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Paper for the House Committee

**Report of the Subcommittee on Securities and Futures
(Professional Investor) (Amendment) Rules 2011**

Purpose

This paper reports on the deliberations of the Subcommittee on Securities and Futures (Professional Investor) (Amendment) Rules 2011 ("the Subcommittee").

Background

2. If an investor is a "professional investor" as classified under Securities and Futures Ordinance (Cap. 571) ("SFO"), certain legal restrictions¹ provided under the SFO do not apply. A similar concept of professional investor is also found in other jurisdictions, such as the United Kingdom, the United States, Australia and Singapore.

3. There are two types of professional investors under SFO. The first type are specified entities, such as banks and insurance companies, as set out in paragraphs (a) to (i) of the definition of "professional investor" in Part 1 of Schedule 1 to SFO. The second type are persons belonging to a class ("high net worth investors") prescribed under the Securities and Futures (Professional Investor) Rules (Cap. 571 sub. leg. D) ("PI Rules") pursuant to paragraph (j) of the definition of "professional investor".

4. The high net worth investors prescribed as professional investors under section 3(a), (b), (c) and (d) of the PI Rules are: -

- (a) a trust corporation having been entrusted under the trust or trusts of which it acts as a trustee with total assets of not less than \$40 million

¹ Restrictions in relation to the issuance of advertisements about investments (section 103 of the SFO), the making of unsolicited calls (section 174 of the SFO) and the communication of an offer in relation to securities (section 175 of the SFO)

- (or the equivalent in foreign currency)²;
- (b) an individual, either alone or with his associates on a joint account, having a portfolio of not less than \$8 million (or the equivalent in foreign currency)³;
 - (c) a corporation or partnership having either a portfolio of not less than \$8 million (or the equivalent in foreign currency) or total assets of not less than \$40 million (or the equivalent in foreign currency)⁴; and
 - (d) a corporation the sole business of which is to hold investments and which is wholly owned by an individual (either alone or with his associates on a joint account) having a portfolio of not less than \$8 million (or the equivalent in foreign currency) (i.e. an individual who falls within the description in sub-paragraph (b) above)⁵.

5. The PI Rules also set out specific methods (evidential requirements) to ascertain whether an investor has the required assets or portfolio so as to be classified as a professional investor. Depending on whether the investor in question is a trust corporation⁶, an individual⁷, a corporation⁸ or partnership⁹, the value of the assets or portfolio is ascertained, as the case may be, by: -

- (a) what is stated in the most recent audited financial statement or statements prepared within 16 months before the relevant date¹⁰;
- (b) referring to the custodian statement or statements issued within 12 months before the relevant date; or
- (c) what is stated in a certificate issued by an auditor or a certified public accountant within 12 months before the relevant date.

6. According to the Securities and Futures Commission ("SFC"), market participants have expressed that the evidential requirements under the PI Rules are very specific and provide little flexibility. SFC has therefore conducted a public consultation exercise in relation to the evidential requirements under the PI Rules in October 2010 and published the consultation conclusions in February 2011.

² Section 3(a) of the PI Rules.

³ Section 3(b) of the PI Rules.

⁴ Section 3(c) of the PI Rules.

⁵ Section 3(d) of the PI Rules.

⁶ Section 3(a) of the PI Rules.

⁷ Section 3(b) of the PI Rules.

⁸ Section 3(c) of the PI Rules.

⁹ Section 3(c) of the PI Rules.

¹⁰ Relevant date is defined in section 2 of the PI Rules to mean different dates with respect to different regulated acts or obligations in question.

L.N. 135 of 2011: Securities and Futures (Professional Investor) (Amendment) Rules 2011

7. Having regard to the views received from market participants and the public in the consultation in October 2010, SFC proposed to amend the PI Rules to allow more flexibility. The Securities and Futures (Professional Investor) (Amendment) Rules 2011 (L.N. 135 of 2011) ("the Amendment Rules") was made pursuant to section 397(1) of SFO to amend the PI Rules to:

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- (a) prescribe additional means of ascertaining whether an investor is a professional investor under section 3(a), (b) and (c) of the PI Rules, whilst preserving the existing methods of evidencing the required assets or portfolio ; and
- (b) prescribe additional types of corporations as professional investors under section 3(d) of the PI Rules.

