14 January 2009

Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES  ACT  2600

Dear Sir/Madam

Goldman Sachs JBWere, as a pre-eminent adviser to the Philanthropic and Community sector, is pleased to respond to the Government's request on "Improving the Integrity of Prescribed Private Funds".

We have structured this submission in three parts:

**Section 1: Executive Summary**

**Section 2: Goldman Sachs JBWere's experience and observations around philanthropy and Prescribed Private Funds (PPFs)**

**Section 3: Detailed response to each consultation question raised in the Discussion Paper**

We welcome this initiative and would be very pleased to answer any subsequent questions or address any issues that may arise from this consultation process.

We understand that, at this stage, Treasury only intends to publish the submission on the Treasury website. On that basis, we have not marked the submission as 'Confidential' however we would request that Treasury seek our prior approval if it intends to publish the document more widely.

Yours sincerely

Christopher Thorn
Executive Director
Goldman Sachs JBWere Philanthropic Services

## Section 1: Executive Summary

Goldman Sachs JBWere supports Government initiatives to improve the integrity of PPFs and to provide trustees with greater certainty as to their philanthropic obligations.

We support the overall principles approach as outlined in the Discussion Paper and have made comments on each individual consultation question.

The key issues raised in our submission are:

- PPFs, in their short life to date, have contributed greatly to improving the culture of philanthropy and community support in Australia;
- As a result of establishing a PPF, many individuals and families have dramatically increased their direct involvement in and financial support of eligible community organisations. This has added new skills, knowledge and support to the community sector;
- PPFs can provide greater support to the community by having the ability to grow distributions over time while providing significant short term support as well. We believe a payout rate of 5% of a PPF's assets (valued annually as at 30 June) and paid out within 12 months will achieve this balance. This also has the advantage of educating and encouraging multi-generational support for the community. It allows fully funded PPFs to continue operation beyond a relatively short 10-15 years, which would not be the case if much larger payouts were required resulting in effectively winding down PPFs. The broader return to the community is much larger under a growing rather than contracting PPF sector;
- We do not believe a minimum size should be established for PPFs. However, we support having a minimum annual dollar value of $20,000 for distributions from PPFs.
- We believe providing the ability for trustees to roll a PPF into a Public Ancillary Fund (PAF), and vice versa, provides sufficient incentive and flexibility for trustees to make economically sensible decisions without affecting tax revenues or distribution levels;
- We do not believe making it compulsory for PPF contact details to be available to the public adds to overall community sector support. In fact it would add to the costs for both PPFs and the community sector, which could cause a reduction in distributions from PPFs over time. In addition, it could also act as a deterrent for some funders to establish a PPF. Better coordination and availability of community sector information would aid grant making efficiency; and
- Simplifying the operation of PPFs and making (keeping) them attractive to potential donors will add greatly to community support and philanthropy in Australia over the coming decades.

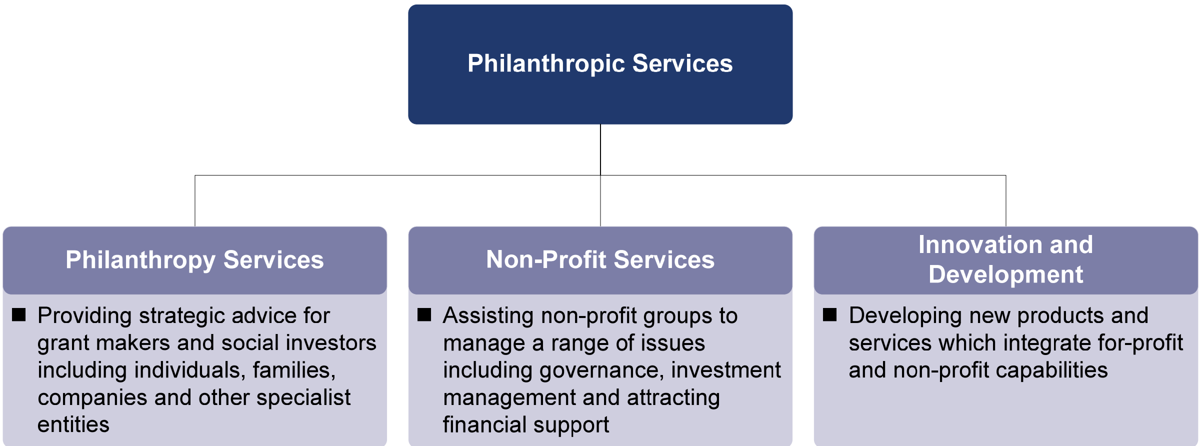
## Section 2: Goldman Sachs JBWere's experience and observations around philanthropy and Prescribed Private Funds (PPFs)

Goldman Sachs JBWere is a financial services organisation that provides investment, wealth management and advisory services to a broad range of private, corporate and institutional clients and has been consistently, and independently, recognised as one of Australia's leading investment houses. Goldman Sachs JBWere is also a leading participant in the capital formation process in Australia, has unparalleled knowledge and experience in Australasian markets and, as part of the Goldman Sachs worldwide network, has far-reaching capabilities that extend into global markets.

Drawing on the extensive resources of the Goldman Sachs JBWere group, the Philanthropic Services team aims to ensure optimal outcomes for, and encourages mutually beneficial relationships between our clients, individuals and families, businesses and their respective stakeholders (i.e. employees, customers and shareholders), other financial institutions and planning groups and the community sector.

The principal aims of the Philanthropic Services team are to:

- promote philanthropy broadly and where appropriate, incorporate philanthropic planning into the wealth management strategies of clients
- assist charitable, cultural, sporting and other non-profit organisations in the management of resources, utilising sound investment principles, whilst understanding the special requirements of non-taxpaying entities to ensure these organisations' ongoing sustainability. This includes helping to establish relationships with potential supporters and/or generate ongoing support
- work with private and public companies to assist them in establishing and managing socially responsible strategies and to build appropriate relationships with philanthropic and non-profit organisations
- support external financial organisations, dealer groups and independent financial planning firms to educate and service their clients about the most appropriate philanthropic structures and where possible provide appropriate advisory and product solutions.



## Expertise in provision of advice for Endowment investors

The Private Wealth Management and Philanthropic Services teams have substantial experience in providing investment advice and management to non-taxpaying perpetual endowment investors including non-profit organisations and endowed foundations, particularly giving consideration to the underlying objectives, specific tax positions and mandates of each entity.

We have significant experience in:

- the creation and implementation of an appropriate investment policy;
- long-range planning, sustainable spending policies and asset allocation;
- current 'best practices' across the country in the non-profit sector, including drawing on the extensive global resources of Goldman Sachs in its work with international clients and endowments;
- promoting best practice of directors and boards of non-profit organisations which has included the establishment of a non-profit leadership program in Australia in conjunction with Harvard Business School;
- understanding and meeting the needs of foundations and non-profit organisations;
- issues around donor relations, fundraising trends and grant-making; and
- assisting clients to integrate the establishment of endowment funds with specific financial planning, estate planning and intergenerational wealth transfer objectives.

## Experience with Prescribed Private Funds

In conjunction with our Private Wealth Management business, the Philanthropic Services team (refer Appendix 1) has extensive experience in the provision of advice to clients regarding:

i. how PPFs and other structured giving options can be utilised to support philanthropic activity;

ii. issues around the establishment and subsequent funding of PPFs;

iii. ongoing management of PPFs and incorporating them into the funder's overall wealth management; and

iv. managing the relationship between PPFs and grant seekers looking for support.

