



ANGLICAN
DIOCESE OF
MELBOURNE

THE ANGLICAN CENTRE
209 FLINDERS LANE
MELBOURNE VIC 3000
PHONE 03 9653 4220
FAX 03 9653 4268

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

Sent via email: aileen.tse@asic.gov.au

Dear Ms Tse

ASIC Consultation Paper 207

This is a submission on behalf of the Melbourne Anglican Trust Corporation (Trust), which is the Trust established to maintain the assets of the Anglican Diocese of Melbourne. We welcome the opportunity to make comment on Consultation Paper 207 (CP207) and provide feedback on specific questions that have been raised. This letter seeks to provide background in relation to our funds and to address the relevant proposals in the Consultation Paper.

Introduction

There are two arms of the Trust which have an interest in the proposals outlined in CP207. Neither of these is a separate legal entity. The two arms are the Anglican Development Fund (ADFM) and Anglican Funds (AF).

They have separate functions. ADFM is a Church Development Fund, named in the Schedule to the Exemption order from APRA, while AF provides investment management services to associated entities within the Diocese. These functions have separate management within the Diocese, and independent supervisory Board or committees. Further information about the structure and operations of these functions is detailed below.

Summary View

Our summary view would be to respectfully suggest that there should be no change to the current ASIC exemption. We submit that funds operated by church organisations such as ours do not give rise to the perceived problems which the proposed changes seek to address: it is our view that the drivers for change are not sufficiently clear as to warrant the proposed policy response. This goes to the fundamental question of whether regulatory action is required.

The regulatory impacts of the proposed changes in our sector are significant and would substantially alter our existing arrangements to the detriment of our operation. Given this and the important contribution of ADFM and AF in the enablement of social and other infrastructure in the dioceses we serve, we would fundamentally question the need for and value of further regulation.

Background – Structure and Operations

1.1 Anglican Development Fund, Diocese of Melbourne:

The ADFM was established by resolution of the Archbishop-in-Council of the Diocese of Melbourne in 1964. It is not a separate legal entity but rather is a charitable trust (of which the Melbourne Anglican Trust Corporation (MATC), a statutory corporation established under Victorian statute is the trustee) which is maintained for the religious and charitable purposes of the Church.

ADFM is supervised by an independent ADF Management Committee which is appointed by the Diocesan Council. It comprises individuals drawn from the banking, funds management and general business sectors. The Archbishop and Registrar of the Diocese are ex officio members.

A principal purpose of the ADFM is to support the development of the physical assets of the Diocese of Melbourne by funding capital expenditure on buildings, plant and equipment. This is achieved principally by:

- a. advancing loans at less than market rates to religious organisations connected to the Diocese of Melbourne for these purposes; and,
- b. through the retention of surpluses earned by the ADFM on its other investments.

These surpluses may, depending on the Fund's need to retain capital, provide a base for grants to be made for specific capital projects through funding of the Church Extension and Development Fund (CEDF) a fund independent from ADFM control established for this purpose.

As at 30 June 2013, the ADFM had \$52m of total assets and is supported by Reserves well in excess of 10% of Risk Weighted Assets. ADFM is also guaranteed by the assets of the Diocese of Melbourne. Investments registered in the name of individuals comprise approximately 40% of total investments.

ADFM accepts a wide range of investors, provided that they operate primarily within the Diocesan boundaries and are affiliated with the church, including individuals, businesses, parishes and related charities, trusts and NFPs. ADFM charges no fees on its accounts, which are both At Call and Term Investments.

ADFM makes available online transaction functionality to all classes of investors. The system provider is Data Action Ltd. ADFM settles daily through the Bulk Electronic Clearing System (BECS) through Indue Ltd. ADFM does not provide any EFTPOS or ATM facilities.

1.2 Operations of Anglican Development Fund:

As well as giving to support the operational expenditure of the Church, both individuals and related institutions (“affiliates”) such as parishes, invest funds in the ADFM to fund capital development. Effectively the ADFM acts as an intermediary between those who wish to support the Diocese in this way and those Diocesan entities who wish to borrow from the ADFM to fund capital developments that have been approved by the Diocese. ADFM undertakes credit risk analysis to assess these proposals and allocates funds where criteria approved by the Council of the Diocese are met.

Those who invest in the ADFM for these purposes do so to support either or both the charitable and religious purposes of the Diocese that are at the core of the Church’s mission. That this support is the prime motivation for the investments is highlighted by the fact that all investments in ADFM are at less than market interest rates. The interest rate structure (or card) is, as a matter of policy, set below prevailing interest rates and this is publicised in communications to investors. Investors place their funds in ADFM in the full knowledge of this policy.

That they do invest in ADFM in these circumstances reflects their primary desire to support the work of the ADFM. They recognise that investment in a RCDF has a clear sacrificial element in it in terms of foregone interest income compared with that which may be received from alternative investments.

The purpose of this lower interest rate policy is to enable the ADFM to advance funds to eligible borrowing entities (primarily parishes) at interest rates that are commensurately less than market rates.

Summary Position of ADFM to CP207:

ADFM has hitherto been governed and secured in its statutory framework by the Exemption Order from the Banking Act provided by APRA. ADFM has made submissions to APRA on their discussion paper and is awaiting their response to that submission, their next proposals and the foreshadowed additional period of consultation.

We recognise that, depending on the outcome of those consultations, ASIC’s proposals as set out in CP207 may well also determine the nature of the future regulatory environment facing the ADFM. In order to provide feedback to ASIC, ADFM has addressed the questions set out in CP207, to the extent it is able without knowing the complete future operating environment. It will be of the utmost importance to ADFM’s operation that the requirements in a post regulatory review environment are clear and unambiguous. This will require coordination as well as the stated consultation between ASIC and APRA.

Against this background, we submit a number of general remarks to ASIC (some of which relate to matters that seem to us to remain within the purview of APRA) which we believe should allay the concerns that seem to be the basis for the review and proposed changes.

- ADFs should retain from each individual investor a written record that they understand and accept the terms of investing with ADFM, that the ADFM is not prudentially supervised and that it does not provide the level of deposit protection provided by ADIs.

- The religious and/or charitable organisation behind the ADF guarantees the investments of all individual investors.
- Audited Annual Accounts are made available to all investors and the regulatory body.
- ADFM Committee risk management, liquidity and capital policies are available.
- That a restriction on the use of the word "deposit" is acceptable. We see no need for restrictions on the use of "at call" or "account" which are generic terms.
- The definition of "associated entities" needs to be fully consistent with APRA's definition of "affiliates".
- The requirement for an ADF to hold an AFSL would place a significantly different interpretation on the relationship between the ADF and its customers. Lower than market interest rates offered by the ADF indicate the nature of that relationship.

