



## Prudential Standard APS 520

### Fit and Proper

#### Objective and key requirements of this Prudential Standard

Persons who are responsible for the management and oversight of an authorised deposit-taking institution (ADI) need to have appropriate skills, experience and knowledge and act with honesty and integrity. This strengthens the protection afforded to depositors and other stakeholders. To this end, institutions need to prudently manage the risk that persons in positions of responsibility may not be fit and proper.

The prime responsibility for ensuring that an institution's responsible persons are fit and proper remains with the Board of directors or, in the case of a foreign ADI as defined under the *Banking Act 1959*, with the senior officer outside Australia with delegated authority from the Board.

This Prudential Standard applies to ADIs and authorised non-operating holding companies under the *Banking Act 1959*. It sets out minimum requirements for these institutions in determining the fitness and propriety of individuals to hold positions of responsibility.

The key requirements of this Prudential Standard are that:

- a regulated institution must have and implement a written Fit and Proper Policy that meets the requirements of this Prudential Standard;
- the fitness and propriety of a responsible person must generally be assessed prior to initial appointment and then re-assessed annually (or as close to annually as practicable);
- a regulated institution must take all prudent steps to ensure that a person is not appointed to, or does not continue to hold, a responsible person position for which they are not fit and proper;
- additional requirements must be met for certain auditors; and
- certain information must be provided to APRA regarding responsible persons and the regulated institution's assessment of their fitness and propriety.

## Authority and application

1. This Prudential Standard, made under paragraphs 11AF(1)(a) and (b) of the *Banking Act 1959 (the Act)*, applies to all authorised deposit-taking institutions (**ADIs**) and authorised non-operating holding companies (**authorised NOHCs**) under the Act. ADIs and authorised NOHCs are collectively referred to as **regulated institutions**.
2. This Prudential Standard specifies:
  - (a) the ‘senior management responsibilities’ for the purposes of the definition of *senior manager* in subsection 5(1) of the Act;
  - (b) the fitness and propriety criteria for an auditor for the purposes of paragraph 17(2)(b) of the Act; and
  - (c) the fitness and propriety criteria for certain responsible persons for the purposes of paragraph 23(2)(b) of the Act.

## Fit and Proper Policy

3. A regulated institution must prudently manage the risk to its business or financial standing that persons acting in responsible person positions are not fit and proper. To this end, the institution must have a written policy relating to the fitness and propriety of its responsible persons that meets the requirements of this Prudential Standard (**Fit and Proper Policy**).
4. The Fit and Proper Policy must have been approved by the Board of directors (**Board**) or, for a foreign ADI as defined in the Act (**foreign ADI**), by the senior officer outside Australia with delegated authority from the Board under *Prudential Standard APS 510 Governance (senior officer outside Australia)*.
5. A regulated institution must take all reasonable steps to ensure that each of its responsible persons is aware of, and understands, the provisions of its Fit and Proper Policy.
6. The Fit and Proper Policy must form part of an ADI’s risk management system required under *Prudential Standard APS 310 Audit and Related Arrangements for Prudential Reporting*.
7. Nothing in this Prudential Standard prevents a regulated institution from applying a Fit and Proper Policy that is also used in a related company, provided that the policy has been approved by the regulated institution in accordance with paragraph 4 and meets the requirements of this Prudential Standard.

