

**Reprint  
as at 1 December 2016**



## **Securities Act (Charity Debt Securities) Exemption Notice 2013**

(SR 2013/471)

Securities Act (Charity Debt Securities) Exemption Notice 2013: revoked, on the close of 30 November 2016, by clause 3.

Pursuant to section 70B of the Securities Act 1978, the Financial Markets Authority gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

### **Contents**

	Page
1 Title	1
2 Commencement	2
3 Revocation	2
4 Interpretation	2
5 Exemptions	2
6 Condition about information document	3
7 Condition about limit on outstanding debt securities	4
8 Conditions about notice of reliance	4
9 Charity must confirm information annually	6
10 Transitional provision relating to Securities Act (Charitable and Religious Purposes) Exemption Notice 2003 until 31 January 2014	6

### **Notice**

#### **1 Title**

This notice is the Securities Act (Charity Debt Securities) Exemption Notice 2013.

---

#### **Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This notice is administered by the Financial Markets Authority.**

## 2 Commencement

This notice comes into force on 1 December 2013.

## 3 Revocation

This notice is revoked on the close of 30 November 2016.

## 4 Interpretation

- (1) In this notice, unless the context otherwise requires,—

**Act** means the Securities Act 1978

**charitable purpose** has the same meaning as section 5 of the Charities Act 2005

**charity** means a society, an institution, or the trustees of a trust that is or are registered as a charitable entity under the Charities Act 2005

**excluded security** means a debt security that—

- (a) is exempted under section 5 or 6(1) of the Act; or
- (b) is exempted from the application of sections 37 and 37A of the Act by virtue of an exemption notice granted under section 5(5) or 70B of the Act (other than this notice or any corresponding previous notice); or
- (c) has not been offered in an offer of securities to the public

**Regulations** means the Securities Regulations 2009

**religious organisation** means a body corporate or unincorporate that is organised and subsisting, or carrying on business, for religious purposes, whether or not it also exists for other purposes

**school board of trustees** has the same meaning as in section 7(1)(d) of the Crown Entities Act 2004.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

## 5 Exemptions

- (1) Every charity and every person acting on its behalf are exempted from sections 33(2), 37, and 37A of the Act and regulation 30 of the Regulations in respect of any debt securities.
- (2) However, the exemption from section 33(2) of the Act does not apply in respect of an issuer that offers debt securities for allotment to school boards of trustees on the basis of an approval granted by the Minister of Education and the Minister of Finance under the Crown Entities Act 2004 that is conditional upon the charity complying with section 33(2) of the Act or otherwise having a trust deed and trustee under the Act.

## 6 Condition about information document

The exemptions in clause 5 are subject to the condition that every subscriber for the debt security must receive, before subscribing for the debt security, an information document relating to the debt security that contains the following information:

- (a) a prominent statement at the front of the document in the following form:

**“Warning**

Prospective investors are advised that [*name of charity*], in making this offer of debt securities, is not subject to the normal offer document and independent supervisor requirements under the Securities Act 1978. This is because a general exemption from those requirements has been granted to all charities.

Accordingly, the information required to be disclosed in respect of this offer is less than the information that would normally be disclosed in a registered prospectus and an investment statement.

Also, there is no independent supervision of your money, and the normal mechanism for redress if you encounter difficulties in securing repayment of your money is not available.

The Financial Markets Authority has not examined or approved this particular offer.

The general exemption was granted on the basis that prospective investors in charities are not necessarily seeking a commercial investment opportunity, but instead wish to support the charitable purpose of the charity. The particular charitable purpose of [*name of the charity*] is discussed in this document.

If the investment risk or return, or if repayment of your investment, is important to you, you should consider seeking financial advice before subscribing to this offer.”; and

- (b) a reference to the list of authorised financial advisers that appears on the FMA’s Internet site; and
- (c) the information required by clauses 2, 9, 10, 11, and 12 of Schedule 13 of the Regulations; and
- (d) a description of the charitable purpose for which the money paid by subscribers will be used; and
- (e) the terms and conditions of the offer of the security; and
- (f) a reference to the requirement to be a member of any dispute resolution scheme that applies under the Financial Service Providers (Registration and Dispute Resolution) Act 2008; and

- (g) a reference to any risks associated with the debt securities that a reasonable person would expect to, or to be likely to, influence prospective investors in deciding whether to acquire the debt securities on offer; and
- (h) any other information that is material to the offer of the security; and
- (i) a statement that it is a term of the offer of the debt securities that, on the request of the offeree, the charity must send, or cause to be sent, without fee and within 5 working days of receiving the request, to that offeree a copy of the most recent audited financial statements of the organisation that comply with generally accepted accounting practice.