Given the guarantee from the Diocese, the requirements suggested by ASIC will add a significant cost and added documentation to the compliance requirements, but in our view not a great deal of additional comfort to investors. The risk is that each ADF, particularly those like ADFM with a significant proportion of investments held by individual or retail investors, could be materially impacted by these compliance issues. The result would be a threat to the viability of our operations and thus our ability to provide capital funding for the religious and charitable purposes of the Diocese of Melbourne.

The Diocese of Melbourne also believes that there is a scheduling issue involved in the proposed reforms which will need to incorporate:

- APRA's revised proposals
- Consultation with APRA
- APRA's final determination
- Assessment of the extent to which ADFs are then reliant on an exemption from ASIC's requirements
- What will be the final version of ASIC's requirements which should involve at least a second round of consultation
- A period for each ADF to assess where they sit within the new regulatory environment
- Transition period for reaching compliance with relevant ASIC / APRA rules.

2.1 Anglican Funds:

Anglican Funds (AF) operates as an activity of the Anglican Diocese of Melbourne through the Melbourne Anglican Trust Corporation (MATC), which is a body incorporated under the Anglican Trust Corporation Act 1884 of the Victorian Parliament (1884 Act). The 1884 Act provides for formation in each of the Anglican Dioceses in Victoria of a corporate body to hold property on behalf of the Church in the Diocese. The MATC has trustees but does not have members.

AF provides the opportunity for Anglican entities including parishes and other diocesan agencies, such as Anglicare, and affiliated bodies such as schools, to have their investments managed via one of three Common Funds created for the purpose of aligning investment objectives with the requirements of the Anglican entities that are investing.

Anglican Funds was established to help support the religious and charitable purposes of the church in our community, by providing distributions from investments that are made within our ethical policy and with return objectives in mind. Many of these works and programmes are delivered in conjunction with government agencies (local, state and federal), and the funding we contribute relieves the government from the financial burden of the provision of infrastructure and other social fabric. It is therefore vital that Church Funds are allowed to continue to operate in a 'light touch' regulatory environment so that the cost of operation can be minimised and returns maximised to the extent that they contribute to the religious and charitable purposes of the church. The present regulatory framework also encourages parishes and affiliated entities to 'invest' with AF, reducing risk through the application of professional investment management and governance practices. In our view, the proposed changes would place these advances at significant risk, thus seemingly jeopardising the very objectives CP207 is seeking to achieve.

2.2 Operations of Anglican Funds:

AF was established as a means for parishes and other Anglican affiliated organisations to invest in and access stable funding for church and charitable projects, and also in which to invest their endowment and daily operating funds. The current exemptions from elements of the Corporations Act were intended to make it easier for such investors to invest in charitable funds like the AF, on the grounds that for some investors financial profit is not the primary reason for making the investment.

A secondary, but important reason was also to be able to provide (through AF) an appropriate framework for governance and investment management of the assets of the Melbourne Anglican Trust Corporation (MATC) and to ensure the appropriateness of the investments undertaken. Through the mechanism of AF, significant advances in the proper governance of church funds have been achieved.

AF is governed by an investment committee appointed by the Diocesan Council, which is the governing council of the Synod when it is not in session. AF's Committee (Committee) is comprised of investment professionals who predominantly originate from the funds management industry together with representatives of the Church more broadly.

2.3 The Common Funds:

AF manages three investment funds:

1. The Endowment Fund
2. The Yield Fund
3. The Cash Fund

The Endowment Fund administers a market linked investment fund governed in an Endowment Model. This fund only accepts investments from the Synod, Parishes and Anglican organisations. The Endowment Fund follows an ethical investment model and invests in defensive and growth assets through wholesale managed funds instructed by private mandates, direct equity holdings, property trusts, and cash. The majority of these investments are liquid assets. The total assets in this fund at the

time of writing were \$58.7m. Investment in the Endowment Fund (as indeed with all AF funds) is not available to individuals.

The Endowment Fund is designed to hold parish bequests, Diocesan monies and the proceeds of asset sales that need to be held long term and that produce an annuity income stream for the particular entity. It aims to maintain the real value of the capital invested and pay a semi-annual income stream of 4.5% pa or more; a derivation of the Yale Endowment formula is used to smooth these distributions against significant market fluctuations. Investment is made through the purchase of units, the value of which rises and falls in-line with the market value of the underlying assets. The Endowment Fund is not capital guaranteed, and is offered as an investment at risk suitable for Anglican organisations with an investment time horizon of greater than 5 years.

The fund has a Management Expense Ratio (MER) of 0.9% pa made possible through collective bargaining power. If the parishes were to approach funds managers on their own, their individual outcomes would be far less favourable. The Endowment Fund makes a modest surplus from its operations, which is returned to the Synod corpus for use in its various charitable and religious activities.

In the 2012 Calendar Year, the Endowment Fund paid distributions to Parishes and the Synod of over \$3m, with asset growth above 4% pa. This income is a vital source of funds for the works of the church, and particularly for parishes in the provision of their various religious and charitable activities as well as providing for the maintenance of assets such as buildings, most of which provide essential community infrastructure and whose activities are intertwined into the social fabric of the local area.

The Yield Fund administers a market linked investment fund designed to return its investors a premium of 1.3% pa above Cash, and the Cash Fund administers a rolling term investment fund designed to give investors a return of slightly above the prevailing Cash rate. Investments in these funds are not available to individuals.

These Funds are overseen by the Committee, reporting to Diocesan Council, who monitor performance of the funds against their individual objectives, utilising advice from independent asset advisors. The Funds are seen by our organisation as part of our internal treasury operations and as such, it is difficult to rationalise the need for further regulation.

Detailed Response:

Having stated our summary view, the following is feedback on the proposals and questions that have been raised. These responses should be read in the context of the first section.

It should be noted that assessing the hypothetical costs of increased financial regulation is difficult, particularly with both ASIC and APRA's making separate proposals on the restructure of the sector.

1.1 Responses to Option 1 – “Remove existing exemptions”

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.

FEEDBACK

B1Q1 Do you agree with this proposal? If not, why not?

