

5 November 2015

Financial Markets Authority
PO Box 1179
Wellington 6140

By email: consultation@fma.govt.nz

Consultation paper: Charities raising funds through debt securities

1. The New Zealand Law Society welcomes the opportunity to comment on the Financial Markets Authority's consultation paper *Charities raising funds through debt securities*.

Proposal: no exemption for charities

2. The Law Society supports the proposal that no exemption should be granted to charities issuing new debt securities and that they should be subjected to standard Financial Markets Conduct Act requirements, including disclosure and governance obligations. The Law Society agrees with the Authority's conclusion at [19] that there are good reasons for requiring charities offering debt to provide the same protections to investors as other debt issuers and to be subject to the same scrutiny.

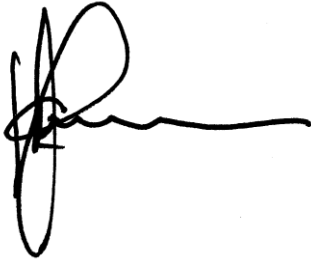
Transitional relief for existing debt securities

3. The Authority has indicated at [32] that an exemption could however be given for existing debt securities issued under the concessionary treatment provided to charities under the Securities Act exemption. The reason given is that existing investors who have lent money on the basis of the lower level of information and governance under the current regime may be prepared to continue lending on that basis.
4. The Law Society considers this would create an anomaly in the new regime and does not support the suggestion. These lenders should be put in the same position as all other lenders to issuers of debt securities. As noted by the Authority at [22], investors lending to a charity should be entitled to the same protections as they would have with any other investment.
5. There may be grounds for permitting "run-off" coverage for a finite period along the lines suggested at [34] for those charities that are not making new issues of debt securities, but five years in addition to the existing transition period is too long.
6. For those charities that wish to seek to continue to raise (debt) funds in the public market the choice should be the same as for all other issuers seeking to raise funds in this manner: that is, either to provide investors with the benefit of a higher level of reporting and governance or to discontinue their activities.

Conclusion

7. This submission was prepared by the Law Society's Commercial and Business Law Committee. If further information or discussion would assist, the committee convenor Rebecca Sellers can be contacted through the committee secretary Karen Yates (ph 04 463 2962, karen.yates@lawsociety.org.nz).

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a horizontal line that ends in a small hook.

Chris Moore
President