## Responsible persons

8. A **responsible person** of a locally incorporated ADI or authorised NOHC is:

- (a) a director of the regulated institution;<sup>1</sup>
  - (b) a senior manager of the regulated institution;<sup>2</sup>
  - (c) an auditor who provides any report in relation to the regulated institution that is required to be prepared by an auditor under the Act (including Prudential Standards) or Reporting Standards under the *Financial Sector (Collection of Data) Act 2001* (**responsible auditor**); or
  - (d) a person who performs activities for a subsidiary of the regulated institution where those activities may materially affect the whole, or a substantial part, of the business of the regulated institution or its financial standing, either directly or indirectly.
9. A **responsible person** of a foreign ADI is:
- (a) a senior manager of the Australian operations of the foreign ADI who is ordinarily resident in Australia;
  - (b) a responsible auditor of the foreign ADI; or
  - (c) a person who performs activities for a subsidiary of the foreign ADI that the foreign ADI controls as part of its Australian operations, where:
    - (i) those activities may materially affect the whole, or a substantial part, of the business of the Australian operations of the foreign ADI or its financial standing, either directly or indirectly; and
    - (ii) where the person is ordinarily resident in Australia.
10. References to a subsidiary in subparagraph 8(d) or 9(c) do not apply to a subsidiary that holds an RSE licence under the *Superannuation Industry (Supervision) Act 1993*.<sup>3</sup>
11. A person need not be an employee of the regulated institution to be a responsible person if they are within the definition at paragraph 8 or 9. In some circumstances a consultant, contractor or employee of a subsidiary or otherwise related company may be a responsible person.
12. APRA may determine that any person is a responsible person if APRA is satisfied that the person plays a significant role in the management or control of the regulated institution, or that the person's activities may materially impact on prudential matters.<sup>4</sup> The determination will be notified in writing to the regulated institution.
13. APRA may determine that a person is not a responsible person in relation to a particular position, responsibility or activity if APRA is satisfied that the person

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<sup>1</sup> Director as defined under section 9 of the Corporations Act 2001.

<sup>2</sup> Senior manager as defined in paragraph 15 of this Prudential Standard.

<sup>3</sup> RSE licence has the meaning given in subsection 10(1) of the *Superannuation Industry (Supervision) Act 1993*.

<sup>4</sup> Prudential matters as defined in section 5 of the Banking Act 1959.

does not play a significant role in the management or control of the regulated institution or that the person's activities may not materially impact on prudential matters. The determination will be notified in writing to the regulated institution and may be subject to such conditions as APRA believes are appropriate.

14. **Responsible person position** means the responsibilities or activities of a responsible person that would lead to the person being a responsible person under paragraph 8 or 9.

### **Senior managers**

15. Senior manager in relation to a regulated institution<sup>5</sup> means a person (other than a director of that regulated institution) who:

- (a) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the regulated institution; or
- (b) has the capacity to affect significantly the regulated institution's financial standing; or<sup>6</sup>
- (c) may materially affect the whole, or a substantial part, of the business of the regulated institution or its financial standing through their responsibility for:
  - (i) enforcing policies and implementing strategies approved by the Board of the regulated institution; or
  - (ii) the development and implementation of systems that identify, assess, manage or monitor risks in relation to the business of the regulated institution; or
  - (iii) monitoring the appropriateness, adequacy and effectiveness of risk management systems; or
- (d) for a foreign ADI, is nominated as the senior officer outside Australia to the extent that the person meets the definition in subparagraphs (a), (b) or (c).

16. For the purposes of the definition of senior manager in subsection 5(1) of the Act, the responsibilities set out in subparagraphs 15(a), (b), (c) and (d), when exercised for a regulated institution, are senior management responsibilities (except where carried out by a director).

### **Criteria to determine if a responsible person is fit and proper**

17. Each regulated institution must clearly document the competencies required for each responsible person position.

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<sup>5</sup> In relation to a foreign ADI, references to regulated institution in this paragraph refer only to the Australian operations of that foreign ADI.

<sup>6</sup> Paragraphs 15(a) and (b) are intended to be interpreted consistently with the definition of senior manager (in relation to a corporation) in section 9 of the Corporations Act 2001.

18. For paragraph 23(2)(b) of the Act and for this Prudential Standard, the criteria that must be met for a person to be fit and proper to hold a responsible person position are whether:
- (a) it would be prudent for a regulated institution to conclude that the person possesses the competence, character, diligence, honesty, integrity and judgement to perform properly the duties of the responsible person position;
  - (b) the person is not disqualified under the Act from holding the position; and
  - (c) the person either:
    - (i) has no conflict of interest in performing the duties of the responsible person position; or
    - (ii) if the person has a conflict of interest, it would be prudent for a regulated institution to conclude that the conflict will not create a material risk that the person will fail to perform properly the duties of the position.

