



ASIC

Australian Securities & Investments Commission

REPORT 495

Response to submissions on CP 207 Charitable investment fundraisers

September 2016

About this report

This report highlights the key issues that arose out of the submissions received in response to Consultation Paper 207 *Charitable investment fundraisers* (CP 207) and our follow-up consultation, and details our responses to those issues.

About ASIC regulatory documents

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

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

Regulatory guides: give guidance to regulated entities by:

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

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

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

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

This report does not contain ASIC policy. Please see Regulatory Guide 87 *Charitable schemes and school enrolment deposits* (RG 87).

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A Overview/Consultation process

- 1 In [Consultation Paper 207](#) *Charitable investment fundraisers* (CP 207), issued in May 2013, we consulted on proposals to amend the exemptions that were available to charitable investment fundraisers in Superseded Class Order [SCO 02/184] *Charitable investment schemes—fundraising* and under Superseded Regulatory Guide 87 *Charities* (SRG 87).
- 2 Specifically, we sought feedback on the following main alternative proposals:
 - (a) Option 1—Remove all existing exemptions for new investment fundraising, except exemptions from the Australian financial services (AFS) licensing requirements in the *Corporations Act 2001* (Corporations Act) for charitable investment fundraisers that only raise investment funds from wholesale investors and associated retail clients.
 - (b) Option 2—For new investment fundraising:
 - (i) retain all existing exemptions from the fundraising, managed investment and debenture provisions for new investment fundraising;
 - (ii) retain the existing exemption from the AFS licensing requirements for charitable investment fundraisers that only raise investment funds from wholesale investors and associated retail clients; and
 - (iii) provide these exemptions subject to new or modified conditions.

Note: ‘Associate’ is a defined term. In this report, we also use the terms ‘associated entities’ and ‘non-associated retail clients’: see ASIC’s response at paragraph 17.
- 3 In January 2016, we issued further correspondence seeking feedback on a modified version of Option 2. In this follow-up consultation we proposed retaining the exemptions outlined in Option 2 but amending some of the proposed modifications and conditions.
- 4 This report highlights the key issues that arose out of the submissions received on CP 207 and the follow-up consultation, and our responses to those issues.
- 5 This report is not a comprehensive summary of all responses received. It is also not meant to be a detailed report on every question from CP 207 or the follow-up consultation. We have limited this report to the key issues.
- 6 For a list of the non-confidential submissions received on CP 207 and in the follow-up consultation, see the appendix. Copies of these submissions are currently on the ASIC website at www.asic.gov.au/cp under CP 207.

Responses to consultation

- 7 In response to the first consultation in May 2013, we received 11 confidential and 10 non-confidential submissions in response to CP 207. In response to the follow-up consultation, we received 13 written submissions (seven confidential and six non-confidential), plus one submission provided verbally. In August 2016, we also issued a draft version of Regulatory Guide 87 *Charitable investment schemes and school enrolment deposits* (RG 87) and ASIC Corporations (Charitable Investment Fundraising) Instrument 2016/813 to all 2016 respondents to the follow-up consultation. We are grateful to respondents for taking the time to send us their comments.
- 8 A majority of the submissions were from church-affiliated charitable investment fundraisers. We also received submissions from non-religious charitable investment fundraisers, an industry body and a professional services provider.
- 9 As part of the follow-up consultation process, we also met with several charitable bodies that had expressed a desire to discuss their concerns with us personally.
- 10 There was some support for the proposed requirements, but many submissions opposed the imposition of any additional regulations on charitable investment fundraisers because the adoption of either of the proposals could significantly impact resources that could be directed towards achieving the organisations' charitable objectives.
- 11 Sections B and C of this paper sets out in more detail the issues that were raised in these submissions and our responses to those issues.

B Response to submissions on CP 207

Key points

We have given significant consideration to the submissions made in response to both CP 207 and the follow-up consultation. As a result of the feedback received, we have decided to impose fewer and less onerous conditions than those originally proposed in Option 2.

Option 1—Removal of existing exemptions

- 12 Under Option 1, we proposed to remove all existing exemptions in RG 87 for new charitable investment fundraising, except exemptions from the AFS licensing requirements for charitable investment fundraisers that only raise investment funds from associated entities.
- 13 There was very little support in the submissions for this approach. Several submissions highlighted that adopting this approach would significantly increase compliance costs and require some entities to substantially restructure their activities. Submissions argued that the existing exemptions are appropriate, as people who choose to invest with a charity do so to promote the charitable purpose and have differing expectations about regulatory protections. Submissions also argued that investors are protected by the disclosure obligations imposed as a condition under the existing exemptions.