8. The Amendment Rules enable market participants to use methods (in addition to those prescribed in the existing PI Rules) that are appropriate in the circumstances to satisfy themselves that a trust corporation, an individual (either alone or with his associates on a joint account), a corporation or partnership meets the required assets or portfolio threshold at the relevant date to qualify as a professional investor at the relevant date..

9. The Amendment Rules also modify section 3(d) of the PI Rules to prescribe as a professional investor any corporation the sole business of which at the relevant date is to hold investments and which at the relevant date is wholly owned by one or more trust corporations, individuals (either alone or with their associates on joint accounts), corporations or partnerships where they are prescribed as professional investors within the scope of section 3(a), (b) or (c) of the PI Rules.

10. The Amendment Rules will come into operation on 16 December 2011.

The Subcommittee

11. At the House Committee meeting held on 21 October 2011, Members agreed to form a subcommittee to study the Amendment Rules. The membership list of the Subcommittee is in the **Appendix I**. Under the chairmanship of Hon CHAN Kam-lam, the Subcommittee has held four meetings with the Administration and SFC and received views from stakeholders such as the Law Society of Hong Kong at one of these meetings. A list of the organizations that have given views and submissions to the Subcommittee is in **Appendix II**.

Deliberations of the Subcommittee

12. The Subcommittee has examined the definition of "professional investor" and the regulatory framework for the Professional Investor regime, and sought explication on the assessment and qualifying criteria for professional investors, the minimum portfolio requirement, the regulatory role of SFC and the Hong Kong Monetary Authority ("HKMA"), as well as sanctions and criminal liabilities for non-compliance with breaches of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission ("Code of Conduct"), PI Rules and the relevant legislation. The views and concerns expressed by Subcommittee members and deputations that have given views to the Subcommittee are set out in the ensuing paragraphs.

Definition of "professional investor"

13. Ir Dr Hon Raymond HO has expressed concern whether the definition of "professional investor" in the PI Rules is sufficiently wide to cover all relevant financial institutions such as funds, trust corporations and insurance companies, etc. The Administration has explained that paragraphs (a) to (i) of the definition of "professional investor" in Part 1 of Schedule 1 to SFO has set out specific types of entities (including market professionals and institutional investors) that are professional investors. Pursuant to paragraph (j) of the definition of "professional investor", SFC is empowered to prescribe additional classes of persons who meet the specified monetary thresholds to be professional investors under the PI Rules.

14. Hon Audrey EU has raised concern that the definition of "professional investor" under the PI Rules has not included or made any reference to qualifying criteria contained in the Code of Conduct, such as the assessment on the investor's knowledge, expertise and investment experience in the relevant product and/or market and the written consent requirement. She is concerned that the definition of "professional investor" is not in a single piece of legislation which may cause confusion and difficulties to the general public to understand the qualifying criteria of a professional investor and the consequences and risks to be classified as a professional investor. The Administration has explained that the Code of Conduct does not provide a legal definition of "professional investor". Rather the Code of Conduct provides specific actions that an intermediary must take when the intermediary wishes to waive certain regulatory requirements in dealing with a professional investor client under the Code of Conduct.

The regulatory framework

15. The Subcommittee notes that SFO contains certain investor protection provisions which do not apply when the relevant regulated acts are targeted specifically at professional investors. If an investor is classified as a "professional investor", the legal restrictions on the issuance of advertisements in relation to investments¹¹, the making of unsolicited calls¹², and the communication of an offer in relation to securities¹³ will cease to apply. Further, the offering of any shares in (or debentures of) a company to professional investors is not subject to the prospectus regime under the Companies Ordinance. In addition, if an intermediary follows the procedural requirements as specified in the Code of Conduct in dealing with its professional investor clients, it can be further exempted from complying with the regulatory requirements set out in paragraph 15.5 of the Code of Conduct (details in **Appendix III**).

16. In the light of the rapid market development and having regard to the Lehman bankruptcy incident and the increase in the sale of investment products with complex structures and features, Subcommittee members are particularly concerned that effective regulatory and enforcement measures are in place to better safeguard the interests of the investing public. In this connection, the Subcommittee has examined the current professional investor regulatory and enforcement regime and sought details on the following issues (paragraphs 17-27).

