



FINANCIAL SERVICES FEDERATION

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Secretariat
Commerce Select Committee
Select Committee Office
Parliament Buildings
WELLINGTON 6011

FINANCIAL SERVICES FEDERATION – SUBMISSION ON FINANCIAL MARKETS CONDUCT BILL

Thank you for the opportunity to provide submissions on this Bill. The Financial Services Federation (“FSF”) is New Zealand’s largest member based industry organisation for financial institutions. The FSF has thirty six members and associates providing financing, investment, banking and insurance services to over 750,000 New Zealanders and our four affiliate members are internationally recognised legal and consulting partners. A list of our members is attached at Appendix A.

As with the Securities Act at present, the Bill is principally relevant to those FSF members that are retail funded, comprising building societies and other non-bank deposit takers (“NBDTs”). The Bill impacts on them as issuers of debt securities who, in future, will be subject to the new disclosure regime envisaged by the Bill of which the FSF is supportive in principle.

As regards the new regime, much of the Bill is of a “framework” nature, and the FSF presently has no material issue with the framework, which has been well signalled. FSF members will however be vitally interested in the content of regulations giving the detail to that framework in due course. (What is said about clauses 517-522 in the submission that follows is relevant to that.) The FSF is therefore keen to be involved in the drafting of all such regulation.

The FSF’s two principal submissions relate to issues that are of real substantive impact on the affected FSF members. They are:

1. The definition of “debt security” that appears to capture building society shares which have on a longstanding basis been outside of the Securities Act disclosure regime by Regulation 46 of the Securities Regulations; and
2. The effect of Clause 20 Schedule 1 which appears to treat Category 2 products and debt securities issued by NBDTs differently to those issued by registered banks in terms of the PDS regime.

The FSF is also supportive of the definition of “material” as it is described in Part 3 clause 43 of the Bill and to the continued exemption of “continuous issuers” from the “waiting period” after a Product Disclosure Statement has been registered.

A National Federation of Financial Institutions

With the exception of the above and those matters addressed in our submission attached, the FSF has no further submission to make on the Bill at this point.

Yours sincerely

A handwritten signature in blue ink, appearing to read "L. McMoran".

Lyn McMorran
Executive Director

FINANCIAL MARKETS CONDUCT BILL
SUBMISSION BY THE FINANCIAL SERVICES FEDERATION INC (“FSF”)

Clause Number	Clause heading	Submission
Part 1	Preliminary provisions	
Clause 8	Definition of “debt security”	<p>The FSF has two issues with this definition:</p> <ul style="list-style-type: none"> A. Its application to building society shares; B. Its application to call products generally (including call building society shares). <p>1. APPLICATION TO BUILDING SOCIETY SHARES: As (a) “redeemable shares in an entity” are included in the definition of debt security; (b) a building society is an ‘entity’; (c) many or even most building society shares are redeemable; the FSF interprets this as meaning that in future building society shares will be “debt securities”. For the sake of clarity the FSF suggests that the Bill should specifically state whether building society shares are to be defined as “debt securities”.</p> <p>Bearing in mind that the exempt status of call building society shares is long standing and a fundamental matter to the FSF’s building society members.</p> <p>That could be achieved as part of an exemption for call debt securities generally, as outlined next, and also as set out at “Clause 20, Schedule 1” in Part 3 below.</p> <p>2. APPLICATION TO CALL PRODUCTS GENERALLY: “Call debt securities” are presently also exempted by the Securities Regulations. The FSF submits that should continue and, as with call building society shares, since that exempt status is fundamental to the FSF’s NBDT members, the FSF suggests that exemption should also be included in the Bill itself.</p> <p>The FSF suggests that can be achieved by –</p> <ul style="list-style-type: none"> <i>i.</i> Defining “call building society shares” in the same way as is presently done in the Securities Regulations (and in the Financial Advisers Act); <i>ii.</i> Defining “call debt security”, also in the same way as in the Securities Regulations (and in the Financial Advisers Act), but adding “and includes a call building society share”; <i>iii.</i> Adding the following to the definition of “debt security” in clause 8(1)(c) of the Bill, as a new sub para (iv) after “does not include”: <p style="padding-left: 40px;">“(iv) a call debt security”.</p> <p>What is suggested at “Clause 20, Schedule 1” below would also apply in respect of the points made here.</p>

