



Non-bank Deposit Takers (Debt Securities and Suitability Concerns) Regulations 2014

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 17th day of February 2014

Present:
His Excellency the Governor-General in Council

Pursuant to section 73(1)(e) and (f) and (3) of the Non-bank Deposit Takers Act 2013, His Excellency the Governor-General makes the following regulations, acting—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the advice of the Minister (as defined in section 4(1) of that Act) given in accordance with a recommendation of the Bank (as so defined) made—
 - (i) taking into account the principles in section 8 of that Act; and
 - (ii) for the regulations under section 73(1)(e) of that Act, in accordance with section 73(3) of that Act; and
 - (iii) after the consultation required by section 76(1)(a) and (b) of that Act.

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Regulations

1 Title

These regulations are the Non-bank Deposit Takers (Debt Securities and Suitability Concerns) Regulations 2014.

2 Commencement

These regulations come into force on 1 May 2014.

3 Interpretation

(1) In these regulations, unless the context otherwise requires,—

Act means the Non-bank Deposit Takers Act 2013

building society has the same meaning as in section 2(1) of the Building Societies Act 1965

entity means any of the following:

- (a) a company or other body corporate;
- (b) a corporation sole;
- (c) an unincorporated body (including, without limitation, a partnership)

senior officer, in relation to an entity that is not an NBDT, means a person occupying a position (however described) that allows the person to exercise significant influence over the management or administration of the entity (for example, a chief executive or a chief financial officer).

(2) Any term or expression that is defined in the Act and used, but not defined, in these regulations has the same meaning as in the Act.

Debt securities

4 Certain securities issued by building societies declared to be debt securities

(1) A share to which subclause (2) applies is declared by this subclause to be a debt security for the purposes of the Act.

(2) This subclause applies to a share that a building society issues, or is to issue, unless that share—

- (a) carries the right to payment of a dividend from the annual surplus or accumulated reserves of the building society; and
- (b) is irredeemable, or redeemable only at the option of the building society; and
- (c) entitles the holder to participate in the assets of the building society on liquidation after the payment of all its other liabilities.

Suitability concerns

5 Matters, circumstances, or conditions prescribed

(1) The matters, circumstances, or conditions in the Schedule are, if any 1 or more of them applies or apply to a person who is a director or senior officer, or a proposed director or senior officer, of an NBDT or a proposed NBDT, suitability concerns for that person.

(2) The Schedule applies even if 1 or both of the following apply to all or any prescribed matters, circumstances, or conditions:

- (a) they occurred wholly or in part outside New Zealand;
- (b) they are governed wholly or partly by a foreign law.

(3) Clause 3 of the Schedule is, for a conviction entered, or other element of a criminal record created and kept, in New Zealand, subject to the Criminal Records (Clean Slate) Act 2004 (in accordance with section 21 of that Act).

Schedule Suitability concerns

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1 Bankruptcy or related proceedings

(1) The person is, or has been, a debtor, defendant, or respondent in any of the following:

- (a) a bankruptcy proceeding; or
- (b) a proceeding for a judgment debt (which, in this paragraph, means an amount for which judgment is entered or for which an order of a court is made in any civil proceedings); or
- (c) any creditors' composition, proposal to creditors, order or arrangement to pay debts, no asset procedure, or other bankruptcy or personal insolvency arrangement or procedure.

(2) Subclause (1) applies even if 1 or both of the following apply:

- (a) the person has not, or has not yet, been adjudged bankrupt or held liable for the judgment debt;
- (b) the proceeding, arrangement, or procedure is not finally determined, concluded, or implemented.

(3) Subclause (1)(c) applies, without limitation, to all arrangements or procedures under Part 5 of the Insolvency Act 2006.

2 Influence over at-risk, deteriorating, or dissolved entity

(1) The person has been a director or senior officer of an entity, or has otherwise exercised significant influence over the management or administration of an entity, at a time within 7 years before—

- (a) the entity made an offer to holders of debt securities issued by the entity to replace those securities, wholly or in part, with equity securities transferred by the entity to those holders; or
- (b) the entity entered into any moratorium proposal, voluntary administration, receivership, judicial management, statutory management, or liquidation; or
- (c) the entity was otherwise wound up, or dissolved, due to insolvency.