**Additional criteria applying to responsible auditors**

19. The additional criteria which must be met for a person to be fit and proper to act as a responsible auditor are whether the person:
- (a) is registered as an auditor under the *Corporations Act 2001*;
  - (b) is ordinarily resident in Australia;
  - (c) is a member of a recognised professional body; and
  - (d) for the auditor of an ADI, has a minimum of 5 years relevant experience in the audit of ADIs and it would be prudent to conclude that the person is familiar with current issues in the audit of ADIs.

**Other matters relating to responsible auditors**

20. The criteria at paragraph 19 do not apply while:
- (a) the regulated institution reasonably considers that there are exceptional circumstances;
  - (b) the regulated institution has promptly notified APRA of which eligibility criteria are not satisfied and of the exceptional circumstances; and
  - (c) APRA has notified the regulated institution in writing that APRA has no objections to the person being appointed as a responsible auditor.
21. For the purposes of paragraph 17(2)(b) of the Act, the criteria for fitness and propriety of an auditor are:

- (a) the criteria at paragraph 18; and
- (b) the criteria at paragraph 19.

**Process for assessment of fitness and propriety**

22. The Fit and Proper Policy must include the processes to be undertaken in assessing whether a person is fit and proper for a responsible person position (**fit and proper assessment**). The processes must include:
- (a) who will conduct fit and proper assessments on behalf of the regulated institution;
  - (b) what information will be obtained and how it will be obtained;
  - (c) the matters that will be considered before determining if a person is fit and proper for a responsible person position; and
  - (d) the decision-making processes that will be followed.
23. The Fit and Proper Policy must specify the actions to be taken where a person is assessed as not fit and proper.
24. The Fit and Proper Policy must provide that a copy of the Policy is given to:
- (a) any candidate for election as a director as soon as possible after the candidate is nominated; and
  - (b) any other person before an assessment of their fitness and propriety is conducted.
25. A fit and proper assessment must be completed for each responsible person within 28 days of this Prudential Standard applying to a regulated institution, if no assessment meeting the requirements of this Prudential Standard has been made within the previous year.
26. The Fit and Proper Policy must require a fit and proper assessment to be completed before a person becomes the holder of a responsible person position unless they hold the position:
- (a) because of a resolution of members of the regulated institution; or
  - (b) because APRA has determined that the person is a responsible person under paragraph 12.

In such cases, the Fit and Proper Policy must require an assessment to be completed within 28 days of the person becoming the holder of the responsible person position.

27. Interim appointment to a responsible person position may be made without a full fit and proper assessment for a period of up to 90 days (or longer with APRA's agreement) including any prior period of interim appointment. Prior to making

such an appointment, reasonable steps must be taken, as specified in the Fit and Proper Policy, to assess the fitness and propriety of the person. The regulated institution must complete a full fit and proper assessment prior to appointing the person to the responsible person position on a permanent basis.

28. The Fit and Proper Policy must require annual fit and proper assessments (or as close to annual as is practicable) for each responsible person position.
29. When an assessment is conducted, a regulated institution must make all reasonable enquiries<sup>7</sup> to obtain information, including collecting sensitive information as defined in the *Privacy Act 1988*, that it believes may be relevant to an assessment of whether the person is fit and proper to hold a responsible person position.
30. Where a responsible person has been assessed as fit and proper, but the regulated institution subsequently becomes aware of information that may result in the person being assessed as not fit and proper, the regulated institution must take all reasonable steps, including collecting sensitive information as defined in the *Privacy Act 1988* if relevant, to ensure that it can prudently conclude that no material fitness and propriety concern exists. Where a concern exists, a full fit and proper assessment must be conducted.
31. The Fit and Proper Policy must contain adequate provisions:
  - (a) to encourage any person to disclose information that may be relevant to a fit and proper assessment to the regulated institution or APRA;
  - (b) to enable the disclosure to APRA of any information the regulated institution is required to provide under this Prudential Standard; and
  - (c) for giving or obtaining any consents required for the collection and use of any information:
    - (i) by the regulated institution to comply with the Fit and Proper Policy or this Prudential Standard; and
    - (ii) by APRA for its powers and functions under the Act.
32. The Fit and Proper Policy must require that sufficient documentation for each fit and proper assessment is retained to demonstrate the fitness and propriety of the regulated institution's current, and recently past, responsible persons.

