

30 July 2015

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

Dear Mr Brennan

Governance requirements for RSE licensees: proposed amendments

We refer to APRA's letter dated 26 June 2015 and thank you for the opportunity to offer our comments on three issues raised in the letter.

1. Board Committees

In its 26 June 2015 letter, APRA has indicated that it proposes to amend SPS 510 Governance to:

- require that a majority of both the Board Audit Committee and the Board Remuneration Committee be independent directors;
- require that the Chair of the Board Audit Committee and the Board Remuneration Committee be an independent director;
- permit the Chair of the Board to be the Chair of the Board Remuneration Committee; and
- remove the ability for the Chair of the Board to also chair the Board Audit Committee.

These changes may well impact the composition of Committees and the number of independent directors required for the Board.

As a matter of good governance, Mercer believes that Committees should be comprised of members with the skills and experience best suited for the Committee's work. It is important

to ensure that a director's role in the overall Board structure, including its Committees, effectively utilizes the director's particular competencies.

However, if a majority of both the Board Audit Committee and the Board Remuneration Committee are required to be independent directors and there are only, say three independent directors in total including the Board Chair, it may transpire that the same independent directors must serve on both Committees, regardless of their skill sets. This may also limit their capacity to serve on other Committees where their skill sets are best suited.

We recommend that APRA reconsider whether it is necessary for a majority of independent directors to sit on the Audit and Remuneration Committees.

2. Transition Plans

We note APRA's expectation that RSE Licensees will have a transition plan in place by 1 July 2016, even though APRA's new prudential standards (and supporting guidance) are not proposed for release until the end of 2015.

We query whether a timeframe of six months is sufficient for Boards to digest the new requirements and formulate meaningful transition plans.

3. Material Relationships

In its letter dated 26 June 2015, APRA proposes to supplement the legislated definition of 'independent director' by including relationships with:

- material professional advisers, consultants and suppliers,
- standard employer sponsors
- parent companies; and
- bodies with the right to nominate potential directors

as 'material relationships'.¹

We note that APRA refers to alignment of the 'independent director' concept with APRA Prudential Standard CPS 510. We wonder whether alignment with the concept of 'non-associated director' in APRA SPG 510 would be more suited to the superannuation industry.

In terms of relationships with material professional advisers, consultants and suppliers, we note the possibility of skilled individuals who formerly worked for a large financial institution

¹ Under section 87(1) in the exposure draft, a material relationship would make a person ineligible as an independent director.

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being precluded from acting as an independent director where the institution provided services to the RSE Licensee, but the individual was not personally involved in the provision of those services. We query whether this would be a desirable outcome, since in these circumstances the possibility of the individual being influenced by their former employer having provided services to the RSE Licensee would be remote.

In terms of bodies with the right to nominate potential directors, we assume that the 'right to nominate' is different from the formal 'right to appoint'; in other words, that as long as the nomination process is *controlled* by the RSE Licensee or a RSE Licensee committee, the fact that the shareholder of the RSE Licensee has the formal right of appointment (which would ordinarily be the case) would not disqualify the person from being independent. Otherwise there could be a circular process whereby a person who is otherwise independent becomes ineligible as an independent director simply by virtue of their formal appointment by a parent company.

We would be happy to discuss the issues we have identified if APRA would like to do so. Please contact Pamela McAlister on (03) 9623 5040 in the first instance.

Yours faithfully,



Partner