



24 May 2013

By email: exemptiondp@apra.gov.au

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

Dear Mr Grummitt

Banking Act exemption: Religious Charitable Development Funds (RCDFs)

We refer to the April 2013 Discussion Paper published by the Australian Prudential Regulation Authority (**APRA**) setting out proposals, among other things, to withdraw Banking Exemption No 1 of 2011 (**RCDF Exemption Order**) for RCDFs accepting investments from retail investors as from 28 June 2014.

Glebe Income Accounts (Anglican Church Diocese of Sydney) is an RCDF and currently listed in Schedule 1 to the RCDF Exemption Order.

We appreciate the opportunity to comment on APRA's discussion paper. We also appreciate APRA's ongoing willingness to engage with RCDFs on these matters. This letter sets out our submissions on the proposals in the Discussion Paper which relate to the RCDF Exemption Order.

1 Background

Glebe Income Accounts (**GIAs**) are operated by Glebe Administration Board (**GAB**) which is the trustee of the Diocesan Endowment of the Anglican Church Diocese of Sydney (**Diocese**). At 30 April 2013 the Diocesan Endowment consisted of total assets of \$255.0 million, total liabilities of \$128.5 million (including liabilities of \$123.4 million for Glebe Income Accounts) and net assets of \$126.5 million. The Diocesan Endowment provides the majority of the money distributed by the Synod of the Diocese each year for the maintenance of various ministries and church activities.

GIAs are designed for investors who wish to support the charitable purposes of the Diocese and for whom profit may not be of primary relevance in the investment decision and are currently open for investments from individuals, parishes, organisations and companies.

Investments are added collectively to the Diocesan Endowment and do not constitute a separate trust or fund. As at 30 April 2013, a total of 6,898 GIAs with an aggregate credit balance of \$123.4 million were operated by 2,200 customers (of which 889 accounts with

an aggregate credit balance of \$20.9 million were operated by 500 individuals). GIAs are operated in accordance with the conditions of (a) the RCDF Exemption Order, and (b) the Class Order exemption [CO 02/184] granted by the Australian Securities & Investments Commission in relation to fundraising by individual religious, educational, community and other charitable organisations. GAB is also a member of the Credit Ombudsman Service Limited.

Non-cash payment facilities (on-line internet access, direct credits, direct debits, BPAY payments and cheque payments) are provided by GAB in compliance with paragraph 4(a) of the RCDF Exemption Order and pursuant to:

- (a) intermediary authorisation agreement between GAB and Glebe Asset Management Limited (Australian Financial Services Licence no. 236962); and
- (b) separate agreements between GAB and each of Westpac Banking Corporation and Indue Limited.

Neither credit and debit cards, nor Automatic Teller Machine (**ATM**) or Electronic Funds Transfer at Point of Sale (**EFTPOS**) facilities are provided.

Further information is available online at <http://www.glebegroup.com.au/gia/>.

2 RCDF Exemption Order Submissions

2.1 Summary of concerns

Our primary concerns in relation to the proposals in relation to the RCDF Exemption Order set out in the Discussion Paper are:

- (a) APRA should provide RCDFs with certainty and clarity as to the customers from whom investments can be accepted from 28 June 2014;
- (b) continuing to be able to provide the accounts and services currently offered to Anglican parishes within the Diocese and other Diocesan organisations;
- (c) continuing to be able to provide the accounts and services currently offered to “non-retail investors” who may not necessarily be Diocesan organisations, but nonetheless wish to support the charitable purposes of the Diocese and for whom profit may not be of primary relevance in the investment decision;
- (d) transitional arrangements, including for term accounts opened before, but with a maturity after, the withdrawal of the RCDF Exemption Order but being of a type which would not be able to be accepted by RCDFs from 28 June 2014; and
- (e) implementation of APRA’s proposals by the replacement of the RCDF Exemption Order.

2.2 Customer certainty and clarity – definition of retail investors

Neither the Discussion paper, nor so far as we have been able to ascertain APRA’s prudential standards or other published guidelines, define the terms “retail investors” or “affiliates” in a way which is easily applicable to RCDFs. Both terms are of central importance to the effective implementation of the proposals in relation to the RCDF Exemption Order set out in the Discussion Paper.