The Goldman Sachs JBWere Foundation was converted to a PPF in June 2002. Formerly the J.B. Were & Son Charitable Fund, which was established in 1973, the Goldman Sachs JBWere Foundation today continues the firm's philanthropic philosophy of giving to Australian charities.

Further to this, one of our Philanthropic Services team members established a PPF in 2004, giving us direct knowledge and involvement with the process of the PPF's administration.

Christopher Thorn, Executive Director, Philanthropic Services is a Council member of Philanthropy Australia. Both Christopher and fellow Executive Director John McLeod are regularly called upon for comment and are contributors to conferences and publications on philanthropic giving and the non-profit sector.

Kelley McLendon, Director of Philanthropic Services in Sydney, spent 6 years with Bank of America as Director of Charitable Trust Services managing in excess of 1,000 US charitable trusts and foundations and is well positioned to compare and contrast philanthropic structures and options in the US and Australia.

We have also established the Goldman Sachs JBWere Charitable Endowment Fund (refer Appendix 2) which is a Public Ancillary Fund (PAF). This structure is attractive to donors for whom a PPF may not be suitable, given the larger amount of capital required and/or the greater level of direct involvement in the administration that a PPF requires.

We believe we are placed in an informed and qualified position to respond to Government's request for submissions and comments on "Improving the Integrity of Prescribed Private Funds".

## Prescribed Private Funds in Context

Since their inception in 2001, PPFs have proved to be a successful initiative of Government to promote a growing culture of philanthropy in Australia. Funded primarily by private donors and supported by the incentive of a tax deduction, PPFs have created an endowment pool currently estimated to be approximately $1.3 billion.

From inception to June 2007, total distributions of $301 million have been made to the community and have increased in each year of operation. These distributions have been from a combination of three sources:

i. up to a 10% distribution of initial gifts;

ii. net annual income earned; and

iii. in some cases a full distribution or "flow through" of annual gifts.

This combination has boosted the payout rate to around 15% of the closing value of PPFs, well above a long term sustainable payout rate of any individual fully funded corpus.

It is important to acknowledge in the early years that these three sources, when aggregated, distort the headline payout rate when considering what a sustainable longer term payout rate should be. As this pool of endowed funds grows and the existing total PPF corpus outweighs new additional annual donations, the actual headline payout rate will decline.

The importance of this ongoing income stream is particularly significant and valuable in an economic downturn when discretionary giving is most vulnerable. Giving by Individuals far outweighs all other non-government sources of external funding for the community sector and as Table 1 illustrates, US experience suggests it is affected the most by recession and share market falls.

**Table 1**

| USA Annual Real Giving Changes 1970-2006 | Individuals | Foundations | Corporates | Bequests | Total |
|---|---|---|---|---|---|
| In all Years | 2.8% | 4.0% | 3.0% | 2.9% | 2.8% |
| In recessions | -1.7% | -3.1% | -1.1% | 2.1% | -1.6% |
| In share market falls | 1.6% | 3.7% | 4.3% | 2.6% | 2.0% |
| Recession & share market falls | -2.4% | -0.9% | 0.2% | -2.1% | -2.1% |

Source: The Foundation Centre

Therefore any action that might create an incentive to increase the scale and lock in that giving in good times to provide ongoing funding in less prosperous times should be encouraged.

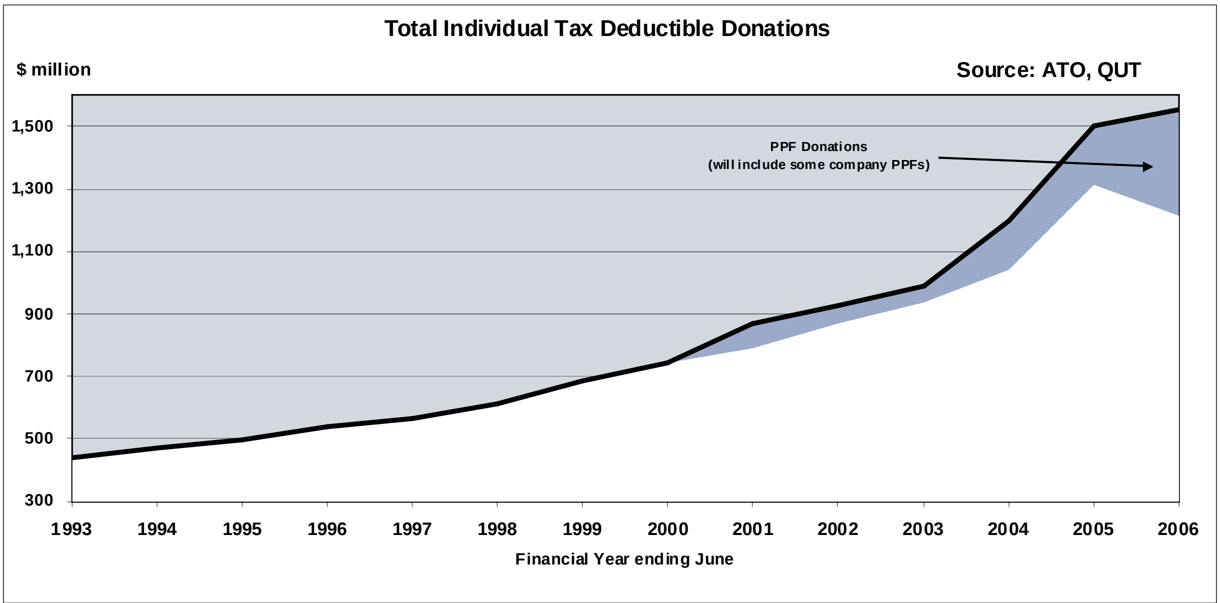
The PPF has provided a structure that is one of the more regulated, accountable and straight forward mechanisms available to individuals, families and businesses who want to establish a philanthropic endowment. This irrevocable trust provides a valuable mechanism for locking in such long term funding in a way and time that is conducive to maximising the commitment of donors.

## Giving in Australia

There is no doubt the emergence of the PPF structure has attracted additional assets to philanthropy and social investment in Australia.

