

24 July 2015

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Australian Prudential Regulation Authority  
GPO Box 9836  
SYDNEY NSW 2001

Via email: [superannuation.policy@apra.gov.au](mailto:superannuation.policy@apra.gov.au).

Dear Mr Brennan,

**Re: Governance requirements for RSE licensees: proposed amendments**

We refer to your letter of 26 June and associated proposed legislative changes and are seeking clarification on certain aspects of the proposals and to convey our support and concerns.

By way of background the governance arrangements for our fund are that the Board composition is currently:

- One 'independent' director (using the current *Superannuation Industry (Supervision) Act 1993* definition)
- Four 'member elected' directors (elected through a direct election of our membership with all directors being members of the Fund and the Fund members being responsible for nomination)
- Four 'sponsor-appointed' directors (appointed jointly by the five organisations that comprise our 'Principal Sponsor' on a merit, not representational, basis. Nominations can come from organisations or the existing Board and a recommendation of the most suitable nominees is made by a Board committee.)

The exposure draft bill indicates that a person is **independent** from an RSE licensee if the person:

1. *Does not have a substantial holding in the RSE licensee*
2. *Does not have a material relationship with, and is not employed by an entity that has a material relationship with, the RSE licensee*
3. *Has not at any time in the last 3 years been an executive officer or director of a body corporate that has a material relationship with the RSE licensee*

Based upon your letter of 26 June, our understanding is that the definition of **material relationship** is taken to include:

- standard employer sponsors
- bodies with the right to nominate potential directors.

In relation to the second criterion, we take this to refer to the five organisations that comprise our Principal Sponsor, as they are the bodies with the ability to nominate (and indeed elect) directors. As an employee of one of those bodies I would not be considered independent under the proposed definition, which we accept.

Our main area for seeking clarification is around the first criterion, that material relationships will include standard employer sponsors. Christian Super currently has almost 6,000 default employers, with a number of our existing directors employed by such an employer. Indeed our member elected directors, as members of the Fund, will almost certainly be employees of a standard employer sponsor. Our concern is that these employers may meet the classification for 'material relationships', despite the only link being that the employer makes compulsory superannuation payments for members of the Fund.

Should this be the case, this would pose significant difficulties for Christian Super. It would preclude a large proportion of current Fund members from being considered independent. The current direct election process for our 'member elected' directors would become fraught as there is no mechanism to screen for 'independence' and there is a strong likelihood that under the expansive definition of material relationships proposed that all of those elected would fail the independence test. Even if a threshold requirement of 'independence' could be introduced it would effectively disenfranchise a large portion of members and effectively create two classes of member.

If the definition of 'independent' as we understand it is introduced inevitably the Fund will need to review its governance structure. It is likely that this will result in a diminution of the number of 'member elected' directors in order to meet the overall independence requirements. We view this as a retrograde step. The Board would lose the significant and vital connection with, and understanding of, the membership that these directors provide. For our Fund, and we suspect many others, this understanding of and connection with the needs of the members is at the core of what we do. It is an essential component in ensuring that we as a Board remain focussed on our primary duty to act in the 'best interests of members'.

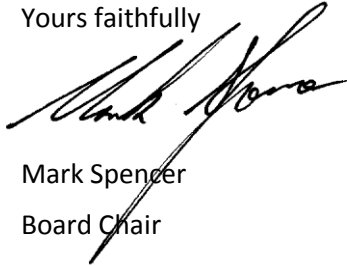
The proposed requirements in relation to independence on the Audit and Remuneration Committees will also impose a considerable constraint upon effective Board operation. Consistent with international best practice in governance our Fund determines committee compositions on the basis of a skills assessment. Attempting to overlay an independence requirement, especially one so narrowly defined, will impose a major impediment in that process. While notionally only applying to the two named committees workload constraints will mean that it has a flow on effect across all Board committees. If our understanding of the proposed definition of material relationships is correct and the affected directors are not considered independent this would exacerbate this problem enormously.

In summary our recommendations to APRA are that:

- The definition of material relationship not include employees or persons who in the last 3 years been an executive officer or director of a 'standard employer sponsor'
- Further consideration be given to the practical implication of imposing independence requirements at the Board Committee level and in particular its impact on a skills based composition approach.

We would welcome the opportunity to discuss these issues with you further if required.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Mark Spencer', written over a diagonal line that extends from the top right towards the bottom left.

Mark Spencer

Board Chair

cc: Robert McDowell  
Senior Manager – Specialised Institutions Division