

## Consultation Paper: Charitable and Religious Purposes Exemption Review

12 July 2013

### About this consultation paper

In this paper we seek submissions on proposals relating to the review the Financial Markets Authority (**FMA**) is undertaking on the Securities Act (Charitable and Religious Purposes) Exemption Notice 2003 (SR 2003/66) (**the CRP Notice**), which is due to expire on 30 November 2013.

FMA is reviewing the CRP Notice simultaneously with the Reserve Bank of New Zealand's review of the appropriate treatment of charitable and religious organisations under the Non-bank Deposit Takers regime.

### Why are we issuing this consultation paper?

The CRP Notice is due to expire on 30 November 2013. This consultation paper seeks submissions on its review.

FMA has the ability to grant exemptions from various provisions of the Securities Act 1978 and regulations made under that Act. We recognise that the solutions to regulatory compliance issues provided by exemptions must be both pragmatic and principled, so that they can most effectively support market activity by promoting and facilitating fair, efficient and transparent investment markets in which the benefits of regulation are proportionate to the costs.

FMA is keen to work with all stakeholders including charitable and religious organisations and their representatives to ensure any exemptions we grant work together with the legislative regime provided by the Securities Act and Regulations. We therefore seek submissions from all stakeholders to assist us with this review process.

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## FMA's purpose in granting exemptions

1. FMA's main objective is to promote and facilitate the development of fair, efficient, and transparent financial markets.
2. Our power to grant exemptions to issuers from various financial markets laws, including the Securities Act 1978 and Securities Regulations 2009, is an important tool we use to achieve this objective. When we exercise our exemption power we look to facilitate the development of New Zealand's capital markets, while balancing the need to ensure investors are fully informed. We carefully consider the cost implications the terms of any exemptions might have for issuers, and we appreciate that these costs will in most cases, ultimately be paid for by investors.
3. This review provides us with the opportunity to work with stakeholders including charitable and religious organisations, investors, advisers and representatives, to see that the exemptions subject to this review meet these goals. We encourage all stakeholders to provide submissions.

## Summary of CRP Notice and proposals

4. The CRP Notice which is due to expire on 30 November 2013, exempts charitable and religious organisations (**CROs**) from the usual securities law requirements that apply to debt securities and participatory securities.
5. FMA has identified a number of risks where funds are raised by a CRO offering debt securities. It is our view that the current extensive exemptions allowing an unrestricted level of funds to be raised by religious organisations are not justified on an on-going basis. We do however consider there remains a sound policy basis to provide relief from significant provisions of the usual securities law compliance requirements where funds are raised to a relatively low financial limit. On this basis we propose continuing exemptions, similar to those in the current CRP Notice, but with a financial cap applying consistently to debt securities offered by all charitable organisations, including religious organisations. We also propose transitional provisions to enable religious organisations currently relying on the CRP Notice, that hold debt securities over the proposed financial limit, to transition to compliance with the new Financial Markets Conduct (FMC) Act regime or repay the securities.
6. FMA does not propose substantive changes to the exemptions currently available for participatory securities. We are reviewing the scope of organisations that are currently able to rely on the exemptions.

## Submission process

7. FMA invites and encourages all stakeholders to make submissions on the notice under review. We are particularly keen to receive feedback on the questions raised, but submissions are welcome on any matter you consider relevant.

8. Please provide us with two versions of your submissions: a PDF and a word document.
9. Please send your submission by email only (no posted or delivered versions please) to [exemptions@fma.govt.nz](mailto:exemptions@fma.govt.nz). The email subject line should identify that the email contains a submission on the 'charitable and religious purposes exemption review', and who the submission is from. For example, Submission on Charitable and Religious Purposes Exemption Review by [submitter's name].
10. The deadline for submissions is Tuesday, **20 August 2013**.
11. To complete our review of the CRP Notice, it may be necessary for us to share and discuss a submission with another regulator. In particular, these submissions are likely to be shared with the Reserve Bank of New Zealand.
12. In general, we will not treat any part of your submission as confidential unless you specifically request that we do so. Submissions will be subject to the Official Information Act 1982. We may also make submissions available on our website, compile a summary of the submissions, or draw attention to individual submissions in internal or external reports.
13. If you would like us to withhold any commercially sensitive, confidential or proprietary information included in your submission, please clearly state this in your submission and identify the relevant extracts of information. We will consider any request to have information withheld in accordance with our obligations under the Official Information Act.

