



11th July 2013

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

Dear Aileen,

Consultation Paper 207 - Charitable Investment Fundraisers

We thank you for the opportunity to comment on the proposed changes set out in the above paper dated May 2013.

As the paper states, this organisation being a Religious Charitable Development Fund (RCDF's) may be affected by the APRA review and the outcome of this consultation process and we attach a copy for your information of a submission we made to APRA.

We believe that there is a lack of understanding of the significant difference between RCDFs and other organisations bundled into the "charities" category. Our prime purpose is not to raise funds for asset acquisition or lending, but to use the margin on investments to fund the ongoing programs supporting communities in need across Australia and overseas.

Our commitment to ensuring security of investor funds is set out in the APRA response and re-affirmed to you. Our asset base is large and diversified and our reputation paramount.

Many of the documented collapses over the years have been the result of the inability to recognise the difference between various investments in the eyes of supervisors and public. The relationship between congregation members investments and Church is well understood by investors and appreciated by those who have invested during turbulent times as recent as the Global Financial Crisis.

we seek to be an innovative, growing church proclaiming Jesus Christ, empowered by the Spirit to transform God's world

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The attempts to legislate to prevent recurrence of investor loss in the past have been futile and in many cases reduced the ability of those entities striving to add value to the community.

With this background, we encourage you to continue consultation with RCDFs, with the aim of enhancing protection for investors and developing a workable solution that allows for the ongoing support of the significant contribution these organisations make to the community.

Yours faithfully



Michael McClaren
Chairperson
Uniting Church Investment Committee
Uniting Church SA



Peter Battersby
Executive Officer – Resources
Uniting Church SA

ASIC Consultation Paper 207

Charitable investment fundraisers

Response – The Uniting Church in Australia Property Trust (S.A.)

Option 1 : Remove all existing exemptions

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.

B1Q1 *We do not agree with this proposal. The system currently in place has allowed charity supporters to make a difference in their communities. We are not aware of any large scale losses to retail investors in RCDF's. There are no compelling reasons to remove exemptions, which have been used to facilitate community good.*

B1Q2 *Investors that invest in charitable investment fundraisers generally do so to help charities and their communities, in the pursuit of altruistic goals. The exemptions have been in place for a long time, as earlier governments and regulators believed that these special classes of investors wanted more than financial returns. They didn't limit it to only non financial returns (donations), because by making financial returns as well, more charity supporters would invest their funds. We have many self (and semi) funded retirees that want to support our organisation, but need a return on investment to support their basic needs. They are aware of the risks and benefits associated with investing with us as this is fully disclosed, and invest with us expecting us to be prudent and skilled to ensure they can receive back their capital when expected.*

The community accepts that charitable investment fundraisers have not been subject to the complex or robust regulation of ADIs. The management and governance is focussed on the goal of protecting investors funds, first and foremost.

Our organisation is proud of its record, and would go to great lengths to protect our community. It would be devastating to our community and our reputation, if we could/did not protect individuals and associated entities that invest with us.

We believe the current framework is adequate to protect investors in charitable investment fundraisers. We have no objections to additional rules and regulations being adopted to complement the current system.

B1Q3 *We believe it is reasonable to apply a less rigorous regulatory framework to charitable investment fundraisers that only raise investment funds from associated entities. Our experience within the charitable investment fundraising industry shows that associated entities are very clear on the risks and benefits involved in investing in charitable fundraisers. Our associates have highly skilled boards and employees that spend a great deal of time on assessing risk and benefits of investments in associated entities.*

B1Q4 *There are grounds to recognise the difference although wholesale investors may often be regarded as 'sophisticated' investors.*

B1Q5 *We do not believe there is any benefit in this proposal to our organisation.*

B1Q6 *The disadvantage from this proposal is that it may force charitable investment fundraisers to exit this field with dire consequences for the community. Alternatively they will continue to fundraise in this area but the compliance time and costs will reduce the benefits fundraisers will provide to communities.*

B1Q7 *This proposal would affect our organisations ability to pursue our charitable purpose. If it forces us to stop fundraising in this manner, it would cost us greater than \$1 million per annum in forgone income.*

We do not know the extent of compliance costs would be involved in pursuing APRA "ADI" status or providing services on an ASIC revised regime. We would certainly expect it would involve a considerable increase on our current operating costs, if we decided to continue to fundraise to our congregation and associated entities.