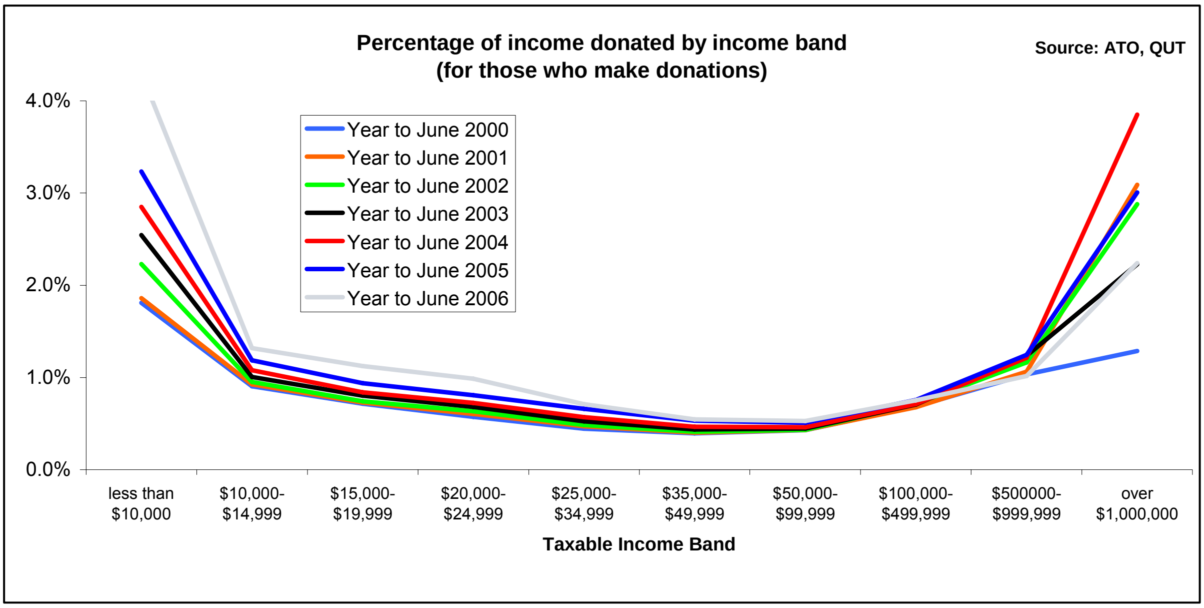
As can be seen in the blue shaded area of Chart 1, since their inception the establishment of PPFs has significantly increased total tax deductible giving in Australia. In addition it is noted that these gifts into PPFs did not reduce the trend of giving excluding PPFs shown in white (giving in 2005 was boosted by the Asian Tsunami appeals).

**Chart 1**



The PPF has been a particularly relevant structure to donors whose taxable income in any year is above $500,000. As shown in Chart 2, those in the upper income bands have taken advantage of this new structure. Historically, giving at the upper income levels has not matched those of other western developed economies. However, the emergence of the PPF has provided a means to close this generosity gap with the percentage of taxable income given rising in all post PPF years above the level given in June 2000 (light blue) prior to PPFs being available.

**Chart 2**




PPFs have led to an increased contribution being committed irrevocably to the community. Any change in policy that reduces the incentive or rationale for establishing such a structure will lead to a reduction in this form of giving and therefore total levels of funding to the community.

## Long Term Value of PPFs

PPFs have been supported since inception in 2001 due to:

i. the PPF structure being a tax effective mechanism that has brought forward giving, that may otherwise have been ad hoc or reactive if done at all, to create an asset that will benefit the community over the long term;

ii. the creation of wealth in a strong economy which has increased the capacity of donors to give and their confidence to set aside substantial assets in the form of irrevocable and long term gifts for the community benefit; and

iii. their ability to promote a longer term and more engaged relationship between grant maker and grant seeker providing more thoughtful and longer term support of community and charitable projects and organisations.

In assessing the true value of a PPF over its life, we need to consider the long term distributions from PPFs and the movement of the underlying capital base which is also a community asset.

We would agree with the premise that PPFs shouldn't be prolonged accumulators of funds nor sparse distributors; however we think it is important to draw the distinction between accumulation for no community benefit and accumulation that enables the preservation of the real value of the underlying corpus resulting in the generation of a growing income stream.

An example of this concept in Australia has been the Helen McPherson Smith Trust.

**Helen McPherson Smith Trust**

- Was established in 1951 with an initial corpus of £275,000 (or A$550,000).
- The annual distribution in the year ended June 2008 was $4.4 million, significantly more than the value of the initial capital base.
- Total grants since 1965 have totalled $69.7 million.
- The underlying investment portfolio value in November 2007 (at its peak) was A$114 million and at June 2008 the portfolio was valued at $96.9 million.

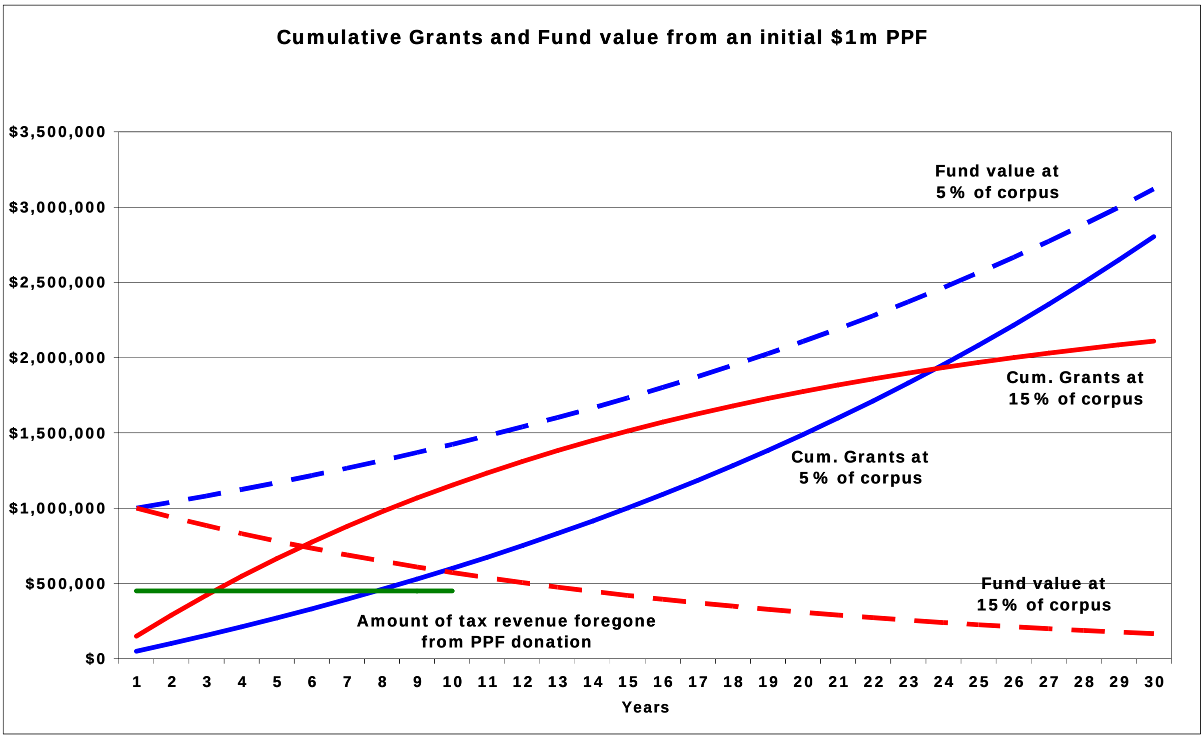
Source: Helen McPherson Smith Trust Annual Report 2008

The diversity and long term nature of the funding from the Helen McPherson Smith Trust to the Victorian community has far outweighed the value of the initial capital contribution and by definition any tax forgone on the establishment of such a fund.

To provide an analysis of what an appropriate payout rate should be, we have modelled the impact of both a 5% payout rate, which is consistent with the Philanthropy Australia submission on PPFs of August 2008 and consistent with international levels (particularly in the US; it should be noted that US charitable trusts make distributions after deducting expenses), and the 15% payout rate calculated from ATO data of actual PPF distributions to date.

