

# Regulatory Impact Statement for declarations to be made for the Non-Bank Deposit Takers Act 2013

April 2014

## AGENCY DISCLOSURE STATEMENT

1. This Regulatory Impact Statement has been prepared by the Reserve Bank of New Zealand (the Bank).
2. It provides an analysis of the options for regulating entities who meet the definition of non-bank deposit taker (NBDT) in the Non-Bank Deposit Takers Act 2013 (the NBDT Act) but who are either not in substance carrying on the business of an NBDT or who raise other policy issues that may justify their exclusion from the regime.
3. The analysis included in this paper relies on assumptions regarding the costs and benefits that the Bank would expect to accrue to entities covered by the regime. These assumptions have been guided by information that entities have provided to the Bank during consultation and the understanding the Bank has developed of the sector over the past five years of regulating it. In the Bank's view, the costs and benefits identified are reasonable and consistent with the information that we have gathered.
4. Although this analysis reflects the costs and benefits to an "average" NBDT, the Bank is aware that the precise costs and benefits to an individual NBDT of each of the options discussed would be highly dependent on the entity's particular circumstances. In particular, the costs of compliance can vary considerably between entities depending on the complexity of their business and the extent to which their current arrangements mirror those required under the NBDT Act. In addition, the costs of complying with some of the prudential requirements (particularly, the cost of appointing a trustee and obtaining a credit rating) can be relatively easily quantified, whereas the costs of the complying with other requirements (such as capital and liquidity) cannot be so easily quantified.
5. Furthermore, some of the expected benefits identified cannot be quantified. For example, although it is broadly accepted that legislative certainty and minimising the compliance burden are desirable outcomes for entities, it is not possible to put a dollar value on such benefits. Accordingly, the analysis has focussed on weighing a broad understanding of the costs and benefits for the identified entities, the sector at large, and the public, considering the factors the Bank is required to have regard to in the NBDT Act.

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## EXECUTIVE SUMMARY

1. This regulatory impact statement relates to proposals to declare certain entities out of the definition of non-bank deposit taker (NBDT) in the Non-bank Deposit Taker Act 2013 (the NBDT Act).
2. Although the broad definition of NBDT provided in the NBDT Act is necessary to minimise regulatory arbitrage, it captures a number of entities whose business may be beyond the intended scope of the regulatory regime for NBDTs. The Reserve Bank of New Zealand (the Bank) has identified that (for reasons outlined in the problem definition section) the nature or size of the following types of entities may mean it is inappropriate to require them to comply with all of the requirements of the NBDT Act:
  - funding conduits;
  - reverse funding conduits;
  - payment facility providers;
  - small charities; and
  - special purpose vehicles that are operated solely for the purpose of raising regulatory capital for a registered bank.
3. Prior to the NBDT Act coming into force on 1 May 2014, NBDTs were regulated as 'deposit takers' (with the same core definition) under Part 5D of the Reserve Bank of New Zealand Act (Part 5D). The NBDT Act substantially replicates the prudential requirements imposed by Part 5D relating to capital, liquidity, credit ratings, related party transactions, risk management and governance. It also introduces a new requirement for NBDTs to be licensed by the Bank.
4. The NBDT Act provides two options for reducing the compliance burden for entities that may be outside the intended scope of the regime. Specifically, exemptions and declarations.
5. Exemptions provide increased flexibility as they allow the Bank to exempt an entity from certain requirements that may be inappropriate, while still requiring compliance with other aspects of the regime. As exemptions are granted for a specified length of time, they also allow the Bank to review the scope of any such exemptions at regular intervals.
6. However, exemptions only provide partial relief for entities that may be outside the intended scope of the regime (an entity cannot be exempted from the requirement to be licensed under the NBDT Act). They also provide less certainty for these entities about their long term treatment under the regime.
7. Declarations may be used in cases where it is desirable to formally declare an entity or type of entity to be outside the definition of NBDT in the NBDT Act. As a result, entities that are subject to such a declaration are not subject to any of the requirements of the Act. Declarations are made via regulations, and for this reason would not be expected to be modified as often as exemptions.

