

16 May 2023

The Australian Prudential Regulation Authority (APRA)

Email: [REDACTED]

APRA: Approval to own or control an RSE licensee: Proposed class exemption

Brief

AIST welcomes APRA's 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). AIST supports APRA's approach to minimising governance and administrative obligations on super funds given the dual governance requirements of *Prudential Standard SPS 520 Fit and Proper*. Comments and recommendations are set out in detail below.

About AIST

Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public sector superannuation funds. As the principal advocate and peak representative body for the \$1.7 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research. AIST advocates for financial wellbeing in retirement for all Australians regardless of gender, culture, education, or socio-economic background. Through leadership and excellence, AIST supports profit-to-member funds to achieve member-first outcomes and fairness across the retirement system.

Submission

AIST would like to thank APRA for the opportunity to provide feedback this proposal. AIST requests the following be considered in relation to the consultation:

1. Reduced administration for both RSE licensees and APRA without compromising regulatory standards:

AIST sought feedback from member funds regarding APRA's consultation.

Member funds welcome the proposed class exemption and consider it will promote a more efficient approach to change of ownership and control provisions without compromising regulatory standards or outcomes. *Prudential Standard SPS 520 Fit and Proper*, establishes the benchmark for acceptable practice in the appointment of responsible persons in RSE's, ensuring the calibre of those charged with running APRA-regulated institutions. Given the fitness and propriety of delegated staff is assessed prior to initial appointment and reassessed annually, the current change of ownership and control provisions in the SIS Act operate as an additional administrative layer. Its removal will provide both impacted RSE's and APRA with a reduction in administrative tasks without compromising regulatory standards, due to the ongoing operation of SPS 520.

A reduction in administrative tasks for super funds and APRA will allow resources to be directed to other work.

2. Reduced reporting for those directors captured under the associate directors' rule:

Member funds were keen to commend APRA's proposed change for those impacted by the associate directors' rule. Some AIST member funds have director shareholders with holdings less than 15 per cent. Under the current regime, these director shareholders are required to follow the same change of ownership and control provisions as other director shareholders despite not having an individual controlling stake in the RSE licensee. APRA's proposed exemption will close the loophole on this anomaly with the flow-on positive impacts identified above.

3. AIST seeks clarification on the following points related to the draft instrument:

- Section 7D, page 3 of the draft instrument states that an exempt person is not '*entitled to any financial benefit directly arising from the person's shareholder in the RSE licensee.*' AIST requests the term '*financial benefit*' be defined and include clarity that it only applies in relation to the acquisition of the share, and not to any payment made in relation to their duties as a director.
- Section 7E, page 3 of the draft instrument states that an exempt person must, '*as soon as practicable after ceasing to be a director of the RSE licensee, transfer or forfeit their shareholding in the RSE licensee.*' To provide greater clarity, this section could consider drafting to include, '*subject to the Constitution governing the shareholders.*'

For further information regarding our submission, please contact [REDACTED]

Yours sincerely,

[REDACTED]

Eva Scheerlinck

Chief Executive Officer