(2) **Moratorium proposal**, in subclause (1)(b), means an offer of any debt security that is, in substance, a variation of the terms

or conditions of an existing debt security, and that does 1 or both of the following:

- (a) extends the time for payment of the principal amount or any other returns under that existing debt security;
- (b) reduces or cancels the principal amount, or any other returns that are due, or to become due, under that existing debt security.

3 Criminal record or prosecution

The person has at any time been convicted of a criminal offence, or (by being charged with the offence or otherwise) made subject to a criminal prosecution—

- (a) for a criminal offence of a kind that could result in a conviction and criminal record; and
- (b) that was not, or has not yet been, withdrawn, dismissed, or stayed, before being finally determined; and
- (c) that did not result, or has not yet resulted, in the person being acquitted or discharged without a conviction.

4 Professional or occupational malpractice

- (1) The person is, or has been, the subject of any investigation or adverse admissions or findings made, or disciplinary or regulatory action taken,—
 - (a) in respect of the person's engagement in a profession or an occupation; and
 - (b) by or to an authority with disciplinary or regulatory functions in respect of persons engaging in that profession or occupation.
- (2) The authority may (without limiting the generality of sub-clause (1)(b)) be a professional or an occupational body, or a governmental or independent public entity or officer.
- (3) The investigation or admissions or findings may be made by or to, or the action taken by,—
 - (a) the authority, or its employees, officers, or agents, directly; or
 - (b) the authority indirectly via a court, tribunal, or person acting judicially.

5 Market participant regulatory non-compliance

(1) This clause applies to a person—

- (a) who is or has been participating in a market; or
- (b) who is or has been a director or senior officer, or who is otherwise exercising or has otherwise exercised significant influence over the management or administration, of an entity that is or has been participating in a market.

(2) The person or, as the case may be, the entity is or has been the subject of any investigation or adverse admissions or findings made, or disciplinary or regulatory action taken,—

- (a) in respect of the person's participation in that market or, as the case may be, in respect of the entity's participation in that market at a time or times when the person was a director or senior officer, or otherwise exercised significant influence over the management or administration, of the entity; and
- (b) by or to an authority with regulatory functions in respect of persons participating in that market.

(3) The authority may (without limiting the generality of sub-clause (2)(b)) be a regulator or market operator, or a governmental or independent public entity or officer.

(4) The investigation or admissions or findings may be made by or to, or the action taken by,—

- (a) the authority, or its employees, officers, or agents, directly; or
- (b) the authority indirectly via a court, tribunal, or person acting judicially.

6 Conflict of interest or potential conflict of interest

The person has a conflict of interest, or a potential conflict of interest, that affects, or is likely to affect, the person's proper performance of his or her duties as a director or senior officer, or as a proposed director or senior officer, of the NBDT or the proposed NBDT.

Michael Webster,
for Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 May 2014, are made under the Non-bank Deposit Takers Act 2013 (the **Act**).

Regulation 4 declares specified securities to be debt securities for the purposes of the Act. The specified shares of a building society are in substance debt-like because they entitle the holder to participate in the society's assets on liquidation as part of, and not (as with equity securities) only after, the payment of all its liabilities. Under the Securities Act 1978 and the Securities Act (Building Societies) Exemption Notice 2013, the specified shares are subject to trustee, trust deed, and other requirements appropriate for debt securities, not to the statutory supervisor, deed of participation, and other requirements for participatory securities. The deposit takers prudential supervision regime in Part 5D of the Reserve Bank of New Zealand Act 1989 applied to all building societies (except some not issuing debt securities to the public in New Zealand and declared by regulations not to be deposit takers). *Regulation 4* ensures, therefore, that building societies offering the specified shares to the public in New Zealand, and meeting all other requirements of the definition of a non-bank deposit taker (**NBDT**) in section 5 of the Act, are also covered by the Act's new regime for every **NBDT**.

Regulation 5 and the *Schedule* prescribe matters, circumstances, or conditions that are suitability concerns if 1 or more of them applies or apply to a person who is a director or senior officer, or a proposed director or senior officer, of an **NBDT** or a proposed **NBDT**. The Act requires the fact or possibility of suitability concerns to be notified to the Bank. Suitability concerns may prevent the licensing of a proposed **NBDT**, or enable the removal of a director of a licensed **NBDT**.

**Non-bank Deposit Takers (Debt Securities
and Suitability Concerns) Regulations 2014**

2014/13

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 20 February 2014.
These regulations are administered by the Reserve Bank of New Zealand.