ASIC's response

We agree that Option 1 is not the appropriate alternative. This option was not pursued in our follow-up rounds of consultation. We consider that Option 2 is a preferable approach that will achieve our regulatory objectives with less negative financial and compliance impact to charitable investment fundraisers. In view of their differing motivations, investors in charitable investment fundraisers may be less likely to read regulated disclosures and therefore may not benefit from strict compliance with the disclosure regime. Also, charities may be more likely to give consideration to ensuring investor's interests are safeguarded without the need for regulation, as they are not directed to achieve profit for their owners.

Option 2—Retain existing exemptions but with new conditions

- 14 Under Option 2, we proposed retaining the existing exemptions from the fundraising, debenture and managed investments provisions, with exemptions for the AFS licensing regime only available to charitable investment fundraisers that accept investment from wholesale investors and associated retail clients. We also proposed retaining or modifying some existing conditions, and introducing additional conditions to achieve our regulatory objective of promoting confident and informed investors.
- 15 In general, submissions were more supportive of Option 2 than Option 1. Support for our proposed additional and modified conditions was mixed, with some conditions receiving broad support but some receiving little or only qualified support.
- 16 Submissions highlighted that, regardless of the relative merits of each proposed condition, the imposition of conditions would lead to an increase in compliance costs for charitable investment fundraisers. Many submissions also considered that there should be a distinction drawn between:
- (a) religious charitable development funds (RCDFs)—which are regulated by the Australian Prudential Regulation Authority (APRA), and exempted from the *Banking Act 1959*; and
 - (b) non-RCDF charitable investment fundraisers.
- 17 While some submissions indicated that the definition of ‘associated entity’ or ‘associate’ required clarification, most considered it reasonable to distinguish between charitable investment fundraisers and RCDFs that act in a treasury function for associated entities (which should be subject to a less rigorous regulatory framework) and organisations that fundraise from retail clients that are not associated entities (non-associated retail clients).

ASIC’s response

We have implemented a modified version of Option 2. As a result of the submissions we have received in response to CP 207, we made changes to some of the proposed conditions and have not implemented others: see ASIC Instrument (Charitable Investment Fundraising) Instrument 2016/813.

We consider that our approach strikes an appropriate balance between our objective of promoting confident and informed investors while seeking to minimise any additional compliance costs for charitable investment fundraisers.

We are particularly concerned about the issue of at-call and short-term investments to non-associated retail clients and the use by those clients of those investments as transactional or very short-term liquidity facilities. We are also concerned that the use of transactional facilities (e.g. automatic teller machines (ATMs), BPAY, cheque and electronic funds transfer at point of sale

(EFTPOS)) creates a very strong expectation about the availability of funds, which in turn creates challenges in managing liquidity for the charitable investment fundraiser.

In our view, if a charitable investment fundraiser is to provide such facilities, it is appropriate that the regulatory requirements of the Corporations Act apply. Therefore, we have prohibited the issue of at-call and short-term investments to non-associated retail clients. This is broadly consistent with the position that APRA has taken, having renewed and modified its exemption order for RCDFs: see [Banking exemption No. 2 of 2015 Religious charitable development funds](#) and the associated regulation impact statement [Banking exemption order for religious charitable development funds](#) (PDF 379 KB).

We have applied the following definition of 'associate', which is similar to and not inconsistent with APRA's proposed definition of 'affiliate'.

An 'associate' of a charitable investment fundraiser is:

- (a) a body constituted by, or under the authority of a decision of the charity, or which is controlled by the charity;
- (b) a person or body that constituted the charity or under whose authority the charity was constituted or that controls the charity;
- (c) a charity with a related charitable purposes that is the same as or similar to the charity;
- (d) a person acting as a trustee of a trust for the charity or a charity with a related charitable purpose;
- (e) a member of the clergy, an employee or a voluntary staff member who works for any person mentioned in paragraphs (a)–(d); or
- (f) a person undertaking training or education to enable them to be a person under paragraph (e) who receives money or money's worth from any person mentioned in paragraphs (a)–(e).