B1Q8 *A considerable change in regulation would amount to a considerable restructuring for our organisation. We currently operate our investment operations with a staff of 6, with operating costs of less than \$0.6 million. Additional costs are estimated to exceed \$100,000 but more importantly reduce our ability to raise funds.*

B1Q9 *The proposal in conjunction with any APRA banking exemption changes, would direct management and board resources to seek the strategic path best suited for our organisation in a changed environment.*

It may require the employment of specialist consultancy services to fully evaluate the differing paths forward and additional staff to ensure compliance.

If the Board was to then decide that the continued pursuit of fundraising to retail investors was not our preferred option, we would then be reducing our funding to charitable programs and projects by greater than \$1 million per annum, due to a substantial decrease in income. Effectively, that would decrease funding programs that are already under strain due to increasing demand.

If the Board's preferred option was to continue to fund raise to retail investors, under this proposal we would have to increase our staffing and create environments to ensure we complied with all the related compliance issues under the ASIC & APRA related legislations. It is not reasonable to expect an organisation to estimate costs of changes that are unknown. We have given some indication above but impact could be greater than \$200,000 pa.

B1Q10 *The proposal would have a significant impact on investment fundraising by charitable organisations generally. No doubt many small charities would give up on offering retail investments, once faced with a plethora of compliance.*

Whilst our supporters are very loyal they also want adequate returns and easily understood options. If charitable organisations remove this fundraising source, supporters will ask why. It would be wrong to assume that supporters are naive. We are not sure that they will understand the regulatory changes are enacted to give them further protection for themselves, and may see it as regulation to exclude them from supporting causes they are passionate about. They will move funds if the products available are restrictive and complicated.

Charitable investment fundraising by its very nature is community orientated. With many credit unions choosing to leave their traditional bonds and becoming general purpose or small banks, and community feelings toward Banks being negative, many investors may reinvest with ADIs but may be very disappointed they cannot pursue their objectives.

B1Q11 *The practical problems with this proposals implementation would be a short time frame to amend existing operations, and the amount of time and cost involved in changing operations substantially.*

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

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).

C1Q1 *We do not agree with the proposal. The full implementation of all sections of this proposal would cost us substantially in time and money, and would not protect retail investors any further than they currently are.*

C1Q2 *Supporters of RCDF's are motivated in part by charitable objectives, and may have a view of regulatory protections which is different to the general population. We believe that our supporters have the capacity to understand the risk that they adopt when investing with us, and would not be any further protected by the sub subsections stated in the proposal. Most supporters have had a life long and defining relationship with our organisation, and understand our organisation.*

C1Q3 *Historically RCDF's have been set up to help fulfil the charitable purposes of the organisation. The RCDF's have been careful to ensure that their regulatory obligations have been adhered to. As a result of exemptions there have been many good community outcomes, in a cost*

effective manner. Regulation should be about protection and assisting the community by ensuring structures are in place to reduce the unreasonable risk burden on them. The existing structure has served all purposes well over many decades, as the risk inherent in a strongly capitalised RCDF is completely different to the risk inherent in most profit driven organisations, many of which have much lower capital levels. The continuation of exemptions for RCDFs (with minor amendments) would serve all parties better than the adoption of general purpose requirements which does not recognise the different profile of RCDFs in comparison to other organisations.

