



15 October 2020

TO: ALL RSE LICENSEES

KNOW YOUR OBLIGATIONS - APPROVAL TO OWN OR CONTROL AN RSE LICENSEE

APRA has undertaken a review of the implementation by RSE licensees and other relevant persons of the controlling stake requirements in Part 2A of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) which came into force on 5 July 2019 (the controlling stake requirements).

In particular, APRA's focus has been on:

- (a) the interaction of the ownership definitions that relate to a "stake" under the *Financial Sector (Shareholdings) Act 1998* (FSSA) to ownership structures of RSE licensees;
- (b) ensuring a person applies for the required approval when a change of ownership occurs within an RSE licensee or corporate group, and that all relevant applicants are identified for controlling stake approvals; and
- (c) improving the controlling stake approval process.

APRA has observed that, since the introduction of the controlling stake requirements, RSE licensees and the relevant persons acquiring the controlling stakes may not have always considered the application of these requirements to their particular circumstances. For example, APRA is aware that some RSE licensee directors hold shares in an RSE licensee. Where this is the case, it may be that the appointment of a new director or removal of an existing director has triggered the controlling stake requirement. (This letter also provides other examples of the persons that should be the subject of an approval application.)

Ensuring compliance with the controlling stake requirements is important, as a failure to obtain APRA's approval prior to owning a controlling stake in an RSE licensee is a strict liability offence under s. 29JCB of the SIS Act which may attract severe penalties.

The purpose of this letter is to remind RSE licensees of the requirement to seek approval from APRA, the form the approval request must take and importantly the action APRA requires all RSE licensees take to determine if this letter applies to them.

APRA Approval Requirements

An application for approval to hold a controlling stake in an RSE licensee needs to be considered whenever there are changes to the ownership of shares in an RSE licensee.

An application will always be required for a new RSE licence. An application may also be required where there are changes to any of the following:

- the directors of an RSE licensee, where this involves a change in shareholdings;
- a restructure of a corporate group;
- an acquisition of shares in an RSE licensee or its holding company; or
- a successor fund transfer that results in the issue or transfer of shares to a director, employer organisation or employee organisation.

Application Form and Instruction Guide

APRA has reviewed the process for an applicant applying to APRA for approval to hold a controlling stake in an RSE licensee.

The Application Form and Instruction Guide have been updated to:

- make the application process more flexible, particularly for multiple applicants and multiple RSE licensees;
- provide a streamlined process for circumstances where there is a simple change of director who is also a shareholder;
- provide additional guidance on how to identify all relevant applicants; and
- clarify the type of documentation to be provided where foreign applicants are involved.

The revised Application Form and Instruction Guide are available on APRA's website at: <https://www.apra.gov.au/apply-to-own-or-control-an-rse-licensee>.

Action Required

APRA requires RSE licensees to take the following action as a matter of priority:

1. identify if there have been any changes since 5 July 2019 to the ownership of shares in an RSE licensee in relation to which APRA approval has not been obtained [e.g. has a change in RSE licensee director (brought about by another director's retirement or internal restructure) resulted in that person holding a share in the RSE licensee]; if so, contact their Responsible Supervisor **within 30 days** of the date of this letter to discuss next steps
2. obtain appropriate professional advice on the FSSA ownership requirements if necessary and how they apply to the RSE licensee's current ownership structure and/or as part of any controlling stake proposal being considered. Particular attention needs to be given to the definition of "associates" in the FSSA as "associates" is widely defined;
3. review the RSE licensee's constitution, shareholder deed and/or risk management framework to ensure the controlling stake requirements are incorporated and the requirement to seek APRA approval is included as required; and
4. if required, lodge a controlling stake application using the [Application Form and Instruction Guide](#) available on the APRA website.

Contact APRA

Please contact your Responsible Supervisor in the first instance if you have any queries.

APRA also strongly encourages applicants to consult early with their Responsible Supervisor or contact APRA Licensing at licensing@apra.gov.au before lodging a controlling stake application.

Yours sincerely,

Helen Rowell
Deputy Chairperson