



Ref No: Super Industry Liaison

29 July 2009

By email: XXXX

*[Sent to Industry Associations - IFSA, ASFA, CSA, IFF & AIST]*

Dear *[Industry Association contact]*

## SUPERANNUATION AND ILLIQUID INVESTMENTS

I refer to APRA's letter of 7 November 2008 concerning the above matter. This letter provides updated guidance to industry on APRA's expectations from RSE licensees ('trustees') in relation to:

- any proposed applications for relief, or variations to relief granted, from regulation 6.34 of the SIS Regulations including 'renewals' of previously granted but soon to expire relief; and
- liquidity management issues (e.g. investment switching).

APRA requests that your organisation passes this information onto your members.

### Applications for relief

APRA has been closely monitoring applications for relief from regulation 6.34 in circumstances where underlying previously liquid investments have become illiquid. Our experience has demonstrated that it remains appropriate that APRA continue to consider applications on a case-by-case basis.

Where a trustee:

- (a) identifies investment options (e.g. where those options are invested in an underlying managed investment schemes (MISs) that has suspended payments) where portability relief needs to be considered; or
- (b) is applying to vary/extend relief already granted;

the trustee will need to lodge an application for APRA's consideration. The Attachment to this letter outlines the information trustees will need to provide in respect of any such application. The purpose of this information is to assist APRA in understanding how trustees are managing the relevant investments and satisfying their obligations to members.

If seeking an extension to relief already granted, trustees should apply at least 30 days prior to the date any relief granted expires if they are seeking an extension to that relief. Such 'extension' applications will still need to provide the information requested as it is important that APRA is clear on actions taken by the trustee in respect of the relevant investment options since the original approval was granted.

APRA will continue to respond to applications in a timely and practical manner. Obviously the more complete the information provided with an application, the greater APRA's capacity to respond quickly.

### **Life policies and Pooled Superannuation Trusts**

APRA has considered a number of applications for relief involving investments by superannuation funds into life insurance policies or pooled superannuation trusts (PSTs). If a superannuation fund is invested in life policies or PSTs which in turn invest into an underlying investment vehicle which has become illiquid, APRA expects trustees to review the terms of the life policy contract, or the applicable governing rules of the PST, in order to determine if the Life Insurer/Trustee of the PST has the capacity to cease payments to the superannuation fund in respect of the frozen investment. Experience indicates that this issue has not always been considered by trustees, not all policies or governing rules allow cessation and neither has information on this aspect been provided in applications to APRA.

### **Fair and Reasonable basis - Section 155**

As stated in APRA's letter of 29 September 2008, APRA considers that section 155 of the SIS Act operates specifically to require a public offer trustee not to issue or redeem interests at a price determined by the governing rules where the trustee, on reasonable grounds, believes that an issue or redemption price under those rules would not be fair and reasonable or where a price cannot be determined under those rules. In those circumstances, the trustee is required to disregard the governing rules and can only issue or redeem interests at a price which the trustee believes on reasonable grounds is fair and reasonable as between the person and the beneficiaries of the entity. This view is borne out by paragraphs 275 and 276 of the Explanatory Memorandum for the 1993 Bill for the SIS legislation in which the provision was first included.

Properly interpreted, having regard to the text of the provision and its context, section 155 is not inconsistent with regulation 6.34.

Where the circumstances are such that a trustee is unable to comply with the obligation under regulation 6.34, the proper course of action is for the trustee to make an application to APRA under regulation 6.37.

### **Liquidity Management**

APRA expects trustees to factor into their liquidity management practices matters such as the payment/processing of withdrawal applications (i.e. portability), investment switches and benefit payments to members/beneficiaries (including pensions, payments to the ATO for temporary residents and death payments). It is an important aspect of trustees acting in the best interests of members to be satisfied that members are being treated in an equitable manner when determining the priority of payment. This will obviously be more of a challenge where certain investment options are in a position where no redemptions can be made from underlying investments.

APRA continues to encourage trustees to contact their APRA Responsible Supervisor to discuss any liquidity concerns they may have identified/be experiencing.

## Contact

Trustees should contact their APRA Responsible Supervisor in the first instance if they have any queries regarding this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'K Chapman', with a long horizontal flourish extending to the right.

