



**ASIC**

Australian Securities & Investments Commission

## CONSULTATION PAPER 207

# Charitable investment fundraisers

May 2013

### About this paper

This consultation paper seeks feedback on the following two options for amending exemptions currently available to charitable investment fundraisers under Regulatory Guide 87 *Charities* (RG 87):

- a proposal to remove all existing exemptions for new investment fundraising, except exemptions from the Australian financial services (AFS) licensing requirements of the *Corporations Act 2001* (Corporations Act) for fundraisers that only raise investment funds from associated entities (Option 1); and
- a proposal to retain existing exemptions (with some modification) for new investment fundraising but on the basis that they are only available if existing conditions and a number of new conditions are satisfied (Option 2).

This paper seeks feedback from charities, holders of investments offered by charities and other interested stakeholders on our proposals.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This paper was issued on 20 May 2013 and is based on the Corporations Act as at the date of issue.

### Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

# Contents

<b>The consultation process</b> .....	<b>4</b>
<b>A Overview</b> .....	<b>5</b>
Our current policy on charitable investment fundraising .....	5
Recent reform in the charities sector .....	7
Concerns about some ‘shadow banking’ activities .....	8
Our review of existing exemptions for charitable investment fundraisers .....	10
<b>B Option 1: Remove existing exemptions</b> .....	<b>13</b>
Proposed Option 1 .....	13
<b>C Option 2: Retain existing exemptions and introduce additional conditions of relief</b> .....	<b>18</b>
Proposed Option 2 .....	18
AFS licensing requirement .....	21
Additional conditions of relief .....	23
Changes to existing conditions of relief .....	35
Assurance of compliance with conditions of relief .....	41
Consequences of non-compliance with conditions of relief .....	44
Charities relying on the group charities exemption .....	45
<b>D Implementation period</b> .....	<b>48</b>
Commencement date for Option 1 .....	48
Phased implementation for Option 2 .....	49
<b>E Exemption for school enrolment deposits</b> .....	<b>53</b>
Renewal of existing exemption .....	53
<b>F Regulatory and financial impact</b> .....	<b>54</b>
<b>Key terms</b> .....	<b>55</b>
<b>List of proposals and questions</b> .....	<b>58</b>

## The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information. We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on charitable investment fundraising. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section F, 'Regulatory and financial impact'.

### Making a submission

We will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any financial information) as confidential.

Comments should be sent by 15 July 2013 to:

Aileen Tse  
 Lawyer  
 Investment Managers and Superannuation  
 Australian Securities and Investments Commission  
 GPO Box 9827  
 Sydney NSW 2001  
 facsimile: 02 9911 2403  
 email: [aileen.tse@asic.gov.au](mailto:aileen.tse@asic.gov.au)

### What will happen next?

<b>Stage 1</b>	20 May 2013	ASIC consultation paper released
<b>Stage 2</b>	15 July 2013	Comments due on the consultation paper
<b>Stage 3</b>	From 15 July 2013	ASIC to consider feedback received

## A Overview

### Key points

Charitable investment fundraisers that raise investment funds through the issue of debentures other than by way of certain limited offers or through the issue of interests in managed investment schemes currently have conditional exemptions from the fundraising, managed investment, debenture and Australian financial services (AFS) licensing provisions of the *Corporations Act 2001* (Corporations Act). Organisations that rely on these exemptions must comply with limited lodgement, disclosure and reporting obligations.

Many charitable investment fundraisers offer investment products of a type offered by commercial operations. The size of investment is significant. Both the Australian Government and the Australian Prudential Regulation Authority (APRA) have recently considered the regulatory settings for charities.

We have decided to review the exemptions that apply to charitable investment fundraisers to assess whether they continue to align with our regulatory objectives of facilitating confident and informed investors and maintaining fair and efficient financial markets.

In this paper, we set out two alternative reform proposals for charitable investment fundraisers:

- Option 1 proposes removal of the existing exemptions, except exemptions from the AFS licensing requirements for fundraisers that only raise investment funds from associated entities (Section B); and
- Option 2 proposes retention of the existing exemptions (with some modification) and the introduction of additional conditions of relief (Section C).

The proposed reforms will only affect charities that undertake new investment fundraising on or after the commencement date of the adopted reforms: see Section D. Further, they do not affect any fundraising undertaken by charities in the form of donations. If either proposal is implemented, it is intended that implementation will be subject to a transition period.

## Our current policy on charitable investment fundraising

- 1 Charitable investment fundraisers that fundraise by issuing debentures or interests in managed investment schemes have relief from the fundraising, managed investment, debenture and AFS licensing provisions of the Corporations Act under Class Order [CO 02/184] *Charitable investment schemes—fundraising*, if the charitable investment fundraiser:

- (a) registers an identification statement with ASIC that contains the prescribed content;
- (b) lodges financial information with ASIC on an annual basis; and
- (c) satisfies certain disclosure requirements in its offer documents.

This exemption is known as the ‘individual charities’ exemption.

Note: A charitable investment fundraiser is an entity that is a charity that raises investment funds (as distinct from donations) in order to carry out its operations.

- 2 A group of charities that have common or related charitable objectives may also be exempted from the fundraising, managed investment, debenture and AFS licensing provisions of the Corporations Act if they are sponsored by an organisation approved by ASIC (the sponsor). Under this type of exemption, the sponsor is obliged under a deed poll to indemnify each sponsored charity against claims by investors in that entity, although such liability may be limited to the amount of money subscribed by investors plus interest accrued. This exemption is known as the ‘group charities’ exemption.
- 3 Guidance on the individual charities exemption and the group charities exemption is contained in Regulatory Guide 87 *Charities* (RG 87).
- 4 RG 87 explains that exemptions for charitable investment fundraisers recognise that some investors may want to assist a charity to fulfil its purpose and, for some investors, financial gain for themselves is not the primary consideration in making the investment. RG 87 proceeds on the basis that, in these circumstances, the usual investor protections and disclosures required under the Corporations Act are not required.
- 5 Charitable investment fundraisers constitute only a small portion of the Australian charities population. Organisations that fundraise through donations only do not raise investment funds and are not affected by our proposals.
- 6 Approximately 200 charitable investment fundraisers rely on ASIC’s exemptions. We estimate that these charities currently manage approximately \$7 billion in investment funds. We understand a significant portion of investment funds is raised from entities that are associated with the charitable organisation.
- 7 Charitable investment fundraisers that rely on ASIC’s exemptions raise investment funds from both wholesale and retail investors, though we are aware that some organisations only accept investments from entities that are associated with the organisation.
- 8 RG 87 also sets out an existing exemption relating to school enrolment deposits. We propose to renew this exemption: see Section E.

## Recent reform in the charities sector

- 9 The Government has been engaging in a broader reform agenda for the not-for-profit sector.
- 10 In the 2011–12 Federal Budget, the Government committed to establishing the Australian Charities and Not-for-profit Commission (ACNC). It also committed to improving accountability, governance and transparency, and streamlining reporting obligations for the not-for-profit sector. The ACNC commenced operation on 3 December 2012.
- 11 Treasury has undertaken a series of consultations on the not-for-profit sector. Since 2011 it has published a consultation paper and draft legislation relating to a definition of ‘charity’, a consultation paper on draft governance standards for charities registered with the ACNC, draft regulations and explanatory materials on financial reporting requirements for charities registered with the ACNC and a discussion paper on charitable fundraising regulation reform. The discussion paper addresses regulation that is applicable to fundraising activities generally (e.g. soliciting donations) rather than investment fundraising specifically, including the application of Australian consumer protection laws and disclosure requirements for fundraising activities.
- 12 In April 2013, Treasury released exposure draft legislation that sets out statutory definitions of ‘charity’ and ‘charitable purpose’. The statutory definition of charity is proposed to take effect from 1 January 2014. It is envisaged that these definitions will be adopted by ASIC in the charitable investment fundraising setting when they become operative. We will also take into account as appropriate any determination by the ACNC about whether an entity has charitable purposes.
- 13 Some charities that are Religious Charitable Development Funds (RCDFs) currently have an exemption from the *Banking Act 1959* (Banking Act) granted by APRA, which broadly allows these organisations to conduct a banking business without holding an authorised deposit-taking institution (ADI) licence. A number of charitable investment fundraisers relying on ASIC’s exemptions are also RCDFs. These entities may be affected by both APRA’s reforms and the reforms proposed in this paper.
- 14 On 19 April 2013, APRA published a discussion paper, *Banking Act exemptions and section 66 guidelines* (APRA’s discussion paper), proposing that, from 28 June 2014, an RCDF will not be allowed to accept investments from retail investors, and will:
- (a) not be able to use the word ‘deposit’ or its derivatives in relation to its activities; and
  - (b) not be allowed to offer BPAY facilities (APRA considers that RCDFs are already prevented from offering automated teller machine (ATM),

electronic funds transfer at point of sale (EFTPOS) and cheque account facilities).

If APRA's proposals are implemented, this may restrict the ability of RCDFs that raise retail investment funds to do so by issue of debentures without relying on some other Banking Act exemption granted by APRA.

- 15 We recognise that an implication of this is that some of the proposals in this paper, to the extent that they relate to retail debenture issuers, may have limited effect. We also understand that some charitable investment fundraisers that issue debentures may consider restructuring their offerings as interests in a managed investment scheme. By publishing our consultation paper during the consultation period for APRA's discussion paper, we are seeking to help inform charitable investment fundraisers of possible implications relevant to restructuring arising from potential regulatory changes.
- 16 We have been consulting with APRA in the development of its discussion paper and our consultation paper. In this consultation paper we cover the field of currently exempted charitable investment fundraisers, including retail debenture issuers, so as to avoid pre-empting APRA's consideration of its policy on exemptions for those debenture issuers that require an exemption from the Banking Act. This does not imply any view about APRA's proposals.

## Concerns about some 'shadow banking' activities

- 17 The term 'shadow banking' describes credit intermediation involving entities and activities outside the regular banking system. The global shadow banking system grew rapidly in the years leading up to the global financial crisis, and there has been a growing interest internationally in monitoring and assessing the risks posed by the shadow banking system.
- 18 In Australia, 80% of the financial sector by assets comprises banks, credit unions and building societies, superannuation funds and insurers, all of which are prudentially regulated by APRA.<sup>1</sup> The shadow banking sector consists of non-prudentially regulated institutions such as registered finance corporations (RFCs) and particular types of investment funds, including some charitable funds. Some of these institutions (e.g. RFCs and RCDFs) undertake activities that would be regulated under the Banking Act were it not for various administrative exemptions issued by APRA.

---

<sup>1</sup> Reserve Bank of Australia (RBA), *Financial stability review*, March 2013, [www.rba.gov.au/financial-stability/resources/publications.html](http://www.rba.gov.au/financial-stability/resources/publications.html).



- 19 Shadow banking institutions account for a relatively small share of financial system assets in Australia and this reduces the extent to which they may be regarded as posing a significant risk to the financial system as a whole. However, as recent events in the debenture-issuing sector (including the \$650 million collapse of Banksia Securities Ltd in late 2012) have shown, the failure of such institutions can have a significant regional impact and may affect broader consumer confidence. Additionally, the adoption of Basel III reforms may prompt growth in this sector.
- 20 Failures in the shadow banking sector tend to highlight the difference between investment products offered by ADIs (which are regulated by APRA) and similar products issued by entities that are not regulated by APRA. A particular risk of the shadow banking sector is that some entities operate businesses that may appear to investors to be a bank. For example, businesses may offer ‘at-call accounts’, which allow investors to withdraw their money at any time, and so appear to be a bank deposit account, even though they are not.
- 21 Australian regulators have been tightening regulation of the shadow banking sector by applying regulations that apply to lending to ADIs and other entities alike. For example, the Corporations Act has been extended to regulate margin lending, ASIC now licenses providers of consumer credit services, and the regulatory coverage of credit products under the National Credit Code has been expanded to include investment property housing loans.
- 22 In line with work envisaged by the Minister for Financial Services and Superannuation, the Hon Bill Shorten, in December 2012, we have recently raised particular concerns with the part of the shadow banking sector that consists of ‘retail debenture issuing lenders’—that is, debenture issuers that issue debentures to retail investors and then on-lend the funds (usually as mortgage financing). We have released Consultation Paper 199 *Debentures: Reform to strengthen regulation* (CP 199) on possible legislative and regulatory change to strengthen the operation of this sector.
- 23 The activities of some of the charitable investment fundraisers also encompass raising funds by issuing debentures to retail investors and then on-lending the funds. We consider these charitable investments may be particularly vulnerable to the risks associated with shadow banking, particularly where investors have at-call or short-term withdrawal rights and are promised a specified return.
- 24 Similarly, the activities of the operators of some charitable managed investment schemes also encompass raising funds by issuing interests in charitable schemes to retail investors and then on-lending the funds or investing in highly illiquid assets, even though investors may have at-call or short-term withdrawal rights and may expect to receive a financial return on

their investment. Unlike typical managed investment schemes, the operators of charitable managed investment schemes are not subject to the restrictions on offering withdrawal rights for schemes that are not liquid that apply to registered managed investment schemes. In our view, these fundraisers may also be susceptible to some of the risks commonly associated with shadow banking activities.

- 25 This prompts consideration whether some of the proposals that have been made in relation to regulated retail debenture issues in CP 199 may also be appropriate for a range of charitable investment fundraisers.