### Further information

14. To remain informed about the proposals and progress of this review, please monitor FMA's website. Proposals and progress in relation to the review will be published on our website at <http://www.fma.govt.nz/compliance/exemptions/>
15. Please contact Natalie Muir, Manager Exemptions, for more information about this review.

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## Background

16. The CRP Notice currently provides relief from the usual securities law requirements that relate to debt securities and participatory securities issued by CROs.
17. Generally, debt securities include interests in, or rights to be paid money that is deposited with, lent to, or otherwise owing by any person. Without the benefit of the CRP Notice a CRO which takes a repayable deposit, or loan of money from a person who is a member of the public, must comply with the securities law requirements relating to debt securities. These deposits are debt securities.
18. For purposes of the above analysis, a member of the CRO is generally a member of the public, and the securities law requirements apply whether or not the CRO agreed to pay the depositors interest on the deposit.
19. A donation of money, where the donor has no right to be repaid the money, is not a debt security. Securities law requirements do not apply to donations. **This review does not impact on donations.**
20. Participatory securities are any interest or right to participate in any capital, assets, earnings, royalties, or other property of any person (which do not also fall into the category of equity or debt securities, or units in unit trusts, or interest in superannuation schemes, or life insurance policies). In some instances CROs offer participatory securities in the circumstances that they take fees or subscriptions from members in return for granting members the right to use their property, for example, club facilities.
21. The CRP Notice does not provide exemptions from the requirements of the Non-bank Deposit Takers regime provided for under Part 5D of the Reserve Bank of New Zealand Act 1989. Some of the charitable and religious organisations that rely on the CRP Notice exemptions from securities law requirements may also be Non-Bank Deposit Takers. That regime imposes requirements on 'deposit takers', which are defined as entities that offer debt securities to the public in New Zealand, that carry on the business of borrowing and lending or providing financial services or both.
22. FMA's review of the CRP Notice is being carried out simultaneously with the Reserve Bank of New Zealand's review of the appropriate treatment of charitable and religious organisations under the Non-bank Deposit Takers regime. Market participants that may also be Non-bank Deposit Takers, should also consider the Reserve Bank's consultation document on its review. This is available on the Reserve Bank's website at [http://www.rbnz.govt.nz/regulation\\_and\\_supervision/nonbank\\_deposit\\_takers/exemptions/5357271.pdf](http://www.rbnz.govt.nz/regulation_and_supervision/nonbank_deposit_takers/exemptions/5357271.pdf). Submissions on that review close at the same time submissions close on FMA's review, namely Tuesday, **20 August 2013**.

## Exemptions for debt securities in the CRP Notice

23. The CRP Notice currently exempts CROs that issue debt securities from the usual securities law requirements:
- to appoint a 'trustee' licenced under the Securities Trustees and Statutory Supervisors Act 2011 to supervise the debt securities and to have a 'trust deed' relating to the securities which sets out the powers and duties of the trustee
  - relating to the disclosure of prescribed information about the debt securities which would otherwise be required to be disclosed in a 'registered prospectus' and key prescribed information which would otherwise be required to be provided to each investor before subscription in an 'investment statement'
  - if the directors of the issuer of the debt securities review and sign off every advertisement relating to the securities.
24. In order to rely on these exemptions the CRO must comply with a number of conditions imposed by the CRP Notice:
- The CRO must give an 'information document' to prospective investors. The document must include a prescribed warning to the effect that: the offer is not subject to the usual securities law offer document requirements; risks may not be as fully disclosed as they would be in a standard offer document; FMA has not examined the offer; and exemptions from the normal requirements have been granted on the basis that investors in CROs are not necessarily seeking a commercial return, but wish to support the organisation. In addition, limited key information that is usually required in an investment statement including information describing the risks and returns, must be provided in the document, the terms of the offer must be described, as well as any other information material to the offer. (For full information on the disclosure requirements review the CRP Notice).
  - The level of funds that can be raised by charitable organisations subject to these extensive exemptions is limited. The CRO must have no more than \$2 million of debt securities outstanding at the time of the offer, and no more than \$500,000 of debt securities may be allotted in any 12 month period.
  - The financial caps noted above do not apply to religious organisations raising funds exclusively for 'religious purposes' as compared to other charitable purposes.

