



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 87

Charitable schemes and school enrolment deposits

September 2016

About this guide

This is a guide for charities that wish to raise funds by issuing debentures or interests in a managed investment scheme to help them meet their objectives. It sets out our policy on giving relief to those charities from the fundraising, managed investment, debenture and licensing provisions of the *Corporations Act 2001* (Corporations Act).

It also covers our exemption for schools accepting enrolment deposits from the fundraising provisions of the Corporations Act.

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.

Document history

This guide was issued in September 2016 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Policy Statement 87, issued December 2004 and rebranded as a regulatory guide 5 July 2007

Disclaimer

This guide 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.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

This section provides an overview of our regulatory approach to charitable investment fundraisers. It explains:

- what ASIC means by the terms ‘charity’ and ‘charitable investment fundraiser’;
- how the fundraising, managed investment, debenture and licensing provisions in the *Corporations Act 2001* (Corporations Act) apply to charitable investment fundraisers; and
- the types of conditional relief available to charitable investment fundraisers from those provisions.

A staged implementation of the requirements in this guide applies: see RG 87.19–RG 87.21 and Table 1.

Schools that require a deposit to be lodged as a condition of enrolment may come within a separate exemption from the fundraising provisions of the Corporations Act: see Section D.

Charities and charitable investment fundraisers

What is a ‘charity’?

- RG 87.1 In this guide, we use the definitions of ‘charity’ and ‘charitable purpose’ from s5 and 12, respectively, of the *Charities Act 2013*. Broadly, charities are religious, educational, community and other types of organisations or bodies that are recognised in law as being formed for religious, educational, community or other charitable purposes.

What is a ‘charitable investment fundraiser’?

- RG 87.2 In this guide the term ‘charitable investment fundraiser’ is used to describe a charity that raises funds to support its purposes by issuing:

- (a) debentures (other than by way of certain limited offers); and/or
- (b) interests in a managed investment scheme.

Note: We use the definitions of these terms from s9 of the Corporations Act. A managed investment scheme run by a charitable investment fundraiser is known as a ‘charitable scheme’.

These financial products are issued on the basis that the money will be repaid to, or a monetary return will be delivered to, holders of the debentures or interests in a registered scheme (investors).

- RG 87.3 Debentures and interests in a managed investment scheme generally constitute a financial product: see s92 and 764A(1)(a) and (ba). Charitable investment fundraisers that conduct fundraising using a managed investment scheme in this manner are likely to be providing a financial service: see s766A.
- RG 87.4 This guide and the fundraising, managed investment, debenture and licensing provisions in the Corporations Act do not apply to fundraising undertaken by charities that is limited to the solicitation or acceptance of donations.

Application of the Corporations Act provisions

Fundraising, managed investment and debenture provisions

- RG 87.5 Various provisions of the Corporations Act may apply to charities that seek to raise funds using a charitable scheme, including:
- (a) the debenture provisions, set out in Pts 2L.1–2L.5;
 - (b) the managed investment provisions, set out in Ch 5C; and
 - (c) the fundraising provisions, set out in:
 - (i) Pts 6D.2–6D.3 (securities fundraising);
 - (ii) s992A and 992AA (anti-hawking); and
 - (iii) Div 2 and 4 of Pt 7.9, and s1017B and 1017G (financial product disclosure).
- RG 87.6 For the purposes of this guide, these provisions are collectively referred to as the ‘fundraising, managed investment and debenture provisions’.
- RG 87.7 The particular provisions that will apply to a charity or charitable investment fundraiser will vary depending on whether the charitable investment fundraiser raises funds through the issue of debentures or interests in a charitable scheme, or both: see RG 87.8.
- RG 87.8 A charity that operates a charitable investment fundraiser may be subject to a number of requirements in the Corporations Act. For example, if they offer:
- (a) debentures, they may be required to:
 - (i) have a trust deed and trustee (Ch 2L); and
 - (ii) issue a prospectus and comply with certain fundraising requirements, including the prohibition on securities hawking (Pts 6D.2 and 6D.3);

- (b) interests in a charitable scheme, they may be required to:
 - (i) comply with the managed investment scheme provisions (Ch 5C);
 - (ii) comply with the anti-hawking prohibitions (s992A and 992AA);
 - (iii) issue a Product Disclosure Statement (PDS) (Div 2 of Pt 7.9) and provide ongoing disclosure of material changes and significant events (s1017B);
 - (iv) comply with the dispute resolution requirements (s1017G); and
 - (v) comply with certain restrictions on advertising (Div 4 of Pt 7.9); or
- (c) both debentures and interests in a charitable scheme, they may be subject to all of these requirements.

Licensing provisions

- RG 87.9 A charity that issues debentures or interests in a charitable scheme may be required to comply with the licensing provisions, which would require them to hold an Australian financial services (AFS) licence and to meet obligations as an AFS licensee: s911A(1) and 912A.

Application to 'exempt bodies'

- RG 87.10 Some provisions in the Corporations Act will not apply in certain circumstances to charities that are an 'exempt body', as defined in s66A. An exempt body is a body corporate that is not a company and is incorporated by or under a law of a state or territory. For example, an exempt body that limits itself to:
- (a) offering debentures within the state or territory where it is incorporated may be exempt from certain fundraising provisions (see s708(20)); and
 - (b) certain conduct in relation to interests in a charitable scheme may be exempt from certain financial product disclosure provisions (see s1012D(8)) and consequently may also be exempt from the requirement to register the scheme.

Relief for charitable investment fundraising

Fundraising, managed investment and debenture provisions

- RG 87.11 Conditional relief is available for charitable investment fundraisers from the fundraising, managed investment and debenture provisions. Relief is not available under this policy for a charitable investment fundraiser that issues financial products that are not debentures or interests in a charitable scheme.

- RG 87.12 Unless the charitable investment fundraiser has the benefit of a licensing exemption or exclusion under the Corporations Act, all operators or promoters of a charitable investment fundraiser will generally need to hold an AFS licence with appropriate authorisations: see RG 87.25–RG 87.26.

Examples of exemptions and exclusions under the Corporations Act

Exemption

A charitable investment fundraiser that issues financial products through an intermediary who holds an AFS licence with appropriate authorisations may be exempt from the licensing provisions: s911A(2)(b).

Exclusion

Issuing debentures is not generally a financial service, although it may be if the funds are invested in an investment business of the issuer, following an offer to the public or a section of the public on terms that this will be done.

Licensing and product disclosure provisions

- RG 87.13 We have given conditional relief to charitable investment fundraisers from the licensing provisions for certain activities. The relief does not apply if any debenture or interest in a charitable scheme is issued to a person as a retail client, except if all retail clients are associates of the charitable investment fundraiser (associated retail clients).

Note: See RG 87.27 for the definition of ‘associate’.

- RG 87.14 We have also given conditional relief from the licensing and product disclosure provisions to persons involved in arranging the issue of, or providing financial product advice about, the debentures or interests in a charitable scheme issued by a charitable investment fundraiser.

Underlying principles of exemption

- RG 87.15 Our exemptions for charitable investment fundraisers recognise that investors are likely to want to assist a charity to fulfil its purpose and, either through personal or common knowledge of the charity, believe the charity will use its funds for that purpose. For many of those investors, financial benefit is not the primary consideration in choosing to invest with the charitable investment fundraiser. Therefore, the investor is not likely to expect or seek disclosures in complete compliance with the Corporations Act or the full protection of the fundraising, managed investment and debenture provisions or (where there are no non-associated retail clients) the licensing provisions.
- RG 87.16 On this basis we have given charitable investment fundraisers relief from significant parts of the regulatory burden applicable to other debenture

issuers or operators of managed investment schemes. Investors in charitable investment fundraisers are not likely to lose confidence in participation in the financial system more broadly on the basis of experience with charitable investment fundraisers. The relief is limited to certain financial products with characteristics that make the investor protections that would apply, if not for the exemption, less necessary—such as a restriction on accepting short-term investments.

RG 87.17 Nevertheless, we do not consider that the licensing provisions are unreasonably burdensome. They set a minimum regulatory standard that helps ensure compliance with the requirement of the relief and the financial services laws that do apply, including the prohibition on misleading and deceptive conduct under the *Australian Securities and Investments Commission Act 2001*.

RG 87.18 It is important that retail clients are not misled about whether the financial product offerings of a charitable investment fundraiser are comparable to those provided by issuers to whom our exemptions do not apply. Requiring that offerings are made through an AFS licensee, together with the requirements of the relief such as investor acknowledgement statements, help ensure this.