8. The status quo has been to exempt the entities listed in paragraph 2 from all of the prudential requirements applying to NBDTs. After reviewing the current treatment of these entities, the Bank considers that they should not be subject to the substantive requirements of the NBDT regime.
9. In light of this decision, the Bank has also considered whether it would be more appropriate to exempt these entities from the requirements of the regime or declare them out of the definition of NBDT altogether. The Bank's view is that it would be more appropriate to declare these entities out of the definition of NBDT altogether given that:
  - They cannot be exempted from the requirement to be licensed, and it would seem to be inappropriate to require them to obtain a licence despite being subject to none of the substantive requirements of the regime, and
  - Declaring these entities out of the definition of NBDT will provide them with more certainty about their long term treatment under the NBDT regime.
10. Accordingly, this regulatory impact statement proposes that these entities be declared not to be NBDTs for the purposes of the NBDT Act.

## **STATUS QUO AND PROBLEM DEFINITION**

11. An NBDT is defined to be a person who offers debt securities to the public in New Zealand and carries on the business of borrowing and lending money, or providing financial services or both.<sup>1</sup> This definition is focused on the substance of the business being carried on by an entity, rather than its corporate form. However, it also has the incidental effect of including within the scope of the regime entities that may either not be in substance carrying on the business of an NBDT, or that may raise special policy considerations justifying their exclusion from the regime. Specifically:
  - intergroup funding vehicles (funding conduits and reverse funding conduits);
  - payment facility providers;
  - small registered charities; and
  - certain special purpose vehicles established by registered banks.
12. While these entities are currently covered by exemptions from all of the current requirements of the NBDT regime, it is not possible to exempt them from the requirement to be licenced under the NBDT Act, which comes into force on 1 May 2014.

### *Intergroup funding vehicles (funding conduits and reverse funding conduits)*

13. A "funding conduit" is a wholly owned subsidiary that issues debt securities to the public solely for the purpose of on-lending to, or investing funds in, its parent company (or the group of companies to which it belongs). Likewise, a "reverse funding conduit" is a parent entity that issues debt securities to the public solely for the purpose of on-lending to, or investing in, members of its corporate group. Entities that act as funding conduits or reverse funding conduits prima facie come within the

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<sup>1</sup> s 5 Non-bank Deposit Takers Act 2013.

definition of NBDT by carrying on the business of borrowing (through the issue of debt securities to the public) and lending (by lending to other members of their corporate group).

14. Funding conduits are currently exempted from all of the requirements of the NBDT regime by the [Deposit Takers \(Funding Conduits\) Exemption Notice 2010](#). Likewise, Insurance Group Australia Ltd (the only currently exempt reverse funding conduit) is exempted by the [Deposit Takers \(Insurance Group Australia Ltd\) Exemption Notice 2012](#).
15. Requiring funding conduits and reverse funding conduits (hereafter referred to as intergroup funding vehicles) to be licensed under the NBDT Act would impose unnecessary costs on these entities given that:
  - An intergroup funding vehicle is raising funds that it then on-lends to other members of its corporate group, who use the funds for purposes other than carrying on the business of an NBDT. In these circumstances, the intergroup funding vehicle is not carrying on activities that are similar in substance to those of a typical NBDT, or which involve the activities of an NBDT. Instead they are merely part of an arrangement being used by a corporate group to raise funds for other business purposes;
  - An intergroup funding vehicle is unlikely to raise systemic risk issues because it on-lends wholly to other members of its corporate group. Therefore, although its depositors would suffer a loss, the failure of a funding conduit is unlikely to have a material effect on confidence in the NBDT sector.

#### *Payment facility providers*

16. Payment facility providers take in and hold funds from the public that they make available on demand either directly or in a specified form (such as equivalent foreign currency). They do not provide interest on such deposits. However, payment facility providers prima facie meet the definition of NBDT by issuing debt securities to the public and carrying on the business of providing certain kinds of financial service.
17. Payment facility providers are currently exempted from all of the regulatory requirements in Part 5D by the [Deposit Takers \(Payment Facility Providers\) Exemption Notice 2009](#).
18. Requiring payment facility providers to be licensed under the NBDT Act would impose unnecessary costs on these entities given that:
  - Pure payment facility providers merely hold funds on behalf of persons, which can then be made available either directly or in a specified form, such as in foreign currency equivalent. They do not aim to provide a financial or other return on the amounts they borrow. As a result, they are not carrying on activities that are similar in substance to those of an ordinary NBDT, or which involve the activities of an NBDT.
  - Payment facility providers are unlikely to raise any systemic risks or the same level of risks to depositors so long as they hold an amount equal to the outstanding value of the call debt securities they issue in a trust account maintained with a bank (as is their current practice).