## Exemptions for participatory securities in the CRP Notice

25. The CRP Notice also currently exempts CROs that issue participatory securities from the usual securities law requirements:
- to appoint a 'statutory supervisor' licenced under the Securities Trustees and Statutory Supervisors Act 2011, to supervise the participatory securities and to have

a 'deed of participation' relating to the securities, which amongst other requirements sets out the duties of the supervisor

- relating to the disclosure of prescribed information about the participatory securities, which would otherwise be required to be disclosed in a 'registered prospectus', and key prescribed information, which would otherwise be required to be provided to each investor before subscription in an 'investment statement'
- if the directors of the issuer of the debt securities review and sign off every advertisement relating to the securities.

26. These exemptions only apply in limited circumstances. Namely where the rights of subscribers are limited to the use of the CROs property, voting at meetings of security holders, or a pro rata share of the CROs property on liquidation. Additionally, the liability of a security holder must be limited to the amount of fees or subscriptions that are approved by a majority of holders in a general meeting.

### Broader legislative reform

27. In considering the impact of reform of the current CRP Notice, CROs should consider the potential impact of broader pending legislative reform on their operations.
28. Financial markets law in New Zealand is currently under review. The Financial Markets Conduct (FMC) Bill when it becomes an Act will replace the Securities Act 1978 (**the Securities Act**). It is anticipated the FMC Bill will receive the Royal assent in the second half of 2013. The operative provisions in the FMC Bill will come into force at that time but most of the substantive provisions will not come into force until regulations made under the FMC Bill are promulgated in around April 2014. The Ministry of Business, Innovation and Employment (**MBIE**) is the government department with responsibility for the review and FMA is an adviser to MBIE on the review. Information about the legislative review is available on both MBIE and FMA's website, [www.mbie.govt.nz](http://www.mbie.govt.nz) and [www.fma.govt.nz](http://www.fma.govt.nz)
29. We envisage CROs will wish to consider the impact of the review of the CRP Notice in the context of this upcoming broader review. Once the new legislative regime is fully in force and the Securities Act and Regulations no longer apply, the current exemptions and any new exemptions proposed in this consultation paper will be redundant.
30. Regulations currently being developed will prescribe the disclosure and governance requirements for market participants issuing financial products. The consultation period for the regulations closed earlier this year, but there will be an opportunity to review a draft of the regulations around October this year. Although it is not the immediate focus of this consultation paper, CROs are encouraged to review those regulations in relation to the disclosure and governance requirements of securities they issue. This will have a long term impact on the requirements relating to the financial products issued by all market participants.