- C1Q4 *We believe that the proposal may be preferable to the alternative proposal in Section B. However the implementation of the multiple requirements proposed, will make the benefits from this proposal much less effective for us, than the existing system and marginal over the alternative proposal. Several of the proposed requirements, if enacted would certainly make our organisation consider whether we would continue to operate our Fund, as it would force us to use our resources for activities which do not appear to be in our organisations or the communities interests.*
- C1Q5 *We currently hold approximately \$17.3 million in loan assets. All assets of the Uniting Church in South Australia are held in the same legal name. These loans represent fewer than 2% of the Church's assets. As would be expected from a traditional Church organisation, we have the majority of our assets in property, which is illiquid in the short term, but we have many readily marketable properties. To cover our outside liabilities, we have liquid assets in the form of:*
- *term deposits with ADIs;*
 - *corporate notes with highly rated organisations (many of which are also ADIs); and*
 - *Australian shares listed on the ASX.*
- With retail investors of approximately \$60 million, and assets of greater than \$1 billion, we have the capacity to bear 100% of the risk on moneys our organisation lends.*
- C1Q6 *Our organisation does not see any obvious benefits from this proposal.*
- C1Q7 *Our organisation believes that many of the requirements proposed in this proposal are disadvantageous. Our analysis of the individual requirements is contained elsewhere in this response.*
- 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 license, must comply with the duties and obligations of AFS licensees.**
- C2Q1 *We do not currently have an AFS license, and would need to research what extra compliance would be required to fulfil the obligations of being an AFS licensee, before we can make a judgement on this proposal. On preliminary investigation it appears that a restricted ADI licence would be much more effective and protect retail investors to a greater extent.*
- C2Q2 *Of our limited understanding of what is entailed in having an AFS license, the continual and structured training aspect applicable for all relevant staff, would not doubt be beneficial, but would also be a cost burden on our organisation.*

C2Q3 *The disadvantages as a result of the proposal are difficult to gauge. We consider the repayment of monies invested with us, as our first priority. Any added costs to our operations would equate to less money being available to pursue our charitable objectives. The objective in this proposal is to protect retail investors, but the application of the licence will not in itself protect retail investors any more than currently applies. The added regulation has the capacity to revert human resources into compliance, and away from other activities which produce greater community benefit. The removal of a licence may be after an event which has harmed investors.*

C2Q4 *We believe that the proposals do not differentiate sufficiently the capacity and ethical obligations that exist within RCDFs.*

C2Q5 *The proposal certainly has the capacity to change the structure and strategic direction of our organisation.*

C2Q6 *Our organisation would need to revise our strategic direction if the proposal was implemented.*

C2Q7 *Our investment operations are run on a low administration cost, allowing greater funds to be used for our charitable purposes. Any further compliance costs, or changes in asset allocations would have a direct impact on our capacity to provide monies for our charitable purposes.*

C2Q8 *A substantial review of our operations would be required to set our strategic path, if the proposal was approved. First practical problem in implementing the proposal would be the time required to embark on this new regime, and the associated legal and compliance costs in ensuring we are adhering to any new regulations.*

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.

- C3Q1 *We disagree with charitable investment fundraisers being subject to a minimum charitable investment requirement. It would appear totally impractical to us as a traditional church. To satisfy this proposal we would be required to look at purchasing new church properties throughout our state, to satisfy the condition. Our investment scheme produces income which is used to fund our religious programs and repay investors not to fund 'charitable assets'. We could agree to a requirement to provide surpluses above regulatory conditions to be used to fund our charitable purposes (as is the case at present), however if the protection of retail investments is paramount, then the amount of capital to be retained in the organisation to payout retail investments is also a very important factor.*
- C3Q2 *Any definition of charitable asset would not be adequate for our purposes.*
- C3Q3 *We do not see any benefits from this proposal from our point of view. It does not recognise the congregation/RCDF relationship.*
- C3Q4 *The disadvantages of this proposal are detailed above. It may lead to the inefficient use of limited resources in the NFP sector in the purchase and maintenance of inappropriate assets. We own our current administration building in Adelaide valued at \$10.75 million. If we were required to adhere to this condition, and assuming our retail investors funds of \$60 million are retained, we would need alternative charitable investments. This would of course not be a good use of our limited resources.*
- C3Q5 *We would think our investors would have no doubt that their funds contribute to the work of the Uniting Church in SA. We publish a quarterly newsletter which proudly details programs and projects that their support has enabled to proceed, and they would be justifiably proud of that support. They expect that we would payback their investments, but also expect that they are contributing to our community. It is not choice of one or the other.*
- C3Q6 *Refer to answers to above questions. The limit of 75% would be an impediment to liquidity management.*
- C3Q7 *No some we do not think it would be preferable. C3 is concentrated on the attainment of assets, and does not assist organisations that have adequate assets at present, and are seeking to enhance the working cash flow of their charitable purposes or liquidity and capital management.*
- C3Q8 *Yes definitely. We have structured to support the cash flow needs of our organisation, whereas this proposal seeks to align retail investments with charitable assets of the organisation.*
- C3Q9 *This proposal would cause us to totally rethink our model, which would have a major impact on business costs of the wider Uniting Church in SA.*
- C3Q10 *There are major practical problems with this proposal. As stated above, it would lead to a major change in why we seek investments from retail investors, and what we invest in. It is unlikely to provide better investor protection due to lack of diversification and poor investment decision making.*