Assessment/qualifying criteria and procedural requirements under the Code of Conduct

17. The Administration and SFC have advised that prior to treating an investor, who has been classified as a professional investor under the PI Rules, as a professional investor under the Code of Conduct and thereby waiving the regulatory requirements set out in paragraph 15.5 of the Code of Conduct, the licensed or registered person should fulfill the following requirements set out under paragraphs 15.3 to 15.4 of the Code of Conduct: -

- (a) The intermediary should assess the investor's knowledge, expertise and investment experience and be reasonably satisfied that the investor is knowledgeable and has sufficient expertise in relevant products and markets (*paragraph 15.3 of the Code of Conduct*) having regard to the following:
 - the type of products in which the person has traded;

¹¹ Section 103 of SFO

¹² Section 174 of SFO.

¹³ Section 175 of SFO.

- the frequency and size of trades (a professional investor would be expected to have traded not less than 40 transactions per annum);
 - the person's dealing experience (a professional investor would be expected to have been active in the relevant market for at least two years);
 - the person's knowledge and expertise in the relevant products; and
 - his awareness of the risks involved in trading in the relevant products and/or markets.
- (b) The intermediary should undertake a separate assessment prior to treating an existing professional investor as a professional investor in a different product type or market (*paragraph 15.3A of the Code of Conduct*);
- (c) The intermediary should undertake a new assessment where a professional investor has ceased to trade in the relevant product or market for more than two years (*paragraph 15.3B of the Code of Conduct*);
- (d) The intermediary should provide a written explanation to the client concerned explaining the risks and consequences of being treated as a professional investor, in particular, the information that will not be provided to him by virtue of being treated as a professional investor. The client should also be informed of the right to withdraw from being treated as a professional investor whether in respect of all products or markets or any part thereof (*paragraph 15.4(a) of the Code of Conduct*);
- (e) The intermediary should obtain a written and signed declaration from the client concerned that the consequences of consenting to being treated as a professional investor and the right to withdraw from being treated as such have been explained to him and that he wishes to be treated as a professional investor (*paragraph 15.4(b) of the Code of Conduct*);
- (f) Procedures should be in place to enable it to carry out a confirmation exercise annually to enable it to ensure that the clients who have elected to be treated as professional investors continue to fulfill the requisite requirements under the PI Rules (*paragraph 15.4(c) of the Code of Conduct*); and
- (g) In carrying out the annual confirmation, the intermediary should remind its clients in writing of the risks and consequences of being treated as a professional investor, in particular the fact that the intermediary is not required to comply with certain regulatory requirements and the right for clients to withdraw from being treated as a professional investor whether in respect of all products or markets or any part thereof (*as mentioned in the circular issued by SFC dated*

18 March 2011).

18. SFC has pointed out that paragraph 15.3 of the Code of Conduct on the knowledge, expertise and investment experience assessment criteria has been tightened after considering the views received during the public consultation on Proposals to Enhance Protection for the Investing Public conducted in the fourth quarter of 2009. The intermediary is required to conduct the knowledge, expertise and investment experience assessment in writing and keep records of all relevant information and documents obtained in the assessment so as to demonstrate the basis of the assessment. At the Subcommittee's request, the Administration has provided a copy of the circular on "Annual Confirmation Exercise of Professional Investors" issued by SFC to licensed corporations and registered institutions on 18 March 2011, and information on the Professional Investor regime of other comparable jurisdictions (**Appendix IV**) for members' reference.

19. To enhance investor protection, Hon James TO and Hon KAM Nai-wai have requested the Administration/SFC to consider making it an explicit requirement in the Amendment Rules or relevant legislation requiring intermediaries to: -

- (a) comply with the relevant regulatory requirements under the Code of Conduct in dealing with/serving professional investors; and
- (b) assess an investor's knowledge, expertise and investment experience prior to treating an investor as a professional investor.

20. The Administration has advised that the current legal and regulatory regime in Hong Kong has a three-level structure. The first level is the primary legislation, SFO, which provides the broad legal framework setting out the key provisions governing the securities and futures industry. The second level is the rules made under SFO that prescribe requirements in subsidiary legislation, and the third level is the codes of conduct made under the SFO relating to the practices and standards with which intermediaries and their representatives are ordinarily expected to comply with in carrying on their regulated activities. While the provisions in SFO and the PI Rules are carefully crafted and in statutory language, the Code of Conduct is written in more layman language to facilitate intermediaries in understanding the requirements in their day-to-day operations.

