



**Abacus**  
Australian Mutuals

Association of Building Societies and Credit Unions

4 December 2007

Rhys Bollen  
Regulatory Policy  
ASIC  
GPO Box 9827  
By email: [policy.submission@asic.gov.au](mailto:policy.submission@asic.gov.au)

Dear Mr Bollen

**Re: Consultation Paper 94 : RG69 : Report 108 - Unlisted, Unrated Debentures**

Thank you for the opportunity to contribute to ASIC's review of disclosure and consumer protection for unlisted, unrated debentures.

Abacus is the industry association for Australian credit unions and mutual building societies. Credit unions and mutual building societies provide financial services to 4.5 million Australians and are:

- Authorised Deposit-taking Institutions (ADIs) subject to the *Banking Act 1959* and APRA regulation as ADIs;
- Australian Financial Services Licensees subject to the *Corporations Act 2001* and ASIC financial services regulation;
- lenders regulated under the *Uniform Consumer Credit Code*;
- subscribers to the *Electronic Funds Transfer Code of Conduct*; and
- reporting entities under the *Anti-Money Laundering and Counter-Terrorism Financing Act*.

As member-owned banking institutions, credit unions and mutual building societies aim to provide quality personal service and to protect and promote the interests of their members. Abacus supports steps to improve the disclosure and market conduct of debenture investment products.

We welcome ASIC's proposals but recommend further measures. Abacus has serious concerns about the marketing and community understanding of the risk of debentures linked to property financing. Our industry has previously raised concerns about promotion that has borne a striking resemblance to ADI term deposits, using terms like "secured" and "guaranteed" to create false impressions about the security of funds invested.

Overall we believe the proposals are a positive step, but require greater focus on reducing consumer risk and a stronger requirement on disclosure in advertising. We also seek to correct some inaccurate use of terms by ASIC in its drafting (primarily use of the term "bank deposits" in place of a full ADI reference).

Abacus seeks consistency in the regulator's application of references to ADIs, so that any reference to "bank deposit" be amended to include "bank, building society or credit union deposit" to reflect the ADI status applying to each of these institutions. We also recommend further disclosure measures to improve consumer protection.

## REPORT ON SUBMISSIONS FOR CP89 UNLISTED, UNRATED DEBENTURES

### *APRA Regulated Entities*

Abacus argued previously that the prudential regulations and supervision applied by APRA to their regulated entities should be the extent of regulation in relation to their activities. It is accepted that subsidiaries of APRA regulated entities should not be exempt from the debenture disclosure provisions as detailed. However Abacus again encourages consultation with the mutual ADI sector to ensure that definitions do not inadvertently impact our sector.

### **REGULATORY GUIDE 69**

Abacus believes that unsophisticated investors require more information about this speculative type of investment. Abacus is supportive of the proposals for unlisted debentures but strongly recommends that ASIC's approach include:

- Awareness that the benchmarks will not assist unsophisticated investors significantly;
- Additional, clearer warnings and alerts on risk and non-ADI status to address this gap;
- Caution against creating de-facto quality marks that do not reflect underlying risk;
- Maintaining a clear focus on the problematic areas of the market;
- Support for ongoing disclosure and additional advertising restrictions on set terms.

We refer ASIC to detailed suggestions made in the previous Abacus submission including those in relation to the presentation of ratings as quality marks, information in prospectus disclosure, and marketing and presentation of material to retail investors.

Given the heartache and loss already occasioned by failures in this market, Abacus strongly recommends more onerous, and consumer tested, warnings as inclusions in the prospectus disclosure documentation for these products. Abacus strongly endorses mandated consumer warnings in prospectus material that deals specifically with the areas of consumer and investor concern identified in previous submissions.

One of the more concerning aspects regarding debentures and in particular, as they relate to unsophisticated and/or retail investors, is the potential of confusing them with deposits with credit unions, banks or building societies.

The Guide (Para RG 69.1) states "with debentures, the investor provides loan funds to the issuer and in return, the person borrowing the funds (the issuer) issues a debenture with a promise to pay a rate of interest (usually fixed) for a defined term and then repay the loan". Clearly, this definition highlights the fact that investments in such debentures are in fact loans and therefore should *not* be confused with deposits, which have a very different understanding within the community generally.

We would therefore again urge ASIC to ensure that investments in debentures be described for what they are, being loans to the issuer and that reference to deposits should be prohibited.

In view of the fact that the law specifies that a borrower is permitted to describe debentures as "unsecured notes" or "unsecured deposits notes" we would also encourage a review of the Corporations Act provisions to consider a more accurate/descriptive wording, which incorporates "loan" rather than "deposit".

Paragraphs RG69.45 to RG69.48 address the matter of rollovers. Abacus again submits that investors need to take a positive action to rollover an existing investment. Current and up to date disclosure and new alerts should be part of this regime.