- 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.

C4Q1 *Our governance standards are based on capital adequacy and liquidity requirements. We would already fulfil the requirements to hold a minimum capital ratio of 8% and a minimum holding of 9% of its liabilities in high-quality liquid assets for retail investment held. We are not separately incorporated from our charitable body, and so our current liabilities to retail investors (\$59 million) is considerably lower than our equity/capital which could be close to \$1 billion (if we valued the Uniting Church's real estate assets in South Australia).*

C4Q2 *Under a new charitable investment regulatory regime, we would certainly not object to minimum capital being a determinate in regards to exemption provisions. It would make sense if the protection of retail investments is paramount, then minimum capital and liquidity are the two most important ingredients in protecting retail investors interests, and therefore should form the guidelines for regulation. There should be some form of supervision that is adequate to ensure compliance regardless of the level set.*

C4Q3 *We would not object to minimum liquidity requirements forming conditions for fundraisers that fundraise from retail investors.*

C4Q4 *If the goal is to have capacity to payback retail investors then the liability profile (liabilities maturity dates) should be used to set a liquidity policy. Policy should be drafted to regulate the capacity of the organisation to payback liabilities to retail investors when due. 9% seems like a ratio used for ADI's that have long weighted assets, however many charitable investment fundraisers have a different asset mix, with greater liquid assets, than most ADIs which have residential mortgages and personal loans.*

C4Q5 *For charitable investment fundraisers that hold an asset mix like ourselves, the requirement to hold high-quality liquid assets comes at a cost to the business. As we understand that to have many varied conditions for different funds may be unworkable in a regulatory environment. Certainly reporting on capacity to payout liabilities to retail investors would be a requirement we would agree with.*

- C4Q6 *Managed Investment Schemes are a different investment class that should be supervised with different standards.*
- C4Q7 *A minimum requirement for capital and liquidity would seem a reasonable requirement for offering investments to retail investors.*
- C4Q8 *It is a requirement to lodge audited financial statements. A registered auditor familiar with standards would have the practical skills to ensure compliance with liquidity and capital requirements on a regular timeframe but this would come at a cost.*
- C4Q9 *Depending on whether the minimum capital and liquidity parameters are applied to all liabilities or only retail investors. If regulated, it would require a regular compliance checklist to be provided to Committees that perform a governance role within the organisation for these two factors. If minimum capital and liquidity parameters are applied to all liabilities held (including associated entities), then it does have the capacity to change asset allocation parameters and overall profitability.*
- C4Q10 *As long as the requirements are only applied to funds from retail investors, we would not have any major compliance costs due to these requirements.*
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- 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.**
- C5Q1 *The proposal has been constructed as a measure to reduce risks associated with liquidity by removing at call liabilities. Maturity profiling should be the most efficient method of managing and the reporting of liquidity risk. Proposal C4 proposes to impose a minimum liquidity parameter, whilst proposal C5 seeks to remove at call investments. If proposal 5 was to be enacted, then without at call funds which could be withdraw in a short time frame, the need to retain a high level of high quality liquid assets consistently should be reduced. We could work under proposal C5, but would then like an amendment to proposal 4.*
- C5Q2 *The benefit from this proposal would be the reduction in short term uncertainty created by having at call liabilities, and the need to then hold a higher level of liquid assets and/or under utilised lending facilities held from our bankers. This could lead to greater profitability.*
- C5Q3 *The adoption of this proposal would not protect our retail investors any further than they already are. The removal of an at call option would be unlikely to change our retail investors perception of whether our organisation is a bank or not. It may also lead to a decrease in the level of funds investors hold with us, as they know they can withdraw them if required in a very short time frame.*
- C5Q4 *If the proposal was enacted, we would certainly prefer it to be only applied to retail investors.*

