Anglican Development Fund
ABN 16 043 119 479

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[redacted]

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

By Email to exemptiondp@apra.gov.au

Dear Mr Grummitt

Banking Act Exemption: Religious Charitable Development Funds (RCDFs)

This is a submission from the Anglican Development Fund, Diocese of Melbourne (**ADFM**), to APRA's Discussion Paper, "Banking Act exemptions and section 66 guidelines." The ADFM welcomes the opportunity to comment on the proposals outlined in this Discussion Paper.

1. Summary of Submission

- The exemption for Religious Charitable Development Funds (RCDFs) from the Banking Act should not be withdrawn.
- The proposed prohibition of retail investors would have a significant detrimental impact on the operation of ADFM.
- The APRA assumption that issues facing RCFs are equivalent to those facing RCDFs is incorrect.
- We make some alternative suggestions in Part 3 below on measures that could be taken to ensure that investors do not mistake RCDFs for ADIs (and which would mean the existing exemption, with some appropriate conditions, could remain in place).
- We support the prohibition of the use of the word "deposit" in respect to the operation of RCDFs.
- We seek further clarity on the definition of the word "affiliate" and suggest a slightly wider definition.
- We oppose the prevention of cheque accounts and BPay facilities being made available to affiliates, and BPay to individual investors.

2. Background

2.1 Anglican Development Fund, Diocese of Melbourne

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

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

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

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

These surpluses may, depending on the Fund's need to retain capital, provide a base for grants to be made for specific capital projects.

The funds advanced are mainly for the development of parishes and their charitable projects, while ADFM is also the primary funder of the Melbourne Anglican Diocesan Schools Commission. These activities are thus aligned with our investors' intention of supporting the local Anglican community.

As at 31 March 2013, the ADFM had $50.3m of total assets and is supported by Reserves well in excess of 10% of Risk Weighted Assets. ADFM is also guaranteed by the assets of the Diocese of Melbourne. Investments registered in the name of individuals comprise approximately 30% of total investments.

Provided that they are affiliated in a demonstrable way with the Anglican Church within the boundaries of the Diocese of Melbourne, ADFM accepts a wide range of types of investors including individuals, businesses, parishes and related charities, trusts and NFPs. ADFM charges no fees on its accounts, which are both At Call and Term Investments. Surpluses that are not required as reserves to support the growth of ADFM are distributed, as determined by the ADF Management Committee, as grants to the Diocese's Church Extension and Development Fund. This Fund in turn makes grants to Anglican entities to support the growth of their religious and charitable objectives.

ADFM makes available online transaction functionality to all classes of investors. The system provider is Data Action Ltd. ADFM settles daily through the Bulk Electronic Clearing System (**BECS**) through Indue Ltd. ADFM's BSB is [redacted].

ADFM does not provide any EFTPOS or ATM facilities.

ADFM does not accept investments from any party that cannot demonstrate its affiliation with some part of the Anglican Church.

2.2 Operating Background to the Exemption as it applies to the ADFM

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

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

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

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

This means that there is a relationship between the ADFM's investors and the ADFM that is not analogous to the relationship between a RCF and its investors. Investors in ADFM are effectively stakeholders in the outcomes of these investments. It could be argued that they are in effect affiliates. Indeed individual parishioner investors indicate the individual parish to which they are affiliated at the time of their registration as an investor in order to help assess the quantum of potential borrowing from ADFM for which their particular parish may be eligible.

In the Discussion Paper, it is stated, *"...the public response to recent RCF failures has demonstrated that even with ... disclosures, investors may still consider that the security of their investment is equivalent to a deposit at an ADI".*

We accept that if such confusion exists then it is a matter of concern but submit that a simple extension of RCF inadequacies to RCDFs is not warranted nor justified. We cannot agree that this is a realistic risk in the case of RCDFs.

Given this, we submit that the current requirement of the Exemption which requires that RCDFs publish in their marketing material appropriate disclaimers is unambiguous. The paragraphs below are on the form that an investor signs when the investor registers with ADFM:

> *"An investment in the Anglican Development Fund (ADF) is designed for persons who wish to promote the charitable and religious purposes of the Diocese of Melbourne and for whom the considerations of profit are not of primary relevance to any decision to make an investment in the ADF.*
>
> *Further, neither the ADF nor the Melbourne Anglican Trust Corporation is prudentially supervised by the Australian Prudential Regulation Authority and investments in the ADF are*

not deposits and do not obtain the benefit of the depositor protection provisions of the Banking Act 1959 (Cth) ".

To our knowledge there is no evidence that confusion of the sort described in the Discussion Paper has occurred with any RCDF.

We submit that given the importance of individual investors (who are invariably parishioners or other supporters of the Anglican Church), to the operation of a number of RCDFs, including the ADFM, correcting any such perceived confusion by simply abolishing the exemption for these investors is an overreaction. It would be better to provide a means by which APRA can be fully confident that the status of RCDFs is understood.

3. Suggested Regulatory Response

For the reasons set out in this paper, we feel that imposing a requirement on RCDFs to become and ADI would be unreasonably burdensome in the light of the alternative regulatory responses available.