Application of the requirements

- RG 87.19 A staged implementation of the requirements applies: see Table 1. All requirements apply from 1 January 2018, except:
- (a) the restriction on the issue of at-call or short-term investments to non-associated retail clients, which applies to debentures or interests in a charitable scheme issued from 1 January 2017; and
 - (b) having an identification statement accepted for lodgement by ASIC or a sponsor for the purposes of the [ASIC Corporations \(Charitable Investment Fundraising\) Instrument 2016/813](#), which applies from 1 March 2017.
- RG 87.20 In this guide:
- (a) a ‘wholesale charitable investment fundraiser’ is a charitable investment fundraiser that has not issued any debentures or interests in a charitable scheme to non-associated retail clients after 31 December 2016; and
 - (b) a ‘retail charitable investment fundraiser’ is a charitable investment fundraiser that is not a wholesale charitable investment fundraiser;
- RG 87.21 This means that a retail charitable investment fundraiser can become a wholesale charitable investment fundraiser when it repays or redeems all

investments held by non-associated retail clients. Table 1 sets out what requirements apply and to whom, and where we have provided guidance.

Table 1: Application of the requirements

Requirement of relief	Who it applies to	Guidance
Identification statement accepted for lodgement	All charitable investment fundraisers (from 1 March 2017).	RG 87.37–RG 87.60
Disclosure requirements	All charitable investment fundraisers that issue to retail clients (including associated retail clients).	RG 87.61–RG 87.66
Avoid indicating product regulated	All charitable investment fundraisers.	RG 87.63
Investor acknowledgement statement	Retail charitable investment fundraisers.	RG 87.67–RG 87.70
Lodge and publish financial report	All charitable investment fundraisers. If they issue: <ul style="list-style-type: none"> • debentures, the report must be for the charitable investment fundraiser; and • interests in a charitable scheme, the report must be for the scheme. 	RG 87.71–RG 87.72
Breach reporting	All charitable investment fundraisers.	RG 87.73–RG 87.77
Prohibition on issue of at-call or short-term investments	Retail charitable investment fundraisers, for issues to non-associated retail clients (from 1 January 2017).	RG 87.79–RG 87.83
Prohibition on short-term investments	All charitable investment fundraisers where the short-term investment is held by a non-associated retail client.	RG 87.80
Payments to investors by cheque or transfer to an authorised deposit-taking institution (ADI) account only	Retail charitable investment fundraisers.	RG 87.84–RG 87.85
Restriction on the terms of issue, repayment and redemption	Retail charitable investment fundraisers	RG 87.86–RG 87.91
Prohibition on the use of ‘at-call’, ‘deposit’ or derivatives of those terms	Retail charitable investment fundraisers.	RG 87.92–RG 87.94

Transitional requirements

RG 87.22 Transitional requirements apply until 1 January 2018. This means that charitable investment fundraisers that do not meet the requirements set out in Sections C and D can continue to rely on the pre-existing relief (contained in Part 3 of ASIC Corporations (Charitable Investment Fundraising) Instrument

2016/813), but must meet the conditions of that relief. They must also comply with the requirements set out in RG 87.19.

RG 87.23 The conditions in the pre-existing relief are discussed in the former version of RG 87, which is reproduced in the appendix. It contains different conditions for exemption from the fundraising, managed investment, debenture and licensing provisions of the Corporations Act.

B What exemptions apply

Key points

This section provides an overview of relief exemptions available for charitable investment fundraisers. It explains:

- the conditional relief provided under ASIC Corporations (Charitable Investment Fundraising) Instrument 2016/813;
- the definition of ‘associate’; and
- what exclusions from the relief apply.

Overview of exemptions

- RG 87.24 We have given conditional relief to charitable investment fundraisers from the fundraising, managed investment and debenture provisions and certain relief from the licensing provisions of the Corporations Act: see ASIC Corporations (Charitable Investment Fundraising) Instrument 2016/813. A charitable investment fundraiser is eligible for this exemption only if:
- (a) either we or a sponsor have accepted for lodgement the charitable investment fundraiser’s identification statement; and
 - (b) the charitable investment fundraiser complies with the breach reporting requirement under the relief (see RG 87.73–RG 87.77).

Licensing exemption

- RG 87.25 Under the relief, wholesale charitable investment fundraisers will not need an AFS licence to:
- (a) deal in financial products by issuing debentures or interests in a charitable scheme that relate to the scheme;
 - (b) deal in financial products that are assets held for investors in the course of the operation of a scheme;
 - (c) provide a custodial or depository service by holding financial products on behalf of investors in a scheme in the course of operating the scheme; and
 - (d) provide financial product advice that is general advice in an offer document issued in connection with the scheme. The offer document must be supplied, in place of a PDS or a prospectus, as a condition of our product disclosure relief. We have treated this offer document as if it were an exempt document.

- RG 87.26 Charitable investment fundraisers cannot rely on this exemption after 31 December 2017 if they issue any financial product to a non-associated retail client from 1 January 2018.

Associates

- RG 87.27 For the purposes of this guide and our policy, we consider an ‘associate’ of a charitable investment fundraiser to be:
- (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 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 for 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 RG 87.27(a)–RG 87.27(d); or
 - (f) a person undertaking training or education to enable them to be a person under RG 87.27(e) and who receives money or money’s worth from any person mentioned in RG 87.27(a)–RG 87.27(e).

Underlying principles for treatment of associates

- RG 87.28 We do not treat retail clients who qualify as ‘associates’ like other retail clients for the purpose of determining:
- (a) the application of our exemption from the licensing provisions; and
 - (b) whether and how certain conditions or requirements apply to the exemptions provided to charitable investment fundraisers.
- RG 87.29 We understand that associated retail clients may not be sophisticated and, indeed, may face a heightened risk due to the concentration of exposure to the charitable investment fundraiser both as an investor and an associate. However, we consider that associates are more likely than non-associated retail clients to appreciate that the charitable investment fundraiser is not being regulated as an issuer of debentures or interests of a managed investment scheme.
- RG 87.30 Investments in charitable investment fundraisers can also provide an advantageous way of remunerating certain associates, where remuneration is provided by a charity that is not subject to fringe benefits tax. Applying

regulatory requirements that could discourage the use of this mechanism may disadvantage staff.

- RG 87.31 If offers may be made to people who are associates because they are voluntary staff members, this must be stated in the identification statement. It must also be stated what criteria will be applied when determining if a person is to be treated as a voluntary staff member (and therefore an associate).
- RG 87.32 We expect that appropriate criteria, such as number of hours regularly worked, will be included to ensure that this category is limited to persons who are genuinely and substantially involved in the organisation of the charity. For example, in the case of a religious charity this would not include members of the religious group that contribute to specific tasks—such as agreeing to be included in a roster from time to time for performing such functions as welcoming, social organisation, music, reading, assisting celebrants of religious services, counting collections, cleaning premises or decorating places where religious services occur—as distinct from persons performing an identifiable staff role as a minister or leader.
- RG 87.33 We will, and we expect that any sponsor will, assess any such criteria in an identification statement to ensure that offers that are not intended to be treated as being made to an associate are not so classified as on the basis of an a broad criteria for identifying voluntary staff members.

Exclusion

- RG 87.34 We may exclude a charitable investment fundraiser from relying on ASIC Corporations (Charitable Investment Fundraising) Instrument 2016/813 if, for example, we consider that the charitable investment fundraiser:
- (a) will not, or will not be engaged in activities that, meet the underlying principles of our relief;
 - (b) has a sponsor that is not an associate;
 - (c) has not complied with the conditions of the exemption or is not likely to comply with those conditions; or
 - (d) has engaged in false or misleading conduct in relation to debentures or interests in a charitable scheme offered, or purportedly offered, in reliance on the exemption.

If we decide to exclude a charitable investment fundraiser from our relief, we will notify them in writing.

No relief from s1017E or 1017F

RG 87.35 Even though relief may be available from the requirements to issue a PDS or prospectus, we will not provide relief from s1017E and 1017F. Charitable investment fundraisers must:

- (a) ensure that until interests in a charitable investment scheme are issued, the charity holds any money paid to acquire the products in a separate account, where required by s1017E; and
- (b) confirm all transactions when a retail client acquires or disposes of a financial product or when the charity varies the terms of the financial product, where required by s1017F.

C Requirements of relief for charitable investment fundraisers relying on ASIC's exemptions

Key points

This section explains the requirements of relief that will apply to charitable investment fundraisers that seek to rely on exemptions from the fundraising, managed investment, debenture and licensing provisions.

The conditions cover the requirement for charitable investment fundraisers to:

- to have an identification statement accepted for lodgement by a sponsor or ASIC (see RG 87.37–RG 87.60);
- give disclosure to persons acquiring financial products offered under the exemptions (see RG 87.61–RG 87.65);
- seek a specific investor acknowledgement statement from non-associate retail clients when they acquire financial products offered under the exemptions, and take reasonable steps to ensure that the product is only likely to be acquired by those who understand the disclosures (see RG 87.67–RG 87.68);
- lodge an audited financial report with ASIC, unless it has been lodged with the Australian Charities and Not-for-profits Commission (ACNC) (see RG 87.71–RG 87.72); and
- report breaches of the conditions to ASIC (see RG 87.73–RG 87.77).

RG 87.36 Some conditions apply to all charitable investment fundraisers who seek to rely on this relief and others will apply only to retail charitable investment fundraisers. Some conditions apply only in relation to retail clients and others apply more generally, as indicated in Table 1.

Note: For the commencement dates for the requirements in this section, see Table 1.