- C5Q5 *Complying with this proposal would require us to restructure our model, though not in a major way, unless it lead to a large drop off in investor funds held with us. Approximately 20% of retail funds are in at call accounts.*
- C5Q6 *The impact on our costs, would depend on whether at call funds are transferred to 31 day fixed term accounts.*
- C5Q7 *There may be some practical problems in regards to rolling over 1500 at call accounts every 31 days (clerical hours, postage etc).*
- 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.
- C6Q1 *We agree with (a) and (b) (i), as these would assist with the education of the risks that our investors need to realise.*

We strongly disagree with the wording and intent of (b)(ii). There is a difference between making investors aware of the risks attached to their investment, and being alarmist. Many charitable investment fundraisers have greater capacity to pay back investors monies than many ADIs for example. It would appear whilst taking part in this consultation paper, that ASIC has the complicated task of forming a new charitable investment model, with a wide variety of charitable organisations with differing operations and financial positions. 'One size may not fit all.'

- C6Q2 *The benefit of an investor acknowledgement would hopefully reinforce the required disclosures.*
- C6Q3 *Refer to C6Q1.*
- C6Q4 *If the proposal was enacted, we would not need to restructure our business.*
- C6Q5 *Complying with this proposal would not have an impact on our costs directly, unless clause (b)(ii) scares off our investors.*
- 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.**
- C7Q1 *Under our current regulatory environment we do not use the word 'deposit'. We agree with this part of the proposal.*

*If proposal 5 is not enacted, then it would be totally impractical not to use the term 'at-call'.
If proposal 5 is enacted, then we have no use for the term.*

The word 'account' is not exclusively a banking term, as everybody has accounts in a range of situations from phone accounts, store accounts to internet providers clients. We do not agree to the exclusion of this word, as it serves no useful purpose.

Congregation members clearly understand the difference between a bank and a church fund.

C7Q2 *There are no obvious benefits to this proposal.*

C7Q3 *The disadvantages to this proposal is that alternative words need to be used to describe account, deposit and at call. Deposit becomes new investment, at call becomes 'hard to find a replacement, perhaps a long phrase' and account becomes 'investment'. The alternatives would not give us any further confidence that an investor is better informed by the use of alternative words.*

C7Q4 *This proposal will not have an effect on our costs.*

C7Q5 Refer to C7Q3.

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).

C8Q1 *The wording is inappropriate. Of course individuals are and should be concerned they can lose their contribution. They are not donations. The wording appears to be a clear message to not invest with this organisation because you are likely to lose your investment.*

Alternative wording

'this product does not have any regulatory protection.'

(iv) A clause about financial returns is immaterial to providing an alert to investors of the risk of investing with a charitable investment fundraiser. We are able to provide a cost effective investment service due to running a different business model, and having a considerably larger capital base as a percentage of our total liabilities than many of the regulated entities.

