

Self managed super funds qualifying as wholesale clients and sophisticated investors

Executive Summary

SMSF's can be classified as wholesale clients and sophisticated investors for the purpose of investing in securities (including bonds), if the trustee or the trust provides an accountant's certificate which states that the trustee or the trust:

1. holds net assets of at least \$2.5 million or has income for the past 2 years equal to or greater than \$250,000; or
2. is controlled by a person that holds net assets of at least \$2.5 million or has income for the past 2 years equal to or greater than \$250,000.

Background

Section 761A¹ defines a retail client as having the meanings given by sections 761G and 761GA. Section 761G provides that a financial product or financial service is provided to a person as a retail client unless subsection (5), (6), (6A), (7) or section 761GA provides otherwise. Section 761G(4) confirms that a financial product or financial services is provided to a person as a wholesale client if it is not provided to the person as a retail client.

None of the financial services or products offered by FIIG to its clients (which include clients which are SMSF) relate to or are superannuation products², general insurance, RSA products or traditional trustee company services. This means that sections 761GA(5), (6) and (6A) are not determinative of the issue.

Section 761G(7)

Question: Can a SMSF be a wholesale client for the purpose of purchasing securities (including bonds)?

Answer: Yes

Reason:

The relevant conditions to determine if a SMSF is a wholesale client are those set out in section 761G(7). If one of those provisions applies then it removes the 'person' who is being provided with the financial product or financial service from being a retail client. The applicable provision in relation to SMSF's is section 761G(7)(c).

1 All references in this document are references to the Corporations Act and the Corporations Regulations (Cth) 2001
 2 Superannuation product is defined as a beneficial interest in a superannuation entity which is a regulated superannuation fund, an approved deposit fund or a pooled superannuation trust, Superannuation (Supervision) Act 1993 (Cth).

Section 761G(7)(c) applies where:

"the financial product, or the financial service, is not provided for use in connection with a business, and the person who acquires the product or service gives the provider of the product or service, before the provision of the product or service, a copy of a certificate given within the preceding two years by a qualified accountant (as defined in section 9) that states that the person:

1. (i) has net assets of at least \$2.5 million³; or
2. (ii) has a gross income for each of the last 2 financial years of at least \$250,000⁴;"

Therefore a SMSF will meet the requirements to be a wholesale client provided it can give FIIG, before the provision of the product or service, a copy of a certificate prepared by a qualified accountant within the proceeding two years that states the trustee:

- has net assets of at least \$2.5 million; or
- has gross income for each of the last 2 financial years of at least \$250,000.

The 'person' referred to in section 761G(7)(c) is the trustee of the SMSF and not the trust. This is because the trust itself is not a legal entity. The trustee is the owner at law of the assets of the trust which it holds for the benefit of the beneficiaries. Therefore the trustee holds the assets of the trust. If the trust has assets of at least \$2.5 million then the trustee (and consequently the trust) becomes a person who can be a wholesale client within the meaning of section 761G(7)(c).

In addition, regulation 7.6.02AB inserts sub-section 761G(7)(ca) into the provisions of section 761G(7):

"the financial product, or the financial service, is acquired by a company or trust controlled by a person who meets the requirements of subparagraph (c)(i) or (ii)."

As a result, a trust (such as a SMSF) can also be classified as a wholesale client if the trust is controlled by a trustee who has net assets of at least \$2.5 million or has gross income for each of the last 2 financial years of at least \$250,000.

3 Regulation 7.1.28.
 4 Regulation 7.1.28.

Section 708(8)

Question: Can a SMSF be a sophisticated investor and therefore be given an offer of securities (corporate bonds) without a disclosure document being required under Part 6D?

Answer: Yes

Reason:

Sections 708(8)(c) and (d) are similar to sections 761G(7)(c) and (ca) with the investor, being the person to whom the offer is made, being required to have a minimum net assets of \$2.5 million or a minimum gross income of \$250,000 for the last 2 financial years or being controlled by a person who has net assets of \$2.5 million or a minimum gross income of \$250,000 for the last 2 financial years.