21. On members' suggestion to incorporate certain regulatory requirements contained in the Code of Conduct in the Amendment Rules and the relevant legislation, the Administration is of the view that extracting certain elements from the Code of Conduct without the surrounding provisions may affect the totality of the regulatory requirements in the Code of Conduct and disturb the existing balance of the regulatory regime, rendering it more difficult to

administer. Moreover, such an amendment may necessitate consequential amendments to other parts of SFO or subsidiary legislation, and the language to be used must be drafted very carefully to provide a high level of legal certainty as it would result in potential criminal sanctions. Nevertheless, the Administration has undertaken to review the Professional Investor regime with a view to consulting the market.

22. Hon James TO has suggested to include in the Amendment Rules or relevant legislation the assessment/qualifying criteria similar to the "elective professional clients" adopted in the UK. According to the Administration, the criteria for "elective professional clients" in the UK were developed in accordance with the EU Markets in Financial Instruments Directive. The criteria are specified in the Conduct of Business Sourcebook of the UK Financial Services Authority. As such, they are similar in effect to the provisions on professional investors as specified in the Code of Conduct in Hong Kong.

23. Hon CHIM Pui-chung has suggested the Administration to consider introducing, in the long run, a licence regime in respect of different financial products and markets by way of the issue of a licence or certificate to accord an investor with the status of a professional investor.

24. The Administration has advised that they are not aware that any major overseas regulator makes an assessment of individual investors and grants a licence if they qualify as a professional investor. As such a proposal involves fundamental changes to the role of SFC as well as the existing market practice, the Administration considers it necessary to study the implications carefully and consult the market before making a decision.

The regulatory role of SFC and HKMA

25. According to the Administration, SFC which is responsible for regulating the securities and futures markets in Hong Kong performs ongoing monitoring of and conducts inspections on licensed corporations from time to time to monitor their compliance with relevant laws (e.g. SFO and the PI Rules) and regulatory standards under the Code of Conduct. SFC may initiate investigations into potential breaches or non-compliance, whether in response to inspection findings, upon referrals, or as identified in the course of handling complaints against licensed corporations.

26. The Administration has also advised that on-site examinations and off-site surveillance are also conducted by HKMA during its day-to-day supervision to ensure registered institutions' compliance with the relevant legal and regulatory requirements when serving professional investors and to assess

the effectiveness of registered institutions' control system. These include reviewing the registered institution's relevant policies and procedures and random sample checks on the registered institution's assessment and adherence to the required procedural safeguards for treating a customer as a professional investor, collecting the number of professional investors as defined under Part I of Schedule 1 to SFO from retail banks through regular survey and, where necessary, follows up with the banks concerned. Any potential non-compliance cases identified in the day-to-day supervision (whether from on-site examinations, off-site surveillance or in the course of handling complaints against registered institutions, etc) will be referred to the HKMA's Enforcement Department for further action as appropriate. Where major breaches or non-compliances are identified, HKMA may take disciplinary actions against an executive officer and/or a relevant individual (i.e. staff registered for conducting regulated activities) and, where appropriate, refer to SFC for enforcement and disciplinary actions.

Sanctions against breaches/non-compliance

27. The Administration has advised that breaches of SFO (e.g. provisions under sections 103, 174 and 175) and the PI Rules may lead to criminal sanctions. The failure to properly assess an investor as a professional investor under any of these provisions may result in criminal prosecution. For example, a breach of section 103(1) of SFO attracts a fine of up to \$500,000 and imprisonment for up to 3 years for conviction on indictment or a fine at level 6 (\$100,000) and imprisonment for up to 6 months for summary conviction. The Code of Conduct on the other hand is underpinned by the disciplinary regime set out in Part IX of SFO. Accordingly, in considering whether or not an intermediary has committed misconduct, SFC is required to have regard to applicable provisions of the Code of Conduct. Further, a failure on the part of an intermediary to comply with the provisions of the Code of Conduct may be taken into account by SFC in assessing whether the intermediary is a fit and proper person to be or to remain licensed or registered. Disciplinary sanctions are provided in Part IX of SFO, ranging from a public reprimand, through fines of up to \$10 million (or up to three times the profit made or loss avoided, whichever is greater), to suspension or revocation of the intermediary's licence or registration.