AF does not agree with this proposal as it currently stands. The key issue with the proposal is the lack of relief offered for the taking of investments from associated entities. This is because:

1. Some of our parishes and associated Anglican entities are on separate trust deeds or are separate legal entities. This infers that ASIC would class them as an Associated Entity, and for AF or ADFM to be able to offer them the same corporate treasury service in the administration of their endowments / monetary assets as it does to other parishes, would require that AF / ADFM complies with most of the requirements of Managed Investment Schemes.
2. Given ASIC’s definition of associated entity:

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.

We take this to imply that AF would also be prevented from taking investments from wholly owned subsidiaries of the church (for instance Anglicare and schools), where we would consider this to be an aspect of their/our internal treasury operation.

3. The additional compliance that would be required in dealing with Associated Entities that is contemplated by this option, will burden AF with additional expense and process for no discernible benefit to our parishes and Anglican subsidiaries, thereby creating an administrative burden on our organisation, leading to a reduced capacity to undertake our charitable and religious works in the community.

AF submits that this proposed option could be improved by modifying the definition of Associated Entity so that corporate treasury type operations can continue efficiently. Furthermore, we submit that adoption of this option may place ASIC in a position that is inconsistent to that of APRA. It should be noted that APRA have made representations in meetings that AF and other industry representatives have attended, that they may consider dealings with affiliated entities (who are not individuals) to fall under the activity of corporate treasury operations, and therefore those operations would likely still enjoy the relief offered by APRA’s proposed new form of their Banking Exemption.

It would appear to AF that there is a benefit to all parties in having commonality across the various regulators in respect to such fundamental definitions and meanings.

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.

Yes, given that the funding is for religious and charitable purposes and that the presence of a lesser regulatory and supervisory regime is clearly communicated to potential investors, all of whom must come (in our case) from the Anglican community, or those who wish to support the aims and objectives of the church.

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?

Yes. AF primarily operates as an internal treasury for its parishes and associated organisations (such as Anglicare). As AF is managing the church's own money, it should be allowed to continue to do so, on the basis that it is operating as a corporate treasury.

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)?

Yes, but there also needs to be a distinction made where individual investors are supporting the charitable investment fundraiser on a sacrificial basis with the clear intent of supporting the religious and charitable purposes of the church.

B1Q5 What benefits do you consider will result from this proposal?

We do not believe that there will be any resultant benefits from this proposal. As detailed above, we believe that the consequences will be negative to the Funds and to the underlying investors.

B1Q6 What disadvantages do you consider will result from this proposal?

This proposal will affect the efficiency and cost structures of our Church Funds. This will have the effect of providing less money to fund the charitable and religious works that are undertaken by the Church and its associates. It is clear that the additional regulatory requirements imposed by this proposal will create a much increased compliance and administrative burden that is not necessary by other organisations that manage their own internal treasury operations. We submit that this will introduce inequity simply because MATC operates a church fund, and not the treasury operations of a public entity. We submit that this policy will create a negative impact on the charitable industry: that is, it will cost more to administer than the returns that are generated.

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?

The proposal would severely impact on our ability to raise funds from individuals who wish to support the religious and charitable purposes of the church and critically limit our ability to fund community infrastructure and social need.

The additional expenses will come directly from the funds that would have otherwise been applied to charitable purposes: church financing and funding will be compromised. This will result in a reduced capacity to service our clients and, in turn, they will need to rely more heavily on government support.

It is also important to note that Endowment Funds are specialised due to the obligations that are normally attached to them, such as their duration, and what are sometimes unique purposes resulting from bequests. Many of our associates do not have the capability or desire to manage their own investments and over many years have relied on the services of AF, and the long term stability that it has provided within the ethical framework of the Anglican Church.

B1Q8 Would complying with this proposal require you to restructure your business in any way?

Yes. We anticipate that our business would have to be restructured. This may include the restructuring of our Funds to become managed investment schemes and a provider of debentures. Additional staff, contractors and professional service providers would need to be employed, being of significant cost to the Funds. Ongoing compliance costs would also need to be quantified but likely to be considerable. It is anticipated that the MER would be raised as a result.

Other options may be to cease offering our services to associated entities, or to transfer our activities to an MIS provider and cease our internal treasury operations, requiring the organisation to make staff redundant.

Given our strong view that our activities comprise internal treasury functions, it is difficult to perceive how further regulation might be so onerous as to contemplate a part cessation of this activity, and if so, what risk would such regulation be seeking to mitigate? A core question for AF considering these proposals is to question, "who benefits from the proposed changes?"

The ADFM would almost certainly need to substantially restructure its operations given the reliance that it has on individual investor funds. A key question to be answered would be the extent to which the revised compliance arrangements and costs would be prohibitive and/or would act as a significant barrier to investment by individuals, thus rendering the business model redundant, which would have a very significant impact on our community programmes and ministry.

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.

We have not undertaken a detailed analysis of the costs associated with the options contemplated in our response to B1Q8. However, the cost of such increased financial regulation is likely to include, but not be limited to:

1. Costs of restructuring, including the issuing entity, its Deed, complying with Debenture requirements, a potential charge over particular assets and associated legal costs.
2. Engaging professional service providers in order to assist with any transition.
3. The cost of potential staff redundancies, depending on assessment of viability.
4. The cost of additional staff should we have to become an MIS.
5. Transaction and opportunity costs in unwinding investment positions in order to restructure (this may well be significant).
6. Increased MER borne by our associates as they will be unable to individually access the economies of scale that are offered by participating in AF's internal treasury operations. The issue in respect to increasing MER costs is not the traditional concern about competitiveness, but rather about effectiveness. Any increase in MER reduces the net return to our 'investors', thus reducing their ability to fund and provide front line services.

We have a fundamental concern that these changes may obviate the viability of these Funds. Beyond this, the charitable purposes of our investors may be seriously undermined.

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.

Yes. We submit that it will either make it much more difficult and more expensive to support one's church, or will force church funds to transition their associate investors to other MIS providers or ADIs.

It is our belief that investors in the ADFM are presently very clear as to the basis of their investment, the supervising regime overseeing the organisation that they are dealing with and the sacrificial nature of their investments in ADFM.

Given this, one might assume that the changes proposed would not greatly impact investor behaviour. What may in fact influence this is the significant cost imposed of any regulatory changes, which we believe may be so significant as to change the nature of the ADFM's operations and cause therefore the character of the ADFM to change, thus making the missional objectives less clear and the ADFM less attractive to investors as a result. This impact, which we perceive to be very real, would substantially alter our ability to fund community infrastructure and social programmes.

B1Q11 Are there any practical problems with the implementation of this proposal? Please give details.

