Australian Prudential Regulation Authority

400 George Street (Level 26)
Sydney NSW 2000

GPO Box 9836
Sydney NSW 2001

T   02 9210 3000
F   02 9210 3411
W www.apra.gov.au

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To all RSE licensees

Response to consultation on proposed Modification Declaration – *Superannuation Industry (Supervision) Regulations 1994*, r.4.07E(8)

APRA released for consultation on 5 February 2014 a proposed modification declaration regarding the operation of r.4.07E of the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) which governs the continuation of self-insured benefits in defined benefit (DB) funds and sub-funds after 1 July 2013.

Consultation closed on 18 February 2014. APRA received six submissions; one submission was private and confidential and the remaining five submissions are available on the APRA website.

APRA has revised the modification declaration as outlined below, following consideration of the issues raised in the submissions.

1. **New defined benefit (DB) members joining the successor fund after the successor fund transfer (SFT) has occurred.**

Submissions raised concerns that the current SIS r.4.07E allows future DB members to join a self-insurance arrangement at any time in the future as long as the fund complied with r.4.07E(8) on 1 July 2013. In comparison, the proposed modification declaration issued for consultation restricted the self-insurance arrangement to only those DB members at the time the SFT occurred, i.e. future new DB members would be unable to join the self-insurance arrangement.

APRA agrees that the modification declaration should facilitate the same arrangement that exists for an ongoing fund, i.e. as r.4.07E allows new DB members to join the self-insurance arrangement for an ongoing fund, the modification declaration should also allow this where an SFT occurs.

2. **After the SFT has occurred, DB members changing/adding an insurance category**.

Submissions also noted that the current SIS r.4.07E allows DB members to change/add an insurance category within the self-insurance arrangement. In comparison, the proposed modification declaration restricted a member's insurance categories to only those categories for which they were insured at the time the SFT occurred. For example, a DB member may wish to add temporary disability insurance where this is already offered under the RSE's self-insurance arrangement or may wish to change from a part-time to a full-time arrangement within the self-insurance arrangement.

APRA agrees that the modification declaration should facilitate the same arrangement

that exists for an ongoing fund to allow DB members to change/add an insurance category within the self-insurance arrangement.

Note that an RSE licensee would not be permitted to add new categories of insurance within the RSE's self-insurance arrangement where these were not already part of the self-insurance arrangement at 1 July 2013.

3. **The proposed modification declaration did not allow for a series of SFTs.**

Submissions raised concerns that, in the current industry climate, further SFTs could occur after an initial SFT, i.e. where a successor fund itself winds up its arrangements and seeks to arrange for a successor fund transfer to another fund. APRA has accepted this view and has revised the modification declaration to accommodate this possibility.

The text of the final modification declaration is provided in Attachment A to this letter.

The modification declaration will become effective on the date of registration on the Federal Register of Legislative Instruments, which is expected to be within one week of the date of this letter.

Submissions raised a number of additional matters about the operation of r.4.07E more generally. As APRA intends that the modification declaration deals only with SFT issues and does not change the operation of r.4.07E more broadly, these additional matters are not dealt with in the final modification declaration.

For further information, please contact your APRA responsible supervisor.

Yours sincerely

Helen Rowell
Member
Australian Prudential Regulation Authority

Attachment A – Final Modification Declaration – Modification to SIS Regulation 4.07E

Final modification declaration:

(8A)   Subregulations (2) and (4) do not apply, in relation to defined benefit members of the fund, if:

  (a)   on or after 1 July 2013, defined benefit members transferred to the fund from another fund (the *original fund*); and

  (b)   the fund is a successor fund of the original fund in relation to the transferring defined benefit members; and

  (c)   immediately before the transfer, the original fund self-insured in relation to the transferring defined benefit members and the risk; and

  (d)   the original fund complied with paragraphs (8)(a) and (b) where the transferring defined benefit members were members of the original fund on 1 July 2013.

(8B)   Subregulation (8A) applies subject to any condition imposed by APRA under subsection 29EA(1) of the Act on the licence of the RSE licensee of the fund.

Final modification declaration – with mark-ups (reflecting changes to the proposed modification declaration released for consultation):

(8A)   Subregulations (2) and (4) do not apply, in relation to ~~a~~ defined benefit member~~s~~ of the fund, if:

  (a)   on or after 1 July 2013, ~~the~~ defined benefit member~~s~~ transferred to the fund from another fund (the *original fund*); and

  (b)   the fund is a successor fund of the original fund in relation to the transferring defined benefit members; and

  (c)   immediately before the transfer~~:~~,

  ~~(i)   the member was a defined benefit member of the original fund; and~~

  ~~(ii)~~   the original fund self-insured in relation to the transferring defined benefit member~~s~~ and the risk; and

  (d)   the original fund complied with paragraphs (8)(a) and (b) where the transferring defined benefit members were members of the original fund on 1 July 2013.

(8B)   Subregulation (8A) applies subject to any condition imposed by APRA under subsection 29EA(1) of the Act on the licence of the RSE licensee of the fund.