The minimum portfolio requirement

28. The Subcommittee notes that the minimum portfolio requirement of not less than HK\$8 million (or the equivalent in foreign currency) for a high net worth individual investor to be classified as a professional investor under the PI Rules has remained unchanged since 2001. In view of the significant depreciation of HK currency, the rise in real estate prices and the general

increase in the wealth of Hong Kong people, some members including Hon WONG Ting-kwong, Hon KAM Nai-wai and Hon James TO have questioned whether it is appropriate and reasonable to maintain the same minimum portfolio requirement. These members urged the Administration to consider raising the minimum portfolio threshold to enhance investor protection.

29. The Administration has explained that the minimum portfolio requirement of HK\$8 million has formed part of the public consultation on Proposals to Enhance Protection for the Investing Public conducted by SFC in the fourth quarter of 2009. According to SFC, the majority of the respondents who have given views on the minimum portfolio requirement opined that the minimum portfolio requirement should be maintained at HK\$8 million. Many respondents are concerned about the adverse impact that any increase in the minimum portfolio amount would have on the private placement market in Hong Kong. The Administration has further pointed out that the minimum portfolio requirement of HK\$8 million is comparable to other jurisdictions, e.g. higher than that in the United Kingdom (EUR 500,000) and lower than that in Australia (AUD 2.5 million) and Singapore (SGD 2 million).

30. The Subcommittee has also taken note that most of the depositions from the securities industry that gave views to the Subcommittee considered the existing minimum portfolio requirement of HK\$8 million reasonable and should remain unchanged. Some depositions (including Hong Kong Securities Professionals Association and the Institute of Securities Dealers Limited) have expressed concern that any excessive increase in the minimum portfolio requirement could adversely affect the private placement activities in Hong Kong, hamper the market practice of the direct placement of a newly listed company's shares in an initial public offering to professional investors in Hong Kong, undermine the development of the financial market in Hong Kong, and compromise Hong Kong's position as an international financial centre.

31. In response to Hon KAM Nai-wai and depositions' enquiry about the definition of "portfolio", the Administration has advised that the term "portfolio" does not include investment-linked insurance products. "Portfolio" is defined under section 2 of PI Rules as comprising any of the following-

- (a) securities;
- (b) a certificate of deposit issued by an authorized financial institution or a bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;
- (c) in relation to an individual, corporation or partnership, money held by a custodian for the individual, corporation or partnership.

Section 3(b) of the PI Rules

32. Some members have enquired about the addition of "or her" after "any of his" under section 3(b) in the English version of the PI Rules. The Administration, in consultation with the Law Drafting Division of the Department of Justice, has advised that the addition is in line with the policy of gender-neutral drafting used in all new legislation.

Views of deputations on the Amendment Rules

33. The organizations which have provided views to the Subcommittee are generally supportive of the Amendment Rules. They have expressed support for extending section 3(d) to include a corporation which is wholly owned by individuals, partnerships and corporations if they and each of them are qualified as a professional investor. On the proposal to prescribe additional means of ascertaining whether an investor is a professional investor under section 3(a) to 3(c) of the PI Rules, some deputations, such as HRL Morrison & Co Capital Management (Int) Ltd., support adopting a principle-based approach, to be supplemented by additional guidelines, for evidencing an investor's status as a professional investor whereby intermediaries may use other methods that are appropriate in the circumstances to ascertain whether an investor is qualified as a professional investor. The Law Society of Hong Kong supports providing flexibility to individuals or partnerships as they are not required by law to prepare audited financial statements and the custodian statements are not readily available to them. The Law Society of Hong Kong however considers such flexibility not necessary for trust companies or corporations where they are required by law to prepare audited financial statements and to whom custodian statements are readily available. Some deputations also agree to the use of "relevant date" as the time reference for ascertaining whether an investor meets the relevant assets or portfolio threshold to qualify as a professional investor. The Law Society of Hong Kong has indicated that there are mixed views on the appropriate "relevant date" on meeting the threshold. While some are supportive of the definition of "relevant date", an alternative view has been expressed that the relevant date should be the date of the investment.

Recommendation

34. The Subcommittee supports in principle the Amendment Rules. The Administration and the Subcommittee have not proposed any amendment to the subsidiary legislation.