Identification statements

RG 87.37 Our exemptions only apply to charitable investment fundraisers that have an identification statement accepted for lodgement by ASIC or a sponsor. This is to ensure that ASIC and current and potential investors can ascertain who may be relying on the exemption, and that there is sufficient information to understand the scope and purpose of the reliance. The identification statement must be publicly available, but it is not required to be used as an offer document.

RG 87.38 This process of accepting an identification statement for lodgement is intended to reduce the extent of any inappropriate reliance on the relief, and

the potential for revocation of acceptance provides a means of excluding charitable investment fundraisers from relief where appropriate.

Benefit of a sponsor

- RG 87.39 A sponsor establishes an arrangement under which it accepts identification statements of charitable investment fundraisers for which it is an associate for the purpose of ASIC Corporations (Charitable Investment Fundraising) Instrument 2016/813. We expect the sponsor to assess whether the identification statement meets the content requirements set out in Table 2 and confirm that it is dated and signed on behalf of the charitable investment fundraiser by a named and identified signatory. We also expect a sponsor to assess whether the charitable investment fundraiser is likely to comply with the conditions of the exemption it is seeking to rely on.
- RG 87.40 A sponsorship arrangement can promote confidence in investment in the charitable investment fundraisers the sponsor accepts identification statements from. This is because the associated entity is likely to have more direct knowledge of the charitable investment fundraisers that is relevant to assessing whether they meet the criteria for an identification statement, both at the time of acceptance and on an ongoing basis.
- RG 87.41 The sponsor will guarantee the charitable investment fundraiser will meet its obligations for the debentures and interests issued, or purportedly issued, under the exemption by a charitable investment fundraiser (whose identification statement it has accepted and not revoked). This ensures that the sponsor has an interest in properly performing its functions in accepting identification statements. This sponsorship will be provided by covenants, set out in a deed, to make payments to the charity up to the amount needed to meet the claim against the charitable investment fundraiser of any holder of any relevant debenture or interests for their entitlements in relation to the investment.
- RG 87.42 A prospective sponsor must make inquiries to ensure that stamp duty obligations for the deed are met and provide adequate evidence to ASIC that any stamp duty needed to ensure the deed is enforceable has been paid.
- RG 87.43 Any entity that is to be a sponsor will need to be accepted by ASIC. The entity must execute a deed in favour of:
- (a) ASIC; and
 - (b) each person that holds any debentures or interests in a charitable scheme issued in reliance on the exemptions.
- RG 87.44 The sponsor must ensure that the deed poll is published on a website maintained by the sponsor or its associate. The deed poll must be easy to find for persons who have access to the internet. The sponsor must also

provide us with any information or assistance that we request to ensure compliance by:

- (a) the sponsor with the deed; or
- (b) the charitable investment fundraiser with the Corporations Act, including the conditions of exemption, or the *Australian Securities and Investments Commission Act 2001*.

RG 87.45 An entity that is interested in being a sponsor should first discuss its proposal and the process that will apply with ASIC. The proposed sponsor will need to explain what steps it will take to ensure it adequately performs its functions.

Withdrawal of acceptance of sponsor

RG 87.46 We will consider notifying the sponsor that it is no longer able to act as a sponsor if they:

- (a) do not meet any of the expectations in this guide; or
- (b) accept identification statements when they do not reasonably believe that:
 - (i) the identification statements are compliant;
 - (ii) the charitable investment fundraiser is likely to comply with the conditions for the exemption on which it seeks to rely;
 - (iii) the charitable investment fundraiser is their associate; and
 - (iv) the issue of the debentures or interests is intended by the charitable investment fundraiser to promote its charitable purpose.

Application for ASIC to accept identification statements

RG 87.47 For ASIC to accept identification statements for lodgement, the charitable investment fundraiser must provide to ASIC digitally:

- (a) an application for the charitable investment fundraiser's identification statement to be accepted by ASIC for the purposes of ASIC Corporations (Charitable Investment Fundraising) Instrument 2016/813, including providing the prescribed fee; and
- (b) an identification statement meeting the content requirements set out in Table 2. The identification statement must be dated and signed on behalf of the charitable investment fundraiser by a named and identified signatory.

Note: A person who makes a false or misleading statement in a document either required by or for the purposes of the Corporations Act or lodged or submitted to ASIC is guilty of an offence: s1308(2)–(3).

Content requirements of identification statements

RG 87.48 Identification statements must include the information set out in Table 2.

Table 2: Content requirements for identification statements

Information	Explanation
Identification information	Information necessary to identify the charitable investment fundraiser—including, as applicable: <ul style="list-style-type: none"> • its Australian Business Number; • particulars of its corporate status, including any legislation under which the charitable investment fundraiser was incorporated and, where relevant, an incorporation number; • the full name and date of birth of any natural person who is or is a part of the charitable investment fundraiser; and • its address.
Compliance	Which exemptions the charitable investment fundraiser intends to rely on and information demonstrating how the charitable investment fundraiser meets, or may be expected to meet, all the conditions for the exemptions.
Financial year	The start and end dates of the financial year of the charitable investment fundraiser, if it is to issue debentures or interests in a charitable scheme.
AFS licence	Whether the operator of the charitable investment fundraiser is or will be required to hold an AFS licence and, if so, the AFS licence number of the licensee.
Charitable purpose	The charitable purpose of the charity, a statement that the issue of the relevant debentures or interests in a charitable scheme will promote that charitable purpose, and information about how the issue of the debentures or interests will do so.
Method of fundraising	Whether investment funds will be raised by issue of debentures or interests in a charitable scheme or both, together with clear identification of any charitable scheme.
Key terms	The key terms of the product, including how the rate of return will be determined, the fees and costs payable by the investor and, for a charitable scheme, any fees and costs payable from the scheme assets.
Investors	To whom and through what means the debentures or interests will be offered, including whether any offers are to be made to non-associated retail clients and wholesale investors and associated retail clients. If offers may be made to persons who are associates because they are voluntary staff members, what criteria will be applied in determining if a person is to be treated as a voluntary staff member (and therefore an associate).
Audited financial reports	Whether the charitable investment fundraiser will be required to lodge an audited financial report with the ACNC and, if issuing interests in a charitable scheme, whether the charitable investment fundraiser will be required to lodge the scheme's audited financial report with the ACNC.

Information	Explanation
Guarantees or obligations	The identity of the provider and the terms of any guarantees or obligations to holders of interests or debentures by any person other than the charitable investment fundraiser that are to apply.
Asset types	What types of assets the charitable investment fundraiser will hold or, if there is to be a charitable scheme, are to be held under the scheme. Also, particulars of the extent to which any of those assets are outside Australia.
Acceptance of identification statement by a sponsor	If the identification statement is to be accepted by a sponsor, a statement to that effect, specifying the sponsor and where a copy of the deed poll required of the sponsor can be found.

Acceptance of identification statement

- RG 87.49 Before we accept an identification statement we will check some or all of its contents. We may ask the charitable investment fundraiser for further evidence of information. If we consider that the information is likely to be false, incomplete or misleading, we will not accept the identification statement.
- RG 87.50 We will also refuse to accept an identification statement if it appears to us that the scheme does not fall within the underlying principles of our policy, or we consider it is likely that the charitable investment fundraiser will not comply with the conditions of relief.
- RG 87.51 If we accept an identification statement, this does not imply that we have reviewed all the information in the statement or formed any view on it. We may at any time check that any part of the identification statement is true and not misleading and that the statement meets the content requirements. A charitable investment fundraiser must provide any information or assistance that we ask for to enable us to do this.
- RG 87.52 We expect a sponsor to only accept an identification statement if the sponsor reasonably believes that it is true, complete and not misleading, and that the charitable investment fundraiser is likely to comply with the conditions of relief.

Changes to information in an identification statement

- RG 87.53 The charitable investment fundraiser must take all reasonable steps to ensure that the identification statement is up to date, complete and not misleading at all times while it is being relied on to comply with the conditions of the exemption. If the identification statement will not be current, the charitable investment fundraiser must lodge an application for acceptance of a replacement identification statement before the change and, if practicable, lodge in sufficient time to ensure that the new identification statement is accepted before the change has taken effect.

RG 87.54 If a charitable investment fundraiser has not lodged an application for acceptance of a replacement identification statement with ASIC 28 days before the change, we are not likely to accept the replacement identification statement before the change. If less than 28 days is provided, the application should explain why it was not practicable to make an earlier application.

RG 87.55 If a sponsor has accepted a charitable investment fundraiser's identification statement, the charitable investment fundraiser should (where practicable) arrange for the sponsor to accept a replacement identification statement to ensure that while the exemption is relied on the identification statement is current.

Revocation of acceptance of an identification statement

RG 87.56 We may revoke acceptance of an identification statement at any time. We will notify the charitable investment fundraiser if we do so. We will consider revoking acceptance if we suspect that:

- (a) the identification statement is untrue, incomplete, misleading or not up to date; or
- (b) the charitable investment fundraiser has not complied with all the conditions that apply to the exemption.