See also RG 87.27–RG 87.33.

C Conditions for exemption

Key points

The existing exemptions from the fundraising, debenture and managed investment scheme provisions will remain in place. However, other conditions will be imposed.

Charitable investment fundraisers that only accept investment funds from wholesale investors or associated retail clients will continue to be exempted from the AFS licensing provisions of the Corporations Act.

There are a number of conditions that charitable investment fundraisers must meet. We have decided to modify a number of the conditions proposed in CP 207.

We have also decided not to impose a number of the conditions proposed in CP 207.

Retention of current exemptions

18 Charitable investment fundraisers that raise funds by issuing debentures or interests in managed investment schemes (charitable schemes) had relief from the fundraising, managed investment, debenture and AFS licensing provisions of the Corporations Act under [SCO 02/184]. The charitable investment fundraiser was required to:

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

This exemption was previously known as the ‘individual charities’ exemption.

19 A group of charities that had common or related charitable objectives may also be exempted from the fundraising, managed investment, debenture and AFS licensing provisions of the Corporations Act if they were sponsored by an organisation approved by ASIC (the sponsor). Under this type of exemption, the sponsor was obliged under a deed poll to indemnify each sponsored charity against claims by investors in that entity, although such liability may be limited to the amount of money subscribed by investors plus interest accrued. This exemption was known as the ‘group charities’ exemption. There was only one group of charities that relied on this exemption.

- 20 Further guidance on the individual charities exemption and the group charities exemption is contained in SRG 87: see the appendix to RG 87.
- 21 We have continued to provide these exemptions under ASIC Corporations (Charitable Investment Fundraising) Instrument 2016/813, although we do not specifically refer to these as the individual charities or group charities exemptions.
- The instrument sets out the conditions from [SCO 02/184], as well as new and modified conditions. These new or modified conditions, along with ASIC's responses to the issues raised by submissions in response to each condition, are set out below.

Licensing

- 22 We considered not extending the licensing relief in [SCO 02/184] in its current form so that charitable investment fundraisers that accept new investment fundraising from non-associated retail clients would be required to comply with the AFS licensing provisions, unless they have the benefit of another existing licensing exemption under the Corporations Act. For example, some debenture-issuing charitable investment fundraisers may be able to rely on the self-dealing exemption, and some charitable investment fundraisers may also be exempt from the requirement to have an AFS licence if they issue financial products through a licensed intermediary.
- 23 We also proposed that any disclosure by the charitable investment fundraiser relying on the exemption from the fundraising, managed investment and debenture provisions about it holding an AFS licence should be coupled with a warning that the investment products issued under the AFS licence are not regulated.
- 24 Submissions in response to this proposal were mixed. Several submissions highlighted that compliance costs would take resources away from the funds achieving their charitable purpose. Several commented that requiring an AFSL will not provide additional investor protection and that the additional disclosure requirements will better protect retail clients. A number of submissions acknowledged that the licensing regime will require charitable investment fundraisers to improve governance, risk management and compliance, as well as improving transparency in the sector, and that this would improve protection for investors.
- 25 Of the respondents, several noted that they were not intending to obtain a retail AFS licence and would therefore close their retail business. On the other hand, a number of charitable investment fundraisers indicated that they already held or intended to acquire an AFS licence as retail funds made up a significant portion of their funds under management.

ASIC's response

We have implemented this requirement: see RG 87.25–RG 87.26.

We acknowledge that charitable investment fundraisers that will no longer be exempted from the licensing provisions may incur increased transitional and ongoing compliance costs, but consider that this is justified by the protections provided to retail clients under the licensing environment. In particular, we consider that it is important that the investments be marketed by an AFS licensee to help ensure that the key disclosures about the absence of regulation and the purpose of the investment are clear. We also consider that the licensing regime will help to deliver improved governance, risk management and compliance within an organisation and improve protections for investors.

Feedback received from industry indicates that while the costs of compliance with the AFS licensing regime are not insubstantial, it remains financially viable for charitable investment fundraisers with larger pools of funds under management to accept retail funds. We consider this a beneficial outcome for consumers, as only those entities that are sufficiently well capitalised to cover the costs of an AFS licence will be able to accept funds from retail clients.