APRA’s April 2008 ADI Authorisation Guidelines contain a similar concept to the concept of retail investors insofar as authorities granted to foreign authorised deposit-taking institutions (**ADIs**) to carry on banking business in Australia are subject to a condition specifically restricting the acceptance of retail deposits by their Australian branches (**Foreign ADI**

Deposit Restriction).¹ In particular, foreign ADIs are not permitted to accept initial deposits (and other funds) from individuals and non-corporate institutions of less than \$250,000, although they can accept deposits and other funds in any amount from incorporated entities, non-residents and their employees.

A related concept of a “retail deposit” is proposed to be used in APRA’s prudential standards on liquidity. Retail deposits are generally defined as deposits placed with an ADI by a natural person, with deposits from legal entities, sole proprietorships or partnerships being regarded as wholesale deposits.² Whilst defining a retail investor as a natural person has the advantage of simplicity, it would preclude RCDFs from accepting investments from both (i) high-net worth individuals who may wish to support the charitable purposes of the RCDF and for whom profit may not be of primary relevance in the investment decision by making an investment of a significant amount, say \$250,000 or more, or (ii) individuals who were “wholesale client” for the purposes of the Corporations Act 2001 (see the next paragraph).

Chapter 7 of the Corporations Act contains a similar concept in section 761G which sets out the meaning of the terms “retail client” and “wholesale client”. These concepts are well understood in the Australian financial services industry and could be adopted (with or without modification) for the purposes of the RCDF Exemption Order (or any replacement exemption).

In our view, the use of a definition of the term “retail investors” which is already well established and understood in Australian law would both:

- (a) provide RCDFs with the necessary certainty and clarity as to the identification of customers from whom investments can be accepted from 28 June 2014; and
- (b) minimise the costs of compliance and the implementation of appropriate customer identification processes.³

However, we would not oppose APRA developing a specific definition of the term “retail investors” for the purposes of the RCDF Exemption Order (or any replacement exemption) so long as that definition provides certainty and clarity and is capable of implementation without RCDFs incurring undue costs.

If APRA proceeds with its proposal to discontinue an exemption for “retail investors” (however defined) we would strongly urge APRA to adopt a similar structure to the Foreign ADI Deposit Restriction which would permit RCDFs to accept investments from both (i) affiliates (including affiliates who would otherwise be classified as retail investors, and (ii) non-retail investors.

2.3 Customer certainty and clarity – definition of “affiliate”

A conventional definition of “affiliate”⁴ is not easily applicable to RCDFs.

¹ Paragraphs 34 and 35.

² Paragraphs 33 and 34 of the consultation draft of APS 210 published in May 2013.

³ Applicants for GIAs and new signatories to existing GIAs, including those operating under power of attorney are required to provide certain identity information and documentation in accordance with the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 to verify that they are who they claim to be.

⁴ For example, the definition used in APRA’s Prudential Standard APS 111 (Capital Adequacy: Measurement of Capital), namely that an “affiliate” is a company that controls, or is controlled by, or is under common control with, another company (in the case of APS 111, an ADI). Control of a company is defined as: (i) ownership, control, or holding power to vote 20 per cent or more of a class of voting securities of the company; or (ii) consolidation of the company with the other company for financial reporting purposes.

We consider that paragraph 4(a) of Schedule 2 to the RCDF Exemption Order already sets out an appropriate and satisfactory definition of those bodies and persons affiliated with an RCDF by reason of their relationship with the relevant religious organisation, namely⁵:

- (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 other binding rules; or
- (iii) a person acting as a trustee of a trust for or for the use, benefit or purposes of a related religious organisation; or
- (iv) an employee of a body mentioned in subparagraphs (i) to (iii) above who receives their stipend or remuneration via an account of the Fund.

We recommend that 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.

2.4 Customer certainty and clarity – non-retail investors

In addition, we consider that RCDFs should be permitted to accept investments from bodies and persons who are not retail investors (however defined) if they wish to support the charitable purposes of the of the relevant RCDF and for whom profit may not be of primary relevance in the investment decision.

Accordingly, we would not oppose a continuation of the required disclosures in paragraphs 5 and 6 of the RCDF Exemption Order, although it does not seem necessary if RCDFs are not permitted to accept investments from retail investors (however defined).

2.5 Continuity of services - cheque and other non-cash payment facilities

The Discussion Paper states RCDFs are prevented from offering ATM, EFTPOS and cheque account facilities. This is incorrect. The RCDF Exemption Order currently permits the provision of cheque account facilities to certain customers⁶. An RCDF can also provide those customers with other non-cash payment facilities, although it cannot provide ATM or EFTPOS facilities⁷.