RG 87.57 We will give the charitable investment fundraiser a reasonable opportunity to satisfy us that:

- (a) we should not suspect deficiencies with either the identification statement or their compliance; or
- (b) it is not appropriate in the circumstances to revoke acceptance of the identification statement.

RG 87.58 A sponsor may also revoke acceptance of an identification statement at any time. We expect that the sponsor will consider revoking acceptance if they suspect that:

- (a) the identification statement is untrue, incomplete, misleading or not up to date; or
- (b) the charitable investment fundraiser has not complied with all the conditions that apply to the exemption.

RG 87.59 If we or a sponsor revoke acceptance of an identification statement, the exemption will no longer apply to the charitable investment fundraiser and the charitable investment fundraiser must then comply with the relevant fundraising, managed investment, debenture and licensing provisions.

Public access

- RG 87.60 Each charitable investment fundraiser must maintain, or arrange for an associate to maintain, a website on which it publishes its identification statement, as accepted by ASIC or a sponsor, for five years after the charitable investment fundraiser relied on or purported to rely on it. The identification statement must be easy for members of the public who have access to the internet to find.

Disclosure

- RG 87.61 Charitable investment fundraisers must not issue a debenture or interest in a charitable scheme under the exemption unless they have given certain disclosures to retail clients (including any associated retail clients). This also applies if the charitable investment fundraiser accepts an additional investment under:
- (a) a debenture that was issued under a previous exemption given by ASIC; or
 - (b) an interest in a charitable scheme in relation to which any interest has been or is to be issued under a previous exemption given by ASIC.

Note: If the disclosures have already been provided to a client, they need not be provided again for an additional investment, whether it involves the issue of a new financial product or not.

- RG 87.62 We do not propose to prescribe the form of the disclosures provided, other than in relation to the content requirements set out in RG 87.25–RG 87.65. The charitable investment fundraiser may wish to conduct consumer testing on the structure and promotion of the product so it is unlikely to be acquired by persons who do not understand the required disclosures, and to otherwise ensure that the prospective investor understands the product.

Avoid indicating that the product is regulated

- RG 87.63 There must be no reference in any promotional material or offer document that states or implies that ASIC has approved or examined the charitable investment fundraiser, the financial products, or any promotional material or offer document.

Note: A charitable investment fundraiser may be under additional disclosure requirements under the conditions of an exemption provided by the Australian Prudential Regulation Authority (APRA) from the *Banking Act 1959* (Banking Act).

Additional disclosure required for retail clients

- RG 87.64 The charitable investment fundraiser must disclose to each retail client:
- (a) how the investment funds are used to support the charitable purpose. For example, it may be the yield on the investments made by the

charitable investment fundraiser or charitable scheme (less costs and income payable to investors), rather than the investment itself, that is directed towards promoting the charitable purpose;

- (b) where the identification statement may be viewed;
- (c) that the charitable investment fundraiser is required by law to notify investors that the debenture or interest and their offering is not subject to the usual protections for investors under the Corporations Act and is not regulated by ASIC; and
- (d) if the charitable investment fundraiser does not hold an AFS licence, a statement of that fact.

RG 87.65 Certain disclosures must be made in each offer document and promotional material given to retail clients in connection with the debentures or interests in a charitable scheme. These documents and materials must incorporate clear and prominent statements that the charitable investment fundraiser is required by law to notify investors that:

- (a) the investment is only intended to attract investors whose primary purpose for making their investment is to support the charitable purpose;
- (b) the investment is not comparable to investments that are issued by banks, finance companies or fund managers; and
- (c) the investor may be unable to get some or all of their money back when they expect to or at all.

RG 87.66 In addition to meeting mandatory disclosure requirements, we expect the charitable investment fundraiser to clearly disclose to retail investors:

- (a) the identity of the charity; and
- (b) the terms and conditions of the offer (or a summary of those terms and conditions).

Investor acknowledgment statements

RG 87.67 Charitable investment fundraisers must not issue a debenture or interest in a charitable scheme under the exemption to a non-associated retail client unless the client has provided an investor acknowledgement statement to the charitable investment fundraiser. This also applies if the charitable investment fundraiser accepts an additional investment under:

- (a) a debenture that was issued under the exemption or a previous exemption given by ASIC; or
- (b) an interest in a charitable scheme in relation to which any interest has been or is to be issued under the exemption or a previous exemption given by ASIC.

Note: If the investor acknowledgement statement has already been provided by the client, it need not be provided again for an additional investment, whether it involves the issue of a new financial product or not.

- RG 87.68 The investor acknowledgement statement must state that the retail client understands the matters set out at RG 87.64–RG 87.65. The writing need not include the matters but can refer to them in another document that is part of the document containing the acknowledgement.
- RG 87.69 The statement must be separate from any other agreement or acceptance by the client. It cannot be part of an application for the investment or document containing other representations.
- RG 87.70 The investor acknowledgement statement is ‘signed’ if the client is identified and their intention indicated. The statement can be signed physically or electronically—for example, by appending the client’s name to an email that is intended to demonstrate acceptance of the content or by typing their name into the signature field on an electronic form.

Lodge financial report

- RG 87.71 A charitable investment fundraiser must, if it has issued debentures or interests under the exemptions:
- (a) prepare a financial report in accordance with the Australian accounting standards:
 - (i) for itself, if it issues debentures; or
 - (ii) for the charitable scheme, if it issues interests in the charitable scheme.

The report must be in accordance with the recognition and management standards that apply to a reporting entity, even if it is not a reporting entity;
 - (b) arrange for a registered company auditor to prepare an audit report on the financial report within six months after the end of its financial year;
 - (c) publish the financial report on the internet, accessible by a link from where the relevant identification statement is or was most recently published for at least three years after they were first published; and
 - (d) lodge the audited financial report with:
 - (i) the ACNC, if required by law to do so; or
 - (ii) ASIC.

Note: The *Australian Charities and Not-for-profits Commission Act 2012* (ACNC Act) provides that financial reporting requirements that apply depend on the size of the registered charity, measured by its annual revenue. Some charities (including small-sized and medium-sized charities and charities that are ‘basic

religious charities', irrespective of size) may not be required to lodge an audited financial report with the ACNC. However, if the charity is not required to lodge the financial report with the ACNC, it will be required to lodge it with ASIC.

- RG 87.72 The requirements are to ensure that certain information is available to ASIC and current and prospective investors. It also supports accountability of the charitable investment fundraiser.

Breach reporting

- RG 87.73 Charitable investment fundraisers must submit a written report to ASIC of the full particulars of each breach, or likely breach, of a condition of relief. The charitable investment fundraiser must report within 15 business days of becoming aware of the breach.
- RG 87.74 We may exclude certain kinds of breaches from these requirements if we consider that, based on our experience, the nature and materiality of these breaches mean that the burden of compliance outweighs the benefit of disclosure.
- RG 87.75 The requirement is in addition to any breach reporting obligation those entities that hold an AFS licence with authorisations to offer investments to retail clients have under the Corporations Act.
- RG 87.76 If a charitable investment fundraiser becomes aware of a breach of a condition of relief and does not notify ASIC, the relief will no longer apply unless and until we confirm in writing that the fundraiser may continue to rely on our exemptions. We may impose conditions for providing such confirmation.
- RG 87.77 In light of the potential implications, we strongly encourage a charitable investment fundraiser to report to ASIC if in any doubt. The fact that a breach is reported to ASIC does not imply that we will take any further action. See [Regulatory Guide 78](#) *Breach reporting by AFS licensees* (RG 78) for more information.

D Product restrictions for charitable investment fundraisers relying on ASIC's exemptions

Key points

This section explains the product restrictions that will apply to charitable investment fundraisers that seek to rely on exemptions from the fundraising, managed investment, debenture and licensing provisions.

The conditions cover the restrictions on:

- investments that are repayable or redeemable within 31 days, except on expiry of a fixed term of at least 31 days (see RG 87.79–RG 87.83);
- certain modes of discharging, in whole or in part, the entitlements of a client that may enable financial products offered under the exemptions to be used as transaction facilities (see RG 87.84–RG 87.85);
- allowing repayment or redemption if there are grounds for concern about the ability to meet all investors' entitlements (see RG 87.86–RG 87.91); and
- the use of certain terms that imply financial products offered under the exemptions can be used as transaction facilities (see RG 87.92–RG 87.94);

RG 87.78 Some conditions apply to all charitable investment fundraisers who seek to rely on this relief and others will apply only to retail charitable investment fundraisers. Some conditions apply only in relation to retail clients and others apply more generally, as indicated in Table 1.

Note: For the commencement dates for the requirements in this section, see Table 1.

