



19 April 2023

TO: ALL RSE LICENSEES

APPROVAL TO OWN OR CONTROL AN RSE LICENSEE: PROPOSED CLASS EXEMPTION

APRA is releasing for consultation a draft instrument to exempt a specified class of persons from compliance with the change of control and ownership provisions of the *Superannuation Industry (Supervision) Act 1993* (SIS Act).¹

Background

The change of ownership and control provisions in the SIS Act commenced on 5 July 2019. These provisions require persons to obtain approval from APRA to own or hold a controlling stake of more than 15 per cent in an RSE licensee. The provisions ensure that such persons are subject to a rigorous approval process, and impose severe penalties for a person that obtains a stake greater than 15 per cent without APRA's approval to do so.

These provisions can particularly impact certain RSE licensee directors. Some RSE licensee directors are required to hold shares in the RSE licensee for the term of their appointment. As directors are considered to be associates of each other, each director shareholder is treated as having a 100 per cent stake in the RSE licensee, and thus is deemed to have a controlling stake (that is covered by the change of ownership and control provisions).² This is the case even where an individual director has a shareholding of 15 per cent or less.

APRA's view is that governance concerns with individual directors are managed through other prudential requirements. Importantly, all RSE licensee director appointments are subject to *Prudential Standard SPS 520 Fit and Proper*.

Proposed class exemption

The proposed class exemption therefore intends to remove the requirement for this class of RSE licensee directors to obtain approval to own or control an RSE licensee, where they are not entitled to a personal financial benefit from the shareholding.

APRA welcomes feedback on the draft class exemption. APRA also seeks views on any risks associated with the draft class exemption and whether there are other circumstances that APRA should consider when finalising the class exemption. The draft class exemption is available on APRA's website at: [Proposed class exemption to own or control an RSE licensee](#).

¹ Sections 29HA and 29JCB of the SIS Act.

² Consistent with the definition of associate in the *Financial Sector (Shareholdings) Act 1998* (FSSA) that captures individuals with a controlling interest by association. 'Stake' is defined under the FSSA (item 10 of Schedule 1) and sets out that a person's stake in a company is the aggregate of the person's direct control interests and the direct control interests held by associates of the person.

Further information about who is covered by the regime is available [here](#) on APRA's website.

Written submissions should be sent to superannuation.policy@apra.gov.au by 17 May 2023 and addressed to the General Manager, Policy, APRA.

Yours sincerely,

Margaret Cole
Deputy Chair