The test being met in section 708(8)(c) is by the person to whom the offer is made. By contrast, the test being met in section 708(8)(d) is satisfied where the offer is made to a trust and the trustee (being the person who controls the trust) is a person who meets the requirements in sub-section (c).

Therefore if a trustee or a trust is given an accountant's certificate which states that the trust or trustee:

- has net assets of at least \$2.5 million; or
- has gross income for each of the last financial years of at least \$250,000,

the trust (such as a SMSF) can be classified as a sophisticated investor and therefore be given an offer of securities without a disclosure document.

The trust can also be classified as a sophisticated investor where it is given an accountant's certificate which states that the trust is controlled by a person who:

- has net assets of at least \$2.5 million; or
- has gross income for each of the last financial years of at least \$250,000.

Conclusion

SMSFs can be classified as wholesale clients and sophisticated investors for the purpose of investing in securities (including bonds), where the trustee or the trust provide an accountant's certificate which states that the trustee or the trust:

1. holds net assets of at least \$2.5 million or has a minimum gross income of \$250,000 for the last 2 financial years; or
2. is controlled by a person that holds net assets of at least \$2.5 million or has a minimum gross income of \$250,000 for the last 2 financial years⁵.

⁵ Consistently, the National Australia Bank (NAB) in promoting its Access Bond Service states that in order to classify as a wholesale client and sophisticated investor a trustee or trust (including SMSF's) must have either net assets of \$2.5million or income for the last 2 financial years of \$250,000 or be controlled by a person who meets those requirements.



FIIG Securities Limited ('FIIG') provides general financial product advice only. As a result, this document, and any information or advice, has been provided by FIIG without taking account of your objectives, financial situation and needs. Because of this, you should, before acting on any advice from FIIG, consider the appropriateness of the advice, having regard to your objectives, financial situation and needs. If this document, or any advice, relates to the acquisition, or possible acquisition, of a particular financial product, you should obtain a product disclosure statement relating to the product and consider the statement before making any decision about whether to acquire the product. Neither FIIG, nor any of its directors, authorised representatives, employees, or agents, makes any representation or warranty as to the reliability, accuracy, or completeness, of this document or any advice. Nor do they accept any liability or responsibility arising in any way (including negligence) for errors in, or omissions from, this document or advice. FIIG, its staff and related parties earn fees and revenue from dealing in the securities as principal or otherwise and may have an interest in any securities mentioned in this document. Any reference to credit ratings of companies, entities or financial products must only be relied upon by a 'wholesale client' as that term is defined in section 761G of the Corporations Act 2001 (Cth). FIIG strongly recommends that you seek independent accounting, financial, taxation, and legal advice, tailored to your specific objectives, financial situation or needs, prior to making any investment decision. FIIG does not provide tax advice and is not a registered tax agent or tax (financial) advisor, nor are any of FIIG's staff or authorised representatives. FIIG does not make a market in the securities or products that may be referred to in this document. A copy of FIIG's current Financial Services Guide is available at www.fiig.com.au/fsg.

An investment in notes or corporate bonds should not be compared to a bank deposit. Notes and corporate bonds have a greater risk of loss of some or all of an investor's capital when compared to bank deposits. Past performance of any product described on any communication from FIIG is not a reliable indication of future performance. Forecasts contained in this document are predictive in character and based on assumptions such as a 2.5% p.a. assumed rate of inflation, foreign exchange rates or forward interest rate curves generally available at the time and no reliance should be placed on the accuracy of any forecast information. The actual results may differ substantially from the forecasts and are subject to change without further notice. FIIG is not licensed to provide foreign exchange hedging or deal in foreign exchange contracts services. FIIG may quote to you an estimated yield when you purchase a bond. This yield may be calculated by FIIG on either A) a yield to maturity date basis; or B) a yield to early redemption date basis. Some bond issuances include multiple early redemption dates and prices, therefore the realised yield earned by you on the bond may differ from the yield estimated or quoted by FIIG at the time of your purchase. The information in this document is strictly confidential. If you are not the intended recipient of the information contained in this document, you may not disclose or use the information in any way. No liability is accepted for any unauthorised use of the information contained in this document. FIIG is the owner of the copyright material in this document unless otherwise specified.