Apart from all the factors mentioned in previous responses, we seek clarity where APRA determines that it would continue to offer a Banking Exemption to RCDFs that conduct business it considers to be Corporate Treasury operations with affiliated entities. Would ASIC still determine to withdraw the current relief for parts of Chapter 2L of the Corporations Act for such a Banking Exempt activity?

1.2 Responses to Option 2 – Retain existing exemptions and introduce additional conditions of relief

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).

FEEDBACK

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

We begin our feedback with the comment that there should be no change to the current ASIC exemption, on the basis that funds operated by church organisations such as ours do not (in our experience) have the perceived problems which ASIC is seeking to address. This goes to the fundamental question of whether regulatory action is required. Nevertheless, Option 2 is clearly more acceptable than Option 1.

This proposal is more acceptable, with the exception of C1(b)(i) which is the same in form and content as that of C3. Our objections are discussed in section C3 of our response.

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?

AF operates primarily as an internal treasury for its parishes and associated organisations (for example Anglicare and Anglican schools). As AF is managing the church's own money, it should be allowed to do so on the basis that it is operating as a corporate treasury, just as a public company will do. Our investors perceive that AF performs that function, with suitable charitable objectives. Expectations may be different, but it is expected that this service is provided as efficiently as possible, and that at all times the investment process is conducted with integrity, and with an ethical overlay.

Our associates prefer to remain within their strengths, being the provision of religious and charitable services, and to use our skills and capabilities rather than develop and rely on their own. The expectation is that the regulatory environment is not as great as for non-charitable funds.

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

We understand that the legislative framework did not have RCDFs in mind during the Parliamentary process and that RG87 and Class Order 02/184 were put in place as a remedy. These were on the basis of individual religious, educational, community and other charitable organisations having a different purpose for the investment of monies. We submit that nothing has changed and therefore there should be no change to the current ASIC exemption. Funds operated by church organisations such as ours do not have a perceived problem which needs to be addressed. This goes to the fundamental question of whether regulatory action is required. The regulatory impact in our sector could be significant and substantially alter our existing arrangements

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

Option 2 is preferable to Option 1, subject to the matters raised in response to C3. We submit that the proposed Option 2 accords more with the original relief, in that it was meant to allow churches and charitable organisations to conduct internal treasury operations across its associated entities.

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?

AF does not on-lend as loans.

ADFM has \$52m of assets of which 58% are in loans to parishes or other Anglican entities. All investments in the ADFM are guaranteed by the Diocese of Melbourne. Thus, investors carry no risk of loss, which would be borne by the Diocese as a whole (which has in excess of an estimated \$2bn in assets).

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

We do not see any benefits from this proposal compared with the existing situation. However, subject to the outcome on proposal C3, Option 2 is preferable to Option 1.

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

We believe that costs may be significant and will result in higher MERs and therefore lower distributions being paid.

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.**

FEEDBACK

C2Q1 Do you agree with this proposal? If not, why not?

No. Given the nature of the relationship between investors and the ADFM, it would add no value to the relationship, while increased costs will lower the beneficial impact on the charitable objectives.

AF has never offered its Funds to retail investors, but would hold a similar view as to the value of the proposed changes given the nature of the likely investor relationship.

C2Q2 What benefits do you consider will result from this proposal?

We do not consider any benefits will result from this proposal.

C2Q3 What disadvantages do you consider will result from this proposal?

We believe that the implementation of this proposal would increase costs substantially with the necessity to comply with the AFSL licensing regime and its ongoing compliance obligations. These costs would need to be passed on to investors by way of a higher MER (or administration costs for ADFM), and may prove over time to be prohibitive, thus depriving organisations such as ours of important investment management and funding mechanisms.

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.

The obligations under AFS licensing are onerous as discussed above. It is imperative that church Funds are allowed to continue to operate in a 'light touch' regulatory environment so that the cost of operation can be minimised and returns maximised to the extent that they contribute to the religious and charitable purposes of the church.

C2Q5 Would complying with this proposal require you to restructure your business in any way?

Yes. We would have to assess what is required at the time of a final determination.

C2Q6 If this proposal is implemented, would you respond by changing the way your organisation currently fundraises?

AF's response would depend on the outcomes of the currently proposed changes from APRA and ASIC. Should Option 2 be implemented as it currently stands, there would be a significant change to our fundraising process and business plans. In respect to the operation of ADFM, implementation of this proposal would result in a profound change to the business model that we would see as being unjustified and unwarranted. It would potentially impact the business model to such an extent as to curtail operations, which would have a significant effect on the Church.

C2Q7 What impact will this proposal have on your business costs?

We would expect higher compliance costs through the AFSL licensing regime which would likely be significant. If practical in ADFM these would need to be passed on to the customer by way of fees. Presently ADFM does not charge any fees for its services and does not intend to do so in the future.

C2Q8 Are there any practical problems with implementation of this proposal? Please give details.

AF would like clarity in the circumstance that APRA determines that it would continue to offer a Banking Exemption to RCDFs that conduct business it considers to be Corporate Treasury operations with affiliated entities. Would ASIC still determine to withdraw the current relief for parts of Chapter 2L of the Corporations Act for such a Banking Exempt activity?

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.

FEEDBACK

C3Q1 Do you agree that charitable investment fundraisers should be subject to a minimum charitable investment requirement?

AF does not agree to the extent that any proposal advances minimum standards beyond those proposed by the Australian Charities National Commission (ACNC) which has been established to support and sustain a robust, vibrant, independent and innovative not-for-profit sector, as well as promote the reduction of unnecessary regulatory obligations on the sector. This regulator would seem to be the most appropriate body to determine such requirements.

It is unclear to us what collaboration ASIC may have had with the ACNC over the broad regulatory framework that should apply. It would appear to us that both the ASIC and APRA discussion papers do not take appropriate account of the requirements, oversight or increased regulatory burden imposed by the ACNC, which in itself was designed to provide additional comfort and assurance to the general public whilst simultaneously reducing the regulatory burdens of the Charities and NFP sector.

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.

Whilst it is difficult to determine based on the information available the intent of this provision, we have responded on the understanding that the proposal would seek to limit the investment opportunities within a Fund (or MIS scheme) to the proposal described at C3. We would welcome further clarity as to the intent of the proposal and the level at which the proposed restrictions apply?

On the basis of the above understanding we do not agree with the proposal. The Funds exist to produce returns from investments for Anglican organisations as investors to use in the mission of that Anglican organisation, itself existing for charitable and religious purposes. To restrict the investment universe in such a way as suggested would cause many of the investors' objectives not to

be met (such as perpetual income distribution for a particular purpose while maintaining the real value of the capital).