### Requirements for debt securities anticipated under the new regime

31. It is expected that regulations will prescribe disclosure and governance requirements for debt securities. At a minimum, an investor friendly Product Disclosure Statement (PDS) and entry on a public website will be required. This must provide key information about the offer and the debt security to enable an investor to make a decision on whether to acquire the financial product.
32. The Bill anticipates some statutory exemptions from the new standard requirements that may be of relevance to CROs, for example:
  - market participants that have 20 or less investors and take funds of \$2 million or less in any 12 month period, will be exempted from the standard disclosure requirements (small offers exclusion, the Bill, Schedule 1, clause 12)
  - market participants offering securities to persons who invest at least \$750,000 and have net assets exceeding \$5 million will be exempted from the usual disclosure requirements (wholesale investor exclusion, the Bill, Schedule 1, clause 3)
33. Regulations may include alternative disclosure requirements that will apply wherever the statutory exemptions apply.
34. There are no anticipated statutory exemptions for CROs raising smaller amounts of funds from a large number of members of the public who are supporters of the CRO. Most CROs are in this situation.
35. The merits of any case, for continued reduced regulatory requirements on disclosure and governance requirements on debt securities, issued by CROs, (by exemption granted by FMA pursuant to its exemption powers under the new legislation) would need to be considered in light of the policy of the new legislative regime for financial products.

### **Requirements for participatory securities anticipated under the new regime**

36. It is anticipated that there will no longer be requirements relating to securities generally categorised as 'participatory securities'. The focus will be more directly on financial products, so 'managed investment schemes' will be regulated (and have prescribed disclosure and governance requirements). A managed investment scheme is a scheme managed by another person into which the participants pay money in order to receive financial benefits.
37. This being the case, participatory securities that provide rights for persons to use shared club facilities in return for a fee or subscription, would not generally come within the scope of products regulated by the new regime. A key consideration of whether the operations of a club falls within the regulatory scope of the new financial market regime will be whether the benefits offered are 'financial benefits'.
38. In this context, we do not envisage any need for continued provision of an exemption by FMA for the offer of club facilities as currently provided for in the CRP Notice following the new regime coming into effect.



## Transition to new regime

39. The FMC Bill is likely to receive the Royal Assent in the second half of 2013; however most of the provisions will not come into force until the accompanying regulations have been completed. It is anticipated that draft regulations will be available for review in October 2013 and in force by April 2014.
40. As mentioned above, the current exemptions for participatory securities will no longer be required once the FMC Bill is fully in force. CROs that are offering what are currently 'participatory securities' in reliance on the CRP Notice, will be able to continue to offer use of their assets or property to their members without the application of securities law or need for any exemption from it.
41. Once the new regime is in force, CROs who offer debt securities will have up to two years to comply with the new regime, subject to the provisions of any new exemption granted from that new regime. The merits for continued reduced regulatory requirements on disclosure and governance requirements on debt securities issued by CROs, would be considered in light of the policy of the new legislative regime.

## Submissions received

42. Following the first stage of consultation in April 2012, FMA received 10 submissions from stakeholders who generally supported renewal of the CRO Notice, saying they relied on it. We also received two submissions that sought significant change and were against the continuation of the CRP Notice on its current terms.
43. After considering risks identified with debt security fundraising under the CRP notice, the submissions and the forthcoming law reform, we concluded that a comprehensive review of the CRP Notice was appropriate and that this should be carried out in conjunction with the Reserve Bank of New Zealand. FMA extended the term of the CRP Notice from 30 November 2012 to 30 November 2013 in order to allow time for a first principles review of the notice and further consultation.

## FMA proposals

44. FMA considers, unless there are sound policy justifications for variation, it is important to take a consistent approach in the regulation of the offer of similar types of financial products by different market participants. We do not consider the risk analysis justifies significant relief for charities or religious organisations where substantial sums of money are being raised and managed:
  - There is almost no external oversight of the debt security fundraising activities of these organisations. There is no requirement for a trustee or membership of a dispute resolution scheme, or in most cases for Reserve Bank prudential supervision.

- There may be a higher than usual risk around the competency of managers in these circumstances as many of these organisations make extensive use of volunteers and therefore may have a reluctance to pay market salaries in order to limit costs.
  - There may be a higher than usual credit risk in the circumstances and charitable and religious organisations could be targeted for the marketing of risky investments due to their perceived inability to assess risk and return, or because of a desire to help unfortunate cases more prone to financial failure.;
  - There is also a higher than usual risk of fraud. Again this may result from a desire to run at reduced cost as well as having no ‘fit and proper’ regulations in place with respect to the persons who run these financial services in charitable and religious organisations.
45. The consistent approach taken by the FMC Bill to the regulation of the offer of similar types of financial products by different market participants, and the relatively low level of funds that may be raised where statutory exceptions are proposed to be recognised, also support our conclusion that a review is appropriate.