While the requirement to hold an AFS licence may now apply to charitable investment fundraisers, the obligations that will attach to this AFS licence will be less onerous than those attaching to AFS licences held by responsible entities of registered managed investment schemes. For example, charitable investment fundraisers that have an AFS licence will only be subject to the base-level financial requirements applicable to AFS licensees, not the financial requirements for responsible entities.

Identification statements

- 26 We proposed that all charitable investment fundraisers be required to lodge an identification statement with enhanced disclosures. Charitable investment fundraisers without a sponsor will continue to lodge this identification statement with ASIC, and charitable investment fundraisers with a sponsor will continue to lodge with the sponsor.
- 27 There was broad support for, and little concern about, this proposal in the submissions.

ASIC's response

We have implemented this requirement to ensure that there is a record of the way in which investments will promote the charity's purpose, the nature of the offering and compliance arrangements, among other things: see RG 87.37–RG 87.60.

Additional disclosure requirements

- 28 We proposed that all charitable investment fundraisers be required to make prominent disclosure regarding the risks of the investment in offer documents and promotional materials, including the risk of losing some or all of the investment. Additionally, we proposed that all charitable investment fundraisers 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).
- 29 A few submissions considered some of the warnings proposed to be provocative and alarmist, with too much focus on the risk of loss rather than the degree of regulatory protection. However, a number of submissions indicated partial acceptance of this proposal, particularly for providing disclosure to investors about their inability to rely on regulatory protections.

ASIC's response

We have implemented this requirement: see RG 87.61–RG 87.66.

We consider that it is important that investors are informed they could lose some or all of their investment, even in circumstances where the charitable investment fundraiser implements a conservative profile or otherwise has the benefit of a related party guarantee or indemnity (or equivalent). We have stipulated content requirements for the disclosure.

Promoting confident and informed participation by investors is a key role for ASIC. We think that, in addition to making it clear that there is little or no regulatory protection for funds invested in charitable investment fundraisers, it is important that investors are aware that they could lose some or all of their funds.

We require different disclosures to be made to non-associated retail clients and wholesale investors and associated retail clients. We consider that charitable investment fundraisers may wish to implement consumer testing to determine the appropriate form of those disclosures.

This approach is in line with APRA's approach for entities that are not authorised deposit-taking institutions (ADIs), and our approach to disclosure in other market sectors involving similar projects, such as offers of debentures.

Investor acknowledgement statements

- 30 We proposed that charitable investment fundraisers not be permitted to issue investment products to non-associated retail clients without a written

statement indicating that the investor acknowledges the required disclosures and understands they may be unable to withdraw their investment when expected or may not get some or all of their money back.

- 31 A number of submissions supported this proposal. A minority considered that it was an unnecessary requirement, given that some charitable investment fundraisers have procedures in place to ensure retail redemptions can be met and that the market is already aware of the risks of the product.
- 32 One submission noted a potential administrative issue of seeking an investor acknowledgement in circumstances where term investments are rolled-over by default.

ASIC's response

We have implemented this requirement: see RG 87.67–RG 87.70. However, it only applies to charitable investment fundraisers that issue investment products to non-associated retail clients.

We consider that this requirement reduces the risk of an expectation gap between:

- retail client expectations; and
- the actual level of regulation afforded to investments in charitable investment fundraisers.

We consider the investor acknowledgement encourages investors to read the disclosures and consider the risks of their investment before investing in a charitable investment fundraiser, promoting informed and confident participation. The requirement will only apply when an investor makes an initial investment, or rolls over an existing investment from the old regime; it will not apply for every reinvestment or additional investment.

Financial reporting

- 33 Under the proposed amendments, charitable investment fundraisers that issue debentures or issue interests in a managed investment scheme must prepare audited financial statements.

Note: Under the proposal, a charitable investment fundraiser must prepare audited financial statements if any of its associated investors are individuals.

- 34 The level of disclosure required in the financial statements will depend on whether the entity (which issued the debentures or interests in a scheme) is a reporting entity or a non-reporting entity.

- 35 Financial statements must be lodged with the Australian Charities and Not-for-profits Commission (ACNC) or, if the ACNC framework does not require lodgement, with ASIC.
- Note: For example, certain charities that may be exempt from lodging financial statements with the ACNC due to their size or classification (such as a basic religious charity) would be required under the proposal to prepare and lodge audited financial statements with ASIC.
- 36 Several submissions indicated support for this proposal on the grounds of improving transparency, though points were raised that the financial reporting requirements should be consistent with those of the ACNC framework and not result in duplication of lodgement, even though that framework does not apply to some small or religious charities.
- 37 Some submissions considered that the lodgement of audited special purpose financial statements, rather than general purpose financial statements, should be sufficient. Some submissions indicated that this condition would impose unjustified compliance costs.

