

Your reference: ADSR 2015

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Mr Andrew Duffy
Investment Managers and Superannuation
GPO Box 9827
SYDNEY NSW 2001

Level 2, 212 Pirie Street
Adelaide SA 5000
GPO Box 2145
Adelaide SA 5001
P 1300 274 151
F 08 8236 4250
E info@ucinvest.com.au

Dear Mr Duffy,

Submission in relation to ASIC Consultation Paper 207
Charitable investment fundraisers
Response – The Uniting Church in Australia Property Trust (S.A.)
February 2016

Thank you for the opportunity to respond to your proposals.

The Uniting Church in South Australia has run its investment fund since the 1970's. It provides an opportunity for its community to assist the Church financially, with many enthusiastic supporters investing their funds with it.

The leadership of the Church is thankful for the support, and is also very aware of its moral and legal obligations to these supporters. To fail these Uniting Church members, would be unthinkable.

The investment fund (UC Invest) currently makes a contribution of \$2.1 million to the SA Church's working budget of \$10.9 million. It has approximately \$60m invested from personal investors, with a further \$170m invested with it from associated and non-associated entities.

As mentioned above, our 'investment' operations provide a valuable service to the work of the Uniting Church and its agencies and schools in South Australia. It also makes a substantial contribution financially, without which there would be a significant reduction in the effectiveness of our organisation. Our investment operations are an activity of the Uniting Church in South Australia, and are not separately incorporated from the Church's legal entity.

It is possible we will seek an AFS licence in line with the general thrust of the proposals (and those of APRA) when required, but would be disappointed if valuable ongoing funds are used on compliance. These funds could be better used to further our purposes and provide greater benefits to our loyal and informed supporters.

We thought that commenting on each proposal, as we believe they currently stand, is the best way to respond.

Our staff of five would no doubt need to increase with a greater compliance regime, with an expectation of an impost of around \$50,000 to \$100,000 each year, and this is after any costs of restructuring. Any reduction in the number or value of investors with us arising from the proposed changes is hard to predict. The loss of all 'retail' investors might reduce profitability from operations by a much as \$1 million. This would greatly affect the Uniting Church in South Australia. Put in human terms this represents 12 full time, paid ministry positions.

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

- 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.**

We do not currently have an AFS license, and still need to fully research what extra compliance would be required to fulfil the obligations of being an AFS licensee. Therefore the financial implications are not known.

The repayment of monies invested with us, is our first priority; it's in our rules. Any added costs to our operations mean less money will be available to pursue our charitable objectives. The objective of 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.

We believe that the proposal does not differentiate sufficiently the capacity and ethical obligations that exist within the various RCDFs.

- C5 Charitable Investment Fundraisers cannot assume an obligation of repayment within 31 days:**
- a. From 1 January 2017 in relation to any retail, non-associated investor; and**
 - b. On or after 1 January 2018, from any investor (retail, wholesale or associated) who makes investments in the CIF, if there are any non-associated, retail investors in the CIF.**
 - c. In relation to retail, non-associated investments, and subject to point © below, CIFs must not permit an expectation of short-term repayment, except where there is demonstrated hardship. This would not preclude wholesale or associated investors from having the ability (but not a legal right) to seek repayment at-call, unless point (d) applies.**
 - d. Except where an obligation exists, CIFs cannot otherwise allow short-term repayments if this would materially increase the risk of the CIF being unable to meet retail investors' repayment rights or expectations. This means that if there is a liquidity event, wholesale and associated investors would be treated on the same footing as retail investors and be subject to the restriction on repayment.**

Maturity profiling should be the most efficient method of managing and the reporting of liquidity risk. Our organisation seeks to perform a treasury function for the wider Uniting Church community in South Australia, by receiving at call and fixed term funds from aged care providers, schools and care agencies and investing these funds in a number of asset classes to make a surplus/profit which is used for charitable purposes. We also seek to offer competitive rates to ensure greater funds are available for these investors; which are then in turn used for their charitable purposes. We also use our surplus/profit to sponsor charitable events and programs of these Uniting Church organisations.

We also invest a portion of our assets in loans to these other UC organisations, which generally are at rates below those offered by traditional ADIs, hence providing them with a capacity to provide a greater level of funds for their organisations.

The removal of our opportunity to offer at-call facilities to non individual clients has the capacity to greatly affect our capacity to provide much needed finance and funds to charitable organisations and their purposes.

