

General additional conditions for public offer RSE licensees under section 29EA of the *Superannuation Industry (Supervision) Act 1993*

A. PROVISION OF INFORMATION CONDITIONS

Minimum number of directors

A.1

- (a) The minimum number of directors of the RSE licensee must be 4 of which the minimum number of Australian resident directors must be 3. Where there are more than 4 directors the minimum number of Australian resident directors must be at least a simple majority of the total number of directors. 'Australian resident' has the same meaning as in subsection 6(1) of the *Income Tax Assessment Act 1936*.
- (b) Any vacancy in the minimum number of directors must be filled within 90 days after the vacancy occurred.

Provision of Information about the RSE licensee to APRA

- A.2 Any change of Chairman, chief executive officer, company secretary, director(s) or any other responsible officer of the RSE licensee is a notifiable event and must be reported to APRA in writing within 14 days after the event occurred.
- A.3 APRA must be notified in writing at least 14 days before:
 - (a) any change in the persons who have the power to exercise a controlling influence over the financial or operating policies of the RSE licensee;
 - (b) any material increase in the controlling influence of any person over the RSE licensee.

Annual information

- A.4 The RSE licensee must prepare financial statements on an annual basis and cause these to be properly audited by an independent registered company auditor in accordance with Australian Auditing Standards, Urgent Issues Group Abstracts and other mandatory reporting requirements as if - the nature of the RSE licensee is such that the *Corporations Act 2001* required that this be done. The financial statements must be prepared to the standard for general purpose accounts even if they are prepared for a special purpose. These statements and the auditor's report must be provided to APRA within 4 months of the end of the financial year of the RSE licensee.

APRA Questionnaires

- A.5 The RSE licensee must complete and return APRA questionnaires about the operations of the RSE licensee as requested from time to time.

No other business or commercial activity

- A.6 (a) The RSE licensee must not engage in any business or commercial activity unless that activity is in its capacity as trustee of registrable superannuation entities, unless:
- (i) that business or commercial activity is necessary or reasonably incidental to the RSE licensee's activities as a trustee of one or more regulated registrable superannuation entities; or
 - (ii) the RSE licensee carried out that type of business or commercial activity at the time this licence was granted or (if the licence has been varied) last varied; or
 - (iii) that business or commercial activity has been approved by APRA in writing.
- (b) For the purposes of sub-condition A.6(a)(i), business or commercial activity includes acting as the RSE licensee of a trust fund (other than a registrable superannuation entity) or of a deceased estate but does not include acting as a single responsible entity of a managed investment scheme where the RSE licensee is authorised to provide financial services on managed investment schemes under an Australian financial services licence issued by ASIC under Chapter 7 of the *Corporations Act 2001*.

B. INSURANCE AND CONTINGENCY CONDITIONS

- B.1 If the RSE licensee undertakes to provide any benefits that are life insurance (including disability) benefits to members, those benefits must be wholly determined by reference to life policies issued to the trustee from a company registered under the *Life Insurance Act 1995*.

C. CUSTODIAN CONDITIONS

- C.1 The RSE licensee must maintain at all times, for the use of the RSE licensee to ensure its ongoing solvency and to support its business operations, a level of cash and cash equivalents of at least \$100,000 where cash equivalents means highly liquid assets which are readily convertible to cash at call and are subject to an insignificant risk of changes in value. In addition, the RSE licensee must obtain an annual audit certificate by an independent registered company auditor certifying that the \$100,000 cash and cash equivalents have been maintained at all times during each year. The certificate must be provided to APRA within 4 months, or within such other period as APRA allows in writing, after the end of each financial reporting period of the RSE licensee.
- C.2 The custodian must be appointed under a written agreement between the RSE licensee and the custodian (the custodian agreement). The custodian

agreement must be in force while the custodian holds assets of any registrable superannuation entity and comply with the outsourcing standard.

- C.3 The custodian agreement must comply with the requirements contained in the APRA Cross Industry Circular No. 1 released in November 2000.
- C.4 Only one custodian may be appointed for each registrable superannuation entity.
- C.5 All assets of each registrable superannuation entity, including all bank accounts (including those maintained for the purpose of meeting expenses incurred by the RSE licensee), must be custodially held by the custodian.
- C.6 The custodian must be independent of the RSE licensee.
- C.7 The RSE licensee must take all reasonable steps to ensure that the custodian satisfies the requirements of Part 15 of the Act.
- C.8 If the RSE licensee becomes aware that the custodian no longer satisfies the requirements of Part 15 of the Act, this is a notifiable event and must be reported to APRA in writing no later than 14 days after the event occurred.
- C.9 If the RSE licensee becomes aware of any problems with the custodian that jeopardise the safety of the assets of a registrable superannuation entity or that indicate that the custodian can no longer be relied on to perform, in a proper manner, the duties of custodian of the assets of any registrable superannuation entity, it must:
 - (a) advise APRA in writing as soon as practicable, and in any event within 7 days after becoming aware; and
 - (b) take all reasonable steps (not involving a breach of the Act) to secure the safety of the assets held by the custodian including, if necessary, causing the custodian to return the assets to the RSE licensee and/or arranging for the assets to be custodially held by another appropriate custodian.
- C.10 (a) The RSE licensee must notify APRA in writing at least 30 days prior to any change of custodian. It will be the RSE licensee's responsibility to ensure that the new custodian is another appropriate custodian. The notice must specify the name and address of the new custodian, and must certify that the use of the new custodian will not result in the contravention of any conditions imposed on the RSE licensee.
 - (b) If the RSE licensee needs to change the custodian arrangements in a shorter time period than 30 days, due to concerns that the custodian may no longer be relied upon to perform, in a proper manner, the duties of custodian or there is any potential to jeopardise the assets of any

registrable superannuation entity, the RSE licensee need only notify APRA in writing regarding the change of custodian as soon as the RSE licensee becomes aware of the concerns or potential to jeopardise the assets of the RSE, PROVIDED THAT the notification is given, at the latest, immediately after the change of custodian occurs.