A restriction on the investment universe in this way may have the effect (as we suspect is intended) of restricting the debenture issuers activities to charitable purposes. A question needs to be asked as to the effectiveness of this measure in governing the overall activities of the organisation as a whole. It would appear that the proposal is seeking to address an unstated problem for which a potentially more elegant solution might be available.

It is also not apparent how the definition of charitable asset aligns to the ACNC definition of a charity or to definitions applied from time to time by other regulatory authorities (eg ATO).

C3Q3 What benefits do you consider will result from this proposal?

We believe this proposal will offer no benefit to the organisation and in fact limit the investment horizon of the organisation to such extent as to increase risk rather than decrease it.

C3Q4 What disadvantages do you consider will result from this proposal?

The reduction in acceptable return which will occur if this proposal is enacted will not allow many of the investors' investment objectives to be met which will cause them to invest elsewhere, resulting in a diminution of contribution in the sector and a reversal of the governance benefits achieved.

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?

AF fundamentally disagrees with this restriction, which artificially restricts the investment opportunities available, this restricting the potential to appropriately construct a portfolio allocation of defensive and growth assets in a way that reflects unfettered access to financial instruments, and thus meet investors' objectives in a best practice way. AF is unsure how this restriction would meet any governance test for prudence or the principle of market forces.

AF believes the proceeds of these investments is the more important test. Where 100% of the proceeds are used for charitable mission purposes is the only real test to be applied. This would appear a much more appropriate hurdle to apply.

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)?

We do not agree and believe this to be a significantly flawed proposition. As previously discussed, this proposal would not allow a large number of current investors to remain in the funds managed by AF/ADFM potentially causing the end of AF/ADFM, and with it the considerable investment in church infrastructure and social investment into the future.

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.

AF currently will only be associated with investing in businesses or organisations that comply with the organisation's ethical filter. All potential investments are screened to ensure they are compliant. This would be the extent to which we would be prepared to support a principles-based charitable investment requirement.

ADFM lends only to entities affiliated to the Anglican Church, but as stated above this is approximately 58% of assets and thus in the example cited above would not comply.

C3Q8 Would complying with this proposal require you to restructure your business in any way?

AF/ADFM would have to fundamentally restructure if not cease to exist, based on our current understanding of how this restriction would affect our operation.

C3Q9 What impact will this proposal have on your business costs? How will you manage these costs?

Based on our present understanding of the proposal, we believe that the impact would be significant, potentially catastrophic. It is difficult to conceive of the available investment universe under such a proposal and we would urge some detailed modelling as to the practicality of what is being proposed, if indeed the proposal is advanced at all.

C3Q10 Are there any practical problems with the implementation of this proposal? Please give details.

We do not agree with this proposal in any way and as such can only recommend that this proposal is not implemented in its present form.

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.

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?

As AF does not contemplate now or in the future fundraising from retail investors, we are unable to comment on the basis of experience. It may well be to the benefit of retail investors that some minimum requirements be imposed, but these would need to be carefully modelled and perhaps implemented over time to allow charitable investment fundraisers to build toward compliance with these new measures over time.

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?

It would perhaps be opportune, if this proposal were to proceed, to consider an appropriate proxy for exempt organisations to aspire to in respect to minimum ratios and key performance indicators.

Whilst not advocating for regulation nor contemplating retail investors at this time, AF believes that the application of standards and key ratios/measures should, to the extent applicable, mirror that of similar regulated organisations.

It is likely that if requested, entities such as ADFM would happily work with ASIC on an appropriate reporting/monitoring regime. However if the proposal follows the suggestion in paragraph 76 that the Risk Weighted Measures should be those set out in CP199, then we would oppose this proposal. The proposed weighting of 200% for related party investments (which we envisage is how lending to parishes and other Anglican entities would be described) is in our view totally unreasonable, given

that the investors are guaranteed by the Diocese, whose total assets are significantly more than those of the ADFM and AF individually.

In respect to ADFM, the Management Committee have already adopted a number of Key Performance and Liquidity Ratios, designed to assist the proper governance of this operation. These seek to mirror what the Committee feel is appropriate using various industry proxies. ADFM would be happy to provide further information regarding the liquidity and performance ratios already in place, which we believe would more than adequately address any concerns.

C4Q3 Do you agree that charitable investment fundraisers that fundraise from retail investors (other than associated entities) should be subject to minimum liquidity requirements?

See response to C4Q2.

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?

We would be supportive of a liquidity requirement of 9% of liabilities in highly quality liquidity assets, we believe that it would be appropriate to include within this definition of liquidity, 'Committed and Undrawn bank facilities with APRA authorised ADIs', which does not currently fall within the definition under CP199. We consider this to be a reasonable inclusion as a source of alternative liquidity, to the extent that it would be available to charitable fundraisers during stressed market conditions".

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.

It may well be feasible to consider a monitoring / reporting framework based on a risk assessment of the activities of the fund. In this way, the charitable investment fundraiser would be aware of the reporting / monitoring and liquidity requirements of various activities. This would also work to reduce unnecessary burden on these organisations that for prudence and other reasons choose not to invest in certain asset classes or undertake on-lending activities into certain sectors. This might also be a useful mechanism to differentiate between internal treasury operations and those with retail exposure.

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?

We do not see that there is any basis to treat an MIS scheme differently because of the legal status of the underlying parent entity. Our present operations are such that individual investors in ADFM

have their investments guaranteed by the assets of the MATC. Whilst not presently an MIS scheme, it is difficult to see how any regulation would improve the security presently offered. In respect to the operations of AF, these are presently treasury type operations and questions regarding the rights of individual investors are not applicable.

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?

This might well be impossible to know what was in the mind of the investor at the time of their investment. All that can be achieved with certainty is to ensure that the investor is informed as to the nature of the investment that they are making, the lack of external supervision thereof and that they understand and appropriately acknowledge the same. In the case of ADFM, we know that they invest in an operation that offers less than market rates, and that they are also informed that the Diocese guarantees their capital and the coupon. Earlier in this submission we suggest that Individual investors confirm their understanding of the nature of their investment in writing.

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?

This is an issue for the regulators, although it is not difficult to imagine a self-reporting regime with an ability by the regulator to audit if necessary.

C4Q9 What changes to the operation of charitable investment fundraisers will occur if the proposed capital and liquidity requirements are implemented?

This would depend on the form and depth of capital and liquidity requirements and the extent to which they differed from the self-regulation already in place. An appropriately structured regime may not impose a significant additional overhead. See also our answer in C4Q7 above.