Accordingly, to allow the existing Exemption to remain place for RCDFs, we propose the following alternative regulatory response to the issues identified by APRA.

i. Retain the present disclaimer (eg, as set out above in the case of the ADFM).

ii. That in order to confirm their understanding that RCDFs are not supervised by APRA with the benefits that flow from that, all investors would need to certify that they understand the non supervised status of the RCDF, and confirm in writing that they have had the opportunity to take independent advice on the matter. (We envisage that this would be broadly similar in intent and practice to procedures available for those who offer personal guarantees for loans).

iii. We also believed that it was an existing requirement that the word "deposit" is not permitted to be used in material relating to the ADFM. It is not used by the ADFM to describe investments. If this is not the case then we support the proposal that it not be permitted for exempt RCDFs.

iv. That exempt RCDFs would be required publish their audited financial accounts and that these should be provided to each investor, at least annually as well as generally being available on a website.

v. That exempt RCDFs should adopt minimum liquidity ratios and capital equity ratios and publish their compliance with these ratios at regular intervals (period to be determined).

vi. Given the matter of trust involved, religious organisations (in the case of the Anglican church, the Diocese), should be required to stand behind their RCDFs with respect to investors' funds, that is they provide a guarantee that is available to investors in the RCDF that in the event of failure by the relevant RCDF, their investments will be repaid by the supporting religious organisation.

The Melbourne Anglican Trust Corporation currently already guarantees the funds invested in the ADFM in this way.

vii. RCDFs should continue to be restricted to promoting themselves to individual members of the church or to non-individual affiliates. (To assist in this it would be worth considering whether those individuals who invest in RCDFs could be considered as affiliates for the purposes of the Exemption. (see Part 5 below).

With these changes we submit that APRA should retain the Exemption for RCDFs and allow them to accept investments from individual investors, since the amended conditions proposed above would enable them to:

- confirm an understanding of the organisation in which they are investing and its non-supervised status;
- obtain information to confirm that it is well managed; and
- receive a guarantee that the relevant church stands behind their investments in the RCDF.

4. Consequences

It almost goes without saying that the cost and administrative complexity involved in obtaining a Banking Act licence would be beyond the reach of most (if not all) RCDFs. Accordingly, if the exemption for retail investors were to be abolished, as is proposed in the APRA Discussion Paper, then there would be several adverse consequences for both the community projects which the ADFM funds and the relationship with individual parishioners, including:

a. A significant amount of funding would need to be replaced. This would be very challenging and would be a major discontinuity and disruption to the work of the ADFM.
b. Parishioners and other supporters would be prevented from contributing their funds directly to the work of the Church except by donation. Many individuals want to be able to advance funds to assist the church but to retain the ability to withdraw that support when their personal circumstances change. ADFM's current operating protocols allow for this without a disruption to the capital developments it funds.
c. The cost of funding the church's capital and strategic investments would rise sharply, reflecting the higher costs of borrowing from ADIs, which are understandably driven by pecuniary motives that are not part of the ADFM's purpose.
d. RCDFs would in some cases either have to cease operation or adopt an operating structure which would be significantly more expensive in its operation and compliance costs. This would add little benefit to the investors involved, and would almost certainly materially reduce the funds available to the Church to pursue its charitable objectives.

5. Affiliates

We believe that greater clarification of affiliates is required. The current definition is set out at paragraph 4(a) of Schedule 2 to the RCDF Exemption. This provides a definition of those bodies and persons affiliated with an RCDF by reason of their relationship with the relevant religious organisation, namely:

(i) *A body constituted by or under the authority of a decision of the central governing body of a related religious organisation; or*

(ii) *A body in relation to which the central governing body of a related religious organisation is empowered to make ordinances or binding rules; or*

(iii) *A person acting as a trustee of a trust for or for the use or purposes of a related religious organisation; or*

(iv) *An employee of a body mentioned in sub paragraphs (i) to (iii) above who receives their stipend or remuneration via an account of the Fund.*

We recommend APRA define "affiliate" in these terms and make it clear in the RCDF Exemption Order (or any replacement exemption) that RCDFs are permitted to accept investments from affiliates who would otherwise be classified as retail investors. We believe that APRA should consider including as affiliates individual investors who register their investment and their affiliation to a particular parish with a RCDF such as ADFM.

6. Other Issues from the Discussion Paper

a. We seek assurance that APRA does not envisage that it will be necessary for a RCDF to provide a full range of de facto treasury services for its affiliates, for example advice and risk management if that is not sought. A RCDF should not be required to provide any specific service beyond what is currently provided.

b. We seek confirmation that APRA does not intend that cheque and BPay facilities should be withdrawn from affiliates, which would lead to a material disruption to their operating procedures and would severely damage the ability of an RCDF to maintain a close relationship with them.

c. BPay facilities are provided to ADFM's customers by an ADI (in our case Westpac Banking Corporation), and we do not understand the perceived risk of this operation which would lead to their withdrawal from any type of investor. We believe that BPay should not be withdrawn.

d. In addition to the proposed prohibition of the word "deposit", we note that APRA proposes that "At Call" accounts be prohibited. We believe that this is an overreaction.

   At Call accounts are an integral part of the ADFM offering to individual investors. For their own convenience, they are indeed the principal means of investment by individual investors. This requires sound liquidity management practices, and the ADF has for several years adopted procedures which effectively mirror those of supervised institutions, with a minimum of 10% of assets required to be held in cash or cash equivalents.

If the concern is that what ADF believes to be a generic name somehow leads to a misunderstanding about the status of the RCDF, then ADFM seeks to use another APRA sanctioned name to describe an account that is an important part of our operations, and which plays an important part in reducing our cost of funds.

8. **Our Submission**

We would be pleased to discuss further with you any of the matters outlined in this submission and request that you contact us further for this purpose. You should contact Andrew Hibbard who is the ADF Manager at either [redacted] or by telephone on [redacted].

Yours sincerely

Ken Spackman
Deputy Chairman of the ADF Management Committee