

Raising money from investors – a guide for community and voluntary organisations

This information sheet outlines the options for community and voluntary organisations wanting to borrow money from investors. (This does not include donations).

What's changed?

New Zealand's financial laws have recently been overhauled to improve conduct and better protect investors. This means that new rules apply to anyone wanting to borrow money from investors in New Zealand.

The new rules affect what are known as debt securities, which are financial products (such as bonds, debentures or promissory notes) that you offer to investors, with a promise to repay them. This does not include donations, as donations are not expected to be repaid.

Under the old rules, anyone wanting to raise money from investors by offering debt securities was required to have a trustee, registered prospectus and investment statement. Registered charities were exempt from these requirements, but from 30 November 2016 the exemption will end and the new rules will apply to everybody. This means that all community and voluntary organisations, including registered charities, wanting to raise money from investors will need to become familiar with the new rules.

We realise that some organisations with existing investors may need to transition to the new rules. But there is no reason to wait until 30 November 2016 if you want to make a new offer of debt securities. Any new offers can already be made under the new rules.

There are several options for fundraising from investors, including lower-cost options, under the new rules.

What are the new rules?

The new law is called the *Financial Markets Conduct Act 2013* (FMC Act). Under the FMC Act, there are different rules and different costs, depending on how much money you want to raise, how you want to raise it, and what type of investors you have.

What are the lower-cost options?

Under the new rules, several types of offers and types of investors are excluded from the standard requirements for disclosure, governance and financial reporting. Although you will still have some obligations, these offers are likely to be cheaper because there are fewer requirements to meet. For example, there may be no need to prepare a short document called a product disclosure statement (PDS), or enter information on the Disclose Register, and no need for a supervisor or trust deed.

The main exclusions that may be appropriate for voluntary or community organisations looking for a lower-cost option for raising money from investors are:

- offers made to wholesale investors
- small personal offers
- offers made through peer-to-peer lending platforms.

Who counts as a wholesale investor?

The following people are wholesale investors for all offers of financial products:

- local authorities and Crown entities
- investment businesses (those who habitually invest money as the main part of their business)
- 'large' investors (with net assets or consolidated turnover of more than \$5 million in each of the past two years)
- 'active' investors (with financial portfolios worth at least \$1 million over the past two years)

The following people are also wholesale investors, but only on a case-by-case basis for particular offers:

- 'eligible' investors (who certify themselves as knowledgeable and experienced investors)
- investors who plan to invest at least \$750,000 in the offer (or whose combined investments with you of the same class of financial products add up to at least \$750,000).

Your own organisation may also be a wholesale investor.

What are the rules for wholesale investors?

Because offers of financial products to wholesale investors are not regulated offers (see the end of this sheet for more about regulated offers), they are excluded from the standard rules for disclosure, governance and financial reporting. This makes them a lower-cost option. However, there are some rules that still apply.

Eligible investor — The investor must first certify that they have experience with financial products that allows them to assess the merits of the offer, their information needs, and the adequacy of the information that is provided to them. The certificate must contain the grounds for the certification and a prescribed warning statement. It must also be signed by an authorised financial adviser, accountant or lawyer and is valid for new investments within a two-year period.

\$750,000 minimum — Any document containing the key terms of the offer that is given to an investor who plans to invest at least \$750,000 in the offer (or whose investments with you of the same class add up to at least \$750,000) must include a prescribed warning statement. If such a document is not provided, the warning statement must be given or sent to the investor before they make an application. You must also receive from the investor an acknowledgement in writing in a prescribed form before or at the same time they make an application.

'Safe harbour' certificate — Investment businesses, active investors, large investors and government agencies can give you a 'safe harbour' certificate stating which category they fall in. You can rely on this certificate as evidence that the investor is a wholesale investor, although you are not required to. The alternative is to ensure you have sufficient evidence to show the investor meets the criteria. A safe harbour certificate must include a prescribed warning statement and is valid for new investments within two years.

Lower-cost options for retail investors

Retail investors are investors who are not wholesale investors. There are two main lower-cost ways for voluntary or community organisations to raise money from retail investors: small personal offers, and using peer-to-peer lending platforms. These methods are cheaper because they are also excluded from the standard rules as they are not regulated offers.

You can raise up to \$2 million over a 12-month period using one of these methods, or both methods combined. If you do this before 30 November 2016, offers made under the old rules are not included when calculating the \$2 million limit.

Small personal offers

A personal small offer can be accepted by up to 20 investors over a 12-month period. It must be a personal offer to someone who is likely to be interested in the offer, and

- someone with whom you have a professional or other connection, or
- someone with whom you have had previous contact, or
- someone who has indicated they are interested in such offers.

Small personal offers can also be made to someone with a gross annual income of at least \$200,000 in each of the past two years.

You must notify the FMA annually of the details of any small personal offers. These investors must also be given a warning statement, and the offer must not be publicly advertised. If you have different companies that are raising funds for different projects, then you could raise up to \$2 million for each company from up to 20 investors each year, but each offer must be genuinely different. For example, the small offer exclusion is not intended to be used to raise \$10 million for a single purpose by setting up five separate companies each raising \$2 million from up to 20 investors in one year.

Peer-to-peer lending platforms

Peer-to-peer lending services match investors with people or organisations needing loans. These services are typically based online, and usually take care of the administration. This includes dealing with repayments and interest payments, and chasing any defaults.

These services are required to be licensed by the FMA. Borrowers have to abide by certain rules such as being honest about the information provided, and their ability to pay it back. There is no limit on investor numbers, and no requirement for a personal connection with your investors. However, the \$2 million limit over a 12-month period still applies, and some services may have smaller limits. If you are using the investment to fund loans to community projects or individuals, then those borrowers could each borrow up to \$2 million a year through a platform.

You could either use an existing platform, or seek a licence to operate your own platform. For more information about peer-to-peer lending, including a list of licensed services, see our website [here](#). For more information about how to become a peer-to-peer lender, see our website [here](#).

Mix and match your options

You do not have to limit your organisation to a single option. You could combine, for example, a small personal offer to retail investors with a separate offer to wholesale investors. This would still be a lower-cost option as neither of these offers would be a regulated offer. Or you could raise some money with a regulated offer, and raise some more money using one or more of the lower-cost options.

See the flowchart on the next page for a guide on how to make an offer to one or more groups of investors.

What if none of these exclusions apply?

If any of your investors do not meet any of the exclusions above, then it will most likely be considered a regulated offer, and the standard rules apply.

This means information about the financial products you are offering must be disclosed in a PDS. Additional information must also appear on the Disclose Register, run by the Companies Office. Together, this information must include all information about the offer and be up-to-date, accurate and understandable. There must be also a trust deed, and a licensed supervisor to act as the trustee under that trust deed.

Please get legal advice

We strongly recommend you get legal advice from a specialist in financial markets law before making an offer of debt securities.

If you are considering making a novel or complex offer to retail investors, we also encourage you to get in touch with us to discuss the best way of explaining it to investors.

Please phone our general enquiries number on **0800 434-567** or email compliance@fma.govt.nz

Your guide to making an offer to investors

