15 November 2011

Dear Trustee(s)

ARRANGEMENTS BETWEEN RSE LICENSEES AND FUND PROMOTERS

Whilst RSE Licensees remain at all times legally responsible for their activities as trustees of funds, RSE Licensees are permitted to outsource some activities, subject to the requirements of the Operating Standard on Outsourcing arrangements, as set out in Regulation 4.16 of the *Superannuation Industry (Supervision) Regulations 1994* (the Outsourcing Standard), and the trustee's duties under general law and the *Superannuation Industry (Supervision) Act 1993*.

Considerations

Commonly outsourced activities include the provision of administration and custodian services. In APRA's experience, whilst RSE Licensees are aware of their obligations to comply with the Outsourcing Standard in relation to these activities, the same cannot be said for some outsourced activities pertaining to product design and/or marketing services. For the purpose of this letter, persons conducting such activities for RSE Licensees are referred to as 'Fund Promoters'.[1]

Poor Fund Promoter performance has the potential to significantly impact the business operations, reputation, rate of return, profitability and/or net assets of an RSE and/or RSE licensee. It should therefore be treated as a 'material business activity' which requires compliance with the provisions of the Outsourcing Standard.

Despite this, APRA has observed that there are numerous examples in the industry in which outsourced activities to Fund Promoters are not being treated by RSE licensees as 'material business activities' that need to satisfy the requirements of the Outsourcing Standard. Specifically, there are cases in which the requirement to have in place a material outsourcing agreement, with the prescribed terms and conditions, has not been met.

APRA expectations

In light of the above, APRA expects RSE licensees to review their arrangements with Fund Promoters to ensure that they comply with the requirements of the Outsourcing Standard. Where existing arrangements do not comply, APRA expects RSE licensees to take immediate steps to ensure compliance with the Outsourcing Standard. Such an approach is also consistent with the theme of proposed robust governance standards as set out in APRA's discussion paper *Prudential Standards for Superannuation*, which was released by APRA on 28 September 2011.

It should be noted that where relevant, during the course of their supervisory activities, APRA frontline supervisors will be following up on this matter to confirm that appropriate action has been taken by RSE licensees. APRA frontline supervisors will also be looking for evidence which supports robust reporting, monitoring and review of Fund Promoter performance by RSE Licensees.

---

[1] It is recognised that the term Fund Promoters as used in the industry, may encapsulate other types of activities which may not be a 'material business activity' within the meaning of APRA's Outsourcing Standard.

RSE licensees are reminded that APRA also expects that they will at all times exercise their own independent and informed judgement in relation to decisions concerning the fund, including on such matters as product design, investment strategy and the types of investments that the RSE licensee is to offer its members. RSE licensees should not be unduly influenced by the expectations or interests of third parties (which may possibly include the expectations or interests of Fund Promoters).

In this regard, RSE licensees are reminded of their duty to act in the best interests of members in priority to their own interests or those of other third parties. To this end, RSE licensees should be prepared to enforce the terms of any material outsourcing agreement, if necessary.

Enquiries

In the event you wish to discuss this letter, please contact your responsible APRA supervisor.

Yours sincerely

Greg Brunner
General Manager
Supervisory Support Division