

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

- Q1** Provide information on how regulators in jurisdictions other than Hong Kong (such as the United Kingdom, the United States, Australia and Singapore) define “Professional Investors”, including the qualifying criteria for Professional Investors, the assets and/or portfolio thresholds, and other relevant evidential and/or procedural requirements.
- A1** The definitions of “Professional Investors” (whereby intermediaries may be exempt from certain business conduct requirements) in other comparable jurisdictions are set out in the table below. The Professional Investor regime in the United Kingdom is more similar to the regime in Hong Kong as intermediaries are required to consider an investor’s knowledge and/or expertise and/or experience and disclose to the client the consequences of being treated as a Professional Investor, which is in line with the requirements in Hong Kong.

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> <ol style="list-style-type: none"> (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>At the client's request, a firm may treat a client as an <u>elective professional client</u> if:</p> <ol style="list-style-type: none"> (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 envisaged, that the client is capable of making his own investment decisions and understanding the risks involved; and (2) at least 2 of the following are satisfied: <ol style="list-style-type: none"> (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; (b) the size of the client's financial 	<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> <ol style="list-style-type: none"> (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 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; (4) the purchaser is a professional 	<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> <ol style="list-style-type: none"> (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 and has a reasonable expectation of reaching the same income level in the current year; (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

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	<p>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>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 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>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 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 	<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 	<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>	

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	<p>in respect of a particular service or transaction or type 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>being satisfied that the 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>	