## **Whistleblowing**

33. The Fit and Proper Policy must include adequate provisions to allow whistleblowing if a person believes that a responsible person does not meet the regulated institution's fit and proper criteria. The Fit and Proper Policy must ensure that the regulated institution and its subsidiaries consent to the person

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<sup>7</sup> Including following the processes described in the Fit and Proper Policy under subparagraph 22(b).

notifying either the person responsible for conducting fit and proper assessments or APRA of that belief and the reasons for it.

34. The Fit and Proper Policy must include adequate provisions to allow persons who believe that the regulated institution has not complied with this Prudential Standard to notify APRA of that belief and the reasons for it.
35. The Fit and Proper Policy must provide that the regulated institution and its subsidiaries consent to any person who held a responsible person position disclosing information or providing documents to APRA relating to their reasons for resignation, retirement or removal.
36. A regulated institution must not, and must ensure that its subsidiaries do not, constrain, impede, restrict or discourage, whether by confidentiality clauses, policies or other means, any person from disclosing information or providing documents to APRA about matters referred to in paragraphs 33, 34 or 35.
37. The Fit and Proper Policy must require that any provisions of the policy encouraging whistleblowing are adequately communicated to directors and employees of the regulated institution and its subsidiaries who are likely to have information relevant to fit and proper assessments.
38. APRA does not require that a regulated institution impose an obligation on any person to make the disclosures under paragraphs 33, 34 or 35. However, the Fit and Proper Policy must require that all reasonable steps be taken to ensure that no person making such disclosures in good faith is subject to, or threatened with, a detriment because of any notification in purported compliance with the requirements of the Fit and Proper Policy.

### **When a responsible person is not fit and proper**

39. Where a regulated institution has assessed that a person is not fit and proper, or a reasonable person in the regulated institution's position would make that assessment, the institution must take all steps it prudently can to ensure that the person:<sup>8</sup>
  - (a) is not appointed to; or
  - (b) for an existing responsible person, does not continue to holdthe responsible person position.

### **Informing APRA**

40. A regulated institution must, within 28 days of when this Prudential Standard applies to it, notify APRA of the following information for each responsible person:
  - (a) the person's full name;

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<sup>8</sup> Including the actions outlined in the Fit and Proper Policy in accordance with paragraph 23.

- (b) the person's date of birth (for identification purposes only);
  - (c) the person's position and main responsibilities; and
  - (d) a statement of whether the person has been assessed under the Fit and Proper Policy.
41. A regulated institution must ensure that the information provided under paragraph 40 remains correct for all of its responsible persons. It must provide revised information to APRA within 28 days of any change or new appointment.
42. A regulated institution must notify APRA within 10 business days if it assesses that a responsible person is not fit and proper. If the person remains in the responsible person position, the notification must state the reason for this and the action that is being taken.
43. The information or notifications required by this Prudential Standard must be given in such form, if any, and by such procedures, if any, as APRA publishes on its website from time to time.
44. A regulated institution must take reasonable steps to:
- (a) obtain any information and documentation that APRA asks of it; and
  - (b) provide that information to APRA
- to assist APRA in assessing the fitness and propriety of a person. This may include providing the Fit and Proper Policy to APRA on request.
45. APRA does not and will not require disclosure of spent convictions where precluded under Part VIIC of the *Crimes Act 1914*.