ASIC's response

We have implemented this requirement: see RG 87.71–RG 87.72.

Although this approach does impose more onerous financial reporting obligations on some charities than the ACNC framework, the proposed financial reporting regime is appropriate because charitable investment fundraisers are permitted to accept investments from the public without complying with the usual regulatory regime. The promise of repayment or holding of assets for investors creates a need for accountability.

This disclosure will improve transparency and accountability and is also in line with the provisions in other market areas.

Breach reporting

- 38 We proposed that, under this condition, charitable investment fundraisers be required to report to ASIC in writing a significant breach, or a likely significant breach, of a condition of relief (e.g. when there is a delay in the lodgement of financial statements).
- 39 We envisaged that ASIC would have a discretionary power, which may be exercised on a case-by-case basis, to exclude charitable investment fundraisers from continuing to rely on our exemptions if we become aware that there are systematic and significant breaches of the conditions of relief.
- 40 While some submissions pointed to higher compliance costs, a number supported the proposal, including the condition on the basis of improving corporate governance in the sector.

ASIC's response

We have implemented this requirement, with some modification. We do not explain what we mean by 'significant breach'. Rather, the charitable investment fundraiser must notify ASIC of all breaches, unless we have notified it that breaches of that kind do not need to be notified to ASIC. If we become aware of a breach that has already occurred but has not been notified to ASIC, we may use our discretion to notify the charitable investment fundraiser whether the exemption in the ASIC Corporations (Charitable Investment Fundraising) Instrument 2016/813 continues to apply, despite the breach having occurred and not been notified immediately: see RG 87.73–RG 87.77.

This obligation is most likely to be triggered when there is a delay in the lodgement of financial statements.

This condition will help us identify charitable investment fundraisers that systematically:

- do not provide or are late in providing financial reports to investors; or
- do not meet or are late in meeting disclosure requirements.

The purpose of this condition is to promote better compliance.

This condition also enables us to permit relief to continue in certain circumstances, even with breaches of the conditions. Under our former policy framework this discretion did not exist.

Restriction on issue of at-call or short-term investments

- 41 In CP 207 we proposed that, for the exemptions to apply, charitable investment fundraisers that accept new investment fundraising from non-associated retail clients should be precluded from issuing interests or debentures that mature within 31 days, or from permitting holders to expect repayment in a lesser period. We consider these to be 'short term investments'. The term includes investments that, when reinvested or renewed at the expiry of a fixed term, may be redeemed or repaid at call or within a 31-day period.

Note: In the context of debentures, retail clients would include anyone to whom disclosure must be made under Ch 6D of the Corporations Act.

- 42 We sought submissions on two modifications to this proposal in our follow-up consultation:
- (a) Initially, we modified the proposal to prohibit a charitable investment fundraiser relying on the exemption from issuing financial products to wholesale investors and associated retail clients if there are any non-associated retail clients in the charitable scheme.

(b) Subsequently, we modified the proposal to provide that, where there are any non-associated retail clients in the charitable scheme, the charitable investment fundraiser must ensure that, essentially, debentures and interests are issued on terms that they may only be repaid or redeemed if all holders (not merely wholesale investors and associated retail clients) would be repaid or redeemed on that day and subsequent days in accordance with their entitlements. We refer to this requirement informally as a ‘liquidity overlay’.

43 The proposed restriction on the issue of short-term and at-call investments also restricts charitable investment fundraisers from offering transactional banking facilities, including ATM, BPAY, cheque and EFTPOS facilities, to:

- (a) non-associated retail clients; and
- (b) wholesale investors and associated retail clients, where the charitable investment fundraiser has issued investments to at least one non-associated retail client.

44 This proposal is generally consistent with APRA’s proposal for RCDFs generally. However, APRA’s restriction only applies to retail investments and not wholesale investors and associated retail clients (APRA uses the term ‘affiliates’), even where there are also non-associated retail clients in the charitable scheme itself.