- C8Q2 *The disclosures and the question's theme is 'it has to be one or the other'. Why can't investors invest their funds wisely with a charitable organisation and expect to get a good return and their capital returned whilst assisting charities making a difference to the community. Charities are run on a low cost model by choice, especially in comparison to regulated large ADIs. To advocate overly harsh and unbalanced disclosures, would erode charity's internal capacity to fund programs. This may force them to fund via traditional lending institutions at greater costs or cease many charitable funding programs.*
- C8Q3 *There does not appear to be any benefit from the disclosures. The disclosures only possible outcome would be to unfairly alarm supporters of charities, and to get them to invest their funds with profit driven financial institutions.*
- C8Q4 *Refer to previous question answers.*
- C8Q5 *The closure of accounts from clients caused by disclaimers that may be interpreted by them that their accounts are unlikely to be repaid, would lead to a loss of income generated by our organisation, and would lead to a reduction in programs and staff redundancies. We do not know how we would manage the process.*
- C8Q6 *There are no practical problems with the implementation of this proposal, barring new forms to be produced with relevant wording.*
- 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.**
- C9Q1 *We agree with this proposal. We already lodge our audited financial statements with ASIC in the time frame proposed.*
- C9Q2 *The six month time frame appears adequate. A three month time frame may be better, however it may be hard to get financial statements completed by the Audit firm in time, depending on their workload.*
- C9Q3 *This proposal does not seem to add any further value than currently. A quarterly return from the charitable investment fundraiser would offer a better system for ASIC to make an*

informed quick opinion on whether a charitable investment fundraiser is going to be at risk. The proposed measure or any other reporting would be immaterial if the data is not reviewed well. We have sent our financial statement annually for at least the last 15 years, and would not know if our statements are filed, or even reviewed.

C9Q4 *There are no disadvantages to the proposal. A more regular and specialised reporting regime than proposed would seem prudent if ASIC have concerns with retail investors funds.*

C9Q5 *There would be no restructure in our business from the proposal.*

C9Q6 *There would be no impact on our business costs with this proposal.*

C9Q7 *There are no practical problems with the implementation of this 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.

C10Q1 *We agree with this proposal.*

C10Q2 *The new content requirements for identification statements seem reasonable.*

C10Q3 *This proposal does have benefits if the identification statement is read by potential investors.*

C10Q4 *There are no disadvantages to the proposal, except if the document is not read by potential investors.*

C10Q5 *There would be no impact on our business costs for the proposal.*

C10Q6 *There would be no practical problems with this proposals implementation.*

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.

C11Q1 *We agree with this proposal. It seems reasonable and appropriate.*

C11Q2 *The time frame specified seems reasonable and appropriate.*

C11Q3 *This proposal does have benefits in it notifies ASIC in a appropriate time frame, whilst putting the onus on individual charities to document and notify breaches.*

C11Q4 *There are no disadvantages to the proposal, assuming auditor has expertise to research breaches thoroughly.*

C11Q5 *There would be no impact on our business costs for the proposal.*

C11Q6 *There would be no practical problems with this proposals implementation.*

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.

C12Q1 *We agree with this proposal. (ii) the independent auditor lodging their statement separately of the charitable investment fundraiser if they believe a Director's statement is incorrect, would seem reasonable and appropriate.*

C12Q2 *There are benefits in the Auditor ensuring compliance, and reporting the breaches independently.*

C12Q3 *There are no obvious disadvantages in this proposal.*

C12Q4 *A robust, independent and thorough compliance and reporting model would ensure that regulatory bodies and stakeholders have full confidence in the charitable investments funds compliance with regulations and that charities are working in the interests of stakeholders. We think a return signed by a Director would also ensure compliance. The proposed model would give the independence objective, robust support.*

C12Q5 *There would be added audit costs, though they should not be substantial.*

C12Q6 *There would be no practical problems with this proposals implementation.*

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.

C13Q1 *We agree with this proposal.*

C13Q2 *The powers suggested in the proposal would be an expectation of the sector already.*

C13Q3 *There are no obvious disadvantages in this proposal, assuming there is a capacity to dispute breach information.*

C13Q4 *This should have no impact on the business costs for our organisation, assuming we do not breach the conditions.*

C13Q5 *There would be no practical problems with this proposals implementation.*

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.