C4Q10 Will charitable investment fundraisers have any practical difficulties in meeting and maintaining the proposed capital and liquidity requirements? Please estimate the likely costs.

Again, this is dependent on form and depth.

Of all the options put forward in CP207, the opportunity to collaborate over capital and liquidity ratios and to establish a self-reporting regime to ASIC (or whomever) would appear the most palatable of suggestions, and AF / ADFM would be pleased to discuss the issue further.

As a general observation, ASIC may wish to coordinate their approach to capital / liquidity regulation with APRA who have indicated that they do not support regulatory ratios for organisations that are exempt from regulation.

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.

FEEDBACK

We can only assume that the proposal is based on concerns about liquidity management. This would be better advanced by focussing on liquidity management.

ADFM has significant proportion of its funds on an 'at call' basis and this proposal would provide an enormous and difficult burden in trying to adjust the balance sheet to comply. The non-provision of 'at call' facilities would be a major issue for ADFM, which would require a significant re-engineering of the business, a sure and certain transition period and most importantly, careful communication by both ASIC and ADFM so as to prevent a detrimental reputational risk.

Although AF does not currently offer investment to retail investors, nor do we plan to offer such investments, we have commented on this proposal based on our understanding of the experience of other operations of this nature.

C5Q1 Do you agree with this proposal? If not, why not?

We are unclear of the rationale for this limitation on operations on the basis of a perceived risk of shadow banking. We understand the Basel III liquidity reforms that are being imposed on ADIs, but do not believe that these should be extended to charitable entities, particularly in limiting the withdrawal timeframe to a minimum of 31 days for associated entities. In addition, we do not believe that this should apply to retail investors, particularly where ASIC insists that charitable investment fundraisers secure an AFS Licence before offering products to retail clients.

The concept that the functional characteristics of an investment product (such as, withdrawal at call) will confuse investors in charitable investment funds and lead them to believe they are investing in a guaranteed entity such as an APRA authorised ADI, we believe is unsupported by any evidence. The concern that profit motivated investors might be 'disappointed' if not repaid within 31 days should be addressed by the disclosure requirements proposed in C6 and C8.

The lack of at-call capacity we believe will act as a disincentive to individuals who would otherwise seek to contribute to the good works of charities through support of charitable fundraisers.

At call funds also represent a lower cost to ADFM relative to term deposits – the inability to attract these funds will reduce the net margin generated, which as discussed, only has the effect of reducing the funds available to support the Diocese's charitable purposes. Also see our answer in C5 above.

C5Q2 What benefits do you consider will result from this proposal?

It is our belief, based on a close understanding of our customers in ADFM that the individual investors have a very clear understanding of the operation of the ADFM as an exempt entity. In respect of the AF, there are presently no retail investors. Based on our close knowledge of the customer, and the existing requirements of the APRA exemption, we fail to see what benefits exist for our customers or for the organisation.

C5Q3 What disadvantages do you consider will result from this proposal?

Rather than simplifying the operation, AF/ADFM believes that such a requirement would confuse our customers and has potential to significantly disrupt the operation of AF/ADFM. It is very difficult to conceive how our existing customers might perceive the benefits of this proposal. This would be enormously detrimental to ADFM (see our answer in C5 above).

C5Q4 Do you agree that this proposal should only apply to charitable investment fundraisers that fundraise from retail investors (other than associated entities)?

Quarantining this proposal to only those funds with retail investors does not ameliorate the impact nor enhance the 'benefit' or acceptability of the proposal.

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.

Yes, radically. 65% of investments in ADFM could be required to be repaid within 31 days. If changes were required, this has the potential to destroy the business model under which ADFM has operated successfully since 1964.

C5Q6 What impact will this proposal have on your business costs? How will you manage these costs?

If it were possible to retain a viable operation under this proposal, ADFM would have to raise more investments of terms greater than 31 days, which will increase investment costs, resulting in either higher costs for charitable organisations to whom we lend, or lower net returns on the operation, which will in turn reduce funds available for the charitable purposes of the wider church.

C5Q7 Are there any practical problems with the implementation of this proposal? Please give details.

Yes, many problems, including but not limited to the transaction and opportunity costs in unwinding investment positions in order to restructure.

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.

FEEDBACK

C6Q1 Do you agree with this proposal? If not, why not?

ADFM agrees with this proposal and presently complies with all APRA requirements in this regard. We believe that individual investors are very aware of the nature of the investment that they are making, the structure and unsupervised nature of the entity managing that investment and the backing of the Church in respect to the guarantee offered in support of that investment.

C6Q2 What benefits do you consider will result from this proposal?

To the extent that other charitable investment fundraisers are not presently complying with APRA guidelines (and we are not aware of any that are not compliant) then this proposal has benefit. For those organisations that are currently complying with the APRA guidelines, the additional benefit proposed here is limited to the positive acknowledgement of the individual investors understanding, which we agree would remove doubt.

C6Q3 What disadvantages do you consider will result from this proposal?

The proposal would place additional burden on ADFM in respect to ensuring an appropriate form of acknowledgement. Our concern would more likely be in respect to appropriately implementing such measures recognising that many of the ADFM's customers are of long standing and for whom such a written acknowledgement has not previously been required.

C6Q4 Would complying with this proposal require you to restructure your business in any way?

No, the proposal would add a small impost on operations, but could be accommodated satisfactorily.

C6Q5 What impact will this proposal have on your business costs?

The proposal would have a material operating cost impact.

C6Q6 Are there any practical problems with implementation of this proposal? Please give details.

We would wish to see such a proposal implemented in two ways. Firstly, it would be proper for acknowledgement from individual investors to be received for any new investments or re-investment in the fund. We would like however to also have a timeframe (say 12 months) to be able to systematically approach existing customers (with longer dated maturities) to seek their acknowledgement and thus compliance. This has both practical and customer management elements. We do not believe that a more gradual introduction of this proposal would significantly detract from the benefits anticipated by the regulator.

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.

FEEDBACK

C7Q1 Do you agree with this proposal? If not, why not?

AF does not currently use either of the terms "at-call" or "deposit". The word "account" is used when referring to the investor's investment with AF. (e.g. investment account). ADFM does not use the 'deposit' or any of the other terms currently excluded under the APRA exemption and therefore would support the proposal to the extent that it mirrored the current restrictions.

ADFM offers at call accounts and can find no rationale for the discontinuation of the terms 'at call' or 'account' which we believe are generic terms used in a variety of contexts that mean that such restrictions would have very little impact in achieving the intended outcome. It is not clear what terms would be an acceptable replacement to these terms.

