

GUIDE TO ESTABLISHING THAT A PERSON IS NOT A 'RETAIL CLIENT'

PREPARED BY: AEMO LEGAL

DOCUMENT NO:

VERSION NO: 1.3

EFFECTIVE DATE: 02/12/2013

ENTER STATUS: Final

Important Notice

AEMO has prepared this document to provide information about criteria and supporting evidence that AEMO may seek in determining whether a person is not a 'retail client':

- to meet the criteria of being a 'wholesale client' for the purposes of a trader or reallocator registration under the National Electricity Rules or a Reallocation Participant in the Gas Supply Hub; and
- for clause 3.2(c) of the auction rules made under clause 3.18.3 of the National Electricity Rules,

as at the date of publication.

No Reliance or warranty – This document does not constitute legal or business advice, and should not be relied on as a substitute for obtaining detailed advice about the national energy laws and rules, corporations legislation or any other applicable laws, procedures or policies. While AEMO has made every effort to ensure the quality of the information in this document, neither AEMO, nor any of its employees, agents and consultants make any representation or warranty as to the accuracy, reliability, completeness, currency or suitability for particular purposes of the information in this document.

Limitation of liability – To the maximum extent permitted by law, AEMO and its advisers, consultants and other contributors to this document (or their respective associated companies, businesses, partners, directors, officers or employees) are not liable (whether by reason of negligence or otherwise) for any errors, omissions, defects or misrepresentations in this document, or for any loss or damage suffered by persons who use or rely on the information in it.

© 2012 Australian Energy Market Operator Limited. The material in this publication may be used in accordance with the [copyright permissions](#) on AEMO's website.

GUIDE TO ESTABLISHING THAT A PERSON IS NOT A ‘RETAIL CLIENT’

This Guide provides information about criteria and supporting evidence that AEMO may seek in determining whether a person is not a ‘retail client’ within the meaning of section 761G(7) of the *Corporations Act 2001* (Cth). This is relevant to the criteria for being a ‘wholesale client’ for the purposes of a *trader* or *reallocator* registration under the National Electricity Rules and a Reallocation Participant in the Gas Supply Hub (section 761G(4) of the *Corporations Act* provides that, in the context of financial products or services, a person acts as a ‘wholesale client’ if it does not acquire the relevant product or service as a ‘retail client’.

This Guide is also relevant in determining whether a person (such as a *Market Customer*, *Generator* or *Trader*) meets the criteria in clause 3.2(c) of the *auction rules*, for entry into an *auction participation agreement*.

Italicised terms are defined in the National Electricity Rules.

Persons who are not a “retail client” as defined in section 761G(7) of the Corporations Act 2001	Supporting evidence
<i>Professional investor</i>	
The person is a financial services licensee.	A copy of a current Australian financial services licence that is issued to that person.
The person controls at least \$10 million.	A copy of a certificate given, within the six months preceding the issue of the relevant transaction, by a member of CPA Australia, the Institute of Chartered Accountants or the National Institute of Accountants, that states that, as at the date of the certificate, the person controls at least \$10 million for the purposes of paragraph (e) of the definition of "professional investor" in section 9 of the <i>Corporations Act 2001</i> (Cth).
The person is a listed entity or a <i>related body corporate</i> of a listed entity.	Listed entity: a letter from Australian Stock Exchange Limited, dated within the preceding one month, certifying that, as at the date of that letter, the entity is included in the official list of the Australian Stock Exchange Limited.

Persons who are not a “retail client” as defined in section 761G(7) of the Corporations Act 2001	Supporting evidence
	<p><i>Related body corporate:</i></p> <ul style="list-style-type: none"> • a copy of current share certificates demonstrating that the entity is a holding company or a subsidiary of a listed entity; and • a letter from Australian Stock Exchange Limited, dated within the preceding one month, certifying that, as at the date of the letter, the entity relied on as being the listed entity is included in the official list of the Australian Stock Exchange Limited. <p>The terms ‘related body corporate’, ‘holding company’ and ‘subsidiary’ are as defined by the Corporations Act 2001 (Cth).</p>
The person is an exempt public authority.	A copy of legislation or other statutory instrument that demonstrates the entity is a public authority or an instrumentality or agency of the Crown in right of the Commonwealth, a State or a Territory.
<p>The person is a body corporate, or an unincorporated body, that:</p> <ul style="list-style-type: none"> • carries on a business of investment in financial products, interests in land or other investments; and • for those purposes, invests the funds received (directly or indirectly) following an offer or invitation to the public in such investments, the terms of which provides for the funds subscribed to be invested for those purposes. 	<ul style="list-style-type: none"> • A copy of the body's most recent annual report and audited balance sheet demonstrating that the body carries on an investment business; and • a copy of the body's most recent subscription document that has been issued to the public that states that the funds raised pursuant to it are to be invested in investments made in the course of that business.
The person is a foreign entity that, if established or incorporated in Australia, would fall within one of the above categories.	Documents equivalent to those listed above.

Persons who are not a “retail client” as defined in section 761G(7) of the Corporations Act 2001 **Supporting evidence**

Large Business	
<p>The transaction is provided for use in connection with a business that is not a small business.</p>	<p>A statutory declaration signed by a person with the requisite knowledge that:</p> <ul style="list-style-type: none"> • in the case of a business that manufactures goods (including in the case of a business that generates electricity), the number of people employed by that business is at least 100; and • in the case of any other business, the number of people employed by that business is at least 20.
High Net Wealth Investor	
<ul style="list-style-type: none"> • The transaction is not provided for use in connection with a business; and • The acquirer of the transaction has: <ul style="list-style-type: none"> - net assets of at least \$2.5 million; or - a gross income for each of the last two financial years of at least \$250,000 per year. 	<p>A copy of a certificate given, within the six months preceding the issue of the relevant transaction, by a member of CPA Australia, the Institute of Chartered Accountants or the National Institute of Accountants, that states that the acquirer has:</p> <ul style="list-style-type: none"> • net assets of at least \$2.5 million; or • gross income for the last two financial years of at least \$250,000 per year.