### **Summary of proposals for debt securities**

46. It is our view that the current extensive exemptions allow for an unrestricted level of funds to be raised and available to religious organisations, and is not justified on an on-going basis. We do however consider there remains a sound policy basis to provide relief from full securities law compliance requirements, where funds are raised to a relatively low financial limit. On this basis we propose continuing exemptions, similar to those in the current CRP Notice, but with a financial cap applying consistently to debt securities offered by all charitable organisations, including religious charitable organisations.
47. We therefore propose:
- (a) New substantial exemptions granted from current standard securities law requirements, similar to those currently available, namely exemptions from the trustee (section 33(2)), prospectus (section 37) and investment statement (section 37A), and advertising certificate requirements (regulation 30).
  - (b) The exemptions being available to ‘charitable organisations’ defined consistently with requirements for charities registering with the Department of Internal Affairs, Charities, namely:
    - (i) organisations with a charitable purpose that fall within one of the four purposes set out in section 5(1) of the Charities Act (relief of poverty, the advancement of education or religion, or any other matter beneficial to the community)
    - (ii) which provide a public benefit; and

- (iii) which are not carried on for the financial benefit or profit of an individual.
  - (c) A relatively low limit on funds able to be raised under the exemption. Our initial view is that \$2 million raised in any 12 month period is an appropriate cap. It is consistent with the small offers exclusion envisaged in the FMC Bill.
  - (d) We also consider an additional cap of \$10 million on total funds outstanding at any time is appropriate.
  - (e) Continuation of the requirement for issuers to provide an information document to investors before they subscribe. We consider this should include a prominent warning and require key information about the securities to be provided consistent with that currently required.
  - (f) Introduction of a reporting requirement. We propose organisations seeking to rely on the notice be required to advise FMA and also report annually on their fundraising activities.
48. We appreciate that the imposition of a relatively low financial cap to the exemptions would mean that religious organisations currently relying on the CRP Notice, and that have significant amounts of funds under management, would be required to undertake a review of their operations and make decisions on how to proceed. They will need time to consider whether they wish to continue to offer and manage debt securities at the level where they would be required to comply with new standard securities law requirements (and if so put in place governance and disclosure requirements to enable them to do so), or repay the securities held.
49. For this reason we propose a transitional period under which religious organisations currently<sup>1</sup> relying on the CRP Notice that hold debt securities over the proposed financial limit, would be required to transition to compliance with the new FMC Act regime. We propose a period of one year from when it is anticipated the FMC Act and relevant regulations will come into effect. This being the case we propose an expiry date on the transitional exemption of 30 April 2015.

### **Summary of proposals for participatory securities**

50. We consider extensive exemptions remain appropriate for offers of these interests, which are not investments in the conventional sense. It is notable, as discussed above, that the interests addressed by the exemptions for these limited rights participatory securities will not be regulated at all under the new regime.
51. On that basis FMA proposes the exemptions for participatory securities should continue substantially unchanged for the remaining period during which the Securities Act requirements continue to apply.

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<sup>1</sup> This transitional provision will not be able to be relied on by organisations not currently holding funds over the \$2 million in reliance on the notice.

52. We are however considering whether the scope of organisations able to rely on these exemptions should:
- (a) be better aligned with the requirements for charities registering with the Department of Internal Affairs, Charities Services (as discussed above in relation to the debt securities exemption); or
  - (b) be broadened to be available to organisations providing a public benefit and not carried on for the private pecuniary benefit or profit of an individual, but without the additional requirement the exemption would only be available to organisations that can show they have a charitable purpose that falls within one of the four purposes set out in the Charities Act (relief of poverty, the advancement of education or religion, or other matter beneficial to the community).