*Small registered charities*

19. Entities may register as charities under the Charities Act 2005 where they are established and operated for a charitable purpose, including the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community.
20. There are a number of registered charities that carry on the business of borrowing or lending, or providing financial services, or both, and therefore come within the definition of NBDT.
21. The treatment of registered charities under the NBDT regime is currently determined by the [Deposit Takers \(Charities\) Exemption Notice 2014](#). Under this notice, registered charities are exempt from all of the requirements of the NBDT regime where they:
  - Have outstanding debt securities offered to the public of \$15 million or less; or
  - The balance of their outstanding loans (excluding loans to certain associated persons) does not exceed \$5 million.
22. By contrast, registered charities over these thresholds are temporarily exempt from some requirements of the NBDT regime under transitional arrangements which are designed to give them time to shift to full compliance with the rest of the regime.
23. Requiring small registered charities to be licensed under the NBDT regime may impose costs of those entities that affects their ability to fulfil their charitable purpose, and there is a public interest in these entities being able to carry out their charitable functions.
24. Generally larger charitable entities are more likely to be able to absorb the costs of compliance with the NBDT regime. There is also a greater public interest in their being covered by the NBDT regime as their failure would be likely to have more significant impacts (i.e. it would affect a larger number of borrowers and lenders, and possibly to a larger extent).

*Certain special purpose vehicles established by registered banks*

25. A special purpose vehicle (SPV) is a legal entity that is created to fulfil a specific objective. Such entities may be established and operated for the purpose of raising regulatory capital for a registered bank (whether by purchasing regulatory capital instruments from the registered bank and issuing matching instruments to investors, or vice versa).
26. In these circumstances the SPV carries on the business of borrowing (by offering regulatory capital instruments, or matching instruments, to investors in the form of debt securities) and lending (by lending the funds raised through this borrowing to the registered bank). As a result, these SPVs come within the definition of NBDT.
27. These types of SPV are currently exempted from all of the requirements of the NBDT regime by the [Deposit Takers \(Banks' Regulatory Capital\) Exemption Notice 2014](#).
28. Requiring these types of SPV to be licenced under the NBDT Act would impose unnecessary costs on these entities given that:

- These SPVs are wholly owned by a registered bank or a parent entity of the registered bank and only lend to the registered bank they are related to. In substance, this kind of SPV acts as a special form of funding conduit for a prudentially regulated entity that carries on the business of borrowing and lending (i.e. a registered bank). As such, they are not carrying on activities that are similar in substance to those of an ordinary NBDT, or which involve the activities of an NBDT;
- Because these kinds of SPV are not in substance carrying on the business of an NBDT, and are instead effectively acting as an extension of a registered bank, their operation is likely to raise few, if any, of the potential risks that may be raised by an ordinary NBDT. In addition, for every claim that investors have against one of these kinds of SPV, the SPV will have a matching claim against the registered bank, so the additional risk to investors from these entities being excluded from the NBDT regime is minimal.

## **OBJECTIVES**

29. The Bank's primary objectives are to:

- Clarify the treatment of entities that are on the boundary of the definition of NBDT;
- Minimise compliance costs for these entities; and
- Reduce the risk of public misperception as to the level of regulation that entities are subject to.

30. The NBDT Act also specifies other matters that must be taken into account when the Bank is deciding whether to recommend an entity be declared not to be an NBDT. These factors include:

- the nature of the business activities carried on by the entity and the extent to which those activities are similar in substance to the activities of an NBDT or involve activities as an NBDT;
- the public interest; and
- any other matters the Bank considers relevant.<sup>2</sup>

31. In addition, the Bank is required to have regard to the following factors in deciding whether to recommend an entity be exempt from certain requirements or declared out of the definition of NBDT:

- a. the desirability of consistency in the treatment of similar institutions, regardless of matters such as their corporate form;
- b. the importance of recognising—
  - i. that it is not the purpose of this Act to eliminate all risk in relation to the performance of NBDTs or to limit diversity among NBDTs; and

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<sup>2</sup> s 72(2) Non-bank Deposit Takers Act 2013.

- ii. that depositors are responsible for assessing risk in relation to potential investments and for their own investment choices;
- c. the desirability of providing to depositors adequate information to enable them to assess risk in relation to potential investments and to distinguish between high-risk and low-risk NBDTs;
- d. the desirability of sound governance of NBDTs;
- e. the desirability of effective risk management by NBDTs;
- f. the need to avoid unnecessary compliance costs; and
- g. the need to maintain competition within the NBDT sector.<sup>3</sup>

### **OPTIONS AND IMPACT ANALYSIS**

32. Three options have been considered for the treatment of intergroup funding vehicles, payment facility providers, small charities, and SPVs that are operated solely for the purpose of raising capital for a registered bank. Specifically:
- a. the status quo (of providing exemptions);
  - b. including all entities in the definition of NBDT without exemption;
  - c. excluding the entities concerned from the definition of NBDT by declaration.
33. Each of these options is discussed in turn below.