Advice sought

35. Members are invited to note the deliberations and recommendation of the Subcommittee.

Council Business Division 1

Legislative Council Secretariat

23 November 2011

**Subcommittee on Securities and Futures (Professional Investor)
(Amendment) Rules 2011**

Membership list

Chairman Hon CHAN Kam-lam, SBS, JP

Members Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon James TO Kun-sun
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Ting-kwong, BBS, JP
Hon CHIM Pui-chung
Hon KAM Nai-wai, MH

(Total : 8 members)

Clerk Ms Annette LAM

Legal Adviser Ms Wendy KAN

Date 1 November 2011

**Subcommittee on Securities and Futures (Professional Investor)
(Amendment) Rules 2011**

List of organizations who have given views to the Subcommittee

1. HRL Morrison & Co Capital Management (Int) Ltd.
2. The Law Society of Hong Kong
3. Hong Kong Securities Professionals Association
4. Hong Kong Investor Relations Association
5. Clifford Chance, Hong Kong
6. UBS AG
7. The Institute of Securities Dealers Limited
8. The Hong Kong Association of Banks (submission only)
9. Hong Kong Securities Association (submission only)
10. Hong Kong Investment Funds Association (submission only)

**Extract from Code of Conduct for Persons Licensed by or Registered with
the Securities and Futures Commission**

15.5 Provisions that may be waived for Professional Investors

(a) Information about clients

- (i) the need to establish a client's financial situation, investment experience and investment objectives (paragraph 5.1 and paragraphs 2(d) and 2(e) of Schedule 6 to the Code), except where the licensed or registered person is providing advice on corporate finance work; and
- (ii) the need to ensure the suitability of a recommendation or solicitation (paragraph 5.2 and paragraph 49 of Schedule 6 to the Code);

(b) Client agreement

- (i) the need to enter into a written agreement and the provision of relevant risk disclosure statements (paragraph 6.1, paragraph 2 of Schedule 3, paragraph 2 of Schedule 4 and paragraph 1 of Schedule 6 to the Code);

(c) Discretionary accounts

- (i) the need for a licensed or registered person to obtain from the client an authority in a written form prior to effecting transactions for the client without his specific authority (paragraph 7.1(a)(ii)); and
- (ii) the need to explain the authority described under paragraph 7.1(a)(ii) and the need to confirm it on an annual basis (paragraph 7.1(b));

(For the avoidance of doubt, a licensed or registered person should still obtain an authorization from a client in order to effect transactions on the client's behalf, however where Professional Investors are concerned the procedures for obtaining such authorizations are relaxed as described in (i) and (ii) above.)

(d) Information for clients

- (i) the need to inform the client about the licensed or registered person and the identity and status of its employees and others acting on its behalf (paragraph 8.1);
- (ii) the need to confirm promptly with the client the essential features of a transaction after effecting a transaction for a client (paragraph 8.2, paragraph 4 of Schedule 3 and paragraph 18 of Schedule 6 to the Code); and
- (iii) *[Repealed]*
- (iv) the need to provide the client with documentation on the Nasdaq-Amex Pilot Program (paragraph 1 of Schedule 3 to the Code).

Professional Investors

	The United Kingdom	Australia	Singapore	The United States
Qualifying Criteria for Professional Investors	<p>There are 2 types of Professional Investors: <i>per se professional clients</i> and <i>elective professional clients</i>.</p> <p><u>Per se professional client</u> includes (but is not limited to) regulated investment firms, authorised financial institutions as well as large undertakings meeting 2 of the following size requirements on a company basis:</p> <p>(1) balance sheet total of EUR 20,000,000 (2) net turnover of EUR 40,000,000 (3) own funds of EUR 2,000,000.</p> <p>At the client's request, a firm may treat a client as an <u>elective professional client</u> if:</p> <p>(1) it undertakes an adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in light of the nature of the transactions or services</p>	<p>The regulatory requirements differentiate between retail and wholesale clients: if the client is not a retail client, then the client is a wholesale client.</p> <p>(a) A financial product (excluding general insurance products, superannuation products and retirement savings accounts) is provided to a <u>wholesale client</u> if:</p> <p>(1) the price for the provision of the financial product is at least AUD500,000; (2) the financial product, or the financial service, is provided for use in connection with a business that is not a small business; (3) the financial product is not provided for use in connection with a business and before the</p>	<p>“<i>Accredited investor</i>” includes:</p> <p>(1) an individual:</p> <ul style="list-style-type: none"> • whose net personal assets exceed in value SGD2 million (or such other amount as the Monetary Authority of Singapore (MAS) may prescribe); or • whose income in the preceding 12 months is not less than SGD300,000 (or such other amount as the MAS may prescribe); <p>(2) a corporation with net assets exceeding SGD10 million in value (or such other amount as the MAS may prescribe).</p>	<p>Relevant categories of investors include <i>accredited investors</i>, <i>qualified investors</i>, and <i>institutional customers</i>.</p> <p>The term <u>accredited investor</u> includes:</p> <p>(1) a natural person whose individual net worth, or joint net worth with his/her spouse exceeds USD1,000,000 at the time of the purchase; (2) a natural person who had an individual income in excess of USD200,000 in each of the 2 most recent years or joint income with his/her spouse in excess of USD300,000 in each of those years</p>