The wording in RG69.48 is confusing in that "as a matter of good practice, issuers should contact investors...." appears to be a statement rather than a formal requirement under the guide. Both issues of a positive action and provision of current disclosure material are

strongly supported and the guide should make it a requirement, rather than a statement with reference to good practice.

#### **DEBENTURE ADVERTISING-CONSULTATION PAPER 94**

As previously noted, Abacus has serious concerns about the marketing and general understanding of risk in the unlisted, unrated debenture market. Our industry has raised concerns with ASIC in the past about promotion that has borne a striking resemblance to ADI term deposits, using terms like “secured” and “guaranteed” to create false impressions about the security of funds invested.

We believe that some providers have sought to mislead unsophisticated investors with the impression that property-financing debentures have a low risk profile – implying a false equivalence to ADI deposits. Existing disclosure requirements are inadequate in these instances, especially where products are mass-marketed and target retirees or those near retirement. ASIC’s proposals, while positive, will not address the range of issues in this market and Abacus recommends additional measures to support the benchmarks.

Credit unions and mutual building societies recommend additional steps of very direct product disclosure “warnings” and advertising limitations to improve the risk understanding of unsophisticated investors and ensure more accurate promotion of debenture investments.

Abacus endorses proposed ongoing disclosure and reporting obligations for debenture issuers, and recommends additional warning benchmarks for advertising (particularly for debenture investments relating to property financing). As noted above, credit unions and mutual building societies consider it essential that an investor warning section be mandated for *both* prospectus documents and advertisements which would highlight:

- (a) The investment is not protected by APRA supervision or prudential standards;
- (b) There is no guaranteed market for the securities and a redemption of the funds may not be possible when required;
- (c) An investment in this organisation is speculative in nature and all of the funds invested could be lost in the event of the failure of the organisation;
- (d) This investment is not similar in type, nature or prudential standing to that of a deposit made with a Credit Union, Building Society or Bank.

Clearly there is a substantial difference between prospectus disclosure and the advertisements run by such organisations in attempting to attract investments. While we support ASIC’s proposed restricted terms, we strongly recommend a more overt warning and message for advertising of unlisted debentures relating to property investment.

Advertising is more important than prospectus disclosure for this market. In many instances advertising will be the trigger for an investor to consider the placement of funds and the willingness of issuers to promote their investments as suitable for retirement funds and having a low risk profile requires more direct attention. We strongly endorse a clear, upfront warning couched in terms that consumers will easily understand – for example: you could lose your money in this investment; this investment is a property loan; this investment is not a “deposit” such as that offered by a bank, building society or credit union. We also suggest that ASIC offer some guidance to unsophisticated investors – for example, by requiring that disclosure include a general notice that ASIC considers these types of investment at the higher end of the risk spectrum (in general).

Another area of concern is the role of financial advisers and recommendations to retail investors which may be based on linked commissions and fail to promote diversification. It is essential for the protection of consumers and to ensure that they do not misunderstand the nature of the investment, that advertisements for such debenture type instruments must not in any form be held out to be similar to a term deposit with an ADI.

Abacus also recommends, given the problems that have emerged from recent property group collapses, that ASIC consider a specific warning for DIY superannuation placement in this type of investment without independent advice.

#### Use of word Deposit

Overall we believe the consultation paper addresses many important issues and should, with the additional measures recommended by Abacus, contribute to improved understanding.

However we are very concerned about ASIC's proposals about the use of the term deposit.

It is unacceptable for ASIC to limit reference to an ADI deposit to "bank deposit". As ASIC would know, or should be aware, banks, building societies and credit unions are all Authorised Deposit-taking Institutions (ADIs) regulated by APRA under the *Banking Act 1959*. Any reference to "bank deposits" should be replaced by **"bank, credit union or building society deposits"**.

To fail to do this would risk creating a perception of a different class of risk associated with different ADIs – in contrast to the highly regulated and sound ADI sector and standard of prudential regulation applied by APRA. It could also risk attracting deposits from members who would otherwise place their funds in genuine term deposits with credit unions and building societies to these highly risky, non-prudentially regulated investment options. Abacus strongly objects to any reference to banks as opposed to the broader and more appropriate ADI references of "bank, building society or credit union".

We suggest that Government consider amendments to remove any reference to the word "deposit" for this class of investment. We suggest very bold and clear upfront messages in both advertising, disclosure and application forms to highlight that the investment is not like a bank, building society or credit union deposit (see previous comments).

Please contact Philip Elliot on (02) 8299 9050 or myself on (02) 8299 9046 or [lpetschler@abacus.org.au](mailto:lpetschler@abacus.org.au) should you have any questions. Thank you again for the opportunity to comment on ASIC's proposals.

Yours sincerely



**LOUISE PETSCHLER**  
Head of Public Affairs