a market services license; or
- f. a derivatives issuer that holds a market services license; or
- g. a QFE or an authorised financial adviser

2. Subclause (1)(a) does not apply to an entity if the entity was established or acquired with a view to using it as an entity to which offers of financial products may be made in reliance upon the exclusion in Schedule 1, clause 3 of the FMCA.

B. Schedule 1, Clause 3(2)(b): Investment Criteria as specified in Schedule 1, clause 38 of the FMCA:

1. A person (**A**) meets the investment activity criteria for the purposes of clause 3(2)(b) if at least 1 of the following paragraphs applies:

- a. **A** owns, or at any time during the 2-year period before the relevant time has owned, a portfolio of specified financial products of a value of at least \$1 million (in aggregate):
- b. **A** has, during the 2-year period before the relevant time, carried out 1 or more transactions to acquire specified financial products where the amount payable under those transactions (in aggregate) is at least \$1 million and the other parties to the transactions are not associated persons of **A**:
- c. **A** is an individual who has, within the last 10 years before the relevant time, been employed or engaged in an investment business and has, for at least 2 years during that 10-year period, participated to a material extent in the investment decisions made by the investment business.

2. For the purposes of:

- a. Subclause (1)(a) above, in determining the specified financial products owned by **A**, the specified financial products owned by an entity controlled by **A** may be treated as being owned by **A** :
- b. Subclause (1)(b) above, in determining the transactions carried out by **A**, transactions carried out by an entity controlled by **A** may be treated as carried out by **A**:

3. The frameworks and methodologies prescribed by the FMA under subpart 4 of Part 9 of this Act for the purposes of this clause (if any) must be complied with when determining whether any of the paragraphs of subclause (1) above are satisfied.

4. In this clause, **specified financial products**, in relation to **A**, means financial products other than-

- a. Category 2 products
- b. Interests in a retirement scheme

c. Financial products issued by an associated person of A

C. Schedule 1, Clause 3(2)(c): A "large" investor as defined in Schedule 1, clause 39 of the FMCA:

A person is **large** if at least 1 of the following paragraphs applies:

- a. As at the last day of each of the 2 most recently completed financial years of the person before the relevant time, the net assets of the person and the entities controlled by the person exceeded \$5 million:
- b. In each of the 2 most recently completed financial years of the person before the relevant time, the total consolidated turnover of the person and the entities controlled by the person exceeded \$5 million.

The frameworks and methodologies prescribed by the FMA under subpart 4 of Part 9 of the FMCA for the purposes of this clause (if any) must be complied with when determining whether either of the above are satisfied.

D. Schedule 1, Clause 3(3)(a): Eligible investor as defined in Schedule 1, clause 41 of the FMCA:

The investor certifies as required by the Eligible Person Certificate and that certification is confirmed by a financial or legal adviser, as required and set out on page 47.

E. Schedule 1, Clause 3(3)(b): Minimum investment of \$750,000:

In relation to the offer of financial products for issue or sale:

- a. The minimum amount payable by the person on acceptance of the offer is at least \$750,000; or
- b. The amount payable by the person on acceptance of the offer plus the amounts previously paid by the person for financial products of the issuer of the same class that are held by the person add up to at least \$750,000.

## DEFINITIONS

Note the terms used above have the meaning as given to them in the relevant provisions of the FMCA, including:

1. "**Category 2 product**" – means any of the following products:

- a. Bank term deposits
- b. Bonus bonds
- c. A call building society share
- d. A call credit union share
- e. A call debt security
- f. A share in a co-operative company (as defined in section 2(1) of the Co-operatives Companies Act 1996)
- g. A unit in a cash or term portfolio investment entity (as defined in the regulations)
- h. A Consumer Credit contract (within the meaning of the Credit Contracts and Consumer Finance Act 2003)
- i. A contract of insurance (other than an investment – linked contract of insurance)
- j. A life insurance policy (within the meaning of section 2(1) of the Securities Act 1978) issued before 1 January 2009)
- k. Any other product specified by the regulations
- l. A renewal or variation of the terms or conditions of any existing category 2 product

2. "Financial product" – means:

- a. A debt security
- b. An equity security
- c. A managed investment product
- d. A derivative