## Our review of existing exemptions for charitable investment fundraisers

- 26 We have observed that a number of charitable investment fundraisers relying on ASIC's exemptions market their products primarily on the basis of the product's commercial features. For example, the promotional materials of some charitable investment products are focused on highlighting the product's attractive returns or low fees.
- 27 Some charitable investment fundraisers relying on ASIC's exemptions may also appear bank-like to some investors—for example organisations that:
- (a) offer a variety of banking and investment products;
  - (b) regularly update investors on their product's financial performance without providing corresponding information about their charitable operations;
  - (c) have websites that appear to be like the websites of commercial operators; or
  - (d) compare their investment products directly with products issued by commercial fundraisers.
- 28 We consider that the structuring of charitable fundraising as an investment, coupled with the significant amount of funds raised through charitable investment fundraising and the focus on the financial performance of some charitable investment products, suggest that more significant investment protections are warranted.
- 29 Accordingly, key aims of our proposals include:
- (a) ensuring investors with charitable investment fundraisers (other than investors who are associated entities of the fundraiser) are confident and informed by:
    - (i) facilitating investor awareness of the risks associated with investment in an unregulated entity, including with respect to the level of regulatory protection afforded to this type of investment;

- (ii) ensuring organisations relying on ASIC’s exemptions for charitable investment fundraisers structure and promote their products in a way that is most likely to attract investors whose primary purpose for investment is to support the charitable purpose of the organisation; and
  - (b) ensuring competitive neutrality objectives are maintained by requiring charitable investment fundraisers that attract investors whose primary investment objective is to obtain repayment of their investment or achieve financial returns to comply with the regulatory regime applicable to commercial fundraisers.
- 30 Recent high-profile collapses of retail-funded shadow banks in Australia have increased the regulatory focus on shadow banking activities. Charitable bodies engaged in investment fundraising, particularly those that raise money by issuing debentures or interests with short withdrawal promises and providing finance to others or investing in illiquid assets, may be regarded as ‘shadow banks’ or entities that have some risks associated with shadow banks. This applies to the extent that those organisations absorb credit risk or engage in maturity transformation in that they provide investors with an opportunity to realise their investment before the underlying investments would ordinarily be realised.
- 31 Our decision to review the existing exemptions available to charitable investment fundraisers forms part of a broader review of Australia’s shadow banking industry in which we are involved. Accordingly, another aim of our proposals is to address shadow banking risks that are associated with investments in charitable investment fundraisers by clearly differentiating these organisations from other fundraisers that are subject to APRA’s prudential framework (such as ADIs) and, if charitable investment fundraisers are permitted to continue to rely on ASIC’s exemptions, to also differentiate their offerings from those made under the regulatory regime contained in the Corporations Act applying to fundraisers generally.
- 32 We recognise that some charitable organisations may be affected by both the reforms proposed in this paper and APRA’s proposed amendments to its exemption for RCDFs. In light of this, we consider it is appropriate that organisations that may be affected by both sets of reforms be in a position to assess the combined impact of those reforms because this could affect their response to the regulatory changes.
- 33 Further, we consider that it is timely to review our policy on charitable investment fundraisers given the significant scale of investment funds raised in reliance on the existing exemptions and the fact that this policy has not been revisited for some time. Our proposals do not affect fundraising by way of donations.
- 34 We are therefore consulting on the following alternative proposals:

- (a) *Option 1*: remove all existing exemptions for new investment fundraising, except exemptions from the AFS licensing requirements of the Corporations Act for fundraisers that only raise investment funds from associated entities<sup>2</sup> (see Section B).
- (b) *Option 2*: retain existing exemptions (with some modification) for new investment fundraising, but on the basis that they are only available if existing conditions and a number of new conditions are satisfied (see Section C).

If either proposal is implemented, it is intended that implementation would be subject to a transition period: see Section D.

35 Following consultation, we will make a final decision on the appropriate direction for reform and determine final details of the reforms and the appropriate transitional arrangements.

---

<sup>2</sup> An associated entity of a charitable investment fundraiser is an entity (excluding an individual) that is connected with the charitable investment fundraiser by being subject to common control or having a common charitable objective. Individuals are excluded from the meaning of 'associated entity' even if they are associated or connected with the charitable investment fundraiser. Paragraph 42 contains further information on entities that are regarded as associated entities.

## B Option 1: Remove existing exemptions

### Key points

This section discusses the first of our alternative proposals, which involves the removal of all existing exemptions for new investment fundraising, except exemptions from the AFS licensing requirements of the Corporations Act for fundraisers that only raise investment funds from associated entities. For all other charitable investment fundraisers, we propose that all existing exemptions should be removed.

This proposal is only intended to apply to new charitable investment fundraising.

### Proposed Option 1

#### Proposal

- B1** Under Option 1, we propose to remove all existing exemptions in RG 87 for new charitable investment fundraising—except exemptions from the AFS licensing requirements of the Corporations Act for fundraisers that only raise investment funds from associated entities.

#### *Your feedback*

- B1Q1 Do you agree with this proposal? If not, why not?
- B1Q2 Do you believe there is any basis to apply a less rigorous regulatory framework to charitable investment fundraisers' investment funds generally? If so, please explain.
- B1Q3 Do you believe it is reasonable to apply a less rigorous regulatory framework to charitable investment fundraisers that only raise investment funds from associated entities? If not, why not?
- B1Q4 Do you believe it is reasonable to distinguish between charitable investment fundraisers that raise investment funds from associated entities only and those that raise funds from wholesale investors more generally (including those that are not associated entities of the charity)?
- B1Q5 What benefits do you consider will result from this proposal?
- B1Q6 What disadvantages do you consider will result from this proposal?
- B1Q7 How would this proposal affect your organisation's ability to pursue its charitable purpose? For example, to what extent would it affect your organisation's ability to invest in assets, programs or services associated with your charitable purpose?
- B1Q8 Would complying with this proposal require you to restructure your business in any way?

- B1Q9 What impact will this proposal have on your business costs? How will you manage these costs? Please quantify and substantiate any costs that you consider would arise.
- B1Q10 Will this proposal have any significant impact on investment fundraising by charitable organisations generally? For example, do you believe it will impact some investors' appetite for investments with charitable investment fundraisers and cause them to move investment funds to ADIs? Please explain.
- B1Q11 Are there any practical problems with the implementation of this proposal? Please give details.

## Rationale

- 36 We estimate that entities relying on ASIC's exemptions under RG 87 currently manage approximately \$7 billion in investment funds. Several charitable investment fundraisers hold investments of several hundred million dollars. Given the significant amount of investment funds managed by charitable investment fundraisers, the collapse of a major operator could have significant implications for investor confidence in charitable investments and more generally in investment products.
- 37 Investors in charitable investment fundraisers may make those investments because they wish to support the charitable works of the organisation. However, we observe that some investment products issued by charitable investment fundraisers are marketed primarily based on their commercial characteristics, such as financial returns and fees associated with the investment. This raises a concern that some investment products are perceived by investors as being comparable to products issued by regulated commercial fundraisers, which have significantly different risk profiles.
- 38 More generally, we believe that investors in these products expect to be in a position to withdraw their investment in accordance with representations about withdrawal rights and investment returns that are made by the fundraiser. Some reactions to high-profile collapses of retail-funded shadow banks in Australia demonstrate there is a gap between some community expectations regarding the level of regulation afforded to shadow banks and the actual degree of oversight. A similar concern exists for charitable investment fundraisers, particularly given the commercial scale at which some fundraisers operate and the degree to which some charitable investment fundraisers appear to be like a bank.
- 39 Our proposal to remove the exemptions currently available to charitable investment fundraisers exposes these fundraisers to the same level of regulation as commercial fundraisers. An exception is that charitable investment fundraisers that only raise funds from associated entities can continue to rely on existing exemptions from the AFS licensing requirements

of the Corporations Act that are given under [CO 02/184] and described in RG 87.

40 This proposal does not prevent charitable investment fundraisers from engaging in investment fundraising, but it does require charitable investment fundraisers to do so in accordance with existing regulatory regimes under the Corporations Act (subject to the exception where investment funds are raised from associated entities only).

41 It is possible that the application of higher regulatory standards to charitable investment fundraisers will promote investor confidence in charitable investments, which may in turn assist charitable investment fundraisers to raise funds.

#### **What is an associated entity?**

42 An associated entity is an entity that is connected with the charitable investment fundraiser by being subject to common control or having a common charitable objective. For example, in the case of a church-affiliated charitable investment fundraiser, we consider entities that are part of the church community to which the fundraiser belongs are associated entities of that fundraiser. Individuals are not regarded as associated entities even if they are connected with that church community.

#### **Who the proposal applies to**

43 This proposal is intended to apply to charitable investment fundraisers that rely on the individual charities exemption as well as charitable investment fundraisers that rely on the group charities exemption (i.e. sponsored charities).

44 This proposal is only intended to apply to new issues, including issues to an existing, former or rollover client of debentures or interests in a managed investment scheme made on or after the commencement date of this proposal.

45 Charitable investment fundraisers would avoid becoming affected by removal of any exemptions if they do not engage in any new issues.

#### **Fundraising from retail investors**

46 Under our proposal, charitable investment fundraisers that fundraise from retail investors (excluding associated entities) may be required to comply with a number of requirements under the Corporations Act, including requirements to:

- (a) hold an AFS licence unless an exemption applies (s911A(1));<sup>3</sup>
  - (b) have a trust deed and trustee if offering debentures (Ch 2L);
  - (c) comply with the managed investment scheme provisions if operating a managed investment scheme (Ch 5C);
  - (d) comply with the hawking requirements (s736, 922A and 922AA);
  - (e) issue a prospectus if offering debentures and comply with certain fundraising requirements (Pts 6D.2 and 6D.3);
  - (f) issue a Product Disclosure Statement (PDS) if offering financial products that are not securities (Div 2 of Pt 7.9) and provide disclosure of certain material changes and significant events to certain holders of financial products that are not securities (s1017B) unless they are a disclosing entity in which case they must comply with Ch 6CA;
  - (g) comply with the dispute resolution requirements if offering financial products that are not securities (s1017G); and
  - (h) comply with certain restrictions on advertising under s734 for securities and Div 4 of Pt 7.9 for financial products that are not securities.
- 47 Under this proposal, a charitable investment fundraiser would be able to continue to raise investment funds from retail investors, if they met the applicable requirements of the Corporations Act and any applicable requirements under other laws such as the Banking Act.
- 48 For charitable investment fundraisers that issue debentures, this would include:
- (a) meeting any requirements of any applicable exemption from APRA under the Banking Act;
  - (b) having a compliant debenture trust deed;
  - (c) making offers under a disclosure document under Ch 6D of the Corporations Act; and
  - (d) meeting any additional requirements (if applicable to the particular charitable investment fundraiser) that arise from the proposals in CP 199.
- 49 For charitable investment fundraisers offering interests in a managed investment scheme, this would include:
- (a) being a public company;
  - (b) ensuring the scheme is a registered scheme;
  - (c) making the offer under a PDS under Pt 7.9 of the Corporations Act; and

---

<sup>3</sup> Some debenture issuers have an exemption from the AFS licensing requirements of the Corporations Act for the issue of their debentures. For more information, see our QFS 121 *Is there a licensing exemption available for the issue of debentures?*.



- (d) holding an AFS licence under which the charitable investment fundraiser is authorised to operate the relevant registered scheme as the responsible entity.

#### **Fundraising from wholesale investors only**

- 50 Charitable investment fundraisers that fundraise by issuing interests in managed investment schemes to wholesale investors only (and not limited to associated entities) will also be required to comply with some requirements under the Corporations Act—in particular, the requirement to hold an AFS licence: s911A(1).<sup>4</sup>
- 51 Charitable investment fundraisers that deal with wholesale investors only are exposed to a significantly lower regulatory burden under the Corporations Act and, accordingly, removing exemptions will have a smaller impact on these entities because they would be required to meet only an additional requirement for an AFS licence.

#### **Fundraising from associated entities only**

- 52 Charitable investment fundraisers that fundraise from associated entities only may be required to comply with requirements of the Corporations Act that are applicable based on their investor profile and the investment products they issue, except that they will continue to enjoy existing exemptions from the AFS licensing requirements of the Corporations Act.

---

<sup>4</sup> In contrast, wholesale debenture issuers are not required to have an AFS licence to issue their debentures.

## C Option 2: Retain existing exemptions and introduce additional conditions of relief

### Key points

This section discusses the second of our alternative proposals, which involves retaining the existing exemptions in RG 87 (with some modification) for new investment fundraising, but to require:

- charitable investment fundraisers that fundraise from retail investors (other than associated entities) to comply with the AFS licensing requirements (see proposal C2); and
- charitable investment fundraisers that rely on ASIC's exemptions under RG 87 to meet both new conditions of relief (see proposals C3–C7) and the existing conditions of relief (as modified, see proposals C8–C10), as well as new breach reporting and audit report requirements (see proposals C11–C12).

A number of the new conditions will only apply to organisations that fundraise from retail investors: see Table 1.

These exemptions would only be of assistance to a debenture issuer if it obtained any exemption required from the Banking Act. APRA has proposed for discussion that from 28 June 2014 it will no longer give an exemption for RCDFs, a number of which are also charitable investment fundraisers, where the RCDF accepts retail investments.

For charitable investment fundraisers relying on the group charities exemption, we are proposing to impose the same conditions as those applying to the relief for other charitable investment fundraisers, other than the requirement to lodge an individual identification statement: see proposal C14.

This proposal is only intended to apply to new charitable investment fundraising.

## Proposed Option 2

### Proposal

- c1 Under Option 2, we propose to retain the existing exemptions in RG 87 (with some modification) but, for new charitable investment fundraising, to require:
- (a) charitable investment fundraisers that fundraise from retail investors (other than associated entities) under ASIC's exemptions to comply with the AFS licensing requirements (see proposal C2); and

- (b) charitable investment fundraisers that are relying on the exemptions under RG 87 to meet the following additional conditions of relief—a requirement to:
- (i) hold 75% of assets (by value) in charitable assets (see proposal C3);
  - (ii) meet capital and liquidity requirements (see proposal C4);
  - (iii) not issue at-call or short-term investment products (see proposal C5);
  - (iv) receive written acknowledgement from retail investors before an investment product is issued (see proposal C6);
  - (v) not use certain terms, such as ‘account’, ‘at-call’ or ‘deposit’ (see proposal C7);
  - (vi) meet a breach reporting requirement, including a requirement to prepare a director’s statement on compliance with the organisation’s breach reporting obligation (see proposal C11); and
  - (vii) lodge an audit report (see proposal C12); and
- (c) charitable investment fundraisers that are relying on the exemptions under RG 87 to meet the existing conditions of relief (which we propose to modify)—including:
- (i) additional disclosure requirements (see proposal C8);
  - (ii) a modified requirement for lodging financial statements (see proposal C9); and
  - (iii) the requirement to lodge identification statements, but with modified content requirements (see proposal C10).

*Your feedback*

C1Q1 Do you agree with this proposal? If not, why not?

C1Q2 Is it reasonable to provide the proposed exemptions on the basis that investors may be motivated in part by charitable objectives and so are likely to have different expectations of regulatory protections?

C1Q3 Is there any other basis for the proposed exemptions in light of the purposes of the relevant provisions of the Corporations Act?

C1Q4 Is this proposal preferable to the alternative proposal (Option 1) set out in Section B? Please give reasons.

C1Q5 What value and proportion of your organisation’s assets are on-lent as loans (whether to associated entities or otherwise), or invested in illiquid assets? To what extent does your organisation require investors to bear the risk of default on moneys your organisation lends?

C1Q6 What benefits do you consider will result from this proposal?

C1Q7 What disadvantages do you consider will result from this proposal?