D. INVESTMENT IN PRUDENTIALY SUPERVISED INSTITUTION

D.1 All assets of each entity must be wholly invested in deposits in, or policies of, the prudentially supervised institution which was specified by the RSE licensee in its application.

D.2 The institution must maintain net tangible assets of at least \$5 million at all times.

E. \$5 MILLION NET TANGIBLE ASSETS

E.1 Within 4 months, or within such longer period as APRA allows in writing, after the end of each financial reporting period of the RSE licensee, the RSE licensee must provide to APRA a certificate by an independent registered company auditor certifying that the RSE licensee had net tangible assets of at least \$5 million at all times during the reporting period.

F. \$5 MILLION GUARANTEE

F.1 Within 4 months, or within such longer period as APRA allows in writing, after the end of each financial reporting period of the RSE licensee, the RSE licensee must provide to APRA a certificate by an independent registered company auditor certifying that the RSE licensee was entitled to the benefit, in respect of the due performance of its duties as RSE licensee, of an approved guarantee of at least \$5 million at all times during the reporting period.

F.2 The RSE licensee must disclose, in regulated documents and in the annual report, information relating to the existence, purpose and extent of the approved guarantee and the availability of this guarantee for perusal.

G. \$5 MILLION COMBINATION NET TANGIBLE ASSETS AND APPROVED GUARANTEE CONDITIONS

G.1 Within 4 months, or within such longer period as APRA allows in writing, after the end of each financial reporting period of the RSE licensee, the RSE licensee must provide to APRA a certificate by an independent registered company auditor certifying that the RSE licensee had a combination of net tangible assets and an approved guarantee (in respect of the due performance of its duties as trustee of an entity) of at least \$5 million at all times during the reporting period.

G.2 The RSE licensee must disclose, in regulated documents and in the annual report, information relating to the existence, purpose and extent of the approved guarantee and the availability of this guarantee for perusal.

H. DEFINITIONS

H.1 In this Schedule:

- (a) **Act** means the *Superannuation Industry (Supervision) Act 1993*;
- (b) **ADI** and **approved non-ADI financial institution** have the same meaning as in subsection 10(1) of the Act;
- (c) **another appropriate custodian** means another custodian:
 - (i) that the RSE licensee considers to be reliable and appropriate to hold the assets of a registrable superannuation entity; and
 - (ii) the use of which by the RSE licensee does not result in the contravention of any of condition imposed upon the RSE Licence;
- (d) **APRA** means the Australian Prudential Regulation Authority;
- (e) **application** means an Application made under Part 2A of the Act;
- (f) **approved guarantee** has the same meaning as in section 11E of the Act;
- (g) **asset** for the purpose of applying for an RSE licence has the same meaning as in Regulation 3A.05.
- (h) **authorised person** has the same meaning as in subsection 10(1) of the Act;
- (i) **custodially held** in relation to an asset of an entity held by a custodian, means that the custodian has one or more of the following:
 - (i) legal title to the asset;
 - (ii) physical possession of the asset;
 - (iii) control of the asset (this includes holding assets in clearing systems, sub-registries (e.g. CHESS) or depositories);
 - (iv) in the case of exchange traded derivative instruments, all margin calls are transacted through accounts in the name of the custodian which receives daily notifications of movements; or
 - (v) physical possession or control of the essential Muniments of title of the asset if any;where in all the circumstances this results in the custodian having effective control of the asset for the purpose of its safekeeping

- (whether or not the custodian also performs other services in relation to the asset);
- (j) **custodian** has the same meaning as in subsection 10(1) of the Act;
 - (k) **days** means calendar days, and includes weekends and public holidays;
 - (l) **fund administrator** means a person who provides fund administration services;
 - (m) **fund administration services** means and includes any administration, management and compliance services performed in relation to an registrable superannuation entity or the provision of staff or resources to the RSE licensee to allow the RSE licensee to carry out such services in its own right;
 - (n) **independent director** has the same meaning as in subsection 10(1) and section 93A of the Act;
 - (o) **months** means calendar months;
 - (p) **muniments of title** means the documentary evidence of title, including instruments and evidence by which the property owner is able to defend his or her title;
 - (q) **net tangible assets** has the same meaning as in Regulation 3A.04;
 - (r) **person** includes a corporation, partnership or other legal or commercial entity;
 - (s) **securities** means the paper right to a tradable asset. This includes bills of exchange, bonds, share certificates and other interest bearing paper traded on financial markets. It also includes an asset pledged to ensure the repayment of a financial obligation (e.g. a loan) and forfeited in the event of a default on that obligation;
 - (t) **significant influence** means the ability or power to exercise 'control' or 'significant influence' as defined in Accounting Standard AASB 1017;
 - (u) **Regulations** mean the *Superannuation Industry (Supervision) Regulations 1994*;
 - (v) **related party** has the same meaning as in subsection 10(1) of the Act;
 - (w) **RSE** means a registrable superannuation entity which has the same meaning as in subsection 10(1) of the Act;
 - (x) **RSE licensee** has the same meaning as in subsection 10(1) of the Act;
 - (y) **total assets** has the same meaning as in Regulation 3A.04;

(z) **total liabilities** has the same meaning as in Regulation 3A.04.