C14Q1 *We agree with this proposal. Risk lies with the Sponsor.*

C14Q2 *Not specifically.*

C14Q3 *The benefits from this requirement are not clear to us.*

C14Q4 *At present we would not be adopting a Sponsor model, so there would be no restructure. However, once we have researched implications of any APRA or ASIC proposals, we may have a view in regards to Sponsor conditions.*

C14Q5 *We do believe this proposal would change the way we fundraise.*

C14Q6 *This proposal should not have an impact on our business costs.*

C14Q7 *We do not see any practical problems in this proposals implementation.*

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

D2Q1 *We would prefer a longer time frame to the proposed 12 months to do the necessary review, decision and any eventual implementation.*

~~D2Q2 *We strongly disagree with this proposal, and would find any timeframe unworkable and unpalatable. This proposals adoption would make all the other proposals immaterial.*~~

D2Q3 *We would already be adhering to these conditions, so we are comfortable with the timeframe proposed.*

D2Q4 *We could adhere to the proposed timeframe, though it is another proposal that we strongly disagree with.*

D2Q5 *We agree with the timeframe, but not the adoption of many parts of the proposal.*

D2Q6 *We agree with the timeframe proposed, but not the proposed removal of product names.*

D2Q7 *We agree with the timeframe, but not the adoption of many parts of the proposal.*

D2Q8 *We agree with the timeframe proposed.*

D2Q9 *We agree with the timeframe proposed.*

D2Q10 *We agree with the timeframe proposed.*

D2Q11 *We would prefer a longer time frame to ensure our current auditors have the capacity and ability to enact the proposed changes.*

D2Q12 *We would prefer a longer time frame to adopt the proposals, and a transitional period would be the most efficient way to enable us to ensure we make well researched decisions and then appropriate implementation and compliance.*



20th May 2013

Mr Neil Grummitt
General Manager, Policy Development
Policy, Research and Statistics
Australian Prudential Regulation Authority
GPO Box 9836
SYDNEY NSW 2001

Dear Mr Grummitt,

RE : Religious Charitable Development Funds - Banking Exemption Order – The Uniting Church in Australia Property Trust (S.A.)

Thank you for the letter from Mr Littrell dated 19 April 2013, regarding the upcoming changes to the Banking Order Exemption.

The Uniting Church in Australia Property Trust (S.A.) (known as 'The Property Trust' in the Uniting Church in S.A.) is the legal name of the Uniting Church in South Australia, and was enacted by an Act of the South Australian Parliament in 1977. All assets of the Uniting Church in SA are held in this same legal name. These assets include all Church properties (chapels/worship centres and manses), bank accounts and investments.

The Uniting Church's membership in South Australia is greater than 20,000 people. Uniting Church people are passionate about our Church and Ministry, both in local communities and abroad. The banking exemption which has been in place for many years, has allowed many Uniting Church people to invest in Uniting Church ministries by investing in at call and fixed term investments (>3,000 accounts) in a fund within 'The Property Trust' legal entity called 'UC Invest'. UC Invest manages the customer database and invests funds in a diversified investment portfolio and generates surpluses over the interest payments returned to investors. This surplus has been directed to fund Church programs.

We only market to our community, as stipulated by conditions from APRA, and include disclaimers which notify our members of conditions under which we operate, including that we are not prudentially supervised by APRA. Our lending is generally restricted to entities within the church rather than the broader community.

Our members do receive interest in return for investing in our operations, however when recently surveyed for marketing purposes, the majority of our members tell us that they invest with us because it financially benefits the Uniting Church and the work that it undertakes in local and overseas communities.

we seek to be an innovative, growing church proclaiming Jesus Christ, empowered by the Spirit to transform God's world

STREET ADDRESS | Level 2, 212 Pirie St, Adelaide **POSTAL ADDRESS** | Uniting Church SA, GPO Box 2145, Adelaide SA 5001
TEL | 08 8236 4200 **COUNTRY CALLERS** | 1300 766 956 **FAX** | 08 8236 4201 **WEB** | sa.uca.org.au **ABN** | 25 068 897 781

The repayment of members and associated entities monies invested in our operations, is our primary priority, as the reputation risk attached by failing to repay funds, would be devastating to our community, and their view of the Uniting Church and its leadership.

UC Invest produce financial statements annually, which are audited, and are available to our members on our website. Financial statements as at 31st December 2012 show UC Invest had assets of \$170.4 million, with liabilities of \$152.9 million (net equity of \$17.5 million).

However included in liabilities are accounts from internal investors (within the "Property Trust") totalling \$30 million (which if using consolidated accounting principles would boost net equity to near \$47.5 million).