C7Q2 What benefits do you consider will result from this proposal?

A continuation of the existing restrictions would provide the regulator with increased confidence as to the level of differentiation between licensed and exempt operations, but aside from this aspect we see very little benefit to the individual investor.

C7Q3 What disadvantages do you consider will result from this proposal?

A broadening of restrictions, say for example to the use of 'at call' and 'account' will mean that alternatives need to be found (assuming the provisions to restrict activity to a minimum 31 day term are not enacted). It might be the case that these alternative descriptors will not enhance the individual investors understanding, thus defeating the purpose of the restrictions.

C7Q4 What impact will this proposal have on your business costs?

There will be impact associated with the necessary changes to brochure ware, forms and the like. There will also be the time and effort in explaining the changes and the alternative terms to customers.

C7Q5 Are there any practical problems with implementation of this proposal? Please give details.

As ADFM is currently complying with the APRA restrictions we advise that there are no significant problems with implementing these proposals, although we continue to question the need for additional restrictions beyond what already exists. ADFM does not use the term 'deposit' in any of its material.

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).

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?

We agree that appropriate disclosure of the basis of investment and the regulatory status of the charitable investment fundraiser is important and in broad principle we support the proposal. We believe that there is potentially more appropriate wording that might apply beyond that in C8(a) given the role that charitable investment fundraiser play in facilitating community infrastructure and meeting social need, but subject to further consultation around wording we would support the proposal.

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?

The question wrongly assumes that through investing in an exempt organisation that individual investors are assuming unmanageable risk. The operation of ADFM places the entire asset base of the MATC behind the individual investor's deposits through the operation of a guarantee. Additionally, the Committee runs a prudent and well managed operation, governed by the requirements of the ADFM Trust Deed and by the requirements of the Trustees Act 1910, which requires the Committee to operate the fund in a prudent manner mindful of the objectives of the individual investor. An individual investor seeks to simultaneously support the religious and charitable purposes of the fund (their primary motivation as evidenced by the sacrificial investment return) and be confident of repayment and expects the return in investment that they are promised (albeit that this will be less than market returns)

C8Q3 What benefits do you consider will result from this proposal?

To the extent that any individual investors are not presently well informed as to the basis of their investment, then this form of disclosure will assist. It needs also however to be balanced against the mitigants offered by the organisation (such as the guarantee) in providing a true and fair view.

C8Q4 What disadvantages do you consider will result from this proposal?

Whilst transparency and appropriate understanding are important elements, the requirements (and / or wording) should not be so onerous as to deter an individual investor from seeking to support the religious and charitable purposes of the fund.

C8Q5 What impact will this proposal have on your business costs? How will you manage these costs?

There will be impact associated with the necessary changes to brochure ware, forms and the like. There will also be the time and effort in explaining the changes and the alternative terms to customers.

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

As ADFM is currently complying with the APRA restrictions we advise that there are no significantly problems with implementing these proposals, although we continue to question the need for additional restrictions beyond what already exists.

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.

FEEDBACK

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

AF/ADFM is comfortable with the proposal provided that this was not additional to other reporting requirements (from any regulatory authority).

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

No, as this allows the entity to pursue completion of the Annual Accounts cognisant of the requirements across the broader entity.

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

Better relationship, transparency and understanding by the regulator.

C9Q4 What disadvantages do you consider will result from this proposal?

No discernible disadvantage.

C9Q5 Would complying with this proposal require you to restructure your business in any way?

No

C9Q6 What impact will this proposal have on your business costs? Please quantify and substantiate your estimate.

None apart from any lodgement costs

C9Q7 Are there any practical problems with implementation of this proposal? Please give details.

No

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.

FEEDBACK

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

Whilst not in agreement with aspects of this proposal, we would be agreeable to the increased disclosure requirements, although we are uncertain as to whether this would benefit the individual investor.

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

AF/ADFM would be comfortable with the proposed level of disclosure, provided that the additional benefit can be ascertained.

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

We are uncertain who will benefit from this additional disclosure or the extent to which disclosure will modify investors' behaviour.

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

Individual investors may well be confused by this additional disclosure which may have the opposite effect to that which is anticipated.

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

As AF is, in our opinion, only an internal treasury operation we feel this proposal will only impact financially with respect to lodgement and compliance costs. ADFM does not believe that the proposal would result in significant costs of implementation.

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

There are no foreseen practical problems with implementation.

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.**

FEEDBACK

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

AF/ADFM would support this proposal if it was an additional requirement under the exemption on a voluntary disclosure basis. Such voluntary measures to bolster accountability under the exemption would be welcomed.

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

We believe that the proposed timelines would be acceptable and do not believe a further exemption is warranted, although perhaps provision could be made for 'initial disclosure' within this time.

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

A mechanism of breach disclosure would serve to reinforce the criteria that underpin good governance. Such a mechanism would provide additional confidence to the regulator and ultimately customers.

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

There may be circumstances where it is only possible to complete initial breach reporting within 10 days with further follow up work and reporting required. Some flexibility around this aspect would mitigate any downside.

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

Additional obligations and reporting will result in increased costs, but this proposal may represent a suitable compromise if it resulted in retention of the exemption.

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

Subject to consideration of the matter in more detail, it is considered that implementation of this proposal would not create significant issues.

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.**

FEEDBACK

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

Presently both AF and ADFM complete Special Purpose Financial Statements which are externally audited. As such, we would see no difficulty in providing an external audit opinion which could be relied upon by investors. We would also be happy to provide such documents to the regulator as required. Directors statements already form part of the audited annual accounts and could be adapted to accommodate specific assurances.

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

The only benefit that AF/ADFM would foresee is the potential for there to be increased confidence by the regulator in the operations of the charitable investment fundraiser. We do not see additional benefit to the investor given our current practice.

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

AF/ADFM does not see any disadvantage given our current practice of preparation of audited accounts and financial statements.

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)?

AF and ADFM are opposed to the proposal outlined in C3 but would welcome further discussion/collaboration as to the proposal at C4. In our view, the absence of the disclosure requirements at C12 would not lessen compliance, given that both AF and ADFM strive to provide the highest standards of governance and prudential management possible.

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.

AF/ADFM would support the disclosure requirements outlined at C12 as part of a voluntary Code of Good Practice to sit alongside the existing exemption. We cannot support the requirements at C3 which we believe to be largely unworkable, but would readily collaborate to compare ways of increasing transparency and accountability under the present exemption conditions.

