ClearView

31 July 2015

Mr Pat Brennan
General Manager
Policy Development
Australian Prudential Regulation Authority
GPO Box 9836
SYDNEY NSW 2001

Delivery via email: superannuation.policy@apra.gov.au.

Dear Mr Brennan,

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

I refer to APRA's letter of 26 June 2015 (Discussion Paper) and thank you for the opportunity to provide feedback on the proposed amendments to Governance requirements for RSE licensees.

ClearView Life Nominees Pty Ltd (CLN) welcomes the majority of the Government's proposed changes to the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) and APRA's proposed changes to SPS 510 – Governance, however would like to provide feedback and raise some concerns with the proposals, in particular with the draft requirements on independent board committees.

ClearView Wealth Limited (CWL) is a Non-Operating Holding Company under the Life Insurance Act 1995, ClearView Life Assurance Limited (CLAL) is a registered Life Insurer and CLN is an RSE. We note in the context of the proposals for RSE's:

- The CWL and CLAL boards have a majority of independent directors (as required), albeit with the same membership for both boards;
- The CLN board has a majority of independent directors, including these being independent of the CWL and CLAL Boards;
- We have existing Board Audit, Risk and Remuneration Committees, with a majority of "independent" directors drawn from the pool of independent directors on the above boards, including one of these as chair (who is not the chair of any of the relevant boards above).

Under this structure, the ClearView group has adopted a number of group wide frameworks, including our Risk Management and Capital Strategy and governance frameworks. These need to be suitable and appropriate for all these entities, and need to be approved by all of the above boards.

We believe our approach provides an effective mix of strong and independent governance oversight, clear and transparent visibility of matters and issues (risk, compliance, reporting, etc) across the group, not obfuscated by "silo" constructs, and is an effective, robust and efficient implementation of appropriate management oversight.

We are disappointed that aspects of the SIS Act changes and APRA prudential standards now proposed will likely undermine aspects of this robust approach and add additional unnecessary costs.

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**Conglomerate Boards**

We note the discussion under Section 1(b) of the APRA Discussion Paper. However, we are unclear of what the point is being made by the comments:

> "Where, however, a group independent director meets both the proposed legislative definition and the requirements of SPS 510, APRA's view is that this director may be able to be considered independent on the board of the RSE licensee. This reflects the existing requirements of CPS 510 which state: independent directors on the Board of the parent company or its other subsidiaries may also sit as independent directors on the Board of the institution."

It seems on one hand to be suggesting APRA is interested in implementing similar allowances as per CPS 510 (that group independent directors can serve as regulated entity independent directors – as we currently do for CLAL and CWL), yet the reference to the requirement to meet the proposed legislation (which seems to us to in fact prohibit this approach), would seem to frustrate such an outcome.

In our view, provided conflicts of interest are respected and managed (as noted in Section 1(b)), we would support the concept that a group independent director could satisfy the independence tests to be a trustee independent director.

In this case, this would need the Exposure Draft legislation to be amended to recognise that exception or allowance. If this does not happen, the suggestion in Section 1(b) referred to above would not seem possible.

We note that in raising this point, as discussed in our introduction, ClearView's current approach is for the "independents" on our trustee board to be not on our other boards.

Nonetheless, we think this is a potentially important issue in terms of the observations below on board Audit, Risk and Remuneration Committees.

**Board Committees (Audit, Remuneration)**

Under Section 1(c) of the APRA Discussion Paper, it is proposed that the majority of directors on RSE board committees be independent.

We support the intention of this approach subject to it permitting a reasonable approach for conglomerates as per that we currently adopt. That is, provide for the committees to be populated by "independent directors" drawn from across the group, and not require these to only be drawn from the independent directors on the board of the trustee only.

It is very important to note that we are discussing functional committees tasked with addressing specific matters under committee charters, for the trustees. The committees should not be addressing core trustee decisions that go to the heart of the oversight of the superannuation fund – these should remain with the trustee board.

If the narrower approach is adopted, this would require conglomerates such as ClearView to then run completely separate committee structures from those of the rest of its group. We note we are currently already required to have separate audit and risk committees for CLAL (the life company) from the rest of the group, but are allowed the membership of these to be the same. This already adds an element of duplication and questionable cost into the group governance structures. Having to maintain separate trustee committees would add significant further cost and inefficiency into the structure, for no material

benefit. Indeed, we think it would detract from the benefits of our existing robust and transparent (across the group) approach.

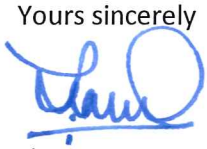
We also submit that ClearView's RSE board committees are functioning appropriately and soundly without the proposed new standards. To meet the proposed requirement would create a duplication of committee structures within an APRA regulated group that may cause inconsistency in group wide governance standards to the detriment of the harmonized governance and risk frameworks of the group. In addition, as noted, it will increase costs for members without any obvious gain.

To summarise:

1. We submit the Exposure Draft legislation should be amended and APRA SPS510 reflect, that independent directors of a trustee can include independent directors from within a conglomerate, including the parent of the trustee. We note the conflict of interest requirements will effectively restrict inappropriate independent director "dual hatting".
2. The independent director requirements for the trustee committees (audit, remuneration) should be permitted to be drawn from the pool of independent directors within a conglomerate. In our view, where committees are under the control of a board with sufficient independent directors in the first place, this should provide for adequate independence and scrutiny of committees functions by the board.
3. If the approach under 2 is deemed insufficient for a trustee board with only a minority of independent directors (say, the minimum one third), then perhaps it should be permitted for trustee boards with a majority independents, including an independent chair.

I trust that the information contained above is of value to APRA. If you would like to discuss any of our comments please don't hesitate to contact me.

Yours sincerely



Simon Swanson
Managing Director