Our analysis uses a 10% p.a. total investment return (including rebate of franking credits) and a 1% p.a. total for costs. We have used an initial $1 million donation and calculated cumulative grant pay outs (solid lines) and corpus value (dotted lines) at both 5% (in blue) and 15% (in red) annual distribution levels. We have also shown the revenue foregone by Government from the initial gift of $1 million at the top marginal tax rate (in green).

**Chart 3**




Source: Goldman Sachs JBWere Philanthropic Services

The analysis highlights several outcomes:

i. both payout rates "repay" the tax forgone reasonably quickly, a 15% payout PPF in the 4th year and a 5% payout PPF in the 8th year;

ii. at the 24$^{th}$ year, both payout rates have provided the same total distribution (just under $2 million). However the 5% payout PPF still retains a corpus of $2.5 million and paid out $123,236 in that year while the 15% payout PPF had a corpus of only $226,500 and paid out $36,144;

iii. the fund value of the 15% payout PPF falls to a sub economic level ($400,000-$500,000) after about 13 years; and

iv. the 5% payout PPF is continuing to grow annual distributions and in our final year of analysis, produces an annual distribution of $155,933, marginally less than the total remaining capital value of the 15% payout PPF.

It is important to remember that it is not just the annual distributions made from a PPF that are philanthropic. The irrevocable donation of capital which creates the long term distribution capabilities of the PPF and the potential for subsequent gifts of capital out of the same PPF are also philanthropic.

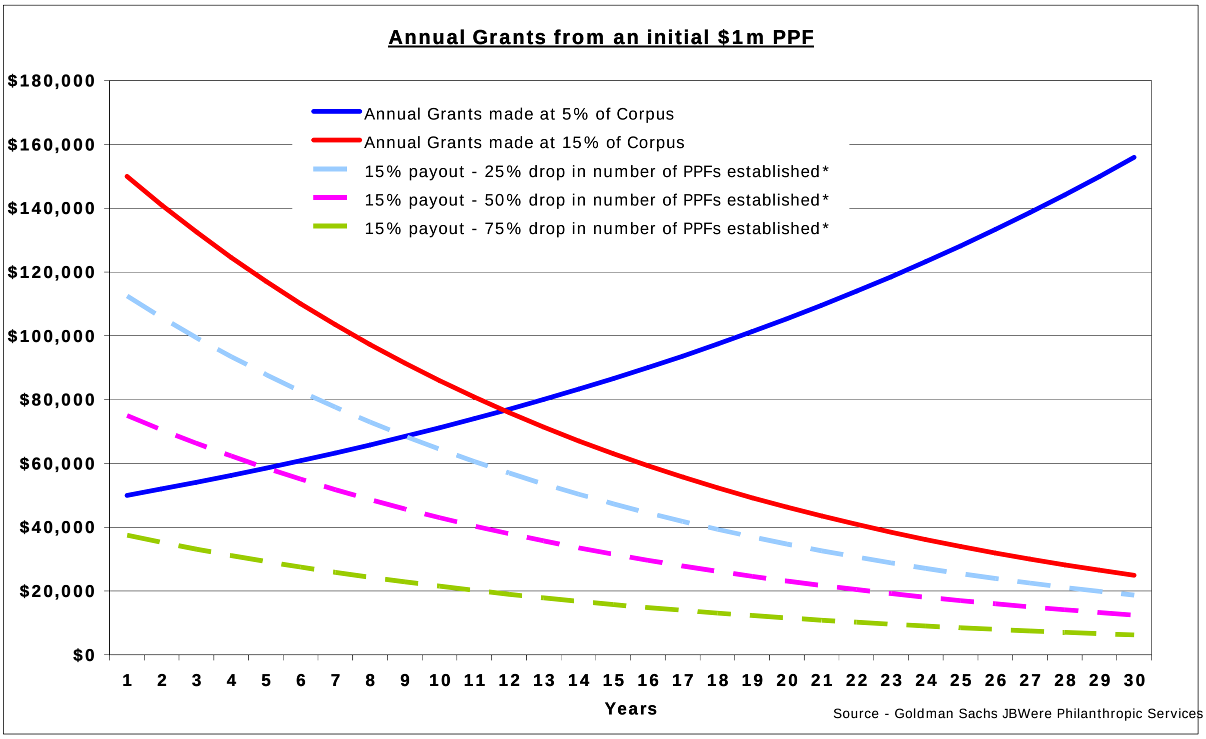
The main reason the value of the underlying capital continues to be relevant and important to the community is that apart from generating a growing revenue stream, if at some time in the future the trustee decides to wind up the PPF, the capital can only be directed to eligible community organisations. Growing the value of the underlying capital increases the value of the initial donation of capital assets available to the community.

PPFs that are established and managed on the basis of this analysis provide an extremely valuable long term source of funding that far outweighs the revenue foregone if Government had given the funds to the sector directly.

This analysis compares the same PPF at two different payout rates and highlights the advantage of a sustainable rate which allows the PPF to continue to grow distributions. Our greater concern for future levels of community support is the potential for fewer PPFs to be established under a non-sustainable level of payout rate.

To compare the effects of a fall in the number of PPFs established, we have looked at the annual distributions used in Chart 3 for the 5% and 15% payout PPFs and then also provided the effective annual grants made if the 15% payout PPF saw a fall in the number of PPFs established by 25%, 50% and 75%, not an unrealistic decline in our view (refer Chart 4).

**Chart 4**




* The impact on annual grants of single $1M PPF is used to illustrate the effect of reducing the number of PPFs and the resulting impact on the collective pool of annual grants made.

This analysis suggests:

i. a fall of 50% in new PPFs being established under a 15% payout level would see annual community distributions from this group fall below those from the sustainable 5% payout group from year 5 onwards; and

ii. more severe falls in new PPFs being established (over 66%) due to this higher payout rate would cause annual distributions to the community to fall below the 5% payout group from the first year onwards causing a marked decline in philanthropic support.

The conclusion drawn is that while we agree with many of the changes recommended for PPFs we believe that any changes made should only serve to encourage further establishment of PPFs and their growing support of the community.

# Section 3: Detailed response to each consultation question raised in the Discussion Paper

**Principle 1 – PPFs are philanthropic**

## 1a Required distributions

***What is an appropriate minimum distribution rate? Why?***

*Goldman Sachs JBWere Response*: We believe an appropriate minimum payout rate to be 5% of a PPFs asset value because:

i. it is justifiable based on analysis we understand has been undertaken by Treasury for the future Fund and Goldman Sachs JBWere's own forecasts for long term asset class returns. From an investment perspective, 5% is sustainable through the business cycle and would provide a growing income stream while allowing the real value of the underlying corpus to be maintained;

ii. a set rate of a percentage of assets (rather than income) is simple to calculate and administer therefore reducing costs of administration and uncertainty of compliance;

iii. it is in line with longstanding US practice which evolved after similar analysis of appropriate Foundation payout rates[1] (re - footnote 1: we strongly recommend review of the article noted which provides an excellent summary of the historical development of policy around foundation payout rates in the US); and

iv. it provides a long term consistent and growing funding stream for the community sector, leading to more consistent and effective grant making and relationships with the community sector.