#### *Status quo*

34. Under the status quo, the entities would continue to be nominally caught by the regime. However, they would still be exempt from all (or almost all) of the prudential requirements contained in the NBDT Act.
35. The benefit of this option is that it provides greater flexibility for the Bank in monitoring and overseeing these entities. By declaring entities out of the regime altogether, the Bank would have little or no oversight of these entities.
36. However, there are a number of problems with this approach. Most significantly, for the reasons set out earlier in this regulatory impact statement (RIS), these entities are (with a few exceptions) generally not carrying on the business of an NBDT in substance, and requiring them to be licensed under the NBDT Act would impose unnecessary compliance costs on them.
37. In addition, given the business model or size of some of these entities, there is a risk that some may not be able to meet the requirements of the regime. Such entities would commit an offence were they to continue to carry on their existing business without a licence. It follows that exemptions may not provide adequate relief for such entities.

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<sup>3</sup> s 8 Non-bank Deposit Takers Act 2013.

38. Licensing entities that are exempt from all of the requirements of the regime also creates a risk of public misunderstanding about the nature and extent of regulation and oversight that such entities are subject to.

*Including all entities in the definition of NBDT without exemption*

39. Under this option the classes of entities identified in this regulatory impact statement would be subject to regulation under the NBDT Act, without being provided with any exemptions from the prudential requirements. The primary benefit of this approach is that regulating all entities within the definition of NBDT the same way would ensure competitive neutrality.
40. However, this only ensures competitive neutrality in the strictest sense as it does not take account the extent to which these entities really are carrying on business analogous to that of a typical NBDT like a credit union, building society, or finance company.
41. The benefits associated with competitive neutrality also need to be balanced against the costs of compliance. The costs of compliance with the regime for an average NBDT could be around \$160,000-\$200,000 a year. However, this figure would vary with the size and complexity of the entity. There may also be substantial up-front costs to achieve compliance depending on an entity's existing arrangements. For example, some entities that are exempt from existing capital requirements have independently advised us that they use them as a guide. It follows that the initial costs associated with moving to compliance may be less for this type of entity.
42. Given these significant costs, requiring compliance with prudential requirements can only be justified where compliance is consistent with the objectives and purpose of the legislation. We do not consider that this is the case in respect of entities that are not in substance carrying on the business of an NBDT, or that may raise special policy considerations like small registered charities.

*Excluding the entities from the definition of NBDT by declaration*

43. Under this approach the classes of entities identified in this regulatory impact statement would be permanently excluded from the definition of NBDT. Accordingly, they would not be subject to any of the prudential requirements imposed under the NBDT Act.
44. One of the costs of this approach is a loss of flexibility in the application of the NBDT Act. For example, if the Bank were to determine that the entities covered by a declaration should be subject to the prudential requirements contained in the NBDT Act then the associated regulation would have to be revoked. This procedure is much more administratively intensive than the current procedure of granting and revoking exemptions.
45. However, the benefit of this approach is that it provides considerably more certainty to entities about whether they are intended to be covered by the regime or not. It also ensures that entities that are not in substance operating as NBDTs are not forced to incur the compliance costs associated with obtaining a licence.
46. The following table analyses the options discussed above in light of the specific matters the Bank required to have regard to under the NBDT Act when exercising its powers.