## Rationale

- 53 The existing exemptions under RG 87 were provided on the basis that because of the differing expectations of regulatory protection by investors who are motivated at least partly by charitable objectives, charitable investment fundraisers should be largely relieved from the regulatory burden applicable to commercial fundraisers. We acknowledge that furthering charitable objectives may be in the public interest. However, there is a competing public interest in ensuring investors are confident and informed. When considering giving exemptions under the Corporations Act, we must consider the objectives of the relevant provisions of the Corporations Act and our obligations under the *Australian Securities and Investments Commission Act 2001* (ASIC Act) that relate to specific aspects of the public interest.
- 54 Modification, rather than removal, of the existing exemptions may be appropriate if we impose conditions on the exemptions that are as effective in addressing the objectives of the exempted provisions in a manner more appropriate to this particular kind of fundraising.
- 55 The exemptions would only be of assistance to a debenture issuer if it obtained any exemption required from the Banking Act. APRA has proposed for discussion that it will from 28 June 2014 no longer give an exemption for RCDFs that accept retail investments, which could affect a number of charitable investment fundraisers.
- 56 Currently, a charitable investment fundraiser that relies on the existing exemptions under RG 87 must comply with certain requirements, including:
- (a) registering an identification statement with ASIC that contains specified information;
  - (b) lodging financial information with ASIC on an annual basis; and
  - (c) satisfying certain disclosure requirements in its offer documents.
- 57 If Option 2 is adopted, we propose to introduce a number of additional conditions on relief for charitable investment fundraisers, which are described more fully below. A number of the new conditions will only apply to organisations that fundraise from retail investors other than associated entities: see Table 1.
- 58 This proposal is only intended to apply to new issues, including issues to an existing, former or rollover client of debentures or interests in a managed investment scheme, made on or after 1 February 2014. Accordingly, charitable investment fundraisers would not be required to satisfy the proposed new conditions if they do not engage in any new issues after that date.

**Table 1: Application of proposed requirements and conditions of relief if relying on ASIC's exemptions**

Requirement/condition of relief	Who it applies to
AFS licensing requirement (proposal C2)	Charitable investment fundraisers that accept investments from retail investors (other than associated entities)
<b>New conditions</b>	
Minimum charitable investment requirement (proposal C3)	All charitable investment fundraisers
Capital requirement (see proposal C4)	Charitable investment fundraisers that accept investments from retail investors (other than associated entities)
Liquidity requirement (proposal C4)	Charitable investment fundraisers that accept investments from retail investors (other than associated entities)
Requirement to not issue at-call or short-term investment products (proposal C5)	Charitable investment fundraisers that accept investments from retail investors (other than associated entities)
Investor acknowledgement requirement (proposal C6)	Charitable investment fundraisers that accept investments from retail investors (other than associated entities)
Requirement to not use certain terms, such as 'account', 'at-call' or 'deposit' (proposal C7)	All charitable investment fundraisers
<b>Changes to existing conditions</b>	
Additional disclosure requirements (proposal C8)	All charitable investment fundraisers
Modified requirement to lodge financial statements (proposal C9)	All charitable investment fundraisers
Modified identification statement (content) requirement (proposal C10)	All charitable investment fundraisers
<b>New reporting obligations</b>	
Breach reporting requirement (proposal C11)	All charitable investment fundraisers
Audit report requirement (proposal C12)	All charitable investment fundraisers

## AFS licensing requirement

### Proposal

- c2 We propose that a charitable investment fundraiser that accepts investments from retail investors (other than associated entities):
- (a) should be subject to the AFS licensing provisions of the Corporations Act; and
  - (b) if required to hold an AFS licence, must comply with the duties and obligations of AFS licensees.

*Your feedback*

- C2Q1 Do you agree with this proposal? If not, why not?
- C2Q2 What benefits do you consider will result from this proposal?
- C2Q3 What disadvantages do you consider will result from this proposal?
- C2Q4 Do you consider there are any specific obligations imposed on AFS licensees under the Corporations Act that should not apply to AFS licensees that are charitable investment fundraisers? If so, please give details and reasons.
- C2Q5 Would complying with this proposal require you to restructure your business in any way?
- C2Q6 If this proposal is implemented, would you respond by changing the way your organisation currently fundraises?
- C2Q7 What impact will this proposal have on your business costs?
- C2Q8 Are there any practical problems with implementation of this proposal? Please give details.

**Rationale**

59 This proposal applies to all charitable investment fundraisers that fundraise from retail investors (other than associated entities) and that, but for the existing exemptions under RG 87, would be required to hold an AFS licence under the licensing provisions of the Corporations Act.

60 Under this proposal, issuers of interests in charitable managed investment schemes must hold an AFS licence and comply with the duties and obligations applicable to AFS licensees if they raise investment funds from retail investors who are not associated entities of the fundraiser.

61 Charitable debenture issuers that would be required to hold an AFS licence under the Corporations Act but for the existing exemptions under RG 87 will also be required to hold an AFS licence if they raise investment funds from retail investors who are not associated entities.

Note: This proposal will not affect all charitable debenture issuers that fundraise from retail investors. Some debenture issuers are not required to hold an AFS licence to issue debentures. For more information, see our QFS 121 *Is there a licensing exemption available for the issue of debentures?*. Also, as noted above, if APRA no longer provides an exemption from the Banking Act to RCDFs, our relief may not be relevant to charitable retail debenture issuers.

62 This proposal will not affect charitable investment fundraisers that:

- (a) raise investment funds from wholesale investors only; or
- (b) only have retail investors who are associated entities of the fundraiser.

63 Charitable investment fundraisers that must hold an AFS licence are subject to additional regulation under the Corporations Act. This includes:

- (a) general duties applicable to licensees;
- (b) financial reporting obligations of licensees, including reporting on applicable financial requirements;
- (c) a requirement to have a dispute resolution system for dealing with retail clients that satisfies the requirements of the Corporations Act; and
- (d) a requirement to have adequate compensation arrangements for retail clients, which is generally met through professional indemnity insurance in respect of the financial services business.

64 AFS licensees must also satisfy financial resource requirements. While specific financial resource requirements generally apply to responsible entities, because charitable investment fundraisers issuing interests in schemes will not be required to register the scheme under Ch 5C of the Corporations Act, the particular financial requirements applying to responsible entities will not apply.

## Additional conditions of relief

- 65 Under Option 2, we propose that charitable investment fundraisers can continue to rely on the exemptions under RG 87 for new fundraising if they meet both the proposed new conditions of relief and the existing conditions of relief under RG 87 (as modified in this paper).
- 66 The new conditions of relief we are proposing are requirements to:
- (a) hold 75% of assets (by value) in charitable assets (see proposal C3);
  - (b) meet capital and liquidity requirements (see proposal C4);
  - (c) not issue at-call or short-term investment products (see proposal C5);
  - (d) receive written acknowledgement from retail investors before an investment product is issued (see proposal C6); and
  - (e) not use certain terms, such as ‘account’, ‘at-call’ or ‘deposit’ (see proposal C7).
- 67 We are also proposing the following new reporting obligations as an assurance of compliance with the conditions of relief:
- (a) a breach reporting requirement, including a requirement to prepare a director’s statement on compliance (see proposal C11); and
  - (b) a requirement to lodge an audit report on compliance with selected new conditions of relief (see proposal C12).

## Minimum charitable investment requirement

### Proposal

- c3** We propose that, as a condition of relying on ASIC's exemptions for charitable investment fundraisers, a charitable investment fundraiser must:
- (a) ensure that when any debenture or interest in a managed investment scheme is issued, and at all times while these debentures or interests are held, 75% of the debenture issuer's or scheme's assets (by value) are in charitable assets, except where this would be impracticable;
  - (b) during any period when it is impracticable to comply with proposal C3(a) (e.g. because there are no charitable assets that can properly be acquired or it would not be practicable to do so because non-charitable assets cannot be liquidated), ensure that:
    - (i) no new debentures or interests are issued; and
    - (ii) ASIC is notified that the charitable investment fundraiser is not complying with the requirement and advise what steps will be taken to meet the 75% requirement as soon as practicable;
  - (c) revalue its assets whenever it has reason to believe the 75% test would not be met if a valuation were done; and
  - (d) when valuing assets for this requirement:
    - (i) only include as charitable assets those assets that are directly related to the disclosed charitable purpose of the organisation; and
    - (ii) ensure that a member of the governing body of the charitable investment fundraiser has signed a document setting out why the relevant asset is directly related to the organisation's disclosed charitable purpose.

#### *Your feedback*

- C3Q1 Do you agree that charitable investment fundraisers should be subject to a minimum charitable investment requirement?
- C3Q2 Do you agree with the proposed definition of charitable assets in proposal C3(d)(i)? If not, please explain why not and give suggestions.
- C3Q3 What benefits do you consider will result from this proposal?
- C3Q4 What disadvantages do you consider will result from this proposal?
- C3Q5 Is the proposed amount of 75% the appropriate amount if such a requirement is to apply? For example, is the proposed percentage high enough to ensure the investment product is likely to appeal primarily to investors whose priority is to support the organisation's charitable purpose, as distinct from investors who are primarily concerned with being repaid or acquiring a financial return on their investment?



- C3Q6 Is the proposed amount of 75% low enough to allow charitable investment fundraisers sufficient flexibility to manage the financial needs of the organisation (e.g. to maintain sufficient liquidity to allow investor redemption requests to be met, or to ensure charitable investment fundraisers satisfy the proposed capital and liquidity requirements in proposal C4)?
- C3Q7 Do you think a principles-based charitable investment requirement would be preferable (e.g. a requirement on charitable investment fundraisers to invest investment funds in charitable investments as much as is practicable, having regard to the financial needs of the charitable debenture issuer or scheme)? Alternatively, do you think this should be an additional requirement to proposal C3? Please explain.
- C3Q8 Would complying with this proposal require you to restructure your business in any way?
- C3Q9 What impact will this proposal have on your business costs? How will you manage these costs?
- C3Q10 Are there any practical problems with the implementation of this proposal? Please give details.

## Rationale

- 68 ASIC's existing exemptions are intended to facilitate investment in charitable organisations in circumstances where an investor seeks to promote the charitable purpose of the organisation, rather than to be assured of repayment or to acquire a financial profit. However, it appears that a number of charitable investment fundraisers relying on the exemptions promote investment products on the basis of their commercial characteristics (e.g. likelihood of repayment in accordance with the terms of investment, investment performance, low fees, attractive returns). This suggests that certainty of repayment under the terms of the investment or financial returns may be a significant object for investors in some charitable investment fundraisings.
- 69 Accordingly, we propose that charitable investment fundraisers relying on the exemptions be required to hold at least 75% of total assets in charitable assets at the time that any debenture or interest in a managed investment scheme is issued, until the debenture is repaid or the interest withdrawn. This requirement is intended to apply to all charitable investment fundraisers relying on ASIC's exemptions.
- 70 During any period when it is not practicable to comply, because there are no charitable assets that can properly be acquired or it would not be practicable to do so because non-charitable assets cannot be liquidated, no new debentures or interests may be issued and the charitable investment fundraiser must notify ASIC and explain what it will do to address the deficiency. In addition, the charitable investment fundraiser must take all reasonable steps to meet the 75% requirement as soon as practicable and

take all reasonable steps to realise any non-charitable assets to the extent necessary so that there are sufficient cash or cash equivalents to enable compliance when acquisition of charitable assets becomes possible.

- 71 Charitable assets are defined as assets that are directly related to the disclosed charitable purpose of the entity and in relation to which a member of the governing body of the charitable investment fundraiser has signed a document setting out why the relevant asset is directly related to the charity's disclosed charitable purpose. For example, a church hall might be a charitable asset of a charitable investment fundraiser whose charitable purpose was promotion of religion.
- 72 This requirement is intended to ensure that relief is only available to fundraisers that demonstrate their primary objective is to achieve their disclosed charitable purpose by issuing investment products that are likely to appeal to investors who wish primarily to support that charitable purpose, rather than to be repaid or acquire a financial profit from their investment.
- 73 Charitable investment fundraisers that do not meet this requirement can still fundraise under the regulatory regime applicable to fundraisers generally.
- 74 A challenge with implementation of this requirement is the need to distinguish a charitable investment fundraiser's charitable assets from other assets. ASIC might not be well placed to check that the charitable investment fundraiser's assessment was appropriate and would be placing significant reliance on the certification by the member of the governing body.
- 75 It is also arguable that there is tension in introducing a minimum charitable investment requirement and a requirement to maintain minimum levels of liquidity: see proposal C4. One matter we seek feedback on is whether a principles-based charitable investment requirement may be preferable (e.g. a requirement on charitable investment fundraisers to invest investment funds in charitable investments as much as is practicable, having regard to the financial needs of the charitable debenture issuer or scheme).

## Capital and liquidity requirements

### Proposal

- C4** We propose that, as a condition of relying on ASIC's exemptions for charitable investment fundraisers, a charitable investment fundraiser that fundraises from retail investors (other than associated entities) must:
- (a) if it issues debentures, meet the capital and liquidity requirements proposed to apply to retail debenture issuing lenders under our Consultation Paper 199 *Debentures: Reform to strengthen regulation* (CP 199), including a requirement to maintain:
    - (i) a minimum capital ratio of 8% of its risk-weighted assets; and

- (ii) a minimum holding of 9% of its liabilities in high-quality liquid assets; and
- (b) if it issues interests in a managed investment scheme, meet a requirement to maintain:
  - (i) minimum liabilities which are not payable while any retail investor redemption request has not been met, and the time since the request was made exceeds the time that members would have expected for meeting redemption requests when they invested ('subordinated liabilities') equalling at least 8% of the scheme's risk-weighted assets; and
  - (ii) a minimum holding of 9% of its liabilities (including interests on issue subject to redemption rights) in high-quality liquid assets.

#### *Your feedback*

- C4Q1 Do you agree that charitable investment fundraisers that fundraise from retail investors (other than associated entities) should be subject to a minimum capital or subordinated liability requirement? If not, why not?
- C4Q2 Is the proposed capital requirement of 8% of risk-weighted assets high enough to define charitable investment fundraisings that should be eligible for exemption, given the risks and the fact that charitable investment fundraisers are not subject to prudential supervision or a requirement to comply with the exempted provisions in the Corporations Act?
- C4Q3 Do you agree that charitable investment fundraisers that fundraise from retail investors (other than associated entities) should be subject to minimum liquidity requirements?
- C4Q4 Is the proposed liquidity requirement of 9% of liabilities in high-quality liquid assets high enough to define charitable investment fundraisings that should be eligible for exemption, given the risks and the fact that charitable investment fundraisers are not subject to prudential supervision or a requirement to comply with the exempted provisions in the Corporations Act?
- C4Q5 Should the minimum capital or subordinated liability requirements and minimum liquidity requirements only apply to some charitable investment fundraisers (e.g. those that on-lend the funds raised or that on-lend the funds raised to certain types of projects only, or those with investment funds above a prescribed threshold)? Please give reasons. If you believe these requirements should only apply to a sub-group of charitable investment fundraisers, please describe and give reasons.
- C4Q6 Is there a basis to treat managed investment schemes differently because investors do not have the right to sue a corporation for a debt in order to obtain their rights?

- C4Q7 Do you believe the proposed capital and liquidity requirements should only apply to charitable schemes where retail investors would have expected when they invested that they would receive a fixed return or be able to redeem over fixed timeframes?
- C4Q8 Could the proposed capital and liquidity requirements be independently monitored practically, given there is no entity separate from the charitable investment fundraiser with a role to monitor compliance with these requirements?
- C4Q9 What changes to the operation of charitable investment fundraisers will occur if the proposed capital and liquidity requirements are implemented?
- C4Q10 Will charitable investment fundraisers have any practical difficulties in meeting and maintaining the proposed capital and liquidity requirements? Please estimate the likely costs.