The Discussion Paper states that the ATO has estimated that the average annual payout rate from PPFs is approximately 15% of the closing asset value. This figure is from the relatively short 7 year history of PPFs and includes three types of payouts.

i. in the establishment phase of a PPF up to 10% of any new gift needs to be distributed in the following financial year as well as income generated;

ii. some PPFs, many of those used by companies, have donated 100% of their gifts each year. These "flow through" PPFs may begin to accumulate a corpus in the longer term but over recent years have had the effect of increasing the "average" payout rate across all PPFs; and

iii. due to the recent strong economy and resulting investment market returns, some PPFs achieved significant capital gains and distributed at rates above the level of income generated from their investments. The large number of share buy backs from listed companies with their associated rebateable fully franked dividend component has also boosted returns above what we would expect through the cycle.

[1] Thomas J. Billitteri "Money, Mission, and the Payout Rule: In Search of a Strategic Approach to Foundation Spending", Nonprofit Sector Research Fund, *The Aspen Institute*, July 2005 – pages 11-13 www.nonprofitresearch.org/usr_doc/Full_Report.pdf

In addition, it is not clear whether unrealised capital gains are currently included in the closing PPF values. This can provide a misleading estimate of the true percentage level of the payout rate.

Table 2 below provides an estimate of the breakup of annual PPF distributions assuming 5% of prior year gifts are distributed and 1 in 20 donations are of a "flow through" nature. The remaining balance is then a fairer indication of income distributed which has averaged 8.2% annually. This has occurred in a period of strong investment returns and when many large share buy backs have potentially impacted understated capital bases (due to unrealised capital gains not being included in all PPF closing values).

Our analysis suggests that through the cycle, a 5% minimum annual payout rate based on a 30th June market valuation PPF assets is both consistent with underlying payouts made to date and provides the opportunity to develop a strong and growing PPF sector which will continue to increase its support for the community.

**Table 2 Estimated break-up of PPF distributions to date**

| | Jun-01 | Jun-02 | Jun-03 | Jun-04 | Jun-05 | Jun-06 | Jun-07 | Average |
|---|---|---|---|---|---|---|---|---|
| Annual donation into PPFs | $78.7 | $53.0 | $53.1 | $155.7 | $192.5 | $348.0 | $471.7 | |
| Closing Value of PPFs | $78.6 | $133.7 | $179.3 | $332.0 | $525.1 | $849.5 | $1,234.1 | |
| Annual Distributions from PPFs | $0.0 | $6.7 | $18.4 | $27.4 | $57.4 | $73.7 | $117.1 | |
| **Gross payout rate on prior June PPF value** | | **8.5%** | **13.8%** | **15.3%** | **17.3%** | **14.0%** | **13.8%** | **13.8%** |
| Payout from 5% of new donations from previous year | | $3.9 | $2.7 | $2.7 | $7.8 | $9.6 | $17.4 | |
| Payout from "flowthrough" donations (est 1 in 20) | | $2.7 | $2.7 | $7.8 | $9.6 | $17.4 | $23.6 | |
| Balance of payout from income | | $0.1 | $13.1 | $17.0 | $40.0 | $46.7 | $76.1 | |
| **Payout rate estimated from income** | | **0.1%** | **9.8%** | **9.5%** | **12.0%** | **8.9%** | **9.0%** | **8.2%** |

Source: Goldman Sachs JBWere Philanthropic Services

Some consideration should also be given to how costs incurred in running a PPF are treated. While minimisation of costs should be encouraged, a professional approach to investment management and grant making suggests reasonable expenditure should enhance the charitable outcome. An allowance for these costs should be considered. Including costs in the distribution rate (as is done in the US[2]) would add some complexity due to definitions and calculations of those costs. Leaving distributions as gross payouts means an extra investment return above CPI is needed to maintain the real value of the fund. On balance, we believe a gross payout (pre costs) of 5% will encourage more efficient management of PPFs and a greater return to the community.

Note: We are comfortable with an additional minimum dollar value of annual distribution of say $20,000 to ensure sub-economic PPF entities are discouraged. However for this suggestion to be workable, we would strongly recommend a regime where PPFs were able to be rolled into other philanthropic structures, for example a PAF, when the PPF structure became less viable. In addition, where the growth of funds in a PAF made a PPF viable, it

[2] Thomas J. Billitteri "Money, Mission, and the Payout Rule: In Search of a Strategic Approach to Foundation Spending", Nonprofit Sector Research Fund, *The Aspen Institute*, July 2005 – pages 11-13 www.nonprofitresearch.org/usr_doc/Full_Report.pdf

would also be consistent to allow the conversion of a PAF into a PPF, meaning those wanting to establish a PPF when funds reach that scale aren't prevented from making an early, smaller, start to their philanthropy via a PAF. This situation would then mirror the self managed and retail superannuation options currently understood and available to the public. This facility would enable PPFs that are diminishing in value, or where the founder's ability or desire to continue to manage the PPF has changed, to "outsource" the administration to professional service providers whilst maintaining their involvement in the grant making process and encouraging continued engagement with the community sector.

***Should the Commissioner have the ability to modify the minimum amount according to market conditions (for example, based on average fund earnings)?***

*Goldman Sachs JBWere Response*: We do not believe the Commissioner should have the ability to modify the minimum payout rate. This would add to operational uncertainty and add increasing complexity.

To create confidence in the long term viability and attractiveness of PPFs, certainty is required. A 5% minimum payout rate can be justified through the cycle to achieve the long term objectives of a growing income stream to the community while still providing a short term jump in distributions after short term above average periods of capital gains.

While investment returns may be higher in some periods (such as during the period of PPF life to date) PPFs can still choose to payout above the minimum level and would be increasing dollar payouts even at the minimum percentage.

Reducing required payout rates during tougher economic times would further reduce dollars received by charities when they are generally most needed. It is worth noting that during periods of both extreme positive and negative investment returns over the last thirty years, the US Foundation payout rate has remained constant at 5% following similar debates after their minimum payout rule was established.

***Should a lower distribution rate apply for a period (for example, 1-2 years) to allow newly established PPFs to build their corpus?***

*Goldman Sachs JBWere Response*: We believe it is critical that the underlying corpus of a PPF be able to grow over time to provide a growing income stream for distribution. However, to encourage early engagement and knowledge of philanthropic opportunities and to not discriminate between PPFs which commence with a larger "one off" gift versus those with regular annual gifts, the same annual payout rate should be applied.

In addition, we believe simplicity and certainty are essential to the ultimate success of and to maximise utilisation of PPFs. Therefore exceptions to cover changed conditions in the establishment years should be avoided to reduce complexity.

## 1b Regular valuation of assets at market rates

***Are there any issues that the Government needs to consider in implementing the requirement to ensure PPFs regularly value their assets at market rates?***

*Goldman Sachs JBWere Response*: While we support the principle of having PPF assets valued at market rate, we believe the Government needs to consider the costs and practicalities of valuing some unlisted or less liquid assets within a PPF. In the case of physical property, or some investments within alternative asset classes, which may be appropriate for longer term endowment investors, annual valuation may create an additional cost and administrative burden that is undesirable for PPFs.

In addition, where the assets are providing a significant social return directly (program related investing - e.g. an interest free or low interest loan to a DGR made by a PPF), some consideration may need to be given to either valuing that social return as part of the annual distribution or not including that asset in the calculation of annual distributions.

