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Dear Pat

APRA Response to Submissions - Religious Charitable Development Funds

The purpose of this letter is to provide feedback to APRA's "Response to Submissions - Religious Charitable Development Funds" dated 30 March 2016 ("the Response Paper").

Moores acts for The Properties Corporation of the Churches of Christ ("Prop Corp"), who operates a religious charitable development fund ("RCDF") under the current Banking exemption. This submission is made on behalf of Prop Corp.

1. Retail Investors

1.1 Prop Corp previously took the opportunity to provide feedback demonstrating the possible impact of APRA's earlier proposal to use the definition of 'retail investor' in the Corporations Act as the basis for a restriction on the activities of a RCDF.

1.2 Prop Corp supports APRA's new proposal which allows RCDFs to take deposits from 'affiliates' although they might be 'retail investors'. This mechanism allows RCDFs to maintain a large amount of current activity and leaves room for congregants, affiliated organisations and others to continue depositing with RCDFs as a means of supporting a charitable cause aligned with their beliefs.

2. Defining 'affiliate'

2.1 It is consistent with the history of RCDFs that people placing deposits with a RCDF were typically 'affiliates' of the RCDF (using a broad definition). The Response Paper proposes a definition of 'affiliate' which relies on a degree of structural or governance relationship between the depositor and the RCDF.

2.2 This submission will seek to:

- (a) demonstrate some likely adverse (likely unintended) consequences of defining 'affiliates' using structural or governance relationships only; and
- (b) propose amendments to the definition which may avoid those adverse consequences while still meeting APRA's overall objective of reducing the likelihood of confusion between a RCDF and an authorised deposit-taking institution ("ADI").

3. Consequences of a structural or governance definition of 'affiliate'

The proposed definition of 'affiliate' is likely to have the following consequences:

3.1 Breaking RCDF activity into denominational silos

- (a) The proposed definition of 'affiliate' used in the Response Paper essentially causes RCDF activity to break into silos.
- (b) Where a religious movement or denomination has a formal governance relationship with a RCDF, then churches, ministers, other employees and para-church organisations which are also 'within the fold' of that movement or denomination can deposit with the RCDF.
- (c) Bodies and persons within a denomination that does not have a RCDF with any kind of formal relationship to their church governance structure would not be able to deposit with any RCDF using the 'affiliate' exemption.
- (d) The proposed definition has the effect of limiting the pool of potential depositors for a RCDF to those organisations (churches and other entities), ministers and employees who are demonstrably 'within the fold' of some kind of umbrella governing body.
- (e) Prop Corp agrees that a RCDF should not be seeking deposits from the 'man in the street'. Under the proposed definition of 'affiliate', a RCDF would, be prevented from taking deposits from an independent church, or from a group of churches whose denomination did not already have a RCDF in existence.

3.2 Isolating independent and less-structured churches

- (a) There is a growing number of churches in Australia (single churches and groups of churches) for whom a denominational label has no applicability. Many single churches are completely independent of any umbrella governing body, despite a significant alignment of religious belief. Anecdotally, those churches and groups of churches would prefer to deposit with a RCDF who was responsive to their needs rather than a mainstream ADI.
- (b) The proposed definition of 'affiliate' would prevent a RCDF of a larger denomination from accepting deposits from single independent churches or smaller groups of churches. For example,

the Uniting Church RCDF would be prevented from accepting deposits from a Christian Community Church. The Anglican RCDF would not be able to take deposits from the Coptic Christians. And so on.

- (c) The proposed definition also prevents independent churches or less-structured churches from depositing with an RCDF operated under a different church banner.
 - (i) Independent churches would have an insufficient level of connection to the RCDF to be an 'affiliate'. This is another example of the issue raised in paragraph 3.1.
 - (ii) Where a group of churches which carry a common purpose, common name or common statement of beliefs but have no formal central organisation or association (the lack of which is often part of their faith expression), the lack of a central governing body or trustee would prevent them from fitting within the exemption.
- (d) It is our understanding that APRA does not necessarily intend its regulatory measures to prevent churches under one brand of religion from depositing with the RCDF operated by another brand of religion.
- (e) As a general social policy, it would be our view that measures which promote or allow interaction between groups of varying religious brands should be preferred above those which do not.

3.3 Loans across denominational lines, but not deposits

- (a) Although historically churches, para-church organisations and congregants may have placed great weight on the denominational label of the causes they chose to support, that is no longer the reality today. In fact, it is becoming common place for various movements and denominations to partner together in ventures and activities, including the joint formation of churches or other special-purpose entities for a particular purpose.
- (b) Many RCDFs are making loans to churches and entities which are 'affiliated' with other denominations. There is nothing which prevents RCDFs from making loans to churches in other denominations. Similarly, there is nothing that prevents a faithbased insurance program from including independent churches within its program.
- (c) It is the submission of Prop Corp that where lending activity has no denominational barriers, it would cause a potentially anomalous result to prevent RCDFs from accepting deposits from churches or entities which are 'outside the fold', particularly where many independent churches or smaller groups may prefer to deposit with an RCDF (perhaps the same RCDF they borrow from).

3.4 Preventing future consolidation of RCDFs

- (a) The satisfactory performance of a RCDF can be a function of critical mass. From this perspective, it could be advantageous for depositors, for APRA and for the sector generally for a larger RCDF to take over the activities of a smaller RCDF in the future.

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- (b) However, the proposed definition of affiliate, in our view, creates a disincentive to the possible merger or consolidation of RCDFs in the future - particularly across denominational lines.
 - (c) If two RCDFs were to merge into one in the future, it would be almost impossible for the merged RCDF to remain 'affiliated' with both original denominations or movements (unless there was also a 'merger' of the denominations; something of a rarity). The merged RCDF would almost certainly only have ongoing structural or governance connections to one of the denominations, not both.
 - (d) This provides an immediate disincentive to any RCDFs from merging in the future, as the merged RCDF may not have license to deal freely with the whole of the merged depositor base.

4. Alternative approaches

4.1 We submit that APRA should consider either:

- (a) amending the proposed definition by substituting paragraphs (i), (ii) and (iii) with a single description of an entity established for religious purposes; and amend paragraphs (iv), (v) and (vi) to refer to those entities; or
- (b) add a paragraph to the definition which includes a religious purpose category of 'affiliate' in the definition.

4.2 In our view, either of these amendments would:

- (a) allow RCDFs to accept deposits from entities (and its employees) which are established for a religious purpose, regardless of the denomination of the depositor;
- (b) still retain a reasonable limitation (the religious purpose limitation) in order to prevent RCDFs presenting as a 'bank' to the man in the street.

4.3 This is also consistent with the approach taken by ASIC in its Policy Proposal for Regulation of Charitable Investment Fundraisers (using the description of "common charitable objective").

4.4 We submit the above amendment will not only achieve the specific regulatory objectives of APRA, but would achieve other beneficial objectives such as:

- (a) avoiding potential confusion between the 'affiliate' test under the Banking exemption and the 'associated entity' test under charitable fundraising regulation (both of which apply to RCDFs); and
- (b) avoiding unnecessary duplication in explanatory materials and resources required by the relevant regulators.

5. Other

5.1 Prop Corp does not have any other objections to the measures proposed in the Response Paper.

5.2 Prop Corp is grateful for the consultation meeting recently held in Sydney, the clear communication provided by APRA and the opportunity to make submissions regarding the future regulation of RCDFs.

For any further information or clarification regarding this submission, please contact Andrew Boer at Moores using the contact details below.

Yours faithfully

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Principal

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