

30 October 2025

[REDACTED]
[REDACTED]

By email: [REDACTED]

Dear [REDACTED]

Your request under the Official Information Act 1982 (OIA) [CAS-154907]

We refer to your request dated 20 October 2025 for the following information:

I make this request under the Official Information Act. Can I please have details of the lawyers, accountants, and financial advisers referred to their relevant professional bodies for potential disciplinary action following the FMA's October 2022 Thematic Review of Use of the Wholesale Investor Exclusion, with particular regard to use of eligible investor certificates. Can I also please have details of the outcomes of those referrals, and action taken against the professionals concerned. My inquiry is in the context of the subsequent High Court ruling in September 2025 clarifying the use of eligible investor certificates, and ongoing FMA investigations into the inappropriate marketing of wholesale investments to retail investors.

The FMA:

- Referred 22 Chartered Accountants (in respect of 25 eligible investor certificates) to CAANZ on 28 November 2022;
- Referred 8 Lawyers (in respect of 8 certificates) to the Law Society on 28 November 2022; and
- Made no referrals of Financial Advisers to the Financial Advisers Disciplinary Committee.

We have decided to withhold the names of Chartered Accountants and Lawyers that were referred under s 9(2)(a) of the OIA, to protect the privacy of natural persons. We have set out the basis of the referrals, that was included in the referral letters to CAANZ and the Law Society, in the **Schedule**.

The FMA has not received a response from CAANZ regarding the referrals. The Law Society notified the FMA of the outcome of the referrals. In all cases, an inquiry was carried out and the Standards Committee decided that no further action was necessary.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

If you wish to discuss this request with us, please feel free to contact me in the first instance.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Ariarna Hakaraia', with a small dot at the end of the line.

Ariarna Hakaraia
Manager, Internal Governance

Schedule: basis of referrals to CAANZ and the Law Society

On 20 October 2022, the FMA published seven warnings, to nine entities in total, in respect of the use of the wholesale investor exclusion. The FMA found these nine entities relied on the wholesale investor exclusion, set out in clause 3 of Schedule 1 of the Financial Markets Conduct Act 2013 (**FMC Act**), in circumstances in which they were not entitled.

These entities relied on certificates given under clause 41 of Schedule 1 of the FMC Act (Eligible Investor Certificates). It is a requirement of clause 41 for a financial adviser, a qualified statutory accountant, or a lawyer to provide a signed written confirmation of the certification in accordance with clause 43 of Schedule 1 of the FMC Act.

Clause 43 of Schedule 1 of the FMC Act prohibits financial advisers, qualified statutory accountants and lawyers from confirming a certification unless, having considered the grounds for certification, they:

- a) are satisfied the investor has been sufficiently advised of the consequences of certification; and
- b) have no reason to believe that the certification is incorrect, or that further information or investigation is required as to whether the certification is correct.

Accordingly, clause 43 requires financial advisers, qualified statutory accountants, and lawyers to exercise professional judgment when considering whether to sign a written confirmation, including in considering the grounds stated by an investor before confirming the certification.

We noted instances where financial advisers, qualified statutory accountants, and lawyers had certified Eligible Investor Certificates that were incomplete (and therefore defective), being certificates that did not meet the requirement under clause 41(1)(b) of Schedule 1 of the FMC Act, for the following reasons:

1. No grounds for certification were stated in the Eligible Investor Certificate.
2. The only grounds stated did not refer to previous experience in acquiring or disposing of financial products and so are not capable of supporting the certification and should be disregarded.
3. The only grounds stated were wholly irrelevant to the certification.

Financial advisers, qualified statutory accountants, and lawyers should not confirm certifications where there are no grounds stated in the certificate. This is because they are not in a position to consider the grounds, as required by clause 43 of Schedule 1 of the FMC Act, if there are no grounds stated in the certificate.

Where the grounds stated in a certificate are not capable of supporting the certification or are wholly irrelevant, further information or investigation will be required before the certificate can be confirmed. We consider that an Eligible Investor Certificate, with irrelevant grounds gives the adviser reason to believe that further information or investigation is required as to whether the certification is correct.

Accordingly, a list of Chartered Accountants and lawyers who had signed written confirmations in deficient Eligible Investor Certificates, which were the basis of the warnings to the nine entities, were referred to CAANZ and the Law Society.