Products repayable in less than 31 days

Products issued from 1 January 2017

RG 87.79 From 1 January 2017, a retail charitable investment fundraiser relying on the exemptions must not issue to any non-associated retail clients debentures or interests in a charitable scheme that are short-term investment products—that is, products that:

- (a) have a fixed term of less than 31 days (from the time of a payment made by the investor under the product) within which the investor cannot require that they be repaid or have their rights redeemed in whole or part;
- (b) have a fixed term of 31 days or more but do not require the investor to be promptly paid at the expiry (e.g. they require a request for repayment), unless the investor's entitlement if they do not get paid

becomes a right that would not be prohibited if originally made on that basis; or

- (c) do not have a fixed term and the investor can be repaid or have the rights acquired from the payment redeemed in less than 31 days of request of the investor.

Products held from 1 January 2018

- RG 87.80 By January 2018, all charitable investment fundraisers that rely on the exemptions must ensure that no non-associated retail client holds a short-term investment product.

Underlying principles for short-term investment restrictions

- RG 87.81 We consider that the circumstances in which relief is appropriate should be limited by the restriction on retail clients acquiring products that could be used on a very short-term basis, to ensure that the financial products offered are not being used by non-associated retail clients as transactional facilities.
- RG 87.82 Transactional facilities imply a strong expectation of availability of funds; if present, these facilities should be subject to regulation under the fundraising, debenture and managed investment provisions. These provisions would be more appropriate for products involving transactional facilities, as they can help ensure that investors understand the risks and also require arrangements that can help ensure the liquidity risks are managed.
- RG 87.83 Our requirements are similar to those that APRA has indicated it will apply to religious charitable development funds to be exempted from the Banking Act from 1 January 2017 and 1 January 2018. Most major charitable investment fundraisers rely on the exemption under the Banking Act. Our exemption condition ensures this applies to all charitable investment fundraisers.

Transactional facilities

- RG 87.84 Retail charitable investment fundraisers must only issue debentures and interests to non-associated retail clients if these clients can only be paid or repaid for the debenture or interest by cheque to the client or to an account of the client with an Australian ADI.
- RG 87.85 This requirement helps ensure that from 1 January 2018, existing retail clients are less likely to treat as transactional facilities financial products that could affect the liquidity of the financial products held by the non-associated retail clients that are receiving new issues.

Allowing short-term repayment

- RG 87.86 Retail charitable investment fundraisers that rely on the exemption must only allow any repayment or redemption of debentures or redemption of interests:
- (a) on a winding up;
 - (b) if the charitable investment fundraiser has reasonable grounds to believe that all holders of debentures or interests will be repaid on that day and at all future times in accordance with their entitlements:
 - (i) if all repayments and redemptions that the charitable investment fundraiser may be required to pay on the relevant day were made; and
 - (ii) if all repayments and redemptions that may reasonably be expected to be due on each future day were made on that future day; and
 - (c) if the debenture or interest is held by an individual and the charitable scheme is satisfied the repayment or redemption would alleviate financial hardship that the individual is suffering or would suffer.
- RG 87.87 Except when relieving financial hardship or on a winding up, it is not appropriate that repayment or redemptions occur where it creates an unreasonable risk of other clients not being paid. This applies especially when there are non-associated clients who will not have short-term investment products, and therefore be unable to act even when a liquidity issue affecting the investment has arisen.
- RG 87.88 In assessing investors' entitlements, the charitable investment fundraiser must consider entitlements created by the marketing of the debentures or interests—that is, if the marketing has created an expectation about repayment—as well as the entitlements derived from the terms of issue of the debentures or interests.
- RG 87.89 We expect charitable investment fundraisers to ensure that debentures or interests are not marketed (especially to retail clients), in a way that creates expectations about repayment or redemption being available if these may not be fulfilled. If any representation, express or implied, is made that the charitable investment fundraiser will have the ability to make repayments or redemptions and there are not reasonable grounds for the representation, we will treat the representation as misleading: s728(2) and 769C.
- RG 87.90 We understand that on any day, many of the payments that holders of debentures or interests may be entitled to may not have to be paid because the holder rolls over their investment. A charitable investment fundraiser can establish cut-off times for requests for repayment or redemption so as to be in a position to know that, when the cut-off time has passed, the amounts that have been rolled over and not requested for repayment or redemption will not have to be paid on that day. This cut-off process would enable

repayments and redemptions to be permitted by RG 87.86(b) on the basis of the amount that will actually need to be paid on that day, disregarding other amounts that could have been required to be paid on that day.

- RG 87.91 We expect charitable investment fundraisers to not avoid the restrictions by establishing feeder structures that provide unrestricted access to repayments and redemptions from the fund for wholesale investors or associated retail clients, and channel the money of non-associated retail clients into the fund through a separate charitable investment fundraiser or charitable scheme. We will consider excluding any charitable investment fundraiser that uses such structures from being able to rely on the exemptions.

Use of restricted terms and misleading comparisons

- RG 87.92 Retail charitable investment fundraisers must not in any offer document, promotional material or other investor communication about any debenture or interest that it offers or has issued in reliance on the exemption use:
- (a) 'at call';
 - (b) 'deposit'; or
 - (c) derivatives of these terms.
- RG 87.93 If this requirement does not apply, the charitable investment fundraiser should consider whether using the restricted terms may be misleading, taking into account any restrictions on withdrawal rights,
- RG 87.94 A charitable investment fundraiser should ensure that all references to the debentures or interests in a charitable scheme are consistent with the underlying principles for relief and not misleading. In particular, a charitable investment fundraiser should not imply any comparison with regulated financial products such as banking products, debentures to which a debenture trust deed is in place under Ch 2L or a registered managed investment scheme.

E School enrolment deposits exemption

Key points

Schools that require a deposit to be lodged as a condition of enrolment may come within a separate exemption from the fundraising provisions, provided that they meet the eligibility requirements.

- RG 87.95 Schools that require a deposit to be lodged as a condition of enrolment may come within a separate exemption from the fundraising provisions of the Corporations Act: see [ASIC Corporations \(School Enrolment Deposits\) Instrument 2016/812](#).
- RG 87.96 The exemption for school enrolment deposits recognises that a financial benefit to the depositor is not likely to be a consideration in acquiring these products. Therefore, the holder is not likely to expect or seek the disclosure required by the fundraising provisions, nor the protections set out in the managed investment or debenture provisions nor the licensing provisions.
- RG 87.97 A school will only be eligible for this exemption if:
- (a) the deposit is required as a condition for the enrolment of a child in the school; and
 - (b) any rights or interests attaching to the deposit are merely incidental to the enrolment.

Appendix: Transitional requirements

- RG 87.98 As noted in Section A, if you are a charitable investment fundraiser that has pre-existing relief, you can continue until 1 January 2018 to rely on that relief and you must comply with the conditions of that relief. However, failure to comply will not necessarily result in the relief ceasing to apply. For your relief to continue, you must also:
- (a) comply with the short-term investment restriction for any new debenture or interest in a charitable scheme you issue from 1 January 2017; and
 - (b) have an identification statement accepted for lodgement by 1 March 2017.

While you are relying on the pre-existing relief, the former version of RG 87 applies to you. This version of RG 87 is reproduced in this appendix.

- RG 87.99 From 1 January 2018, this appendix will no longer apply, and all requirements and relief will be contained within the updated RG 87 and the relevant instruments.
- RG 87.100 This appendix is not intended to state any new policy. It merely replicates the requirements that applied under the previous version of RG 87.

Note: A copy of the previous version of RG 87 is also available from the [ASIC Digest](#) or by calling ASIC on 1300 300 630.

What this appendix is about

- RG 87.101 This appendix sets out our policy on relief from the fundraising, managed investment, debenture and licensing provisions of the Corporations Act that we may give to charities and schools that wish to raise funds to assist them meet their objectives.

Note: In this appendix, ‘charity’ means a person who is or a body or fund that is:

- exempt from income tax by virtue of s50–5 or s50–30 of the *Income Tax Assessment Act 1997*, or provisions that correspond to them;
- a person, body or fund to whom a gift is an allowable deduction for the purposes of calculating the taxable income of a person making the gift by virtue of s30–15, Item 1 or 2 of the *Income Tax Assessment Act 1997* or provisions that correspond to them; or
- otherwise recognised in law as being constituted for religious, educational, community or other charitable purposes.

- RG 87.102 It gives guidance on:
- (a) our general policy on relief for charities and for school enrolment deposits (see RG 87.103–RG 87.117);

- (b) what relief is available for groups of charities for which there is a sponsor accepted by ASIC (the ‘group charities’ exemption) (see RG 87.118–RG 87.132); and

Note: In this appendix, ‘sponsor’ means a person that we have accepted as a sponsor under this policy, having made a deed poll in the form of [Pro Forma 96 Sponsor deed poll](#) (PF 96).

- (c) what relief is available for an individual charity that has registered an identification statement with us (the ‘individual charities’ exemption) (see RG 87.133–RG 87.151).

Our general policy

Our policy

Charitable investment schemes

Note 1: In this appendix, ‘charitable investment scheme’ means a scheme operated by a charity that involves offering and issuing debentures or interests in a managed investment scheme.

Note 2: In this appendix, ‘debenture’ means, in general terms, a chose in action that includes an undertaking to repay as a debt money deposited with or lent to the body with certain exceptions.