## Rationale

- 76 In February 2013, we released CP 199. The consultation period has ended and we are currently considering our policy. One of the proposals made in CP 199 is that retail debenture issuing lenders (i.e. debenture issuers that raise funds from retail investors and on-lend those funds) should comply with mandatory capital and liquidity requirements. The proposal in CP 199 is intended to address concerns that few retail debenture issuing lenders maintain significant capital or adequate levels of liquid assets. Accordingly, these issuers may not be resilient when faced with adverse economic conditions.
- 77 Similar concerns apply with respect to charitable investment fundraisers. Disclosures made by retail charitable investment fundraisers reveal that these fundraisers often have a deficiency of current assets compared to current liabilities and a significant portion of assets invested in illiquid assets (e.g. church buildings).
- 78 We are proposing to apply the capital and liquidity requirements proposed in CP 199 to charitable debenture issuers and issuers of interests in charitable managed investment schemes that fundraise from retail investors (other than associated entities).
- 79 Our proposal is aimed at:
- (a) reducing the risk that the inadequacy of financial resources is likely to be so material that regulated disclosure and compliance with other requirements of the Corporations Act for retail offers is appropriate; and
  - (b) not facilitating by exemption some cases where there is a significant misalignment between the asset base of charitable investment fundraisers or the schemes they operate, and the redemption rights of investors and, consequently, the need for a high level of risk

management to be undertaken by charitable investment fundraisers that is of the kind that regulatory requirements would help to address.

- 80 Charitable investment fundraisers that rely on the exemptions after the commencement date of this requirement will have to ensure they meet the relevant requirements at the time of the offer and until the debenture is repaid in full or the interest is withdrawn.
- 81 This proposal does not apply to charitable investment fundraisers that fundraise from wholesale investors or associated entities only.
- 82 We are seeking submissions on whether, having regard to the aims of the proposal, it is appropriate to narrow the application of the requirements.
- 83 We note the capital and liquidity requirements proposed in CP 199 have not yet been finalised. We will reassess this proposal if the corresponding requirements in CP 199 are not adopted or a varied set of requirements is applied.

#### **Key terms and calculation of ratios**

- 84 Consistent with the capital requirement proposed in CP 199, an entity's capital ratio is calculated as follows:

$$\text{Risk-based capital ratio} = \frac{\text{Capital base}}{\text{Total risk-weighted assets}}$$

where:

- (a) *capital base* is defined as the funding sources to which an entity can most easily allocate losses without triggering insolvency. It means issued capital, reserves, retained earnings and non-redeemable preference shares, net of deductions;
- (b) *deductions* are defined as assets that have little or no value in an insolvency situation, such as goodwill, deferred tax assets and off-balance sheet assets; and
- (c) *risk-weighted assets* are defined as a measure of the entity's on-balance sheet assets, adjusted for risk. Risk weighting adjusts the value of an asset for risk by multiplying it by a factor that reflects its risk.

CP 199 contains further guidance on how the capital ratio should be calculated.<sup>5</sup>

---

<sup>5</sup> The capital and liquidity requirements proposed to apply to retail debenture issuing lenders under CP 199 reflect the capital and liquidity requirements in proposals C4(a)(i) and C4(a)(ii), and substantially reflect the liquidity requirement in proposal C4(b)(ii). CP 199 does not contain a requirement that corresponds with the subordinated liabilities requirement in proposal C4(b)(i) because CP 199 relates only to debentures.

- 85 Consistent with the liquidity requirement proposed in CP 199, the following other definitions apply when determining whether the proposed liquidity requirement for retail charitable investment fundraisers is satisfied:
- (a) *liabilities* are defined as total on-balance sheet liabilities (including equity) and irrevocable commitments less the capital base; and
  - (b) *high-quality liquid assets* are defined as unencumbered:
    - (i) cash;
    - (ii) money on deposit with an ADI (at-call or readily convertible to cash within two business days); and
    - (iii) marketable securities representing claims on or claims guaranteed by the Australian Government or the government of any Australian state or territory.

**Consistent requirements for charitable debenture issuers and issuers of interests in charitable schemes**

- 86 Our proposal extends the application of the proposed capital and liquidity requirements for retail debenture issuing lenders to retail charitable investment fundraisers (with some adaptation, particularly for issuers of interests in managed investment schemes).
- 87 This appears an appropriate framework for charitable investment fundraisers that are retail debenture issuers if such issues are to continue under an ASIC exemption. However, if proposals set out in APRA's discussion paper in relation to its exemptions for RCDFs are implemented, the ability of RCDFs to raise investment funds by issue of debentures to retail investors may be restricted unless they have the benefit of some other Banking Act exemption granted by APRA.
- 88 For charitable managed investment schemes, we are proposing a corresponding approach rather than applying the requirements for registered managed investment schemes to charitable managed investment schemes. This is because registered managed investment schemes are not subject to capital requirements, and capital requirements may be appropriate in defining those schemes to which application of the Corporations Act without exemption may be seen as inappropriate in light of their reduced risks.
- 89 Further, we believe the liquidity tests that apply to registered managed investment schemes are not workable in the context of charitable investment fundraisers. Under the managed investment provisions of the Corporations Act, a managed investment scheme is only regarded as a 'liquid scheme' if its liquid assets account for at least 80% of the value of the scheme property. 'Liquid assets' is defined in s601KA(5) of the Corporations Act. Further, the Corporations Act imposes restrictions on investors' ability to withdraw their investment from a managed investment scheme that is illiquid.

90 These provisions (including the definition of ‘liquid scheme’) do not apply to charitable managed investment schemes if the existing exemptions are retained because charitable investment fundraisers are exempt from the managed investment provisions of the Corporations Act. In any case, we believe charitable investment fundraisers that issue interests in charitable managed investment schemes may not be ‘liquid’ for the purposes of the managed investment provisions of the Corporations Act on the basis that charitable assets are likely to be illiquid assets in the context of the sort of redemption commitments that have been applicable to most charitable investments.

### **Monitoring and supervision of capital and liquidity requirements**

91 We are seeking submissions on whether the proposal in CP 199 can practically be extended to charitable investment fundraisers. The proposed requirements are not intended to form part of a regime involving prudential supervision that involves a continuous high degree of regulator engagement with supervised entities. Under CP 199, proposals for regulation concerning capital and liquidity on debenture issuers rely on monitoring by the debenture trustee. Given that, in the charities sector, debenture issuers relying on ASIC’s exemptions are exempted from the requirement to have a debenture trust deed, the debenture issuer itself would be charged with the responsibility of monitoring compliance with the proposed capital and liquidity requirements.

92 Similarly, we note that charitable managed investment schemes relying on ASIC’s exemptions are exempted from the requirements of the Corporations Act for registered managed investment schemes (including requirements to have a compliance plan, which is required to be audited, and a compliance committee or external directors).

93 The effectiveness of the requirements may be substantially reduced without ongoing independent monitoring. However, this should be considered having regard to proposals C11 and C12.

### **Restriction on issue of at-call or short-term investment products**

#### **Proposal**

c5 We propose that, as a condition of relying on ASIC’s exemptions for charitable investment fundraisers, a charitable investment fundraiser that fundraises from retail investors (other than associated entities) be prohibited from issuing investment products that can be required to be repaid in under 31 days, or permitting holders to expect repayment in a lesser period, except following the expiry of a fixed period of at least 31 days from the time of the relevant investment.



*Your feedback*

- C5Q1 Do you agree with this proposal? If not, why not?
- C5Q2 What benefits do you consider will result from this proposal?
- C5Q3 What disadvantages do you consider will result from this proposal?
- C5Q4 Do you agree that this proposal should only apply to charitable investment fundraisers that fundraise from retail investors (other than associated entities)?
- C5Q5 Would complying with this proposal require you to restructure your business in any way? If applicable, please provide details about the portion of investment funds at your organisation that relates to investment products that can be required to be repaid within 31 days.
- C5Q6 What impact will this proposal have on your business costs? How will you manage these costs?
- C5Q7 Are there any practical problems with the implementation of this proposal? Please give details.

**Rationale**

- 94 This proposal is intended to address the shadow banking risks associated with existing exemptions that are available to charitable investment fundraisers by reducing the potential extent of mismatch in liquidity. It is also intended to reduce the risk that charitable investment fundraisers will be mistaken for banks by retail investors, and the risk that the investment products will be treated as transactional facilities (e.g. where retail investors have their salary paid into an account with the charitable organisation) and not given due consideration from an investment viewpoint (particularly in the case of investors who are partly motivated by self-interest and who might be concerned and disappointed if none of their money was repaid).
- 95 We have chosen a threshold of 31 days to distinguish short-term transactional arrangements from other structures and for consistency with APRA's proposals on RFCs and the Basel III reforms on liquidity for banking businesses.
- 96 Recent high-profile collapses of retail-funded shadow banks in Australia have demonstrated that some retail investors engage with shadow banks as though they were a real bank. A similar risk applies with respect to charitable investment fundraisers, particularly given the commercial scale at which some fundraisers operate and the degree to which some fundraisers actually appear to be like a bank.
- 97 APRA's discussion paper consults on various proposals to amend its Banking Act exemption for RCDFs: see paragraph 14. Further, APRA's discussion paper proposes in relation to RFCs that debentures not be issued with an initial maturity of less than 31 days.



- 98 Similar to these proposals, our proposal is designed to minimise the ability of retail investors to see charitable investment fundraisers as investment substitutes for ADI deposits.
- 99 Our proposal can also reduce concerns of a possible run on investments because investors of charitable investment fundraisers would only have delayed withdrawal rights in relation to the new debentures or interests in a managed investment scheme they acquire.

## Investor acknowledgement requirement

### Proposal

- c6** We propose that, as a condition of relying on ASIC's exemptions for charitable investment fundraisers, a charitable investment fundraiser that fundraises from retail investors (other than associated entities) must, before issuing an investment product to a retail investor:
- (a) take reasonable steps to structure and promote its product so that it is unlikely to be acquired by persons who do not understand the required disclosures; and
  - (b) have received a signed written statement to the effect that the investor:
    - (i) acknowledges the required disclosures; and
    - (ii) understands they may be unable to withdraw their investment when expected or get some or all of their money back.

#### *Your feedback*

- C6Q1 Do you agree with this proposal? If not, why not?
- C6Q2 What benefits do you consider will result from this proposal?
- C6Q3 What disadvantages do you consider will result from this proposal?
- C6Q4 Would complying with this proposal require you to restructure your business in any way?
- C6Q5 What impact will this proposal have on your business costs?
- C6Q6 Are there any practical problems with implementation of this proposal? Please give details.

### Rationale

- 100 This proposal aims to ensure retail investors are aware that their investment is not subject to the usual protections of the Corporations Act at the time the investment is made. This should assist retail investors to appreciate that in making their investment with a charitable investment fundraiser, they are accepting the risks associated with investing in an entity that is not subject to the usual regulatory requirements.

- 101 This proposal also aims to restrict ASIC's exemptions to investments that are made for the primary purpose of promoting the charitable purpose of the issuer, rather than for the purpose of holding an amount for which they have assurance of repayment or acquiring a financial gain from the investment.
- 102 This proposal does not apply to charitable investment fundraisers that fundraise from wholesale investors or associated entities only.

## Restriction on use of certain terms

### Proposal

- c7 We propose that, as a condition of relying on ASIC's exemptions for charitable investment fundraisers, a charitable investment fundraiser must not use the terms 'account', 'at-call' or 'deposit', or derivatives of these terms, in any offer document or promotional materials.

#### *Your feedback*

- C7Q1 Do you agree with this proposal? If not, why not?
- C7Q2 What benefits do you consider will result from this proposal?
- C7Q3 What disadvantages do you consider will result from this proposal?
- C7Q4 What impact will this proposal have on your business costs?
- C7Q5 Are there any practical problems with implementation of this proposal? Please give details.

### Rationale

- 103 We consider that the terms 'account', 'at-call' and 'deposit', and derivatives of these terms, are likely to cause investors to perceive charitable investment fundraisers as bank-like and give rise to confusion as to the nature and risk profile of charitable investments in the minds of investors.
- 104 Our proposal is consistent with proposals in APRA's discussion paper to restrict the use of the term 'at-call' for registered finance corporations and the term 'deposit' or its derivatives for charitable organisations that are RCDFs.

## Changes to existing conditions of relief

### Additional disclosure requirements

#### Proposal

- c8** We propose that, in addition to the existing disclosure requirements under RG 87 concerning regulation and ASIC's role and as a condition of relying on ASIC's exemptions for charitable investment fundraisers, a charitable investment fundraiser must:
- (a) in all offer documents and promotional materials prepared for investment products that are issued in reliance on ASIC exemptions, incorporate clear statements to the effect that:
    - (i) the product is only intended to attract people whose primary purpose for making their contribution (i.e. payment to the charitable investment fundraiser) is to support the charitable purpose of the fundraiser;
    - (ii) the product is only intended to attract people who will not be concerned that they can lose their entire contribution without any regulatory protection applying;
    - (iii) the product is not comparable to investments that are issued by banks or regulated issuers; and
    - (iv) financial returns from making a contribution are not intended to compete with those available from investments issued by commercial providers; and
  - (b) ensure that all required disclosures (whether under RG 87 or this proposal) are prominently disclosed in any offer document or promotional material, and included whenever any statement is made as to returns in a communication to retail investors.

Note: The requirement in RG 87 to state that the investment is designed for investors who wish to promote the charitable purpose of the relevant charity and for whom the considerations of profit are not of primary relevance in the investment decision would be replaced by the disclosures in proposal C8(a).

#### *Your feedback*

- C8Q1 Do you agree that charitable investment fundraisers should be required to make the disclosures in proposal C8(a) in offer documents and promotional materials? If not, why not?
- C8Q2 Are these matters of disclosure adequate to deter potential investors whose primary motive for investment is to be assured of repayment or to seek a financial return on their investment?
- C8Q3 What benefits do you consider will result from this proposal?
- C8Q4 What disadvantages do you consider will result from this proposal?
- C8Q5 What impact will this proposal have on your business costs? How will you manage these costs?

C8Q6 Are there any practical problems with the implementation of this proposal? Please give details.

### Rationale

- 105 Currently, all offer documents issued by charitable investment fundraisers relying on ASIC's individual charities exemption must include a statement to the effect that:
- (a) investors should be aware that the specified charitable scheme is not subject to the normal requirement to have a disclosure document or PDS and be registered or have a trust deed under the Corporations Act;
  - (b) the scheme has not been examined or approved by ASIC; and
  - (c) the investment is designed for investors who wish to promote the charitable purpose of the relevant charity and for whom the considerations of profit are not of primary relevance in the investment decision.
- 106 Further, all promotional materials in respect of the charitable investment fundraiser must not state that the investment has been approved or examined by ASIC.
- 107 RG 87 does not specify the prominence that this disclosure must be given or where the disclosure should be in an offer or promotional document.
- 108 Despite the presence of existing disclosure requirements, there are concerns that the financial performance of investment products issued by charitable investment fundraisers is an important marketing point and a significant consideration for some investors. Further, there is a risk despite the rationale for relief and the required disclosures that some retail investors would expect that regulation would help reduce the risk they can lose all their investment.
- 109 Further, in light of the bank-like features of some charitable investment fundraisers, there are concerns that investors may not appreciate the different risk profiles between charitable investment fundraisers and regulated organisations such as ADIs. This can cause investors to engage with charitable investment fundraisers as though they were a regulated entity and not appreciate that charitable investment fundraisers are not subject to the usual protections under the Corporations Act.
- 110 Our proposal aims to strengthen existing disclosure requirements in order to restrict reliance on ASIC's exemptions to charities that raise investment funds from investors who wish to promote the charitable purpose of the organisation, and for whom commercial considerations and expectations of regulatory protection are not significant in their decision to invest in the product.

