

Extract

Corporations Act 2001 No. 50, 2001 as amended Compilation start date: 19 July 2013 Includes amendments up to: Act No. 61, 2013



Chapter 6D Fundraising
Part 6D.2 Disclosure to investors about securities
Division 2 Offers that need disclosure to investors

Section 708

Sophisticated investors

- (8) An offer of a body's securities does not need disclosure to investors under this Part if:
- (a) the minimum amount payable for the securities on acceptance of the offer by the person to whom the offer is made is at least \$500,000; or
 - (b) the amount payable for the securities on acceptance by the person to whom the offer is made and the amounts previously paid by the person for the body's securities of the same class that are held by the person add up to at least \$500,000; or
 - (c) it appears from a certificate given by a qualified accountant no more than 6 months before the offer is made that the person to whom the offer is made:
 - (i) has net assets of at least the amount specified in regulations made for the purposes of this subparagraph; or
 - (ii) has a gross income for each of the last 2 financial years of at least the amount specified in regulations made for the purposes of this subparagraph a year; or
 - (d) the offer is made to a company or trust controlled by a person who meets the requirements of subparagraph (c)(i) or (ii).
- Note 1: Section 9 defines *qualified accountant*.
- Note 2: A financial services licensee has obligations under Division 3 of Part 7.7 when providing financial advice. ASIC has a power under section 915C to suspend or cancel a licensee's licence.
- (9) In calculating the amount payable, or paid, for securities for the purposes of paragraph (8)(a) or (b), disregard any amount payable, or paid, to the extent to which it is to be paid, or was paid, out of money lent by the person offering the securities or an associate.

Section 761G

761G Meaning of retail client and wholesale client

Providing a financial product or financial service to a person as a retail client

- (1) For the purposes of this Chapter, a financial product or a financial service is provided to a person as a retail client unless subsection (5), (6), (6A) or (7), or section 761GA, provides otherwise.

Note: The references in this section to providing a financial product to a person are not to be taken to imply that the provision of a financial product is not also the provision of a financial service (see the meaning of dealing in section 766C).

Acquiring a financial product or financial service as a retail client

- (2) For the purposes of this Chapter, a person to whom a financial product or financial service is provided as a retail client is taken to acquire the product or service as a retail client.

Disposing of a financial product as a retail client

- (3) If a financial product is provided to a person as a retail client, any subsequent disposal of all or part of that product by the person is, for the purposes of this Chapter, a disposal by the person as a retail client.

Wholesale clients

- (4) For the purposes of this Chapter, a financial product or a financial service is provided to, or acquired by, a person as a wholesale client if it is not provided to, or acquired by, the person as a retail client.

761GA Meaning of retail client—sophisticated investors

For the purposes of this Chapter, a financial product, or a financial service (other than a traditional trustee company service) in relation to a financial product, is not provided by one person to another person as a retail client if:

- (a) the first person (the licensee) is a financial services licensee; and
- (b) the financial product is not a general insurance product, a superannuation product or an RSA product; and
- (c) the financial product or service is not provided for use in connection with a business; and
- (d) the licensee is satisfied on reasonable grounds that the other person (the client) has previous experience in using financial services and investing in financial products that allows the client to assess:
 - (i) the merits of the product or service; and
 - (ii) the value of the product or service; and
 - (iii) the risks associated with holding the product; and
 - (iv) the client's own information needs; and
 - (v) the adequacy of the information given by the licensee and the product issuer; and
- (e) the licensee gives the client before, or at the time when, the product or advice is provided a written statement of the licensee's reasons for being satisfied as to those matters; and
- (f) the client signs a written acknowledgment before, or at the time when, the product or service is provided that:
 - (i) the licensee has not given the client a Product Disclosure Statement; and
 - (ii) the licensee has not given the client any other document that would be required to be given to the client under this Chapter if the product or service were provided to the client as a retail client; and
 - (iii) the licensee does not have any other obligation to the client under this Chapter that the licensee would have if the product or service were provided to the client as a retail client.