- RG 87.103 We will give two types of relief (provided various lodgement and registration requirements are met) that will conditionally exempt charities from certain fundraising, managed investment, debenture and licensing provisions of the Corporations Act.

Note: In this appendix, ‘fundraising provisions’ means Pt 6D.2, Pt 6D.3, s992AA, Div 2 and Div 4 of Pt 7.9 and s1017G of the Corporations Act.

- RG 87.104 The first type of relief (i.e. exemption) applies to groups of charities that have common or related charitable objectives and for which there is a ‘sponsor’. This type of exemption is referred to in this appendix as a ‘group charities’ exemption. ASIC must agree that this relief applies to the sponsor and the sponsor must agree to undertake certain duties.

Note: See RG 87.118–RG 87.132 for details of the ‘group charities’ exemption for charities.

- RG 87.105 The second type of exemption applies to individual charities if ASIC agrees that the relief should apply. This type of exemption is referred to in this appendix as an ‘individual charities’ exemption. This relief was contained in Superseded Class Order [SCO 02/184] *Charitable investment schemes—fundraising* and is continued by section 8 of ASIC Corporations (Charitable Investment Fundraising) Instrument 2016/813 until 31 December 2017.

Note: See RG 87.133–RG 87.151 for details of the ‘individual charities’ exemption.

- RG 87.106 We will not provide relief under this policy to a charitable investment scheme that involves the issue of financial products other than debentures or interests in a managed investment scheme.

Underlying principles

Charitable investment schemes

- RG 87.107 Our exemptions for charitable investment schemes recognise that some investors may want to assist a charity to fulfil its purpose and, either through personal or common knowledge of the charity, believe the charity will use its funds for that purpose. For some of those investors, financial profit to the investor is not the primary consideration in making the investment and therefore the investor does not expect or seek point-of-sale disclosures in compliance with the Corporations Act or the protection of the fundraising, managed investment, debenture or licensing provisions normally required by the Corporations Act.
- RG 87.108 We will give relief from the fundraising, managed investment and debenture provisions and some limited relief from the licensing provisions that would otherwise apply as a result of the offer. However, we will generally not provide relief other than that directly required to facilitate investment in the charitable scheme. This is because wider relief may allow fundraisers and service providers to obtain an unfair commercial advantage from the use of a charitable scheme.

What is a charity?

- RG 87.109 In this appendix the term ‘charity’ is used to describe religious, educational, community and other organisations that are recognised in law as being formed for religious, educational, community or other charitable purposes. This includes charities recognised under statutory provisions such as relevant provisions of the *Income Tax Assessment Act 1997* and those recognised under common law.

Application of the Corporations Act

Fundraising, managed investments and debentures

- RG 87.110 The Corporations Act regulates some fundraising activities of charities because they seek to raise money on the basis that the money will be repaid or a monetary return will be paid on it. When they do this, the charities are likely to be offering and issuing debentures or interests in managed investment schemes, as defined in s9. Schemes of this kind are referred to in this appendix as ‘charitable investment schemes’. However, the fundraising, managed investment, debenture and licensing provisions do not apply:
- (a) when a charity seeks donations; or

- (b) to school enrolment deposits covered by our relief (see Part 2 of ASIC Corporations (School Enrolment Deposits) Instrument 2016/812).

Note: See also 'Exempt bodies' at RG 87.116.

- RG 87.111 The Corporations Act may require a charity that operates a charitable investment scheme (that is not otherwise exempt) to meet a number of requirements, including requirements to:
- (a) have a trust deed and trustee if offering debentures (Ch 2L);
 - (b) comply with the managed investment scheme requirements if operating a managed investment scheme (Ch 5C);
 - (c) comply with the hawking requirements (s736, s992A and s992AA);
 - (d) issue a prospectus if offering debentures and comply with certain fundraising requirements (Pts 6D.2 and 6D.3);
 - (e) issue a PDS if offering financial products that are not securities (Div 2 of Pt 7.9) and provide disclosure of certain material changes and significant events to certain holders of financial products that are not securities (s1017B);
 - (f) comply with the dispute resolution requirements if offering financial products that are not securities (s1017G); and
 - (g) comply with certain restrictions on advertising under s734 for securities and Div 4 of Pt 7.9 for financial products that are not securities.

These provisions are referred to in this appendix as the 'fundraising, managed investment and debenture provisions'.

Licensing

- RG 87.112 The Corporations Act may also require a person who provides financial services to hold an AFS licence: s911A(1). These provisions are referred to in this appendix as the 'licensing provisions'.
- RG 87.113 Our relief to the charitable body and the trustee of the charitable body from the requirement to hold an AFS licence for the provision of financial services is limited.
- RG 87.114 If we grant relief from the fundraising, managed investment and debenture provisions, we will also use ASIC's exemption powers in s911A(2)(1) to grant relief from the requirement to hold an AFS licence for the following activities:
- (a) dealing in financial products by issuing the products offered under the charitable investment scheme;
 - (b) dealing in financial products that are scheme assets on behalf of investors other than by issuing financial products; and

- (c) holding scheme assets that are financial products or beneficial interests in financial products (i.e. providing a custodial or depository service) under the charitable investment scheme.

RG 87.115 We will also use ASIC's exemption power in s911A(2)(l) to give relief to an operator of a charitable investment scheme from the requirement to hold an AFS licence in order to provide general advice about the charitable scheme in an offer document that must be supplied, in place of a PDS or a prospectus, under our relief for product disclosure. We will treat the offer document as if it were an exempt document (e.g. a PDS).

Exempt bodies

RG 87.116 The fundraising provisions do not apply when a charity that is an exempt body (as defined in s66A of the Corporations Act, namely incorporated bodies under state or territory law that are not companies) in certain circumstances. These circumstances are when the exempt body limits itself to:

- (a) in the case of a debenture—offers of debentures within the state or territory where it is incorporated (see s708(20)); or
- (b) in the case of a managed investment scheme, offers and issues of, and recommendations to acquire, interests in the scheme (see s1012D(8)). Where the fundraising provisions do not apply to any issues of interests in a managed investments scheme, generally the scheme is not required to be registered under Ch 5C of the Corporations Act and the operator of the scheme does not need an AFS licence as a responsible entity.

Public access to information

RG 87.117 We will not regard any documents lodged with us under both types of exemption (including any applications for relief) as confidential. Any person may search our database for, and request a copy of, such documents. We will also make a list of sponsors available for search by any person.

The 'group charities' exemption

Note: RG 87.118–RG 87.132 does not deal with school enrolment deposits.

Our policy

RG 87.118 We give conditional relief to a sponsored charity and the trustee of a sponsored charity from the fundraising, managed investment and debenture provisions for the charity's charitable investment schemes. The sponsor must enter a deed poll in the form of PF 96, and comply with the requirements set

out in the deed: see RG 87.126. This type of exemption is referred to in this appendix as a ‘group charities’ exemption.

Note: The form of this relief will be based on [Pro Forma 97 Sponsor exemption](#) (PF 97).

- RG 87.119 If you are a body or organisation wishing to become a sponsor, you must apply to us. We will consider your application against the criteria outlined below. You must provide sufficient detail to demonstrate how you meet the criteria. The criteria are:
- (a) The charities you will register have the same or related charitable objectives. We may direct you to cancel the registration of a specified sponsored body if we think it does not have common or related objectives.
 - (b) The number of charities you will register is large enough to need a ‘group charities’ exemption. If you think there are other good reasons why the exemption is appropriate, you must give the reasons.
 - (c) You can adequately monitor the liability that may arise under the sponsor deed poll set out in PF 96.
 - (d) You have and will continue to have the means to promptly discharge any liability that may reasonably be expected to arise under the sponsor deed poll.
 - (e) Your intention is to assist the charitable aims of members of the group and not make material profits for yourself as a result of being a sponsor.
 - (f) Despite RG 87.119(e), if you may receive remuneration or financial benefits as a result of being a sponsor, you will take reasonable steps to ensure that the sponsored charities include in their offer documents a statement from you informing prospective investors of the terms and arrangements under which you may receive the remuneration or financial benefits. For this purpose you can disregard remuneration or other financial benefits that are trivial or reimbursement of costs and expenses you have or will incur because you are a sponsor.
 - (g) You can adequately monitor that the offer documents issued by sponsored bodies comply with the conditions of our relief. These conditions set out certain requirements to be disclosed in the offer documents or promotional material of a sponsored body.

Note: See conditions 1 and 2 of PF 97.

- RG 87.120 Under the ‘group charities’ exemption, we will also give certain relief to people other than the charity and the trustee of a sponsored charity. This will be relevant to other persons involved in arranging the issue of, or providing financial product advice about, the debentures or interests to which the charitable investment scheme relates. This relief from the licensing provisions and from the product disclosure provisions (in Pt 7.9) applies to the person if:

- (a) the conditions attached to PF 97 appear to be met; and

- (b) the person is not aware nor should be aware that those conditions have not been met.

Underlying principles

- RG 87.121 A charity that makes adequate disclosure about its charitable investment schemes and is sponsored by a body or organisation that meets certain criteria and accepts liability for any loss or damages to investors arising from the conduct of that charity should not have to deal with us on an individual basis to gain relief under our policy.