- 111 We do not propose to prescribe the wording of the proposed mandatory disclosures. However, we consider the following example would satisfy the existing and proposed disclosure requirements if disclosed prominently in the offer documents or promotional materials of a charitable investment fundraiser, including whenever a statement as to returns is made:

#### Example

This product is designed for people who wish to promote the charitable purpose of [the organisation].

This product is only intended to attract people who will not be concerned that they can lose their entire contribution without usual regulatory protection applying.

This product is not comparable to other investments issued by banks or regulated issuers. Also, financial returns from making a contribution are not intended to be commercially competitive.

This product is not subject to the normal regulatory protections and has not been examined or approved by the Australian Securities and Investments Commission (ASIC).

### Modified requirement to lodge financial statements

#### Proposal

- c9 We propose to modify the existing condition of relief relating to lodgement of financial statements. We propose that, as a condition of relying on ASIC's exemptions for charitable investment fundraisers, a charitable investment fundraiser must:
- (a) lodge its audited financial statements and audit report within six months after the end of its financial year;
  - (b) if it issues interests in a managed investment scheme, lodge the scheme's audited financial statements and audit report within six months after the end of the scheme's financial year; and
  - (c) lodge its audited financial statements and audit reports with:
    - (i) the ACNC; or
    - (ii) ASIC if the ACNC financial reporting framework does not apply to the relevant charitable investment fundraiser or, if there is an offer of interests in a managed investment scheme, the scheme.

#### *Your feedback*

C9Q1 Do you agree with this proposal? If not, why not?

C9Q2 Do you believe the proposed time for lodgement of audited financial statements should be shortened? Please give reasons.

C9Q3 What benefits do you consider will result from this proposal?

- C9Q4 What disadvantages do you consider will result from this proposal?
- C9Q5 Would complying with this proposal require you to restructure your business in any way?
- C9Q6 What impact will this proposal have on your business costs? Please quantify and substantiate your estimate.
- C9Q7 Are there any practical problems with implementation of this proposal? Please give details.

## Rationale

- 112 Under RG 87, charitable investment fundraisers must lodge certain financial information with ASIC within six months of the end of each financial year. Organisations that prepare audited financial statements must give a copy of the audited financial statements and the audit report to ASIC. However, RG 87 does not impose a positive requirement on charitable investment fundraisers to prepare audited financial statements—charities that are not otherwise required to do so may lodge financial information in the form of a statement that sets out the funds outstanding under debentures or interests issued by it at the end of the financial year.
- 113 The *Australian Charities and Not-for-profits Commission Act 2012* (ACNC Act) requires that all charities registered with the ACNC provide an annual information statement to the ACNC. In addition, the ACNC Act provides that the following financial reporting requirements will apply from 1 July 2013, or an accounting period commencing after that date:
- (a) large registered entities (i.e. registered entities with annual revenue of \$1 million or more) must provide to the ACNC audited annual financial reports within six months after the end of the financial year or substituted accounting period;
  - (b) medium registered entities (i.e. registered entities with annual revenue of \$250,000 or more and less than \$1 million) must provide to the ACNC annual financial reports that are reviewed or audited within six months after the end of the financial year or substituted accounting period; and
  - (c) small registered entities (i.e. registered entities with annual revenue of less than \$250,000) are not required to provide financial reports to the ACNC.
- 114 We are proposing that all charitable investment fundraisers (regardless of their size) should be required to lodge audited financial statements with the ACNC or, for audited financial statements that are not required to be lodged with the ACNC, with ASIC. Although this proposal imposes more stringent financial reporting requirements on charitable investment fundraisers that are medium or small registered entities, we consider that the increased burden can be justified on the basis of the regulatory benefit that will result from the

availability of audited financial reports for all charitable investment fundraisers (in particular, increased accountability of charitable investment fundraisers).

- 115 Financial statements are an important information source for ASIC to monitor the amount of investment funds raised by charitable investment fundraisers in reliance on ASIC's exemptions. They are also relevant to a number of the other requirements proposed to apply to charitable investment fundraisers—for example, the minimum charitable investment requirement (proposal C3) and the capital and liquidity requirements (proposal C4).
- 116 We are also proposing that charitable investment fundraisers that issue interests in managed investment schemes be required to lodge audited financial reports with respect to the scheme six months after the end of the scheme's financial year. Accordingly, charitable investment fundraisers that operate a managed investment scheme must lodge two sets of audited financial statements—one with respect to itself and another with respect to the scheme.
- 117 Under this proposal, charitable investment fundraisers will no longer be required to lodge their financial statements (or financial statements of the charitable schemes they operate, if applicable) with ASIC if they are required to lodge the relevant financial statements with the ACNC.

### **Retention of existing requirement to lodge identification statements with modified content requirements**

#### **Proposal**

- c10** We propose that, as a condition of relying on ASIC's exemptions for charitable investment fundraisers, a charitable investment fundraiser must:
- (a) continue to meet the existing requirements in RG 87 to lodge:
    - (i) an identification statement with ASIC; and
    - (ii) a supplementary or replacement identification statement when an identification statement needs correcting or updating;
  - (b) in addition to meeting the existing content requirements for identification statements under RG 87, set out the following:
    - (i) the charitable purpose of the organisation that will be disclosed to investors;
    - (ii) whether investment funds will be raised by issue of debentures or interests in a managed investment scheme and, if the latter, a clear identification of the scheme;
    - (iii) whether the charitable investment fundraiser is required to hold an AFS licence and, if so, the AFS licence number of the organisation;

- (iv) whether the charitable investment fundraiser will be required to lodge audited financial statements with the ACNC and, for issuers of interests in a managed investment scheme, whether it will be required to lodge the scheme's audited financial statements with the ACNC; and
  - (v) the financial year of the charitable investment fundraiser and, for issuers of interests in a managed investment scheme, the financial year of the scheme; and
- (c) provide information about its affairs if requested by ASIC and assist ASIC in checking on its compliance.

#### *Your feedback*

C10Q1 Do you agree with this proposal? If not, why not?

C10Q2 Do you believe the new content requirements for identification statements are reasonable? If not, why not?

C10Q3 What benefits do you consider will result from this proposal?

C10Q4 What disadvantages do you consider will result from this proposal?

C10Q5 What impact will this proposal have on your business costs?

C10Q6 Are there any practical problems with implementation of this proposal? Please give details.

## **Rationale**

- 118 Under RG 87, a charitable investment fundraiser can only rely on ASIC's exemptions if ASIC has registered an identification statement in respect of the organisation. The content requirements in respect of identification statements are also set out in RG 87.
- 119 We are proposing that the requirement for ASIC to register the identification statement of a charitable investment fundraiser before that organisation may rely on ASIC's exemptions should continue to apply. Similarly, we are proposing to retain the requirement on charitable investment fundraisers to lodge a supplementary or replacement identification statement when an identification statement needs correcting or updating. Given that few lodgement requirements are applicable to charitable investment fundraisers that have the benefit of ASIC's exemptions, registered identification statements are an important information source to allow ASIC to identify the organisations that rely on the individual charities exemption.
- 120 The proposed new content requirements for identification statements are additional to the existing requirements under RG 87. They are designed to assist ASIC in identifying the charitable purpose of the organisation, the type of investment product proposed to be issued, whether the AFS licensing requirements under the Corporations Act apply to the organisation and



whether audited financial statements are expected to be lodged with the ACNC or ASIC.

- 121 This proposal is intended to apply to issues of new debentures and interests in a managed investment scheme from 1 February 2014: see Section D. Accordingly, charitable investment fundraisers with registered identification statements are not required to update their identification statements to reflect the proposed new content requirements in order to continue relying on ASIC's exemptions if they do not issue new debentures or interests after 31 January 2014. Charities issuing new debentures or issues on or after 1 February 2014 will need to ensure they have complied with the proposed new content requirements to rely on our exemption.

## Assurance of compliance with conditions of relief

### Breach reporting obligations

#### Proposal

- c11** We propose that, as a condition of relying on ASIC's exemptions under RG 87, a charitable investment fundraiser must:
- (a) unless it holds an AFS licence, while there are debentures or interests on issue that were issued by the charitable investment fundraiser in reliance on the exemptions, report to ASIC in writing a significant breach, or a likely significant breach, of a condition of relief as soon as practicable and in any case within 10 business days after becoming aware of the breach or likely breach; and
  - (b) provide to its auditor within two months after the end of each financial year a statement signed by a director, or member of the governing body of the entity, setting out whether the person reasonably believes the charitable investment fundraiser has met its breach reporting obligation under proposal C11(a) or under s912D if it is an AFS licensee and, if not, giving particulars of the non-compliance. This applies if there were debentures or interests issued by the charitable investment fundraiser, in reliance on the exemptions, on issue at any time during the financial year.

#### *Your feedback*

C11Q1 Do you agree with this proposal? If not, why not?

C11Q2 Do you believe the proposed time for lodgement of breach reports under proposal C11(a) should be longer? Please give reasons.

C11Q3 What benefits do you consider will result from this proposal?

C11Q4 What disadvantages do you consider will result from this proposal?

C11Q5 What impact will this proposal have on your business costs?

C11Q6 Are there any practical problems with implementation of this proposal? Please give details.

## Rationale

122 Our proposal allows charitable investment fundraisers to have primary responsibility for monitoring their compliance with the conditions of relief.

123 The proposals are intended to apply to all charitable investment fundraisers that have relied on ASIC's exemptions under RG 87 and they will apply following implementation of the revised policy.

## Obligation to report significant breaches

124 Further to proposal C2 on the AFS licensing requirement, charitable investment fundraisers that must hold a licence will be required to comply with the breach reporting obligations applicable to licensees under s912D of the Corporations Act.

125 We are proposing that all other charitable investment fundraisers be subject to a breach reporting obligation that is similar to the obligation under s912D of the Corporations Act.

126 Consistent with that section, a breach or likely breach of the conditions would only need to be reported if it is significant. Whether the breach, or likely breach, is significant should be determined by considering:

- (a) the nature and frequency of previous breaches;
- (b) the impact of the breach or likely breach on the charitable investment fundraiser's ability to meet its obligations under the debentures or in relation to the managed investment scheme;
- (c) the extent to which the non-compliance indicates that the charitable investment fundraiser's arrangements to ensure compliance with the conditions are inadequate; and
- (d) the actual or potential loss because of the breach to the holders of the debentures or interests or the charitable investment fundraiser.

127 To report a significant breach, or likely significant breach, a charitable investment fundraiser should lodge a written report with ASIC describing the breach and the matters in paragraph 126.

## Director's certificate

128 We are proposing that a charitable investment fundraiser relying on ASIC's exemptions be required to provide to its auditor a director's certificate that sets out whether the director reasonably believes the charitable investment

fundraiser complied with its breach reporting obligations at all times during a financial year when there were debentures or interests on issue that were issued by the charitable investment fundraiser in reliance on the exemptions.

129

This proposal is intended to ensure that charitable investment fundraisers monitor their compliance with the proposed requirements. It will also assist ASIC to identify organisations that are not complying with the conditions so that we may take further action if appropriate.

## Audit report

### Proposal

**c12** We propose that, as a condition of relying on ASIC's exemptions for charitable investment fundraisers, a charitable investment fundraiser must:

- (a) lodge an audit report for each financial year, or any other period that ASIC directs, that states whether:
  - (i) during any part of the financial year for which there were debentures or interests on issue that were issued in reliance on the exemptions, in the auditor's opinion the entity complied with the minimum charitable investment requirement (proposal C3) and the capital and liquidity requirements (proposal C4); and
  - (ii) the auditor has received a director's statement addressing the matters set out in proposal C11(b) and if the auditor is aware that the statement is not true, a statement to that effect; and
- (b) lodge the audit report in proposal C12(a) with ASIC by no later than:
  - (i) for each financial year of the charitable investment fundraiser in which there were debentures or interests on issue that were issued by the charitable investment fundraiser in reliance on the exemptions—the day the entity is required to lodge financial reports with the ACNC or ASIC; and
  - (ii) for any period of time that ASIC directs—the date ASIC directs the audit report to be lodged.

#### *Your feedback*

C12Q1 Do you agree with this proposal? If not, why not?

C12Q2 What benefits do you consider will result from this proposal?

C12Q3 What disadvantages do you consider will result from this proposal?

C12Q4 Do you believe that, in the absence of this requirement (or an alternative external monitoring requirement), there is a significantly increased risk of non-compliance with the minimum charitable investment requirement (proposal C3) and the capital and liquidity requirements (proposal C4)?

C12Q5 Do you think an alternative requirement for external monitoring of compliance with the minimum charitable investment requirement (proposal C3) and the capital and liquidity requirements (proposal C4) may be preferable? If so, please give details.

C12Q6 What impact will this proposal have on your business costs?

C12Q7 Are there any practical problems with implementation of this proposal? Please give details.

## Rationale

- 130 This proposal is intended to ensure that compliance with the minimum charitable investment requirement and the capital and liquidity requirements is monitored and there is a reporting mechanism for non-compliance. It will also assist ASIC to identify organisations that are not complying with these conditions so that we may take further action if appropriate.
- 131 This requirement is broadly similar to a requirement on responsible entities of managed investment schemes, under Class Order [CO 11/1140] *Financial requirements for responsible entities*, to lodge with ASIC a report by the entity's auditor which opines on whether the entity has complied with the financial resource requirements applicable to the responsible entity at all relevant times.
- 132 An alternative to this proposal may be a requirement on charitable investment fundraisers to lodge a director's certificate similar to the certificate described in proposal C11(b). We are interested in receiving feedback as to whether this approach may be preferable for charitable investment fundraisers and whether the absence of external checking would create an increased risk of non-compliance.

## Consequences of non-compliance with conditions of relief

### Proposal

c13 We propose that:

- (a) following receipt of a breach report we will decide:
  - (i) whether a charitable investment fundraiser should continue to have the benefit of ASIC's relief for new fundraising; or
  - (ii) whether we should exercise our power to exclude the charitable investment fundraiser from the relief under the proposed terms of exemption; and
- (b) if a charitable investment fundraiser becomes aware or should reasonably have become aware of a breach of condition(s) and fails to notify ASIC of the breach, its relief will lapse for new fundraising unless and until we confirm in writing that it may

continue to rely on ASIC's exemptions. We may impose conditions for providing such confirmation.