Clause Number	Clause heading	Submission
Part 3 and schedules 1 and 2	Disclosure offers of financial products	
Clause 20, Schedule 1	Exclusion for Registered banks	<p>The effect of clause 20 of Schedule 1 is to exempt registered banks from the PDS regime in respect of Category 2 products and debt securities issued by them. For most purposes, this means that bank deposits and call deposits are exempt.</p> <p>As has been noted above [see “Definition of “debt security””] the FSF considers that call debt securities issued by NBDT’s (including building societies) should be similarly exempt. It notes –</p> <ul style="list-style-type: none"> a. So far as call debt securities issued by NBDT’s are concerned, that would align with the fact that the Financial Advisers Act treats bank and NBDT call deposits the same way; b. So too does the present exemption of call debt securities from the Securities Act; c. Such an approach is particularly appropriate given that NBDTs are now subject to prudential supervision by the RBNZ that is similar to that applicable to banks (and which will become even more similar to the prudential regime in respect of registered banks when the Non-Bank Deposit Takers Bill is enacted); d. There is no clear policy reason for treating bank and NBDT call deposits differently: each is a well understood product from which investors are entitled to exit at any time. <p>The FSF accordingly submits that Clause 20 of Schedule 1 should be amended to exempt call deposits issued by NBDTs. This could be done by –</p> <ul style="list-style-type: none"> i. Defining “NBDT” as a deposit taker licensed under the Non-Bank Deposit Takers Act; ii. Adding “and NBDTs” to the heading to clause 20 of Schedule 1; iii. Adding “and NBDTs” to the end of each of paragraphs (b) and (c) of clause 20 of Schedule 1.
Part 4 and schedule 3	Governance of financial products	
Clauses 90-94	Content of Trust Deeds etc	<p>Despite the fact that these provisions may have the potential to require some retail funded FSF members to make changes to their Trust Deeds, with associated costs, the FSF has no specific comments on these provisions at this stage, apart from the comment made next.</p> <p>Most Trust Deeds of NBDT members of the FSF will typically contain a provision the effect of which is that all enforcement action is via the Trustee on behalf of investors, and that actions by investors are possible only with trustee consent. New clause 90(2) seems intended to permit actions by individual investors regardless of such clauses. This is likely to (a) require changes to members Trust Deeds; (b) be inconvenient to NBDT members of the FSF if it resulted in more claims by individual investors – it is easier to manage and react to one claim by the trustee than to react to several by a number of investors.</p> <p>Accordingly the FSF submits that new clause 90(2) should be removed.</p>

Clause Number	Clause heading	Submission
Part 8	Regulations and exemptions	
Clause 517	Regulations- PDSs	In respect of the regulations empowered by each of these clauses, the FSF submits that there should be an obligation to consult with affected parties (such as the FSF) prior to making regulations, where ever practicable. There is such an obligation in clause 518, but it is very limited in scope.
Clause 518	Regulations – Goverance	
Clause 522	Regulations - General	<p>Such a broader obligation exists in other recent financial sector legislation, and a similar obligation seems appropriate in this context. The FSF suggests it might be worded in terms similar to that of clause 75(1)(b) of the Non-Bank Deposit Takers Bill , namely an obligation on the FMA before recommending regulations to consult with-</p> <p>“if reasonably practicable, other persons, or the representatives of those persons, who ... will be substantially affected by the regulations”</p>

APPENDIX A

Membership List as at 1st April 2012

Full Members

Chattel Lender	Credit Reporting	Finance Company	Debt Collection Agency	Vehicle Lender	Non-Bank Deposit Taking (NBDT)	Insurance
<ul style="list-style-type: none"> • Asset Finance Ltd • Equico Limited • GE Money • John Deere Credit • RentPlus • Thorn Rentals NZ Ltd 	<ul style="list-style-type: none"> • VEDA Advantage 	<ul style="list-style-type: none"> • Avanti Finance Ltd • Centracorp Finance 2000 Ltd • Dorchester • Finance Now Ltd • Instant Finance NZ Ltd • Mutual Credit Finance Ltd • ORIX NZ Ltd • Oxford Finance Corporation Ltd 	<ul style="list-style-type: none"> • Baycorp (NZ) Ltd • EC Credit Control • Receivables Management (NZ) Ltd 	<ul style="list-style-type: none"> • BMW Finance Ltd • European Financial Services Ltd • Mercedes-Benz Financial Services NZ Ltd • Motor Trade Finances • Toyota Finance Ltd • Yamaha Motor Finance NZ Ltd 	<ul style="list-style-type: none"> • Fisher & Paykel Holdings Ltd • Heartland • Heretaunga Building Society • Medical Assurance Society Ltd • Napier Building Society • Nelson Building Society • NZ Association of Credit Unions • Prometheus Finance Ltd • Wairarapa Building Society 	<ul style="list-style-type: none"> • Protecta Insurance NZ Ltd • QBE Lenders Mortgage Insurance Ltd

Associate Members

- Southsure Assurance Ltd

Affiliate Members

- Buddle Findlay
- Deloitte
- Ernst & Young
- Price Waterhouse Coopers
- Russell McVeagh