This remedy that seeks to protect individuals, unfairly disadvantages us from providing assistance for our charitable purposes. There are no additional clauses to make this proposal effective or balanced, just a blanket ban. There must be an alternative way of protecting individuals that choose to invest with us (we do not force or misrepresent our organisation or its ability to protect their funds) whilst enabling us to provide something of good to the greater community. Theoretically we could have \$10m of retail investors in our CIF with \$100m of assets, and not be able to offer associated at call products.

The proposal to exclude at call accounts is unlikely to achieve the stated objective. We believe that organisations should be encouraged to concentrate on holding sufficient liquid funds, maintaining adequate reserves, and establishing support mechanisms to ensure funds are available to investors even in difficult circumstances.

Clause (d). This clause is not clear. Does it mean we can offer at-call to non individuals, which lose their at-call status upon a liquidity event? This needs clarity.

- 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.**

We agree with (a), as this assists with the education of our investors about the risks they need to understand. This is currently the case. It would not be correct to assume that our retail investors are not informed enough to know of the risks.

It would also be unfair and unreasonable to assert our organisation misrepresents the risks of investing with us. Any representation or disclaimer that paints us as a high risk proposition would be misleading. It is disappointing that the consultation paper is trying to equate all possible CIFs as equals, which is not the case. A well capitalised organisation, with strong liquidity is clearly in a different category to one which is seeking to embark on high risk strategies with no respect for their communities or lenders.

We strongly disagree with the wording and intent of (b)(ii) in 2013. Assuming that the wording previously submitted is the expectation, we would continue to oppose such a disclosure, as we believe it is misleading.

The benefit of an investor acknowledgement would hopefully reinforce the required disclosures.

- 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.**

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 previous Consultation Paper also had a proposed exclusion of the word 'account'. It is not exclusively a banking term, as everybody has accounts in a range of situations from phone accounts, store accounts to internet provider's 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 financial institution and a church fund.

The disadvantage to this proposal is that alternative words may need to be used to describe account, deposit and at call. The alternatives will not give us any further confidence that an investor is better informed by the use of alternative words.

- 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).

This Consultation Paper has a further disclosure recommending CIFs to clearly disclose how investment funds are used to support the organisation's charitable purpose (e.g. it may be that it is not the investment but rather the yield on investment less the interest payable to investors that is directed towards promoting the organisation's charitable purposes).

The wording in this proposal is inappropriate. Individuals are and should be concerned that 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 and is far more alarming than that required when investing in a range of products overseen by ASIC.

Alternative wording should focus on the lack of regulatory protection, the use of funds and the beneficiaries of the surplus.

(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.

The disclosures and the question's theme appears to be 'it has to be one or the other'. Investors can place their funds wisely with a charitable organisation and expect to get a good yield and their capital returned whilst assisting charities to make a difference to the community. Charities run by choice on a low cost model, especially in comparison to regulated large ADIs. Further compliance will only increase our cost bases. To advocate overly harsh and unbalanced disclosures, would erode a 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.

There does not appear to be any benefit from the disclosures. The only possible outcome from the disclosures will be to unfairly alarm supporters of charities, and to get them to invest their funds with profit driven financial institutions.

The closure of accounts from clients caused by the suggested harsh disclaimers, will lead to a loss of income generated by our organisation, and will lead to a reduction in programs and possible staff redundancies.

- 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.

We agree with this proposal. We already lodge our audited financial statements with ASIC in the time frame proposed.

The six month time frame appears adequate.

This proposal does not seem to add any further value than is currently the case. A quarterly return from the charitable investment fundraiser would offer a better system for ASIC to make an informed and 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 statements annually for at least the last 15 years, and are not aware if our statements have been filed, or even reviewed.

A more regular and specialised reporting regime that includes information on capital adequacy, liquidity and other key indicators would seem prudent if ASIC has concerns with retail investors funds.

- 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.

We agree with this 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.

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

- 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.

We agree with this 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.

We agree with this proposal.

As detailed above, we view many of your proposals favourably. However there are several proposals (C5 & C8 in particular) that we find unpalatable as they would cause the Church financial harm and we would like ASIC to reconsider. There are other proposals (C2, C5 & C6) which we would prefer not to adopt for the reasons outlined earlier in this response.

Please do not hesitate to contact me if you would like to discuss any of the points I have made.

Yours faithfully

A handwritten signature in black ink, appearing to read "M. McClaren", with a horizontal line underneath it.

Michael McClaren
Chairperson
Uniting Church Investment Committee