## Key Dates

53. The following table summarises key dates when the regulatory changes will apply to CROs currently relying on the exemptions in the CRP Notice.

Date	Event
<b>1 December 2013</b>	New exemptions proposed by FMA in this consultation paper proposed to come into force.
<b>1 April 2014</b>	<p>Substantive provisions in the FMC Bill and the Regulations are envisaged to come into force. This date is subject to any changes in the legislative timetable.</p> <p>From this date issuers of debt securities have two options either:</p> <ul style="list-style-type: none"> <li>○ to continue to comply with the Securities Act 1978 subject to the new exemptions proposed by FMA in this consultation paper; or</li> <li>○ to comply with the new regime.</li> </ul> <p>Charitable and religious organisations issuing participatory securities in accordance with the current CRP Notice will not be offering financial products under the new law. Financial markets regulation will no longer apply in these circumstances and the organisations will no longer require any exemptions.</p>
<b>1 April 2015</b>	End of transitional period proposed by FMA during which religious organisations relying on the new exemptions proposed in this consultation paper may continue to raise more than \$2 million in any 12 month period or hold more than \$10 million at any time. By this date organisations with funds over this level must either comply with the new FMC regime or no longer offer or manage debt securities.
<b>1 April 2016</b>	End of envisaged statutory transitional period under the FMC Bill. By this date market participants' must comply with the new regime subject to any exemption granted by FMA from the new regime. This date is

Date	Event
	subject to any changes in the legislative timetable.

## Details on proposals and submissions sought

54. To assist with our review FMA seeks stakeholders' comments on any matter relevant to the offer, management and oversight of securities offered by charitable and religious organisations.
55. In particular we provide more details and questions below, about our proposals and seek comments on these. Information about the submission process is provided at the front of this document.

### Exemptions for debt securities

#### Organisations able to rely on the exemptions for debt securities

56. We consider that the proposed exemptions should be available to 'charitable organisations' defined consistently with the requirements for charities registering with Department of Internal Affairs, Charities, namely:
- with a charitable purpose that falls within one of the four purposes set out in section 5(1) of the Charities Act 2005 (relief of poverty, the advancement of education or religion, or any other matter beneficial to the community); and
  - which provides a public benefit; and
  - which are not carried on for the financial benefit or profit of an individual.
57. We consider it is desirable for the scope of organisations able to rely on the class exemption to be consistent with the scope of organisation recognised by charities for the purposes of the Charities Act 2005. We also consider this definition will provide greater clarity on the boundaries on which organisations can rely on the notice.
58. A further option we are considering is limiting the organisations able to rely on the exemptions to those registered as charities with the Department of Internal Affairs, Charities.

**Question 1:** Do you agree with our proposed definition of charitable organisation? If not, explain your reasons.

**Question 2:** Do you consider organisations able to rely on the exemptions should be further limited to organisations registered as a charity with the Department of Internal Affairs?

**Question 3:** Are you aware of any organisation currently relying on the CRP Notice that you consider would not fall within this definition, or that would fall within the definition but is not a registered charity? If so please explain on what basis you consider the organisation falls

*within the scope of the current definition but would not fall within the scope of the proposed definition. Please also explain why the organisation is not a registered charity and why you consider it ought to be able to rely on the notice.*

### **Limit on funds able to be raised**

59. Submissions received in response to the first stage of our consultation on this review in April 2012 indicate a divide in the level of funds raised in reliance on the CRP Notice. Charitable organisations (which had not raised funds exclusively for religious purposes) that provided information on level of funds raised, indicated they had raised funds well under the current \$2 million total financial limit. Charitable organisations that raised funds exclusively for religious purposes, and therefore not subject to the \$2 million financial cap, indicated that they had raised a significant level of funds. We are aware that one organisation currently has \$80 million under management.
60. If you have not already provided detailed information about funds raised in reliance on the notice in response to the first stage of our consultation (or if your fundraising practices have changed in any significant way subsequent to the provision of that information), please answer the questions below.