The Church does not currently produce a set of audited consolidated financial statements for the 'Property Trust'. However, as at 31st December 2012 a Balance Sheet for 'The Property Trust' would show the following major items:

Assets

Buildings (the insured replacement value of buildings)		\$509 million
Land (currently we do not have a valuation)		
Investments		
Including:		
Listed Australian equities	\$42 million	
Cash held with ADIs	\$ 8 million	
Term deposits with ADIs	\$10 million	
Corporate Notes – ADIs	\$37 million	
Corporate Notes – other APRA reg entities	\$17 million	\$211 million
	Total	>\$698 million

Liabilities

Investments from Individuals	\$59 million
Investments from UC separately Incorp Agencies	\$44 million
Investments from other entities	\$17 million
	Total \$154 million

Net Assets \$544 million

The only major liabilities of 'The Property Trust' are investments held from the Uniting Church community, as detailed above.

We believe that the consolidated financial position of "The Property Trust" shows that individuals choosing to invest in the Church, are investing in a conservative organisation which has capacity to ensure that all funds are repaid when due.

The Property Trust has a policy of investing in many liquid assets, which are easily convertible to cash. There are also many investments which have been made in existing APRA regulated

organisations, which assist those organisations meet their needs to finance long term lending arrangements (i.e. assisting to finance home loan assets).

As you will appreciate, the suggested alternatives will have a significant impact on our organisation and investors, and we have not had the opportunity to thoroughly explore the three options mooted in the discussion paper for those RCDFs that wish to offer retail type products. This puts us at a disadvantage in regards to providing input on the discussion paper in such a short time frame.

Of course before being in a position to pursue any of the three options, we would need to analyse the options, including; advantages and disadvantages to our organisation of each, required changes in our operations and asset allocations if required, capital and grant restrictions, and estimated compliance costs.

We note the proven record of APRA in protecting depositors and believe that RCDFs should engage with APRA to achieve both parties' objectives. We also strongly support the rights of people to invest their savings with entities they believe operate in a framework that is consistent with their beliefs and values.

There are a number of initiatives that would continue to allow congregation members to invest with us and allow APRA to supervise with minimal impact on its resources. We would like the opportunity to explore these with APRA and are willing to meet with you or your State Manager. These discussions could explore the unique role of our organisation which provides critical work within the community and the impact that changes may have on that work.

There is an opportunity for a set of regulations, and a new reporting regime which would support a restricted APRA Licence for RCDFs. This would allow RCDFs to continue to take investments from congregation members and related agencies subject to certain conditions. We would support recognition that individuals have priority repayment, have RCDFs agree to specific liquidity and capital adequacy requirements and documents provided to congregation members clearly outline the restricted licence.

We believe that quarterly reporting to APRA detailing the organisations capacity and ability to pay back investments, combined with an APRA audit would seem to be an appropriate regime to strengthen the RCDF environment.

If the banking exemption was to be removed, and not replaced with a suitable alternative it would have a substantial impact on the operations of the Uniting Church in SA. It would lead to a reduction in resources made available to ministry and therefore the community. For example, UC Invest has granted \$1.3 million to the working budget of the Uniting Church SA in 2012, which would lead to a reduction in staff as there is no capacity to replace the income that would be lost.

The Church is also currently working through proposed changes as required by the new ACNC regulations and this also appears to consume the resources of the Church and its capacity to continue to serve its community.

We share a passion for the protection of investors' funds and have made many improvements to governance by recruiting independent expertise, enhancing policies and procedures and increasing support for our investing activities.

Our record in providing a safe haven for investors during the global financial crisis is just one example of our commitment and conservative approach for the benefit of congregation members and related entities.

We trust that we are able to work with APRA to find a position that is consistent with our members' desire for security, investing with an organisation compatible with their values and supports our work in the community.

We look forward to engaging with APRA to ensure a workable solution is reached.

Yours faithfully



Michael McClaren
Chairperson
Uniting Church Investment Committee



Graham Humphris
CEO
Uniting Church SA