#### *Your feedback*

C13Q1 Do you agree with this proposal? If not, why not?

C13Q2 What benefits do you consider will result from this proposal?

C13Q3 What disadvantages do you consider will result from this proposal?

C13Q4 What impact will this proposal have on your business costs?

C13Q5 Are there any practical problems with implementation of this proposal? Please give details.

### **Rationale**

133 If we decide to substantially retain existing exemptions that are currently available to charitable investment fundraisers, we are proposing that the exemptions would only be available if a charitable investment fundraiser complies with the new and existing conditions to the exemptions.

134 Accordingly, we are proposing that if a charitable investment fundraiser becomes aware of a significant breach and notifies ASIC of that breach, we will determine whether relief should continue to be available to the charitable investment fundraiser in question. If a charitable investment fundraiser fails to notify ASIC of a breach after it becomes aware or should reasonably have become aware of the breach, we are proposing that relief may cease to be available to that fundraiser unless we determine otherwise, having regard to the nature and significance of the breach and the circumstances surrounding the failure to notify ASIC of the breach.

## **Charities relying on the group charities exemption**

### **Proposal**

**c14** If Option 2 is adopted, we propose that, as a condition of relying on ASIC's exemptions under RG 87, a charitable investment fundraiser relying on the group charities exemption must comply with each of the conditions applying to other charitable investment fundraisers, except the requirement to individually lodge an identification statement. The sponsor would be required to maintain and make available to ASIC and any member of the public particulars about each of the charitable investment fundraisers for which it is the sponsor that includes the content that would be required in identification statements.

*Your feedback*

- C14Q1 Do you agree that charities relying on the group charities exemption should be required to meet these conditions? Please give reasons.
- C14Q2 Do you think that charities relying on the group charities exemption should be required to comply with any other conditions (whether applicable to charities relying on the individual charities exemption or not)? If so, please give details.
- C14Q3 Should charitable investment fundraisers relying on the group charities exemption have to lodge an individual identification statement? If so, what benefits would arise?
- C14Q4 Would complying with this proposal require you to restructure your business in any way?
- C14Q5 If this proposal is implemented, would you respond by changing the way your organisation currently fundraises?
- C14Q6 What impact will this proposal have on your business costs?
- C14Q7 Are there any practical problems with implementation of this proposal? Please give details.

**Rationale**

- 135 Charitable investment fundraisers relying on the group charities exemption are able to rely on ASIC's exemption without having to lodge individual identification statements with ASIC.
- 136 The same risk factors for charities relying on ASIC's existing individual charities exemption apply to charities relying on ASIC's group charities exemption. Accordingly, we consider that the conditions proposed for charities relying on the individual charities exemption should be applied to charities relying on the group charities exemption (this includes the requirement to lodge financial statements, which does not currently apply to sponsored charities relying on the group charities exemption under RG 87).
- 137 In a group charities context, the sponsor must indemnify each sponsored charity against claims by the investors of the sponsored charity and is liable to make payments up to the amount needed to repay investments made in the sponsored charity (and any interest or other income payable on those investments) if investors claim against the charity. Under this structure, investors would only be prevented from recovering their investment if the sponsor is unable to satisfy the indemnity (e.g. because the sponsor is insolvent). However, there is no regulation that ensures the sponsor meets the requirements relating to the maintenance of liquidity and capital or prudential standards that would mean that the financial position of the sponsored charitable investment fundraisers or their schemes was ensured.
- 138 If a sponsor demonstrates that it satisfies the proposed capital and liquidity requirements having regard to all of the charities sponsored by it, we may

consider that conditional exemption from the proposed capital and liquidity requirements can be granted to each of the sponsored charities while this continues.

- 139 Like the other proposed conditions, this proposal is only intended to apply to new charitable investment fundraising (i.e. the issue of new debentures or interests in a managed investment scheme after 1 February 2014). Accordingly, charitable investment schemes currently relying on the group charities exemption would not be required to meet the new requirements if they do not engage in any new charitable investment fundraising.

## D Implementation period

### Key points

Some charitable investment fundraisers may choose to restructure or alter their investment offering as a result of some of the proposals in this paper. In light of this, we believe that a transitional period is appropriate regardless of whether Option 1 or Option 2 is adopted.

Also, we consider that some conditions of relief that are proposed under Option 2 may be more easily implemented than others. Accordingly, if Option 2 is adopted, we are proposing that a phased implementation period would be appropriate.

## Commencement date for Option 1

### Proposal

D1 If Option 1 (removal of exemptions) in Section B is adopted, we propose that the reforms be effective as of 28 June 2014.

### *Your feedback*

D1Q1 If Option 1 is implemented, do you agree with the proposed timeframe for implementation?

### Rationale

140 We acknowledge that the removal of existing exemptions would cause significant change to the regulatory burden of charitable investment fundraisers. We have chosen 28 June 2014 because it aligns with the date that APRA proposes in its discussion paper issued 19 April 2013 as the date from which amendments to current exemptions under the Banking Act for RCDFs would become effective.

141 The proposed commencement date is intended to provide sufficient time for charitable investment fundraisers to make appropriate arrangements to ensure they are in a position to:

- (a) comply with the relevant requirements of the Corporations Act for any new charitable investment fundraising; or
- (b) restrict making such issues, other than to associated entities or subject to complying with the AFS licensing provision, to circumstances where no Ch 6D disclosure document or PDS is required.



## Phased implementation for Option 2

### Proposal

- D2 If Option 2 (retention of exemptions with additional conditions) in Section C is adopted, we propose to implement the changes in stages (see Table 2).

Note: If APRA announces that it will not continue existing exemptions from the Banking Act for RCDFs from 28 June 2014, the requirements will not apply to charitable investment fundraisers issuing debentures in the period until 28 June 2014.

#### *Your feedback*

- D2Q1 Do you agree with the proposed timeframe in Table 2 for implementation of the AFS licensing requirement? If not, why not?
- D2Q2 Do you agree with the proposed timeframe in Table 2 for implementation of the minimum charitable investment requirement? If not, why not?
- D2Q3 Do you agree with the proposed timeframe in Table 2 for implementation of the capital and liquidity requirements? If not, why not?
- D2Q4 Do you agree with the proposed timeframe in Table 2 for implementation of the requirement to not issue at-call or short-term investment products? If not, why not?
- D2Q5 Do you agree with the proposed timeframe in Table 2 for implementation of the proposed investor acknowledgement requirement? If not, why not?
- D2Q6 Do you agree with the proposed timeframe in Table 2 for implementation of the requirement to not use certain terms, such as 'account', 'at-call' or 'deposit'? If not, why not?
- D2Q7 Do you agree with the proposed timeframe in Table 2 for implementation of the additional disclosure requirements? If not, why not?
- D2Q8 Do you agree with the proposed timeframe in Table 2 for implementation of the modified requirement to lodge financial statements? If not, why not?
- D2Q9 Do you agree with the proposed timeframe in Table 2 for implementation of the modified identification statement (content) requirement? If not, why not?
- D2Q10 Do you agree with the proposed timeframe in Table 2 for implementation of the breach reporting requirements? If not, why not?
- D2Q11 Do you agree with the proposed timeframe in Table 2 for implementation of the audit report requirement? If not, why not?
- D2Q12 Do you require a transition period to ensure that adequate arrangements are in place to meet the requirements of these proposals? Please provide details.

**Table 2: Proposed phased implementation for Option 2**

Requirement/condition of relief	Implementation date
AFS licensing requirement (proposal C2)	28 June 2014
<b>New conditions</b>	
Minimum charitable investment requirement (proposal C3)	28 June 2014
Capital requirement (see proposal C4)	To be phased in, with retail charitable investment fundraisers required to have a capital ratio of: <ul style="list-style-type: none"> <li>• 4% of risk-weighted assets by 1 February 2015;</li> <li>• 6% of risk-weighted assets by 1 July 2016; and</li> <li>• 8% of risk-weighted assets by 1 July 2017</li> </ul>
Liquidity requirement (proposal C4)	1 July 2017
Requirement to not issue at-call or short-term investment products (proposal C5)	1 February 2014
Investor acknowledgement requirement (proposal C6)	1 February 2014
Requirement to not use certain terms, such as 'account', 'at-call' or 'deposit' (proposal C7)	1 February 2014
<b>Changes to existing conditions</b>	
Additional disclosure requirements (proposal C8)	1 February 2014
Modified requirement to lodge financial statements (proposal C9)	The financial year commencing on or after 1 July 2013
Modified identification statement (content) requirement (proposal C10)	1 February 2014
<b>New reporting obligations</b>	
Breach reporting requirement (proposal C11)	As and when new requirements/conditions of relief become effective
Audit report requirement (proposal C12)	As and when new requirements/conditions of relief become effective

## Rationale

142

We consider that the proposed conditions under Option 2 are important to ensure that:

- (a) investors of charitable investment fundraisers are confident and informed, including, if applicable, as to the lack of regulation that may help reduce the risk of them not getting their money back; and

- (b) investors invest in the charitable investment fundraiser primarily because they seek to support the charitable purpose of the organisation rather than for some financial objective.

Accordingly, we consider that they should be implemented as soon as practicable.

#### **Conditions with effect on 1 February 2014**

- 143 We are proposing an implementation date of 1 February 2014 for:
- (a) the requirement to not issue at-call or short-term investment products;
  - (b) the investor acknowledgement requirement;
  - (c) the requirement to not use certain terms such as ‘account’, ‘at-call’ or ‘deposit’;
  - (d) the additional disclosure requirements; and
  - (e) the modified identification statement (content) requirement.
- 144 These proposals aim to prevent investors from engaging with charitable investment fundraisers as though they were banks and ensure investors are properly informed about the nature and risk profile of their investment, and should be able to be implemented without significant effort or expense by charitable investment fundraisers. The modified identification statement (content) requirement will enable ASIC to clearly identify the entities likely to be operating under the new exemptions.
- 145 If APRA announces that it will not continue existing exemptions from the Banking Act for RCDFs from 28 June 2014, we will not require compliance by debenture issuers in the period until the expiry on 27 June 2014 to avoid the imposition of additional requirements in a period prior to discontinuation of offering of debentures to retail clients in light of the Banking Act’s application.

#### **Progressive implementation of remaining conditions**

- 146 We are proposing that the modified requirement to lodge financial statements will first apply for the financial year commencing on or after 1 July 2013. This proposed timing aligns with the commencement date proposed to apply under the ACNC financial reporting framework. Accordingly, registered charities will be required to lodge their first reports with the ACNC for the 2013–14 financial year.
- 147 We are proposing that the minimum charitable investment requirement and the AFS licensing requirement will have effect from 28 June 2014. This means that with the exception of the capital and liquidity requirements, the package of amendments proposed to apply to charitable investment fundraisers will have commenced operation by this date.

- 148 The proposed effective date of 28 June 2014 aligns with APRA's proposed implementation date for its proposals for RCDFs. Some charitable investment fundraisers rely on both ASIC's exemptions for charitable investment fundraisers and APRA's exemptions for RCDFs for the conduct of banking activities and accordingly will be affected by both sets of proposed reforms. By aligning the commencement date of ASIC's and APRA's proposals (except to the extent that the capital and liquidity requirements in our proposals are proposed to be phased in over time), we aim to facilitate a more streamlined implementation process for these organisations.
- 149 We acknowledge that the introduction of capital and liquidity requirements would have a significant impact on charitable investment fundraisers. We are therefore proposing a phased transition period so that charitable investment fundraisers have sufficient time to increase their capital and liquidity or to restructure their organisation if required. The proposed transitional arrangements for the capital and liquidity requirements generally align with the arrangements proposed in an equivalent proposal for retail debenture issuing lenders under CP 199.
- 150 We are proposing that the breach reporting and audit report requirements should take effect when the requirement to which they relate becomes effective. This means, for example, that from the commencement date of the minimum charitable investment requirement (i.e. 28 June 2014), the obligation to report significant breaches, to provide director certification as to compliance and to lodge audit reports for this requirement will also become effective.

## E Exemption for school enrolment deposits

### Key points

Schools that require a deposit to be lodged as a condition of enrolment may come within an exemption from the fundraising provisions of the Corporations Act under Class Order [CO 02/151] *School enrolment deposits*. We propose to renew this exemption without amendment of the terms of the exemption.

### Renewal of existing exemption

#### Proposal

E1 We propose to roll over relief that is currently available to schools for school enrolment deposits under [CO 02/151] without amending the terms of the relief.

#### *Your feedback*

E1Q1 Do you agree with this proposal? If not, why not?

E1Q2 Do you consider that the existing terms of the relief should be amended? If so, please provide details.

#### Rationale

- 151 Schools that require a deposit to be lodged as a condition of enrolment may currently rely on an exemption from the fundraising, managed investment, debenture and AFS licensing provisions of the Corporations Act under [CO 02/151] if:
- (a) the deposit is required as a condition for the enrolment of a child in the school; and
  - (b) any rights or interests attaching to the deposit are merely incidental to the enrolment.
- 152 RG 87 states that the exemption for school enrolment deposits is granted on the basis that when a school enrolment deposit is made, profit to the depositor is unlikely to be a relevant consideration in the depositor's decision to make the deposit. RG 87 proceeds on the basis that in these circumstances, the depositor is unlikely to expect or seek the usual protections for investors under the Corporations Act.
- 153 We do not consider that there are new circumstances or risks in relation to the exemption for school enrolment deposits which should cause ASIC to review the terms of the existing exemption. Accordingly, we propose to roll over the existing exemption for school enrolment deposits.

## F Regulatory and financial impact

154 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:

- (a) ensuring that investors who invest with charitable investment fundraisers are confident and informed; and
- (b) ensuring that regulation does not impose an unreasonable burden.

155 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:

- (a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
- (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and
- (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).

156 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

157 To ensure that we are in a position to properly complete any required RIS, please give us as much information as you can about our proposals or any alternative approaches, including:

- (a) the likely compliance costs;
- (b) the likely effect on competition; and
- (c) other impacts, costs and benefits.

See 'The consultation process', p. 4.