## 1c Minimum PPF size

***Is setting a minimum PPF size appropriate?***

*Goldman Sachs JBWere Response*: While we recognise (and advise clients) that there is a sensible minimum size of corpus for which a PPF makes economic sense, ($400,000-$500,000) after considering initial setup and annual audit and other costs, there are difficulties in mandating a minimum amount and we believe this decision should be left to trustees. Again, this is currently the option available within the superannuation industry in Australia.

Although many donors establish PPFs with a large initial gift, there are also a significant number who wish to reach their target over a number of years. Indeed the current accumulation plan points to this option. Implementing a minimum PPF size would introduce a barrier and would reduce the number of participants, size and attractiveness of philanthropy in Australia. Having the flexibility to build up the required minimum with donations over subsequent years seems to be consistent with the Governments stated ambition of promoting Philanthropy.

Another situation where setting a minimum size may prove problematic is during periods of significant market volatility where the value of a PPF may fall below the minimum required for a temporary period. This may create administrative complications, costs or ultimately lead to the premature winding up of such a PPF.

The ability to roll a PAF into a PPF or vice versa would also mean donors could establish their endowment in a structure that was appropriate for the size of capital. This would be similar in many respects to the self managed superannuation funds versus retail superannuation fund situation in terms of appropriate choice for donors.

***What should the minimum PPF size be in dollar terms?***

*Goldman Sachs JBWere Response*: Rather than setting a specific dollar value minimum for PPF assets, economies of scale will help trustees decide the size and accumulation best suited to their circumstances. However, to ensure a significant distribution to charities, even from newer PPFs in a build up phase, a minimum annual distribution of say $20,000 might be set. This requirement would also deal with any short term reductions in the capital value of a PPF due to market movements or in the case of one off capital distributions e.g. in response to a natural disaster, etc.

We are aware of a number of donors who, due to the upfront capital commitment required to establish a PPF and also due to the inability to roll a PAF into a PPF when they reached critical mass, have put off establishing any structure at all. Therefore these potential donors have not made any gifts of capital as they didn’t want to end up with two structures over time, or be committed to a PAF when a PPF might be better suited to their circumstances in the longer term. This situation has been suboptimal for the community sector.

***Should a fund have to distribute all its capital when its total value falls below this minimum amount?***

*Goldman Sachs JBWere Response*: The establishment of a minimum annual dollar distribution plus the ability to roll a PPF into a PAF should provide enough flexibility for trustees to decide which structure best suits their philanthropic plans. In all cases they would continue to have the ability to wind up their philanthropic structure by distributing all remaining funds to eligible community organisations.

## 1d Increased public accountability

***Are there any relevant issues that need to be considered in improving and standardising the public accountability of PPFs?***

*Goldman Sachs JBWere Response*: We support the proposal that all PPFs be required to have an ABN and to be recorded on the Australia Business Register with the indication that they are a PPF. We would also encourage the continued timely release of aggregate PPF statistics and the expansion of these into State based data. This would be helpful to charities in determining the potential of specific cause areas and further promoting the existence of and growth in structured philanthropy to the broader public.

***Are there any concerns with the proposal to require that the contact details of PPFs be provided to the public? What information should be provided publicly?***

*Goldman Sachs JBWere Response*: We acknowledge the transparency and accountability obligations of PPFs, especially noting the tax concessions that donors receive as part of the incentive to establish such a structure.

The two issues around disclosure are, “to whom” should that accountability and transparency be and what would be the impact of expanding the current level of contactability of PPFs to the public.

In our view, the obligation to be transparent and accountable should be to the taxpayer via the ATO. Individual tax data, superannuation details and individual donor or charitable fund data are not currently disclosed to the public. As is the case now, PPFs have certain reporting requirements that are amongst the most regulated of any in the community sector. That is not to say more information should not be made available as required by the ATO and any other proposed Charitable peak bodies (e.g. QUT’s analysis of tax deductible giving and PPF statistics) for the sake of creating aggregated data to assist in the analysis and measurement of philanthropic activity. Indeed we would encourage a broader collection and distribution of organised giving data from existing charitable structures to be made available to the public in aggregate form as is currently done for PPFs.

We don’t believe that all PPFs should be forced to individually disclose this information to the broader public. Those that are of a size and inclination to publically disclose are able to do so currently. However, for the majority, the balance of costs to benefits needs to be considered. One of the attractions of the PPF structure is that they should be simple to administer and low cost to sustain. Public reporting on their activities and being faced with increased requests for funding and the administrative issues of responding to such requests will only add to costs and reduce available levels of funding. In addition, the extra cost burden to charities of making applications to PPFs for no increase in total sector funding levels, just a potential redistribution, doesn’t seem sensible.

Where PPFs are established to fund particular areas of focus, which can make good sense on policy and efficiency grounds, our observation is that charities from unrelated areas will continue to expend their resources to appeal to these groups for funds regardless. This is not in the interests of the charities or the individual PPFs.

The potential benefits of public disclosure are that PPFs may receive information which helps in their grant decision making process. However we believe this could be achieved more efficiently through a centralised “charity commission” type body which we understand is also being considered by Government in a separate study.

There may be some benefit in either Government or a peak body such as Philanthropy Australia providing a recommended template for those PPFs who voluntarily wish to become public but only to the extent of providing details of their scale, areas of interest and preferred contact details.

**Principle 2 — PPFs are trusts that: (1) abide by all relevant laws and obligations, and (2) are open, transparent and accountable**

### 2a Give the ATO greater regulatory powers

***Will two years be a long enough transitional period for existing PPFs to comply fully with the new Guidelines?***

*Goldman Sachs JBWere Response*: Partly this will depend on the extent of the changes finally legislated for PPFs. In regard to transitional arrangements, we believe there are potentially significant issues facing existing PPFs from transferring to the proposed guidelines. Attempts to force existing PPFs to comply with the new regime have the risk of being resisted on legal grounds and potentially resulting in some existing PPFs being closed down. Both of these alternatives could create reputational damage to the Philanthropic sector. This does not appear to be consistent with the Governments stated aim of promoting Philanthropy.

Subject to further discussion and legal opinion, we would recommend an option for existing PPFs to be grandfathered under the terms that were previously agreed with Government and new PPFs being established under the new proposed regulations. As we are still in the early stages of the PPF being used (with 769 PPFs being established by June 08) we don’t believe this will create unjustifiable administration or compliance issues going forward. Depending on the final shape of the legislation it may be that most existing PPFs would prefer a simpler, more workable and usable set of regulations and would voluntarily choose to opt into a new regime.

***Are there any cost or other concerns relating to the corporate trustee proposal?***

*Goldman Sachs JBWere Response*: In regard to the issue of mandating the use of corporate trustees, on the surface this appears sensible when considered as an alternative to using individual trustees. This is a practice we would normally recommend for ease of ongoing administration. However in some cases founders may have specific reasons for wanting to engage individuals as trustees and as a principle of choice we would support retention of this option.

***Are there any privacy concerns that the Government needs to consider?***

*Goldman Sachs JBWere Response*: If PPFs are to remain private, as we recommend in 1d, then being able to access the details of directors of a corporate entity which is identified as a trustee of a PPF would be of concern to some PPFs. Privacy arrangements need to recognise the independence of the trustees of a PPF and the separate affairs of the funder. Any presumption that they are one and the same would not appear to distinguish between the roles, obligations and rights of each.