## **7 Condition about limit on outstanding debt securities**

- (1) The exemptions in clause 5 are subject to the condition that, at the time of the offer of the debt securities, the cumulative total of the following amounts must not exceed \$15 million:
  - (a) the aggregate amount of the principal sums owing under outstanding debt securities (not being excluded securities) allotted by that charity, and by any associated person of that charity; and
  - (b) the aggregate amount of the debt securities being offered.
- (2) A religious organisation and every person acting on its behalf do not need to comply with subclause (1) until 1 April 2015 if—
  - (a) the religious organisation offered debt securities in reliance on the Securities Act (Charitable and Religious Purposes) Exemption Notice 2003 or any corresponding previous notice on or before the close of 30 November 2013; and
  - (b) the aggregate amount of the principal sums owing as at 1 February 2014 under outstanding debt securities (not being excluded securities) allotted by that charity, and by any associated person of that charity, in reliance on a notice referred to in paragraph (a), exceeds \$15 million.

## **8 Conditions about notice of reliance**

- (1) The exemptions in clause 5 are subject to the condition that the charity must provide to the FMA before offering the debt securities—
  - (a) written notice that the charity intends to rely on this notice in relation to an offer of debt securities; and
  - (b) a copy of the information document referred to in clause 6 that relates to those debt securities; and
  - (c) a statement by the directors of the charity as to whether, in their opinion, after due enquiry by them, the information referred to in subclause (2) in respect of the charity either—
    - (i) has been provided to the FMA before offering the debt securities;
    - or

- (ii) if that information was provided to the FMA in respect of a previous offer of debt securities, has not materially and adversely changed since the information was so provided; and
  - (d) confirmation that the directors of the charity will comply with clause 9.
- (2) The information is as follows:
- (a) the names of its directors; and
  - (b) the names of its senior managers (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) responsible for the offer and management of the debt securities; and
  - (c) a statement of its charitable purpose; and
  - (d) the procedures that the charity has in place for management and oversight of the receipt and management of subscriptions; and
  - (e) a copy of the charity's most recently audited financial statements and a copy of any document from the auditor to the charity noting findings from the audit; and
  - (f) the aggregate amount of the principal sums owing under outstanding debt securities (not being excluded securities) allotted by that charity, and by any associated person of that charity, at the end of its most recently completed accounting period; and
  - (g) if the condition in clause 7(1) does not apply to the charity because it is a religious organisation that offered debt securities in reliance on the Securities Act (Charitable and Religious Purposes) Exemption Notice 2003 on or before the close of 30 November 2013, notice of that fact; and
  - (h) the amount of debt securities (not being excluded securities) allotted by the charity during the most recently completed accounting period; and
  - (i) the amount of total capital of the charity as at the end of its most recently completed accounting period; and
  - (j) the amount of total assets of the charity as at the end of its most recently completed accounting period; and
  - (k) the amount of the principal sums owing under outstanding loans made by the charity as at the end of its most recently completed accounting period; and
  - (l) whether any amounts of principal or interest promised to subscribers of any debt securities allotted by the charity were not repaid upon falling due during the last 12 months and, if so, the reason for that; and
  - (m) any complaints received about the charity's offer or management of any debt securities allotted by the charity and how these were resolved; and
  - (n) a summary of any enquiries made in the last 12 months by any government or regulatory organisation that relate to debt securities offered by the charity or to projects funded by subscriptions.

**9 Charity must confirm information annually**

For the purposes of clause 8(1)(d), the charity must annually, and within 1 month of the end of each of its accounting periods,—

- (a) confirm to the FMA that there is no change to the information last provided to the FMA under clause 8(2); and
- (b) provide updated information in respect of the matters referred to in clause 8(2) if there is a change in that information.