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## ATTACHMENT

## Applications for relief - r. 6.37

In order to assess an application for relief, or a variation of relief granted, under r. 6.37 of the SIS Regulations, APRA requires the following information. Based on the information received, APRA may request further information if necessary to assess whether the criteria for relief under r. 6.37 are made out.

| No.   | Question  | Response Required                            |
|---|---|--|
| 1   | Full name and ABN of the registrable superannuation entity (RSE) for which the Trustee is applying for relief   |  |
| 2   | Copy of APRA instrument(s) Trustee is applying to vary  | <i>(Copy to be provided, where relevant)</i> |
| <b>3 For each affected investment option in the RSE</b> |   |  |
| 3.1   | Full name of the investment option that has become illiquid   |  |
| 3.2   | Reason(s) the option has become illiquid, including details of downstream investments that have caused or contributed to the illiquidity (e.g. percentage of investment option they represent)                      |  |
| 3.3   | Name and ARSN of the downstream investment (e.g. managed investment scheme)   |  |
| 3.4   | Name and Exchange Code (e.g ASX, NZX) of any listed security  |  |
| 3.5   | Current status of the investment/downstream investment (i.e. change of withdrawal offer, frozen, temporarily closed, restructure etc) and the period of time that applies to redemptions                            |  |
| 3.6   | Date and copy of each update (including letters to investors and relevant investment updates referring to the illiquid status) provided by each Fund Manager to the Trustee since the redemption policy was changed | <i>(Copy to be provided)</i>                 |

| No. | Question   | Response Required   |
|-----|--|---|
| 4   | <b>Funds wholly invested in life policies</b>  |   |
| 4.1 | Name of each life policy the fund is invested in   |   |
| 4.2 | Copy of each life policy<br><i>(Note: If the life policy has been amended since the previous application for relief, an updated copy of the life policy needs to be provided)</i>                        | <i>(Copy to be provided, if not already provided in a previous application)</i> |
| 4.3 | Details of the provision the Life Insurer is relying upon in relation to the timing of redemption applications   |   |
| 4.4 | Confirmation of which life policy pension members are invested in  |   |
| 4.5 | Copy of each notification the Trustee has received from the Life Insurer in relation to the illiquid option  |   |
| 4.6 | Details of any different arrangements in place for payments to pension members from illiquid investments   |   |
| 5   | <b>Funds wholly invested in pooled superannuation trusts (PSTs):</b>   |   |
| 5.1 | Name and ABN of PST  |   |
| 5.2 | Copy of the governing rules of the PST<br><i>(Note: If the governing rules have been amended since the previous application for relief, an updated copy of the governing rules needs to be provided)</i> | <i>(Copy to be provided, if not already provided in a previous application)</i> |
| 5.3 | Details of the provision the PST is relying upon in relation to the timing of redemption applications  |   |
| 5.4 | Copy of each notification the Trustee has received from the PST in relation to the illiquid option   |   |
| 5.5 | Details of any different arrangements in place for payments to pension members from illiquid investments   |   |

| No. | Question  | Response Required |
|-----|---|-------------------|
| 6   | <b>Withdrawal Application and Member details</b>  |                   |
| 6.1 | Period of time for which a suspension or variation of portability requirements is requested and reasons why   |                   |
| 6.2 | Number and dollar value of unprocessed withdrawal/redemption requests for the investment option   |                   |
| 6.3 | Number of members (or investor accounts) in the illiquid option and the percentage of total fund members they represent   |                   |
| 6.4 | Number of members currently receiving pension payments included in the previous number  |                   |
| 6.5 | Amount invested in illiquid option in dollars and as a percentage of total fund assets  |                   |
| 6.6 | Where available, the concentration of member in general, and pensioner member, investments in the illiquid option (as a percentage of individual member's total benefits in the fund)                                       |                   |
| 6.7 | How the trustee is dealing with pension payments for members with investments in affected options   |                   |
| 6.8 | Number of members and pension members that are 100% invested in the illiquid options  |                   |
| 6.9 | Information on the nature and timing of communication already undertaken (e.g. copy of any significant event notice(s) issued), or proposed, by the trustee to directly affected members and members of the fund as a whole |                   |