45 Of the conditions proposed, this condition was one of the most contentious. Most charitable investment fundraisers who made submissions were opposed to this requirement and argued that the loss of at-call funds and transactional facilities would cause a significant loss in resources for charitable projects and require many loans to be refinanced. A number of submissions noted that this restriction would require a longer transition period to allow charitable investment fundraisers to refinance loans and establish the ongoing viability of the charitable investment fundraiser due to the increased costs associated with this restriction.

46 It was argued that the risks associated with at-call investments could be managed by implementing liquidity and capital requirements, and possibly quarantining liquid assets. Another view was that a shorter period for the permissible investment term, such as two business days rather than 31 days, was appropriate.

47 One further submission expressed the view that the liquidity test was unduly onerous.

48 A number of submissions queried the basis for imposing restrictions on the offer of transactional facilities to associated entities. These submissions noted that an inability to offer such facilities would jeopardise the viability of charitable investment fundraisers, as these investors would be targeted by other financial institutions.

ASIC's response

Following the second consultation, we consider it is necessary to:

- prohibit the issue of at-call and short-term investments to non-associated retail clients; and
- restrict the terms of issue of at-call and short-term investments to wholesale investors and associated retail clients, where there are any non-associated retail clients in the charitable scheme—essentially imposing a liquidity overlay so that the charitable investment fundraisers must ensure that, if any repayments or redemptions are effected, all holders of debentures and interests would be repaid or redeemed when due or reasonably expected to be due (see RG 87.79–RG 87.83). We expect the charitable investment fundraiser to make reasonable assumptions about the future, taking into account a range of factors (including the current markets).

We consider that prohibiting the issue to non-associated retail clients without imposing this liquidity overlay could give rise to a situation where a charitable investment fundraiser is obliged to meet short-term withdrawal requests from wholesale investors and associated retail clients but is prevented from preserving the asset pool to ensure that non-associated retail clients can be repaid.

In addition, we have permitted charitable investment fundraisers to facilitate redemptions to:

- any retail clients in the event of hardship; or
- all investors on a winding up.

The charitable investment fundraiser must make clear that at-call and short-term investments are issued to wholesale investors and associated retail clients on that basis.

We have also provided that a retail charitable investment fundraiser (i.e. one that has issued debentures or interests in a managed investment scheme to non-associated retail clients) may convert to a wholesale charitable investment fundraiser at any time, provided that it redeems or repays all investments held by non-associated retail clients.

Previous surveillances of the sector revealed that several charitable investment fundraisers had more liabilities than assets. The redemption restriction discussed above means that investment products cannot be offered to non-associated retail clients if the charitable investment fundraiser is in danger of potentially acute short-term illiquidity, and reduces the possibility of a run on investments as investors would have only delayed withdrawal rights.

This requirement also prevents non-associated retail clients from using their charitable investment fundraiser investment as a transactional facility—a behaviour that has increased the difficulties faced by some investors of failed mortgage funds and

debenture issuers. We acknowledge that liquidity risks can be managed, but consider that this is most appropriately effected through regulated structures in the case of highly liquid investments.

Restricted terms

- 49 We proposed that charitable investment fundraisers that have issued or propose to issue debentures or interests in a charitable scheme to any non-associated retail client must not use in any offer document, promotional material or other investor communication the terms:
- (a) ‘at-call’;
 - (b) ‘deposit’; or
 - (c) derivatives of these terms.
- 50 A majority of submissions accepted this proposal.

ASIC’s response

We have implemented this requirement: see RG 87.92–RG 87.94.

We consider that this requirement is consistent with APRA’s proposal for RCDFs, promotes differentiation between charitable investment fundraisers and banks, and provides improved certainty for investors. It does not preclude a charitable investment fundraiser from using the terms where they have not issued debentures or interests in a charitable scheme to non-associated retail clients.

Transition period

- 51 We also proposed a transitional period be imposed: see Table 1 of CP 207.
- 52 A number of submissions sought further explanation about the transitional arrangements, particularly about existing at-call and short-term investments held by non-associated retail clients and the liquidity overlay.

ASIC’s response

None of the requirements, including the liquidity overlay, will apply until 1 January 2018.

However, from 1 January 2017, no charitable investment fundraiser can issue any new at-call or short-term investments to non-associated retail clients. Existing at-call and short-term investments held by these clients may remain until 31 December

2017, after which they must be redeemed, repaid or converted to non-short term investments. This is consistent with APRA's proposed treatment of RCDFs.