**10 Transitional provision relating to Securities Act (Charitable and Religious Purposes) Exemption Notice 2003 until 31 January 2014**

- (1) Every charitable organisation and every religious organisation (as those terms are defined in the Securities Act (Charitable and Religious Purposes) Exemption Notice 2003 (the **2003 notice**)), and every person acting on its behalf, may, until the close of 31 January 2014, continue to rely on the 2003 notice, as if the 2003 notice continued in force until the close of 31 January 2014, in respect of an offer of debt securities the offer of which is accompanied by an information document under the 2003 notice that is dated on or before 31 January 2014.
- (2) However, this clause does not permit debt securities to be offered in reliance on the 2003 notice on or after 1 February 2014.

Dated at Wellington this 26th day of November 2013.

Simone Robbers,  
Head of Primary Regulatory Operations.

**Statement of reasons**

This notice comes into force on 1 December 2013. The notice is revoked on 30 November 2016.

The notice exempts charities that are raising funds by the allotment of debt securities to support their charitable purpose from the normal offer document and independent supervisor requirements under the Securities Act 1978.

The notices replaces the exemption for debt securities in the Securities Act (Charitable and Religious Purposes) Exemption Notice 2003 (the **2003 notice**), which expires on 30 November 2013. A sister notice to this notice, the Securities Act (Community and Recreational Purposes) Exemption Notice 2013, replaces the exemption for participatory securities in the 2003 notice.

The principal differences between the 2003 notice and this notice in relation to debt securities are as follows:

- this notice applies to charities registered under the Charities Act 2005:
- it is a condition of this notice that, at the time of the offer of the debt securities, the aggregate amount of the principal sums owing under outstanding debt securities (not being excluded securities) allotted by a charity, and by any associated person of that charity, and the aggregate amounts of debt securities being offered, must not exceed \$15 million. The financial limit condition of the 2003 notice did not apply to religious organisations:
- this notice contains extra conditions.

The Financial Markets Authority, after satisfying itself as to the matters set out in section 70B(2) of the Act, considers that it is appropriate to grant the exemptions because—

- it is appropriate to provide relief from standard trustee and disclosure requirements where a recognised charity seeks funds, by an offer of debt securities to support its charitable purpose, from investors whose significant motivation is to support that charity:
- the conditions of the notice reflect and support this justification by requiring the fact that relief is provided from the normal offer document and independent supervision requirements to be made clear to prospective investors at the front of the offer document in a prominent notice. Investors are warned that this means there is no independent supervision of their money, and the information required to be disclosed in respect of the offer is less than the information that would normally be disclosed. It is made clear that this is permitted because it is recognised that investors are not necessarily seeking a commercial investment opportunity but wish to support the charity. The charitable purpose for which the money will be used must be explained. Investors are advised to seek financial advice if investment risk or return is important to them:
- the conditions of the notice requiring key information to be given about the debt securities provide for prospective investors to receive key information to assist their decision on whether to deposit funds with the charity. This includes information about risks, guarantees, and the consequences of insolvency of the organisation and also alerts investors to the fact that financial statements are available:
- the charity is limited to having \$15 million in debt securities (except certain excluded securities) outstanding at any time. This limits the overall risk and impact of any organisation failure on financial markets:
- organisations relying on the notice must notify the FMA of that fact, and must provide information about their directors and senior managers who are responsible for the offer and management of the securities and about the procedures in place for the management and oversight of the subscriptions. This must be updated annually. Receipt of this information also enables the FMA to monitor the fundraising under the notice. This will assist the FMA in its consideration of whether any new exemption for charities from the new disclosure and super-

vision regime prescribed by the Financial Markets Conduct Act 2013 should be granted:

- given the warning required to be given to prospective investors states that the offer is directed at persons keen to support the charity and includes the potential impact of the exemptions on risk, the minimum prescribed required information, and the limit on funds able to be raised, the FMA considers the exemptions do not cause significant detriment to subscribers:
- given the application of the exemptions only to registered charities and the required disclosures facilitating the issue of the securities only to informed supporters of those charities, the FMA considers that the exemptions are not broader than is reasonably necessary to address the matters that gave rise to them.

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 28 November 2013.

## **Reprints notes**

### **1    *General***

This is a reprint of the Securities Act (Charity Debt Securities) Exemption Notice 2013 that incorporates all the amendments to that notice as at the date of the last amendment to it.

### **2    *Legal status***

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3    *Editorial and format changes***

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4    *Amendments incorporated in this reprint***

Securities Act (Charity Debt Securities) Exemption Notice 2013 (SR 2013/471): clause 3