

FMA publishes its report on the Thematic review of use of the wholesale investor exclusion

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On 20 October 2022, the Financial Markets Authority – Te Mana Tātai Hōkōhoko (the FMA) released its report titled "[Thematic review of use of the wholesale investor exclusion](#)" (the Report). The Report contains findings from the FMA's thematic review of wholesale offers of financial products (the Review), along with guidance for offerors and lawyers, accountants, and financial advisers who provide confirmations for eligible investor certificates.

Background

In recent years, the FMA has seen an increase in complaints and concerns raised about wholesale offers of financial products, indicating increased investor participation. The complaints caused the FMA to be concerned about how wholesale offers (particularly offers related to property development projects) are being advertised and the type of investors to whom they are offered. As a result, the FMA undertook the Review, with a focus on offers made in connection with property syndication.

We wrote an [in-depth article on New Zealand's wholesale investors regime](#) in June 2022, which considers the following questions:

- Who are wholesale investors?
- What are wholesale offers?
- How are wholesale offers treated differently? and
- What is the FMA concerned about?

FMA's finding on eligible investor certificates

The Report highlights several undesirable practices in the market for wholesale offers. One of those practices identified by the FMA is the offeror's reliance on incomplete eligible investor certificates, including some with grounds that were not capable of supporting the matters certified.

While the FMA has confirmed that there is no obligation on the offeror to verify the information in an eligible investor certificate, the FMA is of the view that "*the offeror must ensure the [investor's] experience is relevant, and where the grounds stated are not capable of supporting the matters certified, they should be disregarded when deciding whether or not to rely on the certificate*". In practical terms, the FMA expects offerors, when relying on an eligible investor certificate, to ensure:

- All requirements of certification have been completed
- The grounds stated are relevant and support the certification of previous experience in acquiring or disposing of financial products that is relevant to an assessment of the financial products on offer
- There is no reason to believe the person does not have the previous experience certified (as provided under clause 42(1) of Schedule 1 of the FMCA).

The FMA is prepared to take regulatory action where incomplete or insufficient certification is relied on, as indicated by recent warnings given to a number of wholesale offerors.

Our view and next steps

With the Report now published, the FMA is clearer on its expectations in relation to offers made in reliance on the wholesale investor exclusions under the Financial Markets Conduct Act 2013 (the FMCA). While the Review was focused on property development, the findings in the Report are applicable to all wholesale offers.

We encourage all offerors making offers of financial products to wholesale investors to read the Report, especially offerors who are relying on, or intend to rely on, the eligible investor exclusion under clause 3(3)(a) of Schedule 1 of the FMCA. The Report should also be sobering reading for any independent professional who has not previously taken their role of verifying an eligible person certificate with the gravitas it demands.

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