Explanation

Who can use the 'group charities' exemption?

- RG 87.122 The 'group charities' exemption is for groups of charities that have common or related charitable objectives where there is a sponsor accepted by us. A 'group charities' exemption also supports any statement by a member charity that an investment in or with it is an investment that is supported by or benefits the group as a whole.
- RG 87.123 As a guide, a group of 20 or more member charities may need the 'group charities' exemption. Smaller numbers may be considered if there is good reason.

No relief from s1017E and s1017F

- RG 87.124 We will not require a sponsored charity to issue a PDS or prospectus and we will give relief from the requirement in s1017B to inform investors of certain material changes and significant events. However, we will not give relief from certain other obligations. Charities must ensure that until financial products (other than debentures) are issued, they hold any money paid to acquire the products in a separate account: s1017E. Charities must also confirm, or provide the investor with a facility to confirm, all transactions when a retail client acquires or disposes of a financial product or when it varies the terms of the financial product where required by s1017F.

Note: In this appendix, 'retail client' means a client defined as such under s761G and Ch 7, Pt 7.1, Div 2 of the Corporations Regulations 2001.

General criteria for group charities exemptions

- RG 87.125 In brief, a charity is exempt if it:
- (a) is registered and remains registered by a sponsor who complies with its deed poll; and
 - (b) makes certain disclosures as set out in PF 97 to ensure that investors are made aware that:

- (i) the charity's investment scheme is not subject to the usual fundraising, managed investment, debenture and licensing provisions;
- (ii) the sponsor is liable to make payments to the charity up to the amount needed to repay investments under the charitable investment scheme and any interest or other income payable on those investments if investors claim against the charity; and
- (iii) the investment is designed for investors who wish to promote the charitable purposes of the charity and for whom the considerations of profit are not the primary consideration in the investment decision.

Your duties as sponsor—PF 96

RG 87.126 To have our acceptance as a sponsor, you must make a deed poll in the form set out in PF 96. In brief, the deed obliges you to:

- (a) maintain a register of those charities and their investment schemes for which you unconditionally accept liability;
- (b) indemnify the relevant charity against claims by investors in the charitable investment scheme (the liability may be limited to the amount of money subscribed by investors plus any interest accrued up to the date the liability is met);
- (c) continue to provide the indemnity for claims by those who invested while the charity or scheme was on the register, although you may remove a charity or charitable investment scheme from the register; and
- (d) allow any person to inspect the register.

Stamp duty

RG 87.127 You should make your own enquiries to ensure that stamp duty obligations for the deed (described at RG 87.126) are met and provide adequate evidence to us that this has occurred.

Deregistration at ASIC's direction

RG 87.128 Under the terms of the deed, we may direct the sponsor to deregister a charity. We may do this if, for example, we consider that:

- (a) the relevant charitable investment scheme does not meet the underlying principles of our relief (see RG 87.107) or if the charitable purposes of the body are not related to other members of the group;
- (b) the charity has not complied with the conditions of the exemption; or
- (c) the charity has engaged in false or misleading conduct in relation to its charitable investment scheme.

Withdrawal of acceptance of sponsor

RG 87.129 We may withdraw our acceptance of a sponsor at any time. If we intend to do this we will give reasonable notice to the sponsor. We will consider this action if, for example, we no longer have confidence that the sponsor will fulfil its obligations under the deed poll, or if we believe the sponsor has not given us adequate and accurate information. We may publish the notice given to the sponsor. If our acceptance is withdrawn, all charities registered by the sponsor fall outside the ‘group charities’ exemption. Therefore, those charities will:

- (a) have to comply with the fundraising, managed investment, debenture and licensing provisions of the Corporations Act that otherwise apply; or
- (b) obtain an ‘individual charities’ exemption.

Application to be sponsor

RG 87.130 We will consider an application to be a sponsor only if the application includes consent to allow any person to examine the application on request to us. We may seek more information about the application. The deed poll must be lodged with us before we will give relief based on PF 97.

RG 87.131 A sponsor wanting relief for its own fundraising activities can include itself within a ‘group’ exemption.

RG 87.132 To apply for approval as a sponsor:

- (a) prepare a statement that addresses all the matters set out in RG 87.119;
- (b) ensure that the statement includes a consent to allow a person to examine the application on request to ASIC;
- (c) complete PF 96; and
- (d) lodge all documents with any ASIC Office.

You can also contact ASIC on 1300 300 630 for information and assistance.

The ‘individual charities’ exemption

Note: RG 87.133–RG 87.151 does not deal with school enrolment deposits.

Our policy

RG 87.133 We will give conditional relief from the fundraising, managed investment and debenture provisions and the licensing provisions of the Corporations Act to individual charities and their trustee for the charity’s charitable investment schemes without the need for a sponsor: see section 8 of ASIC

Corporations (Charitable Investment Fundraising) Instrument 2016/813. A charity and its trustee are eligible for this exemption only if we have first registered the charity's identification statement.

Note: An officer or employee of a charitable body is exempt from the requirement to hold an AFS licence for the provision of these financial services on behalf of the body by s911B(1)(e).

- RG 87.134 We will give relief from the licensing provisions and the fundraising provisions in Pt 7.9 to other people who provide financial services for the financial products issued under a charitable investment scheme provided:
- (a) the conditions of the relief for the individual charity appear to be met; and
 - (b) the person is not aware nor should be aware that the conditions of relief applying to the charity have not been met.

Lodging an identification statement

RG 87.135 If you are an individual charity seeking relief, you must lodge with us an identification statement that sets out:

- (a) the identity of the charity;
- (b) your Australian Company Number (ACN) if you are a company or, if not, your Australian Business Number (ABN) if you have one;
- (c) details of incorporation if you are an incorporated body other than a company (e.g. the legislation under which you were incorporated and, where relevant, an incorporation number);
- (d) the names and addresses of all members if you are an unincorporated body (other than an unincorporated registrable body for which an Australian Registered Body Number (ARBN) is provided);
- (e) a brief description of the scheme and its intended purpose; and
- (f) the guarantees or promises, if any, made to or proposed to be made to holders of interests or debentures in your scheme.

- RG 87.136 In describing the charitable investment scheme to us, you should also include information on:
- (a) what types of assets the scheme will invest in or, for a debenture issue, the charity will hold to enable it to satisfy any liability;
 - (b) what countries those assets will be located in; and
 - (c) how you will ensure you will comply with the conditions attached to section 7 of ASIC Corporations (Charitable Investment Fundraising) Instrument 2016/813.

Registering an identification statement

- RG 87.137 If you want to rely on the ‘individual charities’ exemption, you must ensure that your registered identification statement is completely accurate and adequate in all material respects.
- RG 87.138 We will register an identification statement unless we are concerned that the information in a material particular is, in content or by omission, misleading or deceptive in the form or context in which it appears or fails to include the information required by RG 87.135–RG 87.136.
- RG 87.139 We will refuse to register an identification statement if it appears that the charitable investment scheme does not fall within the underlying principles of our policy: see RG 87.107.

Updating an identification statement

- RG 87.140 When the identification statement needs correcting or updating, you must lodge a supplementary or replacement statement with us as soon as possible. If the terms of the investment relate to variable interest rates and the identification statement and the offer document sets out how rate changes are to be notified to persons who are offered the investment, the identification statement need not be updated each time rates change.

Cancelling registration of an identification statement

- RG 87.141 We may withdraw the registration of an identification statement at any time. We will tell you of the withdrawal. We will consider withdrawing registration if:
- (a) as a result of changed circumstances, the identification statement may no longer be accurate and adequate in all material respects, and you fail to lodge a supplementary statement setting out the changed circumstances;
 - (b) as a result of our own inquiry or new information, we are not satisfied that the statement is accurate and adequate in all material respects; or
 - (c) we are not satisfied that:
 - (i) financial reports you have lodged with us are true and fair and comply with any applicable requirements as to the financial reports under any law requiring them to be prepared; or
 - (ii) you have fulfilled all conditions of the ‘individual charities’ exemption.

Information given to investors

- RG 87.142 You must ensure that every offer document given to investors contains or is accompanied by the following information:
- (a) the identity of the charity;

- (b) the terms and conditions of the offer (or a summary of those terms and conditions);
- (c) a statement that the normal protections that would apply under the Corporations Act do not apply; and
- (d) other information required to be disclosed under section 8 of ASIC Corporations (Charitable Investment Fundraising) Instrument 2016/813.

There must be no reference in any promotional material or offer document that the charitable investment scheme has been approved or examined by ASIC.

Lodgment of financial report

RG 87.143 You must lodge with ASIC certain financial information within six months of the end of each financial year. If you are under an obligation under a Commonwealth, state or territory law to lodge the financial report with the Crown or a statutory body, you must provide the financial report to ASIC. If you have the financial report audited, you must give ASIC a copy of the audit report. If you are not required to lodge a financial report in that way, you can choose to give ASIC:

- (a) audited annual financial report for that financial year (with an audit report if you have one); or
- (b) a statement that sets out the funds outstanding under the charitable investment scheme at the end of the financial year.