**Question 4:** *Please advise the number of deposits taken in the last 12 months, the value range of those deposits taken in the last 12 months, and aggregate value of those deposits.*

**Question 5:** *Was your extent of reliance over the last 12 months (indicated by the above statistics) typical, or has your organisation been increasing or decreasing its fundraising under the notice?*

**Question 6:** *Are the debt securities you offer on call or for a term and, if for a term what is the range of the duration of the terms offered?*

61. As noted above, following consideration of risks identified with debt security fundraising under the CRP Notice, the submissions and the forthcoming law reform, FMA has concluded that extensive exemptions from disclosure and trustee supervision requirements, allowing an unrestricted level of funds to be raised, are not justified. We consider a relatively low limit is appropriate on funds able to be raised by charitable organisations where supervision and full standard disclosure is excused.
62. Our initial view is that \$2 million is an appropriate cap. This is consistent with the current cap applying to charitable organisations relying on the CRP Notice, and with the small offers exclusion envisaged in the FMC Bill.
63. Furthermore, our initial view is that it is appropriate that this restriction be imposed as a maximum of \$2 million being raised in any 12 month period. This is also consistent with the manner in which the small offers restriction is framed in the FMC Bill. Framed in this way means an organisation may hold debt securities of more than \$2 million at any one time, provided only \$2 million is raised in any 12 month period.

64. In the case of debt securities that are 'on call' we would consider the amount of the debt security is 'raised' each time funds are deposited with the organisation, so 'on call' funds held for six months by an organisation before withdrawal would only be considered to be raised once and not each day they are held.
65. We also consider it is appropriate to impose a restriction of \$10 million in total funds outstanding at any time. This is consistent with the Reserve Bank's proposal under consultation, to declare small charitable organisations (where the organisation has total debt not exceeding \$10 million) out of the Non-bank Deposit Takers definition.

**Question 7:** *Do you agree with the proposed levels and nature of application of the financial limits? If you propose alternatives, please explain your reasons.*

### **Transitional period**

66. As noted, FMA's view is that the current extensive and restrictive exemptions are not appropriate, and provision should only be made for orderly transition out of this relatively unregulated significant level of debt fundraising. In particular, FMA understands that the imposition of a financial cap would mean that religious organisations currently relying on the CRP Notice, and with significant amounts of funds under management, would be required to either comply with the new standard securities law requirements (and so put in place governance and disclosure requirements to enable them to do so), or repay the securities held.
67. For this reason we propose a transitional period ending 30 April 2015, under which religious organisations **currently** relying on the CRP Notice that hold debt securities over the proposed financial limit, would be required to transition to compliance with the FMC Bill or repay the securities. It is anticipated that the FMC Bill and Regulations will be in force by 30 April 2014, so this will allow a one year transitional period after the FMC Act and Regulations are in force.
68. Additionally we note that no class exemption from the Securities Act and Regulations developed following this review will be effective to provide relief once the FMC Bill and Regulations are fully in force, following the transitional period during which issuers are able to continue to comply with the Securities Act regime. Class exemptions granted from the Securities Act and Regulations will not be effective in providing any relief from requirements of the new regime. As noted above, the merits of any case for continued reduced regulatory requirements on disclosure and governance requirements on debt securities issued by CROs, must be considered in light of the policy of the new legislative regime.