It is unclear whether APRA intends to prevent an RCDF providing cheque facilities to affiliates. The withdrawal of the cheque and other non-cash payment facilities which are currently provided to Anglican parishes within the Diocese, Diocesan organisations and other customers who satisfy the requirements of paragraph 4(a) of Schedule 2 to the RCDF Exemption Order would cause considerable disruption to the day-to-day operations of those customers.

As noted above, cheque and other non-cash payment facilities are provided by GAB pursuant to separate agreements GAB and each of Westpac Banking Corporation and Indue Limited. Both of these service providers is an ADI subject to prudential supervision by APRA.

We recommend that APRA continue to allow RCDFs to provide cheque and other non-cash payment facilities to affiliates, consistently with the current RCDF Exemption Order.

⁵ In the context of the Diocese these categories of “affiliate” would enable investments to continue to be accepted from Anglican parishes within the Diocese and other Diocesan organisations.

⁶ Paragraph 4(a) of Schedule 2 to the RCDF Exemption Order.

⁷ Paragraphs 4(b) and (c) of Schedule 2 to the RCDF Exemption Order.

Furthermore, and having regard to the regulatory concerns identified in the Discussion Paper (i.e. that even with the required disclosure that an RCDF is not prudentially supervised by APRA and that investments do not obtain the benefit of depositor protection, investors may still consider that the security of their investment is equivalent to a deposit with an ADI), there does not seem to be any policy reasons to preclude RCDFs from providing cheque and other non-cash payment facilities to non-retail investors.

In our view, restricting the provision of these facilities to affiliates and non-retail investors is not required in order to address the regulatory concerns identified in the Discussion Paper.

2.6 Continuity of services – operating as a de facto corporate treasury

It is unclear whether the various references in the Discussion Paper to RCDFs operating as de facto corporate treasuries for their affiliates constitutes a proposal by APRA that an individual RCDF must operate as a “de facto corporate treasury” for its affiliates. If so, this is an uncertain and unnecessary additional requirement.

In order to take advantage of the RCDF Exemption Order (or any replacement exemption), an individual RCDF should not be required to provide any treasury services (eg financial advice or management) which are in addition to the existing services which are provided by the RCDF.

2.7 Transitional arrangements

Whilst for historical reasons the RCDF Exemption Order currently expires on 28 June 2013, in our view this is anomalous. It would be preferable for an extension of the RCDF Exemption Order to expire on the last day of a month (eg 30 June 2014).

In this context we note that APRA may consider a longer transition period on a case-by-case basis where necessary.

The Discussion Paper is also unclear as to whether:

- (a) RCDFs will no longer be allowed to accept investments from new retail investors (who are not affiliates) from the date the RCDF Exemption Order is withdrawn or replaced, but can continue to provide accounts to existing customers opened before that date;
- (b) RCDFs will no longer be allowed to accept either (i) investments from new retail investors (who are not affiliates), or (ii) additional investments from existing retail investors (who are not affiliates), from the date the RCDF Exemption Order is withdrawn or replaced (for example, existing term investments made by non-affiliated retail investors can be retained until their maturity date but cannot be “rolled over”);
- (c) RCDFs will no longer be allowed to retain any investments from retail investors (who are not affiliates) from the date the RCDF Exemption Order is withdrawn or replaced (for example, existing term investments made by non-affiliated retail investors must be redeemed before the date the RCDF Exemption Order is withdrawn or replaced)⁸; or
- (d) some other arrangement is contemplated.

Again, RCDFs should be provided with certainty and clarity as to APRA’s intentions in relation to investments made by retail investors (who are not affiliates) prior to the date the RCDF Exemption Order is withdrawn or replaced.

⁸

We note that an RCDF may not have a contractual right to redeem a term investment in these circumstances.

2.8 Implementation

The Discussion Paper refers to the withdrawal of the RCDF Exemption Order, but at times seem to contemplate the replacement of the RCDF Exemption Order with a new exemption.

In our view it would be preferable for any changes to the RCDF Exemption Order to be implemented by a new exemption under section 11 of the Banking Act 1959, with the RCDF Exemption Order expiring in accordance with its terms. This would provide for a single point of reference setting out all the terms which were applicable to RCDFs in order for them to be exempt from the need to be authorised under the Banking Act.

We would welcome the opportunity to discuss these submissions with you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark Payne', followed by a small dot.

MARK PAYNE
Chief Executive Officer
Glebe Administration Board