**Table One: Evaluation of three options against considerations in section 8 of the Non-bank Deposit Takers Act 2013**

	<b>Option One: Status Quo</b>	<b>Option Two: Including all entities without exemption</b>	<b>Option Three: Excluding all entities by declaration</b>
<b>Ensures consistency of treatment of similar entities</b>	No effect as the identified entities are considered materially different to other NBDTs.	No effect as the identified entities are considered materially different to other NBDTs.	No effect as the identified entities are considered materially different to other NBDTs.
<b>Importance of recognising it is not the purpose of the NBDT Act to eliminate risk or limit diversity in the NBDT sector</b>	Supportive as it minimises compliance burden so costs would not limit competition in, or entry into, the sector.	Unsupportive as this would increase compliance burden and may force some entities out of business if they cannot obtain a licence.	Very supportive as it minimises compliance burden so costs would not limit competition in, or entry into, the sector.
<b>Recognises that depositors are responsible for assessing risk in relation to their own investment choices</b>	Supportive as it does not place the onus of monitoring sound business practices (to the extent prudential requirements mirror these) on third parties (i.e. trustees or the Bank).	Less supportive, as active monitoring of an entity's business practices by trustees and the Reserve Bank may reduce the incentives for investors to carry out their own assessment of risk.	Supportive as it does not place the onus of monitoring sound business practices (to the extent prudential requirements mirror these) on third parties (i.e. trustees or the Bank).
<b>Provides depositors adequate information to enable them to assess risk of investments and identify high and low risk</b>	Unsupportive as it does not force entities to make prudential disclosures. However, in some cases the nature of an entity's business may render these of limited benefit. They may also misrepresent the extent to which the entity is subject to prudential requirements and oversight.	Supportive as it forces entities to make prudential disclosures. However, in some cases the nature of an entity's business may render these of limited benefit. They may also misrepresent the extent to which the entity is subject to prudential requirements and oversight.	Unsupportive as it does not force entities to make prudential disclosures. However, in some cases the nature of an entity's business may render these of limited benefit. There is also no risk of the public misinterpreting the level of prudential oversight that entities are subject to under this option.
<b>Supports sound governance of NBDTs</b>	Unsupportive as it does not require compliance with the governance standards imposed by prudential requirements.	Supportive as it requires compliance with the governance standards imposed by prudential requirements.	Unsupportive as it does not require compliance with the governance standards imposed by prudential requirements.
<b>Supports effective risk management by NBDTs</b>	Unsupportive as it does not require compliance with the risk management standards imposed by prudential requirements.	Supportive as it requires compliance with the risk management standards imposed by prudential requirements.	Unsupportive as it does not require compliance with the risk management standards imposed by prudential requirements.

<b>Avoids unnecessary compliance costs</b>	Supportive as it gives exemptions from the NBDT Act requirements. However, entities would still need to go through the licensing process under the NBDT Act.	Very unsupportive as it requires entities to be licensed and comply with all of the NBDT Act requirements regardless of the public benefit of doing so.	Very supportive as it puts entities outside the requirement to comply with the NBDT Act and the associated licensing requirements. It also provides certainty of this outcome.
<b>Maintains competition within the NBDT sector</b>	Mixed effect as the entities are considered materially different from other NBDTs, but may nevertheless compete with them to a limited extent. But there is also the risk that compliance costs and the requirement to be licensed would drive some entities out of business, limiting competition in the sector.	Mixed effect as the entities are considered materially different from other NBDTs, but may nevertheless compete with them to a limited extent. But there is also the risk that compliance costs and the requirement to be licensed would drive some entities out of business, limiting competition in the sector.	Mixed effect as the entities are considered materially different from other NBDTs, but may nevertheless compete with them to a limited extent. But there is also the risk that compliance costs and the requirement to be licensed would drive some entities out of business, limiting competition in the sector.

## CONSULTATION

47. In November 2012, the Bank wrote to entities that are subject to the Deposit Takers (Funding Conduits) Exemption Notice 2010 and the Deposit Takers (Payment Facility Providers) Exemption Notice 2009 to consult on the proposal to declare those entities out of the definition of NBDT.
48. The Bank received two submissions from entities that are currently covered by the Deposit Takers (Funding Conduits) Exemption Notice 2010. Both agreed with the proposal to declare entities that act as funding conduits out of the definition of NBDT. However, they provided comments on the specified circumstances that would allow an entity to be classified as a funding conduit under the NBDT Act. The Bank took these comments into account and simplified the proposed specified circumstances accordingly. The other two entities listed in the notice no longer have debt securities on issue so no longer rely on the exemption.
49. The Bank received responses from two of the three payment facility providers included in the notice. Both agreed with the proposal to make a class declaration with respect to payment facility providers and did not provide comments on the specified circumstances listed in the proposal.
50. Registered charities were consulted late in 2013 on the proposed thresholds for small charities to be exempted from all of the prudential requirements of the regime under the Deposit Takers (Charities) Exemption Notice 2014, and these thresholds are also reflected in the proposed declaration excluding them from the regime. During that consultation, some charities felt that the thresholds should be higher or exclude charities from the regime altogether. However, the Bank considers that these thresholds strike an appropriate balance between reducing the risks that could be created by the failure of a large charity that acted as an NBDT, and avoiding imposing disproportionate compliance costs on charitable entities.
51. Although banks have not been consulted on the proposal with respect to a declaration for SPVs, the Bank is of the view that industry would be supportive of this proposal as it will significantly reduce compliance costs and is consistent with the approach adopted to date for exempting these SPVs from all of the requirements of the regime.
52. The Treasury, the Ministry of Business, Innovation and Employment, and the Financial Markets Authority have been consulted on these proposals.