## Key terms

Term	Meaning in this document
ACNC	Australian Charities and Not-for-profit Commission
ACNC Act	<i>Australian Charities and Not-for-profits Commission Act 2012</i>
ADI	Authorised deposit-taking institution—has the meaning given in s9 of the Corporations Act
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services  Note: This is a definition contained in s761A of the Corporations Act.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act  Note: This is a definition contained in s761A of the Corporations Act.
APRA	Australian Prudential Regulation Authority
APRA's discussion paper	<i>Banking Act exemptions and section 66 guidelines</i> , released by APRA on 19 April 2013
ASIC	Australian Securities and Investments Commission
associated entity	An entity (excluding an individual) that is connected with the charitable investment fundraiser by being subject to common control or having a common charitable objective
ATM	Automated teller machine
Banking Act	<i>Banking Act 1959</i> , including regulations made for the purposes of that Act
Basel III reforms	Reforms on capital adequacy requirements in the global banking system released by the Basel Committee on Banking Supervision in December 2010, which were adopted by APRA in January 2013
charitable investment fundraiser	An entity that is a charity that raises investment funds (as distinct from donations) in order to carry out its operations
charitable scheme	A managed investment scheme that operates to promote charitable purposes operated by a charitable investment fundraiser
[CO 02/184] (for example)	An ASIC class order (in this example numbered 02/184)

Term	Meaning in this document
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
CP 199	Consultation Paper 199 <i>Debentures: Reform to strengthen regulation</i> , published in February 2013
debenture	A security that represents a company promising an investor to repay money at a future point in time
EFTPOS	Electronic funds transfer at point of sale
financial year	Means a financial year applying to a charitable investment fundraiser and includes a substituted accounting period relevant to requirements for lodgements with the ACNC
group charities exemption	Means the group charities exemption described in Section B of RG 87
individual charities exemption	Means the individual charities exemption set out in [CO 02/184] and described in Section C of RG 87
managed investment scheme	Has the meaning given in s9 of the Corporations Act
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
National Credit Code	National Credit Code at Sch 1 of the National Credit Act
new charitable investment fundraising	New issues, including issues to an existing, former or rollover client of debentures or interests in a managed investment scheme, made in reliance on ASIC's exemptions for charitable investment fundraisers, which occurs after the transition period of the proposed reforms  Note: The transition period for Option 1 is proposed to end on 27 June 2014 (see proposal D1). The transition period for Option 2 is proposed to end on 31 January 2014, with phased implementation from 1 February 2014 (see proposal D2).
Product Disclosure Statement (PDS)	A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act  Note: See s761A of the Corporations Act for the exact definition.
RBA	Reserve Bank of Australia
Religious Charitable Development Fund (RCDF)	A fund listed in the Banking exemption No. 1 of 2011 (as most recently amended by the Banking exemption No. 2 of 2012) as a Religious Charitable Development Fund
retail investor	An investor who would be regarded as acquiring financial products as a retail client under s761G or 761GA of the Corporations Act and Ch 7, Pt 7.1, Div 2 of the Corporations Regulations



<b>Term</b>	<b>Meaning in this document</b>
RFC	Registered finance corporation
RG 87	Regulatory Guide 87 <i>Charities</i>
s766E (for example)	A section of the Corporations Act (in this example numbered 766E), unless otherwise specified
shadow banking	Activities that are banking business or have a similar function to banking business by entities that are not regulated in a way that is substantially similar to banks
subordinated liabilities	Liabilities that are not payable in the event that a retail investor redemption request is not met within the expected timeframe
wholesale investor	An investor who would be regarded as acquiring financial products as a wholesale client under s761G or 761GA of the Corporations Act

## List of proposals and questions

Proposal	Your feedback
<p>B1 Under Option 1, we propose to remove all existing exemptions in RG 87 for new charitable investment fundraising—except exemptions from the AFS licensing requirements of the Corporations Act for fundraisers that only raise investment funds from associated entities.</p>	<p>B1Q1 Do you agree with this proposal? If not, why not?</p> <p>B1Q2 Do you believe there is any basis to apply a less rigorous regulatory framework to charitable investment fundraisers' investment funds generally? If so, please explain.</p> <p>B1Q3 Do you believe it is reasonable to apply a less rigorous regulatory framework to charitable investment fundraisers that only raise investment funds from associated entities? If not, why not?</p> <p>B1Q4 Do you believe it is reasonable to distinguish between charitable investment fundraisers that raise investment funds from associated entities only and those that raise funds from wholesale investors more generally (including those that are not associated entities of the charity)?</p> <p>B1Q5 What benefits do you consider will result from this proposal?</p> <p>B1Q6 What disadvantages do you consider will result from this proposal?</p> <p>B1Q7 How would this proposal affect your organisation's ability to pursue its charitable purpose? For example, to what extent would it affect your organisation's ability to invest in assets, programs or services associated with your charitable purpose?</p> <p>B1Q8 Would complying with this proposal require you to restructure your business in any way?</p> <p>B1Q9 What impact will this proposal have on your business costs? How will you manage these costs? Please quantify and substantiate any costs that you consider would arise.</p> <p>B1Q10 Will this proposal have any significant impact on investment fundraising by charitable organisations generally? For example, do you believe it will impact some investors' appetite for investments with charitable investment fundraisers and cause them to move investment funds to ADIs? Please explain.</p> <p>B1Q11 Are there any practical problems with the implementation of this proposal? Please give details.</p>

Proposal	Your feedback
<p>C1 Under Option 2, we propose to retain the existing exemptions in RG 87 (with some modification) but, for new charitable investment fundraising, to require:</p> <p>(a) charitable investment fundraisers that fundraise from retail investors (other than associated entities) under ASIC's exemptions to comply with the AFS licensing requirements (see proposal C2); and</p> <p>(b) charitable investment fundraisers that are relying on the exemptions under RG 87 to meet the following additional conditions of relief—a requirement to:</p> <p>(i) hold 75% of assets (by value) in charitable assets (see proposal C3);</p> <p>(ii) meet capital and liquidity requirements (see proposal C4);</p> <p>(iii) not issue at-call or short-term investment products (see proposal C5);</p> <p>(iv) receive written acknowledgement from retail investors before an investment product is issued (see proposal C6);</p> <p>(v) not use certain terms, such as 'account', 'at-call' or 'deposit' (see proposal C7);</p> <p>(vi) meet a breach reporting requirement, including a requirement to prepare a director's statement on compliance with the organisation's breach reporting obligation (see proposal C11); and</p> <p>(vii) lodge an audit report (see proposal C12); and</p> <p>(c) charitable investment fundraisers that are relying on the exemptions under RG 87 to meet the existing conditions of relief (which we propose to modify)—including:</p> <p>(i) additional disclosure requirements (see proposal C8);</p> <p>(ii) a modified requirement for lodging financial statements (see proposal C9); and</p> <p>(iii) the requirement to lodge identification statements, but with modified content requirements (see proposal C10).</p>	<p>C1Q1 Do you agree with this proposal? If not, why not?</p> <p>C1Q2 Is it reasonable to provide the proposed exemptions on the basis that investors may be motivated in part by charitable objectives and so are likely to have different expectations of regulatory protections?</p> <p>C1Q3 Is there any other basis for the proposed exemptions in light of the purposes of the relevant provisions of the Corporations Act?</p> <p>C1Q4 Is this proposal preferable to the alternative proposal (Option 1) set out in Section B? Please give reasons.</p> <p>C1Q5 What value and proportion of your organisation's assets are on-lent as loans (whether to associated entities or otherwise), or invested in illiquid assets? To what extent does your organisation require investors to bear the risk of default on moneys your organisation lends?</p> <p>C1Q6 What benefits do you consider will result from this proposal?</p> <p>C1Q7 What disadvantages do you consider will result from this proposal?</p>

Proposal	Your feedback
<p>C2 We propose that a charitable investment fundraiser that accepts investments from retail investors (other than associated entities):</p> <p>(a) should be subject to the AFS licensing provisions of the Corporations Act; and</p> <p>(b) if required to hold an AFS licence, must comply with the duties and obligations of AFS licensees.</p>	<p>C2Q1 Do you agree with this proposal? If not, why not?</p> <p>C2Q2 What benefits do you consider will result from this proposal?</p> <p>C2Q3 What disadvantages do you consider will result from this proposal?</p> <p>C2Q4 Do you consider there are any specific obligations imposed on AFS licensees under the Corporations Act that should not apply to AFS licensees that are charitable investment fundraisers? If so, please give details and reasons.</p> <p>C2Q5 Would complying with this proposal require you to restructure your business in any way?</p> <p>C2Q6 If this proposal is implemented, would you respond by changing the way your organisation currently fundraises?</p> <p>C2Q7 What impact will this proposal have on your business costs?</p> <p>C2Q8 Are there any practical problems with implementation of this proposal? Please give details.</p>

Proposal	Your feedback
<p>C3 We propose that, as a condition of relying on ASIC's exemptions for charitable investment fundraisers, a charitable investment fundraiser must:</p> <p>(a) ensure that when any debenture or interest in a managed investment scheme is issued, and at all times while these debentures or interests are held, 75% of the debenture issuer's or scheme's assets (by value) are in charitable assets, except where this would be impracticable;</p> <p>(b) during any period when it is impracticable to comply with proposal C3(a) (e.g. because there are no charitable assets that can properly be acquired or it would not be practicable to do so because non-charitable assets cannot be liquidated), ensure that:</p> <p>(i) no new debentures or interests are issued; and</p> <p>(ii) ASIC is notified that the charitable investment fundraiser is not complying with the requirement and advise what steps will be taken to meet the 75% requirement as soon as practicable;</p> <p>(c) revalue its assets whenever it has reason to believe the 75% test would not be met if a valuation were done; and</p> <p>(d) when valuing assets for this requirement:</p> <p>(i) only include as charitable assets those assets that are directly related to the disclosed charitable purpose of the organisation; and</p> <p>(ii) ensure that a member of the governing body of the charitable investment fundraiser has signed a document setting out why the relevant asset is directly related to the organisation's disclosed charitable purpose.</p>	<p>C3Q1 Do you agree that charitable investment fundraisers should be subject to a minimum charitable investment requirement?</p> <p>C3Q2 Do you agree with the proposed definition of charitable assets in proposal C3(d)(i)? If not, please explain why not and give suggestions.</p> <p>C3Q3 What benefits do you consider will result from this proposal?</p> <p>C3Q4 What disadvantages do you consider will result from this proposal?</p> <p>C3Q5 Is the proposed amount of 75% the appropriate amount if such a requirement is to apply? For example, is the proposed percentage high enough to ensure the investment product is likely to appeal primarily to investors whose priority is to support the organisation's charitable purpose, as distinct from investors who are primarily concerned with being repaid or acquiring a financial return on their investment?</p> <p>C3Q6 Is the proposed amount of 75% low enough to allow charitable investment fundraisers sufficient flexibility to manage the financial needs of the organisation (e.g. to maintain sufficient liquidity to allow investor redemption requests to be met, or to ensure charitable investment fundraisers satisfy the proposed capital and liquidity requirements in proposal C4)?</p> <p>C3Q7 Do you think a principles-based charitable investment requirement would be preferable (e.g. a requirement on charitable investment fundraisers to invest investment funds in charitable investments as much as is practicable, having regard to the financial needs of the charitable debenture issuer or scheme)? Alternatively, do you think this should be an additional requirement to proposal C3? Please explain.</p> <p>C3Q8 Would complying with this proposal require you to restructure your business in any way?</p> <p>C3Q9 What impact will this proposal have on your business costs? How will you manage these costs?</p> <p>C3Q10 Are there any practical problems with the implementation of this proposal? Please give details.</p>

Proposal	Your feedback
<p>C4 We propose that, as a condition of relying on ASIC's exemptions for charitable investment fundraisers, a charitable investment fundraiser that fundraises from retail investors (other than associated entities) must:</p> <p>(a) if it issues debentures, meet the capital and liquidity requirements proposed to apply to retail debenture issuing lenders under our Consultation Paper 199 <i>Debentures: Reform to strengthen regulation</i> (CP 199), including a requirement to maintain:</p> <p>(i) a minimum capital ratio of 8% of its risk-weighted assets; and</p> <p>(ii) a minimum holding of 9% of its liabilities in high-quality liquid assets; and</p> <p>(b) if it issues interests in a managed investment scheme, meet a requirement to maintain:</p> <p>(i) minimum liabilities which are not payable while any retail investor redemption request has not been met, and the time since the request was made exceeds the time that members would have expected for meeting redemption requests when they invested ('subordinated liabilities') equalling at least 8% of the scheme's risk-weighted assets; and</p> <p>(ii) a minimum holding of 9% of its liabilities (including interests on issue subject to redemption rights) in high-quality liquid assets.</p>	<p>C4Q1 Do you agree that charitable investment fundraisers that fundraise from retail investors (other than associated entities) should be subject to a minimum capital or subordinated liability requirement? If not, why not?</p> <p>C4Q2 Is the proposed capital requirement of 8% of risk-weighted assets high enough to define charitable investment fundraisings that should be eligible for exemption, given the risks and the fact that charitable investment fundraisers are not subject to prudential supervision or a requirement to comply with the exempted provisions in the Corporations Act?</p> <p>C4Q3 Do you agree that charitable investment fundraisers that fundraise from retail investors (other than associated entities) should be subject to minimum liquidity requirements?</p> <p>C4Q4 Is the proposed liquidity requirement of 9% of liabilities in high-quality liquid assets high enough to define charitable investment fundraisings that should be eligible for exemption, given the risks and the fact that charitable investment fundraisers are not subject to prudential supervision or a requirement to comply with the exempted provisions in the Corporations Act?</p> <p>C4Q5 Should the minimum capital or subordinated liability requirements and minimum liquidity requirements only apply to some charitable investment fundraisers (e.g. those that on-lend the funds raised or that on-lend the funds raised to certain types of projects only, or those with investment funds above a prescribed threshold)? Please give reasons. If you believe these requirements should only apply to a sub-group of charitable investment fundraisers, please describe and give reasons.</p> <p>C4Q6 Is there a basis to treat managed investment schemes differently because investors do not have the right to sue a corporation for a debt in order to obtain their rights?</p> <p>C4Q7 Do you believe the proposed capital and liquidity requirements should only apply to charitable schemes where retail investors would have expected when they invested that they would receive a fixed return or be able to redeem over fixed timeframes?</p> <p>C4Q8 Could the proposed capital and liquidity requirements be independently monitored</p>

Proposal	Your feedback
	<p>practically, given there is no entity separate from the charitable investment fundraiser with a role to monitor compliance with these requirements?</p> <p>C4Q9 What changes to the operation of charitable investment fundraisers will occur if the proposed capital and liquidity requirements are implemented?</p> <p>C4Q10 Will charitable investment fundraisers have any practical difficulties in meeting and maintaining the proposed capital and liquidity requirements? Please estimate the likely costs.</p>
<p>C5 We propose that, as a condition of relying on ASIC's exemptions for charitable investment fundraisers, a charitable investment fundraiser that fundraises from retail investors (other than associated entities) be prohibited from issuing investment products that can be required to be repaid in under 31 days, or permitting holders to expect repayment in a lesser period, except following the expiry of a fixed period of at least 31 days from the time of the relevant investment.</p>	<p>C5Q1 Do you agree with this proposal? If not, why not?</p> <p>C5Q2 What benefits do you consider will result from this proposal?</p> <p>C5Q3 What disadvantages do you consider will result from this proposal?</p> <p>C5Q4 Do you agree that this proposal should only apply to charitable investment fundraisers that fundraise from retail investors (other than associated entities)?</p> <p>C5Q5 Would complying with this proposal require you to restructure your business in any way? If applicable, please provide details about the portion of investment funds at your organisation that relates to investment products that can be required to be repaid within 31 days.</p> <p>C5Q6 What impact will this proposal have on your business costs? How will you manage these costs?</p> <p>C5Q7 Are there any practical problems with the implementation of this proposal? Please give details.</p>