	The United Kingdom	Australia	Singapore	The United States
	<p>envisaged, that the client is capable of making his own investment decisions and understanding the risks involved; and</p> <p>(2) at least 2 of the following are satisfied:</p> <p>(a) the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous 4 quarters;</p> <p>(b) the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds EUR 500,000;</p> <p>(c) the client works or has worked in the financial sector for at least 1 year in a professional position, which requires knowledge of the transactions or services envisaged.</p>	<p>provision of the product, the client gives to the provider a copy of a certificate issued within the preceding 6 months by a qualified accountant stating that the client has (i) net assets of at least AUD2.5 million or (ii) gross income of at least AUD250,000 per annum for each of the last 2 financial years;</p> <p>(4) the purchaser is a professional investor (which includes financial services licensees and other regulated entities, as well as any person who controls at least AUD10 million).</p> <p>(b) A financial product is also provided to a <u>wholesale client</u> if the financial product is not provided for use in connection with a business, and the financial services licensee is satisfied</p>		<p>and has a reasonable expectation of reaching the same income level in the current year;</p> <p>(3) a trust, with total assets in excess of USD5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person (a person who has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment); and</p> <p>(4) an entity in which all of the equity owners are accredited investors.</p> <p>The term <u>qualified</u></p>

	The United Kingdom	Australia	Singapore	The United States
		<p>on reasonable grounds that the client has previous experience in using financial services and investing in financial products that allows the client to assess:</p> <ol style="list-style-type: none"> (1) the merits and value of the product; (2) the risks associated with holding the product; (3) the client's own information needs; and (4) the adequacy of the information given by the licensee and the product issuer. 		<p><u>investor</u> includes:</p> <ol style="list-style-type: none"> (1) a natural person who owns and invests on a discretionary basis, not less than USD25,000,000 in investments. <p>An <u>institutional customer</u> is a customer who qualifies as an <i>institutional account</i>, the definition of which includes the account of:</p> <ol style="list-style-type: none"> (1) an entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least USD50 million.
Procedural Requirements	<p>Prior to treating a retail client as an <u>elective professional client</u>:</p> <ol style="list-style-type: none"> (1) the client must state in writing that it wishes to be treated as a professional client either generally or in respect of a particular service or transaction or type 	<p>Before, or at the time when, the product or advice is provided to a <u>wholesale client</u> under (b) above:</p> <ol style="list-style-type: none"> (1) the licensee must give to the client a written statement of its reasons for being satisfied that the 	<p>When a licensed financial adviser etc provides any financial advisory service in respect of any (designated) investment product to an accredited investor, the</p>	

	The United Kingdom	Australia	Singapore	The United States
	<p>of transaction or product;</p> <p>(2) the firm must give the client a clear written warning of the protections and investor compensation rights the client may lose; and</p> <p>(3) the client must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.</p>	<p>client has the requisite previous experience in using financial services and investing in financial products; and</p> <p>(2) the client is required to sign a written acknowledgment that: (i) the licensee has not provided him with any document which would be required if he were a retail client and (ii) the licensee does not have any other obligations to him that relate to retail clients.</p>	<p>licensee shall disclose to the accredited investor the exemptions from certain business conduct requirements that are available to the licensee when providing financial advisory services to accredited investors.</p>	