Underlying principles

RG 87.144 We consider that investors do not expect or rely on the same level of regulatory protection otherwise required under the Corporations Act when the investment in the charity is to promote the charitable purposes of the charity and not to make a financial profit for the investor.

Explanation

No relief from s1017E or s1017F

RG 87.145 We will not require a charity with an ‘individual charities’ exemption to issue a PDS or prospectus and we will give relief from the requirement in s1017B to inform investors of certain material changes and significant events. However, we will not give relief from certain other obligations. Charities must ensure that until financial products (other than debentures) are issued they hold any money paid to acquire the products in a separate account: s1017E. Where required by s1017F, charities must also confirm all transactions when a retail client acquires or disposes of a financial product or when it varies the terms of the financial product.

Registering an identification statement

- RG 87.146 If we register an identification statement, this does not imply that we have confirmed the accuracy and adequacy of the statement. We may, from time to time, seek to verify the accuracy and adequacy of the identification statement after its registration. We may do this as a matter of course or in response to concerns we may have about the statement.

Cancelling registration of an identification statement

- RG 87.147 If we cancel the registration of an identification statement then you fall outside the ‘individual charities’ exemption. You must then comply with the relevant fundraising, managed investment, debenture and licensing provisions of the Corporations Act as applicable.

Information given to investors

- RG 87.148 The offer document given to investors must include the information required by section 8 of the ASIC Corporations (Charitable Investment Fundraising) Instrument 2016/813. This information may well be more detailed than the information required in the identification statement lodged with ASIC. You do not have to lodge a copy of the offer document or any subsequent document updating the offer although you may have to update your identification statement: see RG 87.140.

Application for exemption

- RG 87.149 To obtain relief under section 8 of ASIC Corporations (Charitable Investment Fundraising) Instrument 2016/813 you must apply to register an identification statement as required by the instrument. The identification statement must address each of the issues set out in RG 87.135–RG 87.136. It must also include a consent to allow any person to examine your application on request to ASIC.
- RG 87.150 You must include a statutory declaration from an authorised officer or trustee of your organisation that states that your organisation is a charity as defined for this policy.
- RG 87.151 To apply for an ‘individual charities’ exemption:
- (a) prepare an identification statement that addresses all the matters listed in RG 87.135–RG 87.136;
 - (b) ensure that the identification statement includes a consent to allow a person to examine the application on request to ASIC (see RG 87.149);
 - (c) include a statutory declaration that states that your organisation is a charity as defined for the purpose of this policy (see the note to RG 87.101); and

- (d) lodge all documents with any ASIC Office. (Note that you don't have to lodge a copy of the offer document with us.)

You can also contact ASIC on 1300 300 630 for information and assistance.

Key terms

Term	Meaning in this document
ACNC	Australian Charities and Not-for-profits Commission
ACNC Act	<i>The Australian Charities and Not-for-profits Commission Act 2012</i>
ADI	Authorised deposit-taking institution
AFS licence	An Australian financial services licence under s913B that authorises a person who carries on a financial services business to provide financial services Note: There is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A of the Corporations Act.
APRA	Australian Prudential Regulation Authority
associate	Any of the following: <ul style="list-style-type: none"> (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 related charitable purposes which is the same as or similar to the charity; (d) a person acting as a trustee of a trust for the charity or for charitable purposes that are related to the purposes of the charity; (e) a member of clergy, an employee or a voluntary staff member who regularly works for a person referred to in any of paragraphs (a)–(d); (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 a person mentioned in any of paragraphs (a)–(e)
associated retail client	A retail client considered an associated of the charitable investment fundraiser
Banking Act	<i>Banking Act 1959</i>
charity	Has the meaning given in s5 of the <i>Charities Act 2013</i>
charitable purpose	Has the meaning given in s12 of the <i>Charities Act 2013</i>
charitable investment fundraiser	A charity that issues debentures or operates a charitable scheme (including by promoting the scheme)

Term	Meaning in this document
charitable scheme	A managed investment scheme that operates to promote charitable purposes operated by a charitable investment fundraiser
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
debenture	A security that represents a body promising an investor to repay money at a future point in time Note: See s9 of the Corporations Act for the exact definition.
debenture provisions	The requirement in Pts 2L.1–2L.5 of the Corporations Act.
financial product	A facility through which, or through the acquisition of which, a person does one or more of the following: <ul style="list-style-type: none"> • makes a financial investment (see s763B); • manages financial risk (see s763C); • makes non-cash payments (see s763D) Note: This is a definition contained in s763A of the Corporations Act: see also s763B–765A.
fundraising provisions	The requirements in Pts 6D.2–6D.3, Div 2 and Div 4 of Pt 7.9, s992A, 992AA, 1017A, 1017B and s1017G of the Corporations Act.
licensing provisions	The requirement in s911A(1) for a person who carries on a financial services business to hold an AFS licence and comply with the obligations of holders of an AFS licence in Pts 7.6–7.8 of the Corporations Act.
managed investment scheme	In general terms, a scheme that has the following features: <ul style="list-style-type: none"> • people contribute money or money's worth as consideration to acquire rights (interests) to benefits produced by the scheme (whether the rights are actual, prospective or contingent and whether they are enforceable or not); • any of the contributions are to be pooled, or used in a common enterprise, to produce financial benefits, or benefits consisting of rights or interests in property, for the people (the members) who hold interests in the scheme (whether as contributors to the scheme or as people who have acquired interests from holders); and • the members do not have day-to-day control over the operation of the scheme (whether or not they have the right to be consulted or to give directions) Note: See s9 of the Corporations Act for the exact definition.
managed investment provisions	The requirements in Ch 5C of the Corporations Act

Term	Meaning in this document
non-associated retail client	A retail client not considered an associate of the charitable investment fundraiser
offer document	Any document that contains an offer or invitation to subscribe or buy interests in a charitable scheme or debentures in connection with a charitable investment fundraiser
PF 96 (for example)	An ASIC pro forma (in this example numbered 96)
Product Disclosure Statement (PDS)	A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act Note: See s761A of the Corporations Act for the exact definition.
retail charitable investment fundraiser	A charitable investment fundraiser that is not a wholesale charitable investment fundraiser
retail client	An investor who would be regarded as acquiring financial products as a retail client under s761G or 761GA of the Corporations Act and Ch 7, Pt 7.1, Div 2 of the Corporations Regulations
RG 78 (for example)	An ASIC regulatory guide (in this example numbered 78)
s912A (for example)	A provision of the Corporations Act (in this example numbered 912A), unless otherwise specified
short-term investment	A debenture or interest in a charitable scheme issued by a charitable investment fundraiser that is a short-term investment as defined by RG 87.79.
sponsor	In relation to a charitable investment fundraiser, a person who: <ul style="list-style-type: none"> • has entered into and given to ASIC a deed poll: <ul style="list-style-type: none"> – in favour of each holder of a debenture or interest in a managed investment scheme issued by each charitable investment fundraiser for which the sponsor has accepted an identification statement; and – under which the sponsor covenants to guarantee the performance of the charitable investment fundraiser of its obligations under any debenture or interest in a managed investment scheme to which the identification statement relates, except any debentures or interest issued after revocation of the acceptance of lodgement; and • we have not subsequently notified in writing is no longer a sponsor for the purposes of Corporations (Charitable Investment Fundraising) Instrument 2016/813, unless we have revoked the notification in writing

Term	Meaning in this document
wholesale charitable investment fundraiser	A charitable investment fundraiser that has not issued any debentures or interests in a charitable scheme to non-associated retail clients after 31 December 2016
wholesale investor	An investor who would be regarded as acquiring financial products as a wholesale client under s761G or 761GA of the Corporations Act

Related information

Headnotes

charitable investment fundraisers, charitable purpose, charitable schemes, charities, debentures, identification statement, interests, exemptions, financial products, fundraising, licensing, managed investment schemes, sponsors

Instruments

[ASIC Corporations \(Charitable Investment Fundraising\) Instrument 2016/813](#)

[ASIC Corporations \(School Enrolment Deposits\) Instrument 2016/812](#)

[ASIC Corporations Repeal Instrument 2016/810](#)

[ASIC Corporations Repeal Instrument 2016/819](#)

Regulatory guides

[RG 78](#) *Breach reporting for AFS licensees*

Legislation

ACNC Act

Australian Securities and Investments Commission Act 2001

Banking Act

Charities Act 2013, s5 and 12

Corporations Act 2001, Chs 2L and 5C, Pts 2L.1–2L.5, 6D.2–6D.3 and 7.9
Divs 2 and 4, s9, 66A, 708(20), 764A(1)(a), 764A(1)(ba), 766A, 911A(1),
911A(2)(b), 912A, 992A, 992AA, 1012D(8), 1017B, 1017E–1017G,
1308(2)–(3)

Income Tax Assessment Act 1997

Consultation papers

[CP 207](#) *Charitable investment fundraisers*