Proposal	Your feedback
<p>C6 We propose that, as a condition of relying on ASIC's exemptions for charitable investment fundraisers, a charitable investment fundraiser that fundraises from retail investors (other than associated entities) must, before issuing an investment product to a retail investor:</p> <p>(a) take reasonable steps to structure and promote its product so that it is unlikely to be acquired by persons who do not understand the required disclosures; and</p> <p>(b) have received a signed written statement to the effect that the investor:</p> <p>(i) acknowledges the required disclosures; and</p> <p>(ii) understands they may be unable to withdraw their investment when expected or get some or all of their money back.</p>	<p>C6Q1 Do you agree with this proposal? If not, why not?</p> <p>C6Q2 What benefits do you consider will result from this proposal?</p> <p>C6Q3 What disadvantages do you consider will result from this proposal?</p> <p>C6Q4 Would complying with this proposal require you to restructure your business in any way?</p> <p>C6Q5 What impact will this proposal have on your business costs?</p> <p>C6Q6 Are there any practical problems with implementation of this proposal? Please give details.</p>
<p>C7 We propose that, as a condition of relying on ASIC's exemptions for charitable investment fundraisers, a charitable investment fundraiser must not use the terms 'account', 'at-call' or 'deposit', or derivatives of these terms, in any offer document or promotional materials.</p>	<p>C7Q1 Do you agree with this proposal? If not, why not?</p> <p>C7Q2 What benefits do you consider will result from this proposal?</p> <p>C7Q3 What disadvantages do you consider will result from this proposal?</p> <p>C7Q4 What impact will this proposal have on your business costs?</p> <p>C7Q5 Are there any practical problems with implementation of this proposal? Please give details.</p>



Proposal	Your feedback
<p>C8 We propose that, in addition to the existing disclosure requirements under RG 87 concerning regulation and ASIC's role and as a condition of relying on ASIC's exemptions for charitable investment fundraisers, a charitable investment fundraiser must:</p> <p>(a) in all offer documents and promotional materials prepared for investment products that are issued in reliance on ASIC exemptions, incorporate clear statements to the effect that:</p> <p>(i) the product is only intended to attract people whose primary purpose for making their contribution (i.e. payment to the charitable investment fundraiser) is to support the charitable purpose of the fundraiser;</p> <p>(ii) the product is only intended to attract people who will not be concerned that they can lose their entire contribution without any regulatory protection applying;</p> <p>(iii) the product is not comparable to investments that are issued by banks or regulated issuers; and</p> <p>(iv) financial returns from making a contribution are not intended to compete with those available from investments issued by commercial providers; and</p> <p>(b) ensure that all required disclosures (whether under RG 87 or this proposal) are prominently disclosed in any offer document or promotional material, and included whenever any statement is made as to returns in a communication to retail investors.</p> <p>Note: The requirement in RG 87 to state that the investment is designed for investors who wish to promote the charitable purpose of the relevant charity and for whom the considerations of profit are not of primary relevance in the investment decision would be replaced by the disclosures in proposal C8(a).</p>	<p>C8Q1 Do you agree that charitable investment fundraisers should be required to make the disclosures in proposal C8(a) in offer documents and promotional materials? If not, why not?</p> <p>C8Q2 Are these matters of disclosure adequate to deter potential investors whose primary motive for investment is to be assured of repayment or to seek a financial return on their investment?</p> <p>C8Q3 What benefits do you consider will result from this proposal?</p> <p>C8Q4 What disadvantages do you consider will result from this proposal?</p> <p>C8Q5 What impact will this proposal have on your business costs? How will you manage these costs?</p> <p>C8Q6 Are there any practical problems with the implementation of this proposal? Please give details.</p>

Proposal	Your feedback
<p>C9 We propose to modify the existing condition of relief relating to lodgement of financial statements. We propose that, as a condition of relying on ASIC's exemptions for charitable investment fundraisers, a charitable investment fundraiser must:</p> <p>(a) lodge its audited financial statements and audit report within six months after the end of its financial year;</p> <p>(b) if it issues interests in a managed investment scheme, lodge the scheme's audited financial statements and audit report within six months after the end of the scheme's financial year; and</p> <p>(c) lodge its audited financial statements and audit reports with:</p> <p>(i) the ACNC; or</p> <p>(ii) ASIC if the ACNC financial reporting framework does not apply to the relevant charitable investment fundraiser or, if there is an offer of interests in a managed investment scheme, the scheme.</p>	<p>C9Q1 Do you agree with this proposal? If not, why not?</p> <p>C9Q2 Do you believe the proposed time for lodgement of audited financial statements should be shortened? Please give reasons.</p> <p>C9Q3 What benefits do you consider will result from this proposal?</p> <p>C9Q4 What disadvantages do you consider will result from this proposal?</p> <p>C9Q5 Would complying with this proposal require you to restructure your business in any way?</p> <p>C9Q6 What impact will this proposal have on your business costs? Please quantify and substantiate your estimate.</p> <p>C9Q7 Are there any practical problems with implementation of this proposal? Please give details.</p>

Proposal	Your feedback
<p>C10 We propose that, as a condition of relying on ASIC's exemptions for charitable investment fundraisers, a charitable investment fundraiser must:</p> <p>(a) continue to meet the existing requirements in RG 87 to lodge:</p> <ul style="list-style-type: none"> <li>(i) an identification statement with ASIC; and</li> <li>(ii) a supplementary or replacement identification statement when an identification statement needs correcting or updating;</li> </ul> <p>(b) in addition to meeting the existing content requirements for identification statements under RG 87, set out the following:</p> <ul style="list-style-type: none"> <li>(i) the charitable purpose of the organisation that will be disclosed to investors;</li> <li>(ii) whether investment funds will be raised by issue of debentures or interests in a managed investment scheme and, if the latter, a clear identification of the scheme;</li> <li>(iii) whether the charitable investment fundraiser is required to hold an AFS licence and, if so, the AFS licence number of the organisation;</li> <li>(iv) whether the charitable investment fundraiser will be required to lodge audited financial statements with the ACNC and, for issuers of interests in a managed investment scheme, whether it will be required to lodge the scheme's audited financial statements with the ACNC; and</li> <li>(v) the financial year of the charitable investment fundraiser and, for issuers of interests in a managed investment scheme, the financial year of the scheme; and</li> </ul> <p>(c) provide information about its affairs if requested by ASIC and assist ASIC in checking on its compliance.</p>	<p>C10Q1 Do you agree with this proposal? If not, why not?</p> <p>C10Q2 Do you believe the new content requirements for identification statements are reasonable? If not, why not?</p> <p>C10Q3 What benefits do you consider will result from this proposal?</p> <p>C10Q4 What disadvantages do you consider will result from this proposal?</p> <p>C10Q5 What impact will this proposal have on your business costs?</p> <p>C10Q6 Are there any practical problems with implementation of this proposal? Please give details.</p>

Proposal	Your feedback
<p>C11 We propose that, as a condition of relying on ASIC's exemptions under RG 87, a charitable investment fundraiser must:</p> <p>(a) unless it holds an AFS licence, while there are debentures or interests on issue that were issued by the charitable investment fundraiser in reliance on the exemptions, report to ASIC in writing a significant breach, or a likely significant breach, of a condition of relief as soon as practicable and in any case within 10 business days after becoming aware of the breach or likely breach; and</p> <p>(b) provide to its auditor within two months after the end of each financial year a statement signed by a director, or member of the governing body of the entity, setting out whether the person reasonably believes the charitable investment fundraiser has met its breach reporting obligation under proposal C11(a) or under s912D if it is an AFS licensee and, if not, giving particulars of the non-compliance. This applies if there were debentures or interests issued by the charitable investment fundraiser, in reliance on the exemptions, on issue at any time during the financial year.</p>	<p>C11Q1 Do you agree with this proposal? If not, why not?</p> <p>C11Q2 Do you believe the proposed time for lodgement of breach reports under proposal C11(a) should be longer? Please give reasons.</p> <p>C11Q3 What benefits do you consider will result from this proposal?</p> <p>C11Q4 What disadvantages do you consider will result from this proposal?</p> <p>C11Q5 What impact will this proposal have on your business costs?</p> <p>C11Q6 Are there any practical problems with implementation of this proposal? Please give details.</p>

Proposal	Your feedback
<p>C12 We propose that, as a condition of relying on ASIC's exemptions for charitable investment fundraisers, a charitable investment fundraiser must:</p> <p>(a) lodge an audit report for each financial year, or any other period that ASIC directs, that states whether:</p> <p>(i) during any part of the financial year for which there were debentures or interests on issue that were issued in reliance on the exemptions, in the auditor's opinion the entity complied with the minimum charitable investment requirement (proposal C3) and the capital and liquidity requirements (proposal C4); and</p> <p>(ii) the auditor has received a director's statement addressing the matters set out in proposal C11(b) and if the auditor is aware that the statement is not true, a statement to that effect; and</p> <p>(b) lodge the audit report in proposal C12(a) with ASIC by no later than:</p> <p>(i) for each financial year of the charitable investment fundraiser in which there were debentures or interests on issue that were issued by the charitable investment fundraiser in reliance on the exemptions—the day the entity is required to lodge financial reports with the ACNC or ASIC; and</p> <p>(ii) for any period of time that ASIC directs—the date ASIC directs the audit report to be lodged.</p>	<p>C12Q1 Do you agree with this proposal? If not, why not?</p> <p>C12Q2 What benefits do you consider will result from this proposal?</p> <p>C12Q3 What disadvantages do you consider will result from this proposal?</p> <p>C12Q4 Do you believe that, in the absence of this requirement (or an alternative external monitoring requirement), there is a significantly increased risk of non-compliance with the minimum charitable investment requirement (proposal C3) and the capital and liquidity requirements (proposal C4)?</p> <p>C12Q5 Do you think an alternative requirement for external monitoring of compliance with the minimum charitable investment requirement (proposal C3) and the capital and liquidity requirements (proposal C4) may be preferable? If so, please give details.</p> <p>C12Q6 What impact will this proposal have on your business costs?</p> <p>C12Q7 Are there any practical problems with implementation of this proposal? Please give details.</p>

Proposal	Your feedback
<p>C13 We propose that:</p> <p>(a) following receipt of a breach report we will decide:</p> <p>(i) whether a charitable investment fundraiser should continue to have the benefit of ASIC's relief for new fundraising; or</p> <p>(ii) whether we should exercise our power to exclude the charitable investment fundraiser from the relief under the proposed terms of exemption; and</p> <p>(b) if a charitable investment fundraiser becomes aware or should reasonably have become aware of a breach of condition(s) and fails to notify ASIC of the breach, its relief will lapse for new fundraising unless and until we confirm in writing that it may continue to rely on ASIC's exemptions. We may impose conditions for providing such confirmation.</p>	<p>C13Q1 Do you agree with this proposal? If not, why not?</p> <p>C13Q2 What benefits do you consider will result from this proposal?</p> <p>C13Q3 What disadvantages do you consider will result from this proposal?</p> <p>C13Q4 What impact will this proposal have on your business costs?</p> <p>C13Q5 Are there any practical problems with implementation of this proposal? Please give details.</p>
<p>C14 If Option 2 is adopted, we propose that, as a condition of relying on ASIC's exemptions under RG 87, a charitable investment fundraiser relying on the group charities exemption must comply with each of the conditions applying to other charitable investment fundraisers, except the requirement to individually lodge an identification statement. The sponsor would be required to maintain and make available to ASIC and any member of the public particulars about each of the charitable investment fundraisers for which it is the sponsor that includes the content that would be required in identification statements.</p>	<p>C14Q1 Do you agree that charities relying on the group charities exemption should be required to meet these conditions? Please give reasons.</p> <p>C14Q2 Do you think that charities relying on the group charities exemption should be required to comply with any other conditions (whether applicable to charities relying on the individual charities exemption or not)? If so, please give details.</p> <p>C14Q3 Should charitable investment fundraisers relying on the group charities exemption have to lodge an individual identification statement? If so, what benefits would arise?</p> <p>C14Q4 Would complying with this proposal require you to restructure your business in any way?</p> <p>C14Q5 If this proposal is implemented, would you respond by changing the way your organisation currently fundraises?</p> <p>C14Q6 What impact will this proposal have on your business costs?</p> <p>C14Q7 Are there any practical problems with implementation of this proposal? Please give details.</p>

Proposal	Your feedback
<p>D1 If Option 1 (removal of exemptions) in Section B is adopted, we propose that the reforms be effective as of 28 June 2014.</p>	<p>D1Q1 If Option 1 is implemented, do you agree with the proposed timeframe for implementation?</p>
<p>D2 If Option 2 (retention of exemptions with additional conditions) in Section C is adopted, we propose to implement the changes in stages (see Table 2).</p> <p>Note: If APRA announces that it will not continue existing exemptions from the Banking Act for RCDFs from 28 June 2014, the requirements will not apply to charitable investment fundraisers issuing debentures in the period until 28 June 2014.</p>	<p>D2Q1 Do you agree with the proposed timeframe in Table 2 for implementation of the AFS licensing requirement? If not, why not?</p> <p>D2Q2 Do you agree with the proposed timeframe in Table 2 for implementation of the minimum charitable investment requirement? If not, why not?</p> <p>D2Q3 Do you agree with the proposed timeframe in Table 2 for implementation of the capital and liquidity requirements? If not, why not?</p> <p>D2Q4 Do you agree with the proposed timeframe in Table 2 for implementation of the requirement to not issue at-call or short-term investment products? If not, why not?</p> <p>D2Q5 Do you agree with the proposed timeframe in Table 2 for implementation of the proposed investor acknowledgement requirement? If not, why not?</p> <p>D2Q6 Do you agree with the proposed timeframe in Table 2 for implementation of the requirement to not use certain terms, such as 'account', 'at-call' or 'deposit'? If not, why not?</p> <p>D2Q7 Do you agree with the proposed timeframe in Table 2 for implementation of the additional disclosure requirements? If not, why not?</p> <p>D2Q8 Do you agree with the proposed timeframe in Table 2 for implementation of the modified requirement to lodge financial statements? If not, why not?</p> <p>D2Q9 Do you agree with the proposed timeframe in Table 2 for implementation of the modified identification statement (content) requirement? If not, why not?</p> <p>D2Q10 Do you agree with the proposed timeframe in Table 2 for implementation of the breach reporting requirements? If not, why not?</p> <p>D2Q11 Do you agree with the proposed timeframe in Table 2 for implementation of the audit report requirement? If not, why not?</p> <p>D2Q12 Do you require a transition period to ensure that adequate arrangements are in place to meet the requirements of these proposals? Please provide details.</p>

---

Proposal	Your feedback
E1 We propose to roll over relief that is currently available to schools for school enrolment deposits under [CO 02/151] without amending the terms of the relief.	E1Q1 Do you agree with this proposal? If not, why not? E1Q2 Do you consider that the existing terms of the relief should be amended? If so, please provide details.

---