***Are there any concerns over particular penalty types?***

*Goldman Sachs JBWere Response*: We would support recommendations that allow the ATO the flexibility to respond proportionately to any misuse of PPFs by providing access to a wider range of penalties.

Our observation would be that our clients have appreciated the supportive attitude of the ATO in providing assistance to trustees of PPFs in dealing with existing guidelines for PPFs.

Having flexibility in the range of penalties available would be extremely positive, both in terms of working with donors who make administrative errors due to misunderstandings (where restitution or education undertakings may be appropriate), through to strong remedies being made available for serious and inappropriate misbehaviour or abuse of the regulations. Certainly some clarity in this area is required along with a simpler set of regulations with which trustees can comply.

## 2b Introduce fit and proper person test for trustees

***If a fit and proper person test were introduced, what criteria should be imposed on trustees?***

*Goldman Sachs JBWere Response*: We would support initiatives to provide ongoing education and resources to assist trustees of PPFs in their role. However imposing a mandatory fit and proper person test for all trustees (e.g. children of donor families or other similarly community minded friends) may discourage wider involvement and participation in the governance of PPFs and philanthropy in general. Requiring at least one trustee to undertake some form of certified training (perhaps continuing professional development CPD type points) may be a method of ensuring knowledge levels are maintained.

Support for a peak body (e.g. Philanthropy Australia) to provide this education, training and access to appropriate information, guides and other publications seems the most efficient and effective means to achieve this goal.

This resource would be made available to existing and potential trustees, professional advisers and practitioners and other sector participants e.g. grant seekers.

## 2c Move relevant provisions from Model Trust Deed into the Guidelines

***Are there any other provisions presently in the Model Trust Deed that should be covered in the updated Guidelines?***

*Goldman Sachs JBWere Response*: The main areas needing clarity such as distribution calculations are the main focus of this submission.

***Are there any provisions not in the Deed that should be in the updated Guidelines?***

*Goldman Sachs JBWere Response*: Some definition, examples and treatment of appropriate types and levels of costs within a PPF would be useful. In addition, some further clarity around allowed DGR and TCC categories would be helpful.

**Principle 3 — PPFs are private**

## 3a Limit the number of PPF donors

***Would there be any disadvantages if a cap were introduced on the number of donors to a PPF (for example, a maximum of 20 donors over the life of the fund)?***

*Goldman Sachs JBWere Response*: PPFs should be a vehicle primarily for private philanthropy and therefore some limit on the ability for them to be used to collect donations from the public is encouraged, for example under 50% of total donations. However, arbitrarily limiting the number of "related" donors to the non public proportion needs to take into account both a PPF's potential use by a corporate donor and employees and the possible size of extended and intergenerational families. These groups could number more than 100 yet still be legitimately related for the definition of private donors.

***Is conversion from PPF to PAF an acceptable mechanism to deal with changing PPF circumstances?***

*Goldman Sachs JBWere Response*: We believe (as for reasons outlined earlier) in promoting greater ongoing philanthropy and for reasons of efficiency and changing circumstances of donors, that in certain circumstances allowing a PPF to rollover into a PAF, or vice versa, has very strong policy and administrative justification. This is also consistent with the options available for superannuation. As long as annual distributions to DGR's are continued during any conversion periods, we see no reason to limit the choice of appropriate philanthropic structure and allowing that to evolve as conditions change.

***What rules could be used to deal with the conversion from a PPF to a PAF?***

*Goldman Sachs JBWere Response*: If adequate rules exist for the operation of PPFs and PAFs already, then the main issue will be around complying with those existing rules plus ensuring an annual donation to DGR's is not missed during conversion. There should be no tax implications and no impact on distributions to the community. Some consistency in methods of calculation of payout rates and asset valuation methods between PPFs and PAFs may need to be examined to close any transitional loopholes.

**Principle 4 — PPFs are ancillary funds**

## 4a Restrict PPF investment to only liquid assets

***Would there be any disadvantages from introducing this limitation to the existing PPF investment rules?***

*Goldman Sachs JBWere Response*: The choice of investment assets should be made to suit the purpose of the PPF. These can vary significantly and change over time. For example, where a PPF has been established to support construction of a hospital facility over the next five years, a high proportion of capital stable, liquid assets would be held. However, a PPF established to support welfare organisations deal with increasing annual needs would need some level of liquid assets to make annual distributions, but a higher level of growth assets to help combat inflation and provide a long term growing stream of income. Liquidity can vary amongst growth assets and thought would need to be given to the definition of liquidity e.g. would funds which have a quarterly application and redemption cycle be considered liquid?

These decisions are best left to the trustee of the PPF who in turn should be guided by their investment policy, including asset allocation ranges, designed to best fulfil the philanthropic aims of the PPF.

# Appendices

## Appendix 1

**Goldman Sachs JBWere Philanthropic Services Team Profile**

## Appendix 2

**Charitable Endowment Fund**

## Appendix 1 – Goldman Sachs JBWere Philanthropic Services Team Profile

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**Philanthropic Services**

# Team profile

### Christopher Thorn

**Executive Director, Philanthropic Services**

Christopher is the Executive Director of the firm's Philanthropic Services team, where his primary responsibilities include raising awareness of philanthropic issues; providing advice on investment and capital management to individuals and organisations wishing to implement a philanthropic strategy; and fostering relationships between interested parties in order to facilitate the giving process.

Christopher is a partner of Goldman Sachs JBWere. He joined the firm in 1984 and worked in Melbourne as a Retail and Institutional Adviser. In 1993 Christopher moved to New York as Vice President Institutional Sales. Upon returning to Australia in 1996 he was appointed Manager of Goldman Sachs JBWere's Queensland business, until returning to Melbourne in 2001.

Christopher has held a variety of senior management roles within Goldman Sachs JBWere's Private Wealth Management business, including business integration and strategy. In 2002, Christopher established the firms Philanthropic Services division.

Christopher is a member of the Philanthropy Australia Council; Chairman of StreetSmart Australia – a campaign established to provide financial support to the homeless sector, Chairman of ShareGift Australia and also Vice-President of the Camberwell Grammar School Foundation.

### John McLeod

**Executive Director, Philanthropic Services**

John joined the Philanthropic Services team in 2002 after 16 years in resource equity markets at Goldman Sachs JBWere. His primary responsibilities include researching and analysing trends in the philanthropic sector; interpreting the findings to provide valuable education for clients; and forging relationships between clients with a philanthropic interest and the not-for-profit sector. He has completed the newly established Swinburne University postgraduate course in Philanthropy and Social Investment.

Following his initial studies in Engineering (Mining) and Commerce, John worked for Mount Isa Mines for five years in a variety of roles including Development Miner, Mining Engineer, Project Engineer and Planning Manager. He later joined Esso Australia as Senior Mining Engineer in the Minerals Department in Sydney, conducting financial and technical analysis and assessing potential development on advanced exploration areas.

John joined the firm in 1987 and has been responsible for research into BHP (now BHP Billiton) and the energy sector. He later took on the role of Resource Strategist and Manager of Resource Research within the firm's top-ranking strategy team.

After retiring as a partner of Goldman Sachs JBWere in 2003, John was able to devote more time to both his family's interests in private philanthropy and in a broader education role through Philanthropic Services.