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

This proposal would not have a significant impact on business costs.

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

AF/ADFM does not envisage any issues with implementation of an increased reporting and disclosure requirement.

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.

FEEDBACK

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

It is reasonable to expect that the regular occurrence of breach reporting would result in the withdrawal of privileges under the exemption, thus, in general terms, AF/ADF would be supportive of the proposal, provided that: (1) there existed some form of categorisation of breach offence so that the measure was not punitive; and (2) the regulator adopted a graduated system such as x number of breaches within x period or a '3 strikes' type policy.

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

Breach reporting would, under this scenario, have real consequences and this would be taken seriously by all parties. It would also provide the regulator with a means to exclude a charitable investment fundraiser from the exemptions for sustained under-performance.

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

- Breach reporting and the underlying monitoring will likely increase compliance costs for both AF/ADFM.

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

The cost increase of breach monitoring reporting would not be significant provided that the breach conditions and reporting framework were not overly complex or onerous.

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

AF/ADFM do not envisage any significant issues with implementation of this proposal.

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.

FEEDBACK

C14Q1 Do you agree that charities relying on the group charities exemption should be required to meet these conditions? Please give reasons.

Yes, we would agree on the basis that the charitable investment fundraiser should at all times be able to clearly articulate the charitable and religious purposes of any individual fund and its investment objectives.

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.

There should be disclosure requirements in the form of Investment Statements, Audited Annual Accounts/Financial Statements and Annual Reports to investors.

C14Q3 Should charitable investment fundraisers relying on the group charities exemption have to lodge an individual identification statement? If so, what benefits would arise?

No, we do not believe this to be necessary.

C14Q4 Would complying with this proposal require you to restructure your business in any way?

We do not believe that this proposal would require a restructure of our organisation based on detail currently available.

C14Q5 If this proposal is implemented, would you respond by changing the way your organisation currently fundraises?

Only if that was necessary, which we presently do not believe that it is. AF/ADFM would, in our belief, presently comply with these requirements.

C14Q6 What impact will this proposal have on your business costs?

There would be a negative impact on cost.

C14Q7 Are there any practical problems with implementation of this proposal? Please give details.

AF/ADFM does not envisage any practical problems in complying with this proposal.

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

FEEDBACK

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

AF/ADFM do not presently agree with the proposal as outlined, which we consider to be unworkable. If this option was to be implemented, due to the nature of the change proposed, a significantly longer transition timeframe would need to be incorporated. It is our belief that the proposal would substantially alter the business model under which AF/ADFM operates, and the regulator would need to provide a suitable timeframe for transition to prevent total dislocation of the current arrangements and the economic and social impacts thereof. We would consider a graduated timeframe of 24 / 36 months would be more appropriate, noting our opposition to the proposal as it stands.

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.

FEEDBACK

D2Q1 Do you agree with the proposed timeframe in Table 2 for implementation of the AFS licensing requirement? If not, why not?

AF/ADFM believe that the timeframes to achieve AFS licensing under proposal C2 are too onerous, unless a fast path application process, recognising our current operations, is proposed? Given the long history of the exemption and the fundamental nature of the changes proposed, longer lead times would be required. Having said that, many of the other key dates proposed for Option 2 appear reasonable and could be met (some immediately).

D2Q2 Do you agree with the proposed timeframe in Table 2 for implementation of the minimum charitable investment requirement? If not, why not?

We do not agree that the timeframe is achievable, on the basis that we do not consider the proposal at C3 to be practical or workable (see earlier comments). This proposal would require considerable discussion and amendment before we could comment on the feasibility of implementation.

D2Q3 Do you agree with the proposed timeframe in Table 2 for implementation of the capital and liquidity requirements? If not, why not?

Yes, these requirements and the timing for implementation appear reasonable and well considered.

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?

In addition to our opposition to the proposed change which would deny the ADFM the opportunity to issue 'at call' or 'short term' products, we believe that the timeframe for implementation is too aggressive. 'At call' funds from individual investors make up a significant percentage of our funds under management and given their importance to the overall funding model for the ADFM, a much greater lead time in order to generate alternate funding sources would be required. We would consider that a minimum of 18 / 24 months would be required to assist the prospect of an orderly transition.

D2Q5 Do you agree with the proposed timeframe in Table 2 for implementation of the proposed investor acknowledgement requirement? If not, why not?

Yes, this appears reasonable.

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?

Given that the ADFM currently use the terms 'at call' and 'account', the proposed timeframe is wholly unacceptable. We would propose 12 months following the expiry of the current APRA exemption.

D2Q7 Do you agree with the proposed timeframe in Table 2 for implementation of the additional disclosure requirements? If not, why not?

No, we believe an additional 12 months is required.

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?

Yes this appears reasonable, although may need to be modified to accommodate longer transition timeframes dependent upon the shape of the final proposals presented.

D2Q9 Do you agree with the proposed timeframe in Table 2 for implementation of the modified identification statement (content) requirement? If not, why not?

Yes, this appears reasonable given our interpretation that this would only apply to AF, although we reiterate our comments at C14Q3 regarding the applicability of this measure to funds relying on the group charities exemption.

D2Q10 Do you agree with the proposed timeframe in Table 2 for implementation of the breach reporting requirements? If not, why not?

Yes, subject to any transition arrangements.

D2Q11 Do you agree with the proposed timeframe in Table 2 for implementation of the audit report requirement? If not, why not?

Yes, subject to any transition arrangements.

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.

Yes, it is undoubted that a transition period would be required. The length of any transition timeframe would be dependent upon the final proposals presented but would likely to require up to 24 /36 months.

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.

FEEDBACK

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

Yes

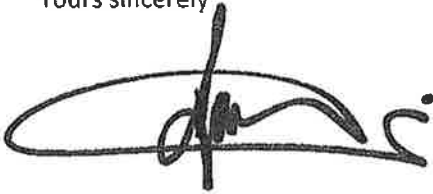
E1Q2 Do you consider that the existing terms of the relief should be amended? If so, please provide details.

No

2 Next Steps:

We trust that our submission has been helpful to ASIC. AF/ADFM requests that ASIC contact us to discuss our submission further. You may do this by contacting the Manager of Anglican Funds, at either investment@anglicanfunds.com.au, the Manager of Anglican Development Fund at ahibbard@adfmelbourne.org.au or myself at registrar@melbourneanglican.org.au or by telephone on 03 9653 4220.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ken Spackman', written over a horizontal line.

Ken Spackman
Registrar and General Manager
Anglican Diocese of Melbourne