**Question 8:** *Do any organisations currently relying on the exemptions and holding funds over the proposed standardised \$2 million annual financial cap and \$10 million total financial cap, consider they will not be able to reduce the level of debt securities they hold in order to rely on the exemptions while complying with the lower financial limit, or transition to compliance with the Bill by 30 April 2015? If not, please explain why not, and what proposal you have for a prompt and orderly transition.*

## Disclosure requirements

69. As noted, we consider significant disclosure exemptions are appropriate, however issuers should provide a key information document to investors before they subscribe. We envisage this document would be similar to that required under the existing CRP Notice:

- A warning to the effect that the offer is not subject to normal offer document requirements; risks may not be as fully disclosed as they would be in a standard offer document; FMA has not examined the offer; and that exemptions from the normal requirements have been granted on the basis that investors in CROs are not necessarily seeking a commercial return, but wish to support the organisation.
- Provision of key information:
  - the information usually required by an investment statement describing the securities (clause 2), returns (clause 9), information about any guarantees (clause 10), principle risks (clause 11) and consequences of insolvency of the organisation (clause 12)
  - describing the charitable purposes for which the money will be used
  - the terms of the offer
  - any other information material to the offer
  - confirming that the most recent financial statements are available on request.

**Question 9:** Do you agree the nature of the warning is appropriate? If not, what do you propose and why?

**Question 10:** Do you agree the scope of information required to be provided is appropriate? If not, what information do you see as the key material information prospective investors should receive in order to make a decision on whether to deposit funds with the organisation?

## Reporting requirement

70. To enable improved oversight of organisations relying on the exemption, we propose organisations seeking to rely on the notice are required to advise FMA, and additionally report annually on their fundraising activities.
71. This information will assist FMA to determine if it is appropriate to provide any new exemption for charitable organisations from the new regime under the FMC Bill, when it comes into force.
72. We propose the initial reporting reliance requirement would apply prior to reliance on the new exemption granted (so before reliance on the exemptions after 30 November 2012).



We envisage requiring notification of intended reliance, a statement of the charitable purposes of the organisation, and provision of a copy of the key information document.

73. We propose the annual reporting requirement require provision of the following information to FMA within one month of the end of the financial year of the organisation:
- (a) the names of persons in the organisation who carry out work in relation to the offer and management of the debt securities
  - (b) any changes to the charitable purposes of the organisation
  - (c) the procedures in place for the management and oversight by the organisation of the receipt of funds and management of funds
  - (d) the amount of debt securities raised in the last 12 months
  - (e) the amount of debt securities outstanding at the reporting date
  - (f) the capital to asset ratios
  - (g) the loans made to asset ratio
  - (h) whether any amounts of principal or interest promised were not repaid upon falling due during the last 12 months, and if so the reason for that
  - (i) any complaints received about the offer or management of the debt securities and how these were resolved
  - (j) any issues under current investigation, or investigated in the last 12 months by any government or regulatory organisation relating to the debt securities, or projects funded by funds raised by the debt securities.
74. Organisations relying on the exemptions will need to put in place a monitoring system to collate this information during the year so it can be reported on.

**Question 11:** *If you consider there are any reasons why this information should not be provided to FMA, please explain.*

### **Exemptions for participatory securities**

75. We propose exemptions substantially similar to the current exemption be continued until no longer required when the new FMC regime comes into effect.
76. We seek submissions on the scope of organisations able to rely on these exemptions as outlined in our summary of proposals. In responding please explain your reasons.

**Question 12:** *Do you consider these exemptions raise any risks to the public?*

**Question 13:** *Do you consider the scope of organisations able to rely on these exemptions should be aligned with the definition of charities recognised in the Charities Act?*

**Question 14:** *Do you consider the scope of organisations able to rely on these exemptions should be limited to charities registered under the Charities Act?*

**Question 15:** *Do you consider the scope of organisations able to rely on these exemptions should be broadened to be available to organisations providing a public benefit and not carried on for the private pecuniary benefit or profit of an individual, but without the additional requirement the exemption only be available to organisations that can particularly show they have a charitable purpose that falls within one of the four purposes set out in the Charities Act (relief of poverty, the advancement of education or religion, or other matter beneficial to the community).*

**Question 16:** *What organisations do you envisage will be able to rely on the exemption if the broader definition is adopted, that would not be able to rely on the definition if one of the narrower definitions is adopted?*

**Question 17:** *Do you see any risks in enabling a broader scope of organisations to be able to rely on the exemptions for these participatory securities (ie these shared facilities)?*