### Kelley McLendon

**Director, Philanthropic Services**

Kelley joined the Philanthropic Services team in January 2008. Her primary responsibilities include partnering with our Client Advisors and Key Account Managers to bring philanthropic opportunities and solutions to Goldman Sachs JBWere clients, facilitating dialogue between the non-profit sector and those with a philanthropic interest and increasing visibility of philanthropy in the community.

Prior to her employment with Goldman Sachs JBWere, Kelley relocated from the US in 2004 to work for National Australia Bank and spent most of her tenure there as Group Manager for Corporate Community Investment (CCI). In this role she was responsible for providing strategy and consolidated reporting of the bank's own philanthropic donations and partnerships, volunteering efforts and community sponsorships.

Before that, Kelley worked for Bank of America for more than 14 years. Her last role was Director of Charitable Trust Services. This specialist unit helped high net worth donors throughout New England create and implement charitable strategies. She and her team managed a large portfolio of charitable trusts and foundations from offices in Boston, Massachusetts, Hartford, Connecticut and Providence, Rhode Island.

Kelley is a licensed Certified Financial Planner (US) and has been instrumental in bringing a number of innovative philanthropic partnerships to reality including the Massachusetts Catalogue for Philanthropy and the Boston Workforce Development Initiative.

### Mevan Jayawardena

**Associate, Philanthropic Services**

Mevan joined Goldman Sachs JBWere in October 2006. He is responsible for researching and analysing trends in the non-profit sector, driving and supporting new initiatives and exploring opportunities for adding value to our clients.

Before joining the firm, he worked in the IT services industry and held both technical and management positions. Mevan received a Bachelor of Business and Bachelor of Computing from Monash University.

Mevan has a keen interest in humanitarian work and has been active in many grass-roots level projects over the last 10 years, particularly in the international aid sector.

## Appendix 2 – Charitable Endowment Fund

# Goldman Sachs JBWere Charitable Endowment Fund

## The Goldman Sachs JBWere Charitable Endowment Fund is an innovative fund designed to help you manage your philanthropic giving.

### What is the Goldman Sachs JBWere Charitable Endowment Fund?

The Goldman Sachs JBWere Charitable Endowment Fund (CEF) is a public charitable foundation designed to help private donors manage their philanthropic giving. The CEF allows you to provide enduring gifts to charitable organisations without the administrative burden of establishing and managing a private charitable foundation.

As a public charitable entity, the CEF is endorsed by the Australian Taxation Office (ATO) as a Deductible Gift Recipient (DGR) and a Tax Concession Charity (TCC), consequently all donations into a CEF account are tax deductible* and the CEF is exempt from income tax.

Donations into your CEF account are invested by Goldman Sachs JBWere and each year a portion of the investment return is used to make charitable grants. The remainder is reinvested to ensure the fund continues to grow for future grant making. The CEF allows you to pursue a philanthropic mission in perpetuity or wind up your account at any point in time and distribute the full proceeds as charitable grants.

**The steps to establishing your account and making grants**

**Establishment**
Donate a minimum of $20,000 to open your CEF account.

The Trustee will verify your application and establish your account.

**Tax deduction**
The Trustee will issue a receipt for claiming your tax deduction for the donation you have made.

**Investment**
Donations are invested by Goldman Sachs JBWere.

**Annual recommendations**
Advise the Trustee of the Charitable Organisations you wish to recommend as grant recipients†.

**Grants**
The Trustee makes grants to the Charitable Organisations as recommended by you and approved by the Trustee†.

**Statements**
Each November, you will receive an annual statement for your CEF account.

**Additional donations**
You can make additional tax deductible donations ($5,000 minimum) into your CEF account as often as you wish.

### Benefits of the CEF

- **Easy to establish**
  Setting up your CEF account can be quick and simple and no further ATO or regulatory approval is required.
- **Naming rights**
  You can name your CEF account (within guidelines) and grants from your CEF account can use this name or be anonymous at your discretion.
- **Tax advantages***
  You are entitled to claim a tax deduction for your initial and all additional donations into your CEF account.
- **Easy to manage**
  Investment management, administration and reporting are taken care of on your behalf.
- **Flexible grant making**
  In addition to annual grant making from the return generated by investments, you can recommend grants† from the capital balance in your CEF account at any time of the year.
- **Giving in perpetuity**
  Your CEF account can endure indefinitely and so it allows you to create a legacy of giving for decades to come.

* Given the complexity of taxation legislation and the significant and ongoing changes introduced by Governments, it is recommended you obtain advice from your own professional tax adviser before deciding whether to establish a CEF account.

† The ultimate decision on the Charitable Organisations to receive grants from your CEF account rests with the Trustee, as it is the Trustee's responsibility to ensure all funds donated to and disbursed from the CEF are dealt with in accordance with regulatory requirements.

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## Fees

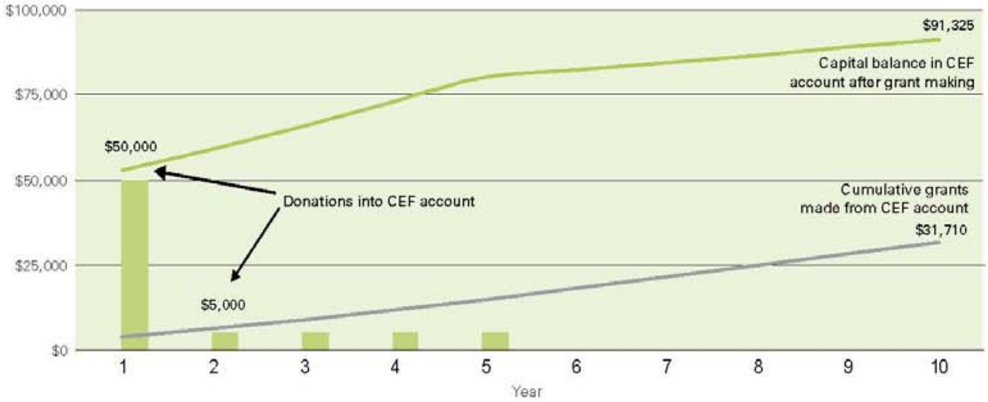
A CEF account will be charged an annual management fee, estimated to be 1.04% p.a. (after the refund of all applicable GST credits).

Additionally, the managers of the funds in which the CEF will be invested are expected to charge management costs of approximately 0.92% p.a. (after GST refunds available) of the value of the relevant investments.

## Example of a CEF account

In the example below, if you make an initial donation of $50,000 and then make additional donations of $5,000 p.a. for the next four years, in 10 years (based on the assumptions below), your CEF account would have:

- generated charitable grants totalling $31,710
- built a $91,325 corpus for future charitable giving.




Assumptions:
- income based on 4.81% p.a. including franking credit refunds and less fees
- capital growth based on 3.83% p.a.
- grant making based on a declared distribution of 4%.

Long term investment return estimates sourced from Goldman Sachs JBWere Private Wealth Management Investment Strategy.

## Further information

To find out more about the CEF and whether it will help you achieve your philanthropic goals you should read the Information Memorandum for more information. The Goldman Sachs JBWere Philanthropic Services team can help tailor a solution for you and discuss what options are available. Please call your adviser or Goldman Sachs JBWere Philanthropic Services on **(03) 9679 1183** or email **cef@gsjbw.com**. Alternatively, visit **www.gsjbw.com/cef**.



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