See Table 1 in RG 87.

Proposed conditions that have not been adopted

- 53 In CP 207 we proposed imposing the following conditions as part of Option 2:
- (a) minimum charitable assets;
 - (b) capital and liquidity requirements;
 - (c) compliance audit report; and
 - (d) annual certification of compliance with the breach reporting requirements.

Minimum charitable assets

- 54 We proposed that all charitable investment fundraisers hold 75% of assets (by value) in charitable assets.
- 55 Many submissions disagreed with this condition on the basis it resulted in a duplication of regulation between ASIC and the ACNC, as ACNC has already assessed whether a charitable investment fundraiser has a charitable purpose. Many submissions also considered that distinguishing between charitable and non-charitable assets is artificial and inappropriate as a charitable investment fundraiser is not charitable because of what it invests in but because of the outcome it produces for its charitable community. Additionally this condition would restrict investment options, conflict with prudent liquidity management and may be contrary to the regulatory aim of protecting retail clients.

Capital and liquidity requirements

- 56 We proposed that all charitable investment fundraisers meet certain capital and liquidity requirements.
- 57 Submissions were generally agreeable to imposing capital and liquidity requirements to protect retail clients, but considered that it was inappropriate to impose this condition where charitable investment fundraisers operated as internal treasuries. Some submissions considered that capital and liquidity requirements would address our perceived concerns underlying the condition proposed in CP 207 prohibiting the issue of at-call or short-term investments. Other submissions considered this condition would increase compliance costs for charitable investment fundraisers and increased regulatory cost for ASIC.

Compliance audit report

- 58 We proposed that all charitable fundraisers lodge an audit report for each financial year reporting on compliance with the minimum charitable investment requirement, the capital and liquidity requirement and with requirements to lodge financial reports with the ACNC or ASIC.
- 59 Some submissions were supportive to the extent that the imposition of this condition allowed charitable investment fundraisers to continue with their current fundraising practices. Other submissions considered that this condition would lead to increased compliance costs and would not significantly increase the risk of non-compliance.

Annual certification of compliance with the breach reporting requirements

- 60 We proposed imposing, as part of the breach reporting condition, a requirement that charitable investment fundraisers lodge an annual certification of compliance with the breach reporting requirements, along with the annual financial statements lodged with ASIC or the ACNC (as relevant).

ASIC's response

We are not adopting the minimum charitable assets condition because a common model used by charities derives a benefit from the spread on loans or management fees on assets, rather than the use of the assets themselves. Investors may still be motivated to support the charity on the basis that those profits will promote the charitable purpose. Further, disclosure on the way in which investment funds are used to assist the charitable purpose of the charitable investment fundraiser may better attract investors who support that purpose.

We are not adopting the capital and liquidity requirement conditions set out in CP 207 because they are difficult for ASIC to monitor and enforce, and our enforcement of such prudential-like requirements might, in any case, cause confusion for investors both about our role and the distinction between charitable investment fundraisers and ADIs. Furthermore, we consider that the imposition of such rigorous requirements would impose significant unjustified costs on charitable investment fundraisers that meet the short-term exemption restriction.

We are not adopting the compliance audit condition because, in the absence of a minimum asset or capital and liquidity condition, the benefits of such an audit may not justify the cost.

We are not adopting the requirement to lodge an annual certification of compliance with the breach reporting requirements because we do not consider this is necessary.

Appendix 1: List of non-confidential respondents

First consultation (2013)

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| <ul style="list-style-type: none"> • Anglican Church Diocese of Sydney • Anglican Church of Australia—Diocesan Financial Advisory Group • Anglican Diocese of Melbourne—Melbourne Anglican Trust Corporation • Australian Catholic Bishops Conference | <ul style="list-style-type: none"> • Governance Institute of Australia (then called Chartered Secretaries Australia) • Independent Schools Queensland • Missions Interlink • UCA Funds Management • UC Invest • Uniting Church in Australia Investment Fund (WA) |
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Follow-up consultation (2016)

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| <ul style="list-style-type: none"> • Anglican Church Diocese of Sydney • Anglican Diocese of Melbourne—Anglican Development Fund • Australian Catholic Bishops Conference | <ul style="list-style-type: none"> • Baptist Union of Queensland • Governance Institute of Australia • UC Invest |
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