



Anglican Church of Australia

Diocesan Financial Advisory Group

By email: aileen.tse@asic.gov.au

19 July 2013

Ms Aileen Tse
Lawyer, Investment Managers & Superannuation
Australian Securities and Investments Commission
GPO Box 9827
SYDNEY NSW 2001

Dear Ms Tse

Submission in response to Consultation Paper 207

1. We welcome the opportunity to respond to Consultation Paper 207: Charitable investment fundraisers (CP207) published by the Australian Securities and Investments Commission (ASIC) in May 2013.
2. The Diocesan Financial Advisory Group (DFAG) was established in 2000 by the Anglican Church of Australia to advise the General Synod on various financial matters. This has included matters in relation to the operation and governance of its charitable investment fundraisers, otherwise referred to within the Anglican Church as Anglican Diocesan Development Funds (ADDFs).
3. We recognise that several ADDFs will have provided you with individual submissions in response to CP207. We also note that many ADDFs have subtle differences in their design and intent and in their modus operandi. Indeed, it is not clear that all ADDFs are subject to the Corporations Act 2001 of Australia (CA).
4. We have not attempted in this letter to address all the specific questions contained in CP207; rather, we have summarised the largely common views and concerns across the ADDFs and on behalf of the Standing Committee of the General Synod of the Anglican Church of Australia.

Background

5. ADDFs were established to support the charitable activities of Anglican dioceses and their affiliated organisations, and as a means for others to contribute to supporting those activities, including individuals for whom financial gain may not be a primary consideration in their investment decision. Certain investment products offered by ADDFs are debentures pursuant to the CA. The charitable activities that benefit from the operations of ADDFs include community services, social welfare, aged care and education.

6. The principal concern of ASIC appears to be the risk posed by the 'shadow banking system', as evidenced by the failure of Registered Financial Corporations (RFCs) such as Banksia Securities Limited. This is a legitimate concern.
7. However, the comparison drawn by ASIC between the risks inherent in the activities of ADDFs and the risks inherent in the 'shadow banking system' is fatally flawed. ADDFs are fundamentally different from RFCs in both motive and operation. We believe that ASIC's proposals to deal with their concern are akin to the proverbial 'sledgehammer to crack a nut'.

Response and recommendations

8. One of our principal concerns is to ensure alignment of the regulation of ADDFs between the Australian Prudential Regulation Authority (APRA) and ASIC, and the avoidance of unnecessary duplication and associated costs.
9. CP207 notes that ASIC "have been consulting with APRA in the development of its discussion paper and our consultation paper". You would therefore presumably be aware that a number of individual ADDFs and DFAG provided submissions to APRA concerning its discussion paper, and subsequently met with APRA; and that APRA has since extended its banking exemption for ADDFs by approximately one year and will enter into a period of further consultation with ADDFs (and other religious charitable development funds).
10. We suggested to APRA that rather than removing the current banking exemption order, APRA's concerns can be reasonably and adequately addressed by extending the conditions under their existing order, which might include a combination of:
 - (a) prohibiting the use of the word 'deposit' or any of its derivatives in relation to an ADDFs' activities, as suggested by APRA
 - (b) the ADDF being required to obtain and maintain records of each retail client's explicit acceptance of the terms of an investment with an ADDF, and their acknowledgement that the ADDF does not provide a level of protection equivalent to an ADI regulated by APRA
 - (c) the religious body (in our case, the relevant Anglican dioceses) providing a guarantee of repayment of all retail investments
 - (d) that as well as making its annual audited financial statements available to its retail investors, the ADDF make available its Board management policies (or equivalent) relating to capital adequacy and liquidity management. We note that the Standing Committee of the General Synod has encouraged the adoption of minimum standards developed by DFAG covering, amongst other things, capital adequacy requirements, liquidity requirements and asset underwriting requirements
 - (e) APRA clarifying that the definition of 'affiliate' at paragraph 4(a) of Schedule 2 to the existing exemption order would remain suitable.
11. Assuming that APRA will ultimately propose something similar to the above suggestions, then we believe no changes to the current ASIC exemption are warranted.

12. If APRA ultimately adopts a different stance, then we could understand there may be need to amend the ASIC exemption. However it is difficult to predict what amendments would be appropriate until any banking exemption changes are known.
13. Of the options proposed by ASIC in CP207, Option 2 is preferred, albeit we would seek some amendments and clarifications. These would include:
 - (a) clarification of the definition of 'associated entities' is required. We recommend that the definition specifically include the entities described in paragraph 4(a) of Schedule 2 to the APRA banking exemption
 - (b) we do not believe ADDFs should be subject to the AFSL licensing provisions of the CA (proposal C2). These provisions do not recognise the nature of the relationship between the Church, the ADDFs and those investing in and supporting them
 - (c) we do not believe ADDFs should be subject to a minimum charitable investment requirement (proposal C3). The charitable purposes of ADDFs will be appropriately regulated by the Australian Charities and Not-for-Profits Commission (ACNC)
 - (d) we do not believe at-call or short-term investment products should be prohibited (proposal C5). Any requirements related to product offerings should be consistent with the APRA banking exemption
 - (e) likewise we believe the use of certain terms such as 'account', 'at-call' or 'deposit' (proposal C7) should be consistent with the APRA banking exemption
 - (f) we believe that the requirement to lodge identification statements (proposal C10) should be streamlined by recognising similar information provided to the ACNC.

Concluding remarks

14. The financing of the Australian church has traditionally been sourced in the main from lay members and other church supporters, either through gifting to the church, lending to the church or investing in church endeavours. ADDFs were established simply to improve the efficiency of the financing activities. This financing has provided the means for the church to carry out its many and varied and highly valuable (in some communities, essential) charitable activities. The proposals in CP207 would seriously impact the ability of the church to deliver these activities to the detriment of not only church members but the broader communities and society it serves.
15. We do recognise the legitimate concerns raised by ASIC in CP207. However, we submit that changes to the ASIC exemption at this time are unjustified and unnecessary. The recommendations provided in our submission to APRA, we believe, would adequately address the genuine concerns of both APRA and ASIC.

16. Importantly, we assume ASIC would not enact changes to the existing ASIC exemption ahead of clarification from APRA regarding any changes to their banking exemption. We also assume ASIC would not enact changes to the existing ASIC exemption which are inconsistent with or do not marry with changes which APRA may make to their banking exemption. We therefore seek confirmation that an extension to the ASIC exemption will be granted for a period at least consistent with the APRA extension, and allow for a similar period of further consultation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michael Codling', written in a cursive style.

Michael Codling
Chair
Diocesan Financial Advisory Group