## CONCLUSIONS AND RECOMMENDATIONS

53. The Bank recommends that regulations be made declaring the following entities not to be NBDTs for the purposes of the NBDT Act:
  - intergroup funding vehicles;
  - payment facility providers;
  - small charities; and
  - special purpose vehicles that exist solely for the purpose of raising capital for a registered bank.

54. Although the practice of providing exemptions has worked adequately to date, the Bank believes that it is more appropriate to declare these entities out of the NBDT regime. This will provide affected entities with more certainty as to their legislative obligations going forward, and will avoid the need for them to incur the compliance costs associated with their having to seek a licence under the NBDT Act.
55. The cost of this proposal is to reduce the level of flexibility available to tailor the application of the NBDT regime to these entities. However, the Bank considers that this costs is outweighed by the benefits of the proposal.

### **IMPLEMENTATION PLAN**

56. The Bank notes that the transition period for licensing under the NBDT Act ends on 1 May 2015. All entities that meet the definition of NBDT in the NBDT Act will be required to be licensed by that time. For this reason, all of the declarations proposed in this RIS and associated Cabinet paper will need to be in force by that date in order to avoid affected entities having to incur the costs of applying for a licence.
57. The Bank has carefully considered the specified circumstances that an entity should be required to satisfy in order to benefit from any regulation declaring them out of the definition of NBDT. These specified circumstances (subject to drafting) are included in the appendix to this RIS, and are designed to ensure that the declarations cannot be used to arbitrage around the intended scope of the NBDT regime.

### **MONITORING, EVALUATION AND REVIEW**

58. As the proposed regulation would take the affected entities outside the definition of NBDT, the Bank would not formally monitor them in the future. However, where an entity no longer comes within the specified circumstances in the declarations, they would revert to being an NBDT and would be required to be licensed under the NBDT Act.

**Appendix One: Proposed specified circumstances for a declaration (subject to drafting)**

1. Entities acting as funding conduits or reverse funding conduits would generally be declared not to be NBDTs where:

- The entity uses 100% of the subscriptions raised from the issue of debt securities to lend money to, or to subscribe for or purchase securities in, another member or its group; and
- Neither the entity, or any other group member, carries on the business of lending money to any person outside the group.

For these purposes “lending” would mean providing “credit”, and credit would mean a right granted to a person by another person to:

- defer payment of a debt; or
- incur a debt and defer its payment; or
- purchase property or services and defer payment for that purchase (in whole or in part).

However, for the avoidance of doubt, an entity would not be treated as having carried on the business of lending if it grants the right to purchase property or services and defer payment for that purchase purely as an incidental result of carrying on other business.

2. Entities acting as payment facility providers would generally be declared not to be NBDTs where:

- The entity does not provide any financial services in New Zealand except issuing call debt securities which:
  - Take the form of pre-paid instruments issued by the company in New Zealand in favour of security holders;
  - Under which the entity will not pay to security holders any interest, or any consideration in the nature of interest; and
- The entity holds an amount equal to the outstanding value of the call debt securities on issue in a trust account maintained with a registered bank, or an overseas bank which is subject to at least an equivalent amount of supervision.

3. Registered charities would generally be declared not to be an NBDTs where:

- The charity has total outstanding debt securities offered to the public of under \$15 million, or outstanding loans to person other than certain related parties of under \$5 million.
- The charity has notified the Bank on an annual basis that it is meeting the specified circumstances listed above.

4. Special purpose vehicles (SPVs) established by registered banks for the purpose of raising regulatory capital would generally be declared to not be NBDTs where:
- The SPV is established and operated for the purpose of raising regulatory capital for the registered bank;
  - The SPV raises regulatory capital for the bank through either or both of the following arrangements:
    - By purchasing regulatory capital instruments from the bank and issuing equivalent debt securities to the public; or
    - By purchasing securities from the bank and issuing regulatory capital instruments to the public in the form of debt securities;
  - The SPV complies with any requirements that apply to the SPV under a condition of registration imposed on the bank under section 74 of the Reserve Bank of New Zealand Act 1989;
  - The SPV lends at least 95% of the subscriptions received from its issue of securities to the public to the registered bank it is related to;
  - The SPV does not carry on the business of lending to any entity apart from the registered bank it is related to.