

DRAFT



Private Health Insurance (Prudential Supervision) Rules 2015

I, [insert name of delegate], delegate of APRA make these Rules under subsection 172(1) of the *Private Health Insurance (Prudential Supervision) Act 2015*.

Dated: xx June 2015

[To be signed]

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Part 1 – Preliminary

1. Name of Rules

These Rules are the *Private Health Insurance (Prudential Supervision) Rules 2015*.

2. Commencement

These Rules commence:

- (a) if the Rules are registered before the day on which the Act commences – at the same time as the Act commences; or
- (b) if the Rules are registered on or after the day on which the Act commences – on the day on which the Rules are registered.

3. Definitions

Note: Terms used in these Rules have the same meaning as in the Act – see section 13 of the *Legislative Instruments Act 2003*. These terms include:

appointed actuary
 approved form
 APRA
 Assets
 cover
 for profit insurer
 health benefits fund
 health-related business
 net asset position
 policy group
 policy holder
 private health insurer
 officer [of a private health insurer]
 referable
 rules [of an insurer]

In these Rules:

Act means the *Private Health Insurance (Prudential Supervision) Act 2015*.

borrowings of a health benefits fund are borrowings which would be permitted under Rule 5 of these Rules.

capital adequacy direction means a direction given by APRA under section 95 of the Act relating to the capital held by a private health insurer in a health benefits fund.

capital adequacy standard means *Prudential Standard HPS 110 Capital Adequacy* (HPS 110) made under section 91 of the Act.

PHI Act means the *Private Health Insurance Act 2007*.

PHIAC means the Private Health Insurance Administration Council.

Regulations means any regulations made under the Act.

solvency direction means a direction given by APRA under section 95 of the Act to ensure that a private health insurer will be able to meet the liabilities of a health benefits fund conducted by the insurer out of the assets of the fund as they become due.

solvency standard means *Prudential Standard HPS 100 Solvency Standard* (HPS 100) made under section 91 of the Act.

subordinated debt is as defined in *Prudential Standard HPS 001 Definitions*.

Part 2 – Expenditure and application of health benefits funds

4. Mortgages and charges

- (1) For the purposes of subsection 28(3) of the Act, the purpose for which a private health insurer may mortgage or charge an asset of a health benefits fund, or funds, conducted by the insurer is that the mortgage or charge is for the sole purpose of the benefit of the business of the fund or funds.
- (2) A mortgage or charge referred to in subrule (1) is subject to the conditions that it:
 - (a) only secures a borrowing that is permitted under these Rules; and
 - (b) does not secure a liability that is not a liability incurred, or to be incurred, by the fund, or funds, for the business of the fund or funds; and
 - (c) will not adversely impact on the insurer's ability to:
 - (i) maintain the capital adequacy of the fund in accordance with the capital adequacy standard; or
 - (ii) comply with a capital adequacy direction given to the insurer; or
 - (iii) maintain the standards of solvency in accordance with the solvency standard; or
 - (iv) comply with a solvency direction given to the insurer.
- (3) A mortgage or charge is subject to the condition that:
 - (a) the mortgage or charge complies with the insurer's risk management statements or policies that have been developed with the advice of the insurer's appointed actuary and approved by the board of the insurer; or
 - (b) before entering into the transaction for the mortgage or charge, the insurer obtains and considers advice from its appointed actuary on the matters referred to in subrule (2) in respect of that mortgage or charge.

Note: Section 29 of the Act provides that a transaction entered into in contravention of section 28 is of no effect unless the Federal Court makes an order in respect of the transaction, or the transaction is included in a class of transactions specified in these Rules to be transactions to which subsection 29(1) of the Act applies.

5. Borrowings

- (1) For subsection 28(4) of the Act, a private health insurer must not borrow money for the purposes of the business of a health benefits fund conducted by the insurer unless the borrowing is:
 - (a) by way of a subordinated debt; or
 - (b) by means of a bank overdraft; or
 - (c) to cover settlement of a transaction for the acquisition of an asset that is to be an asset of the fund, but only where the period of the borrowing does not exceed 90 days and the amount borrowed does not exceed 10% of the value of the assets of the fund following the acquisition; or
 - (d) otherwise, for the sole purpose of the benefit of the business of the fund, but only where the borrowing would not result in the total amount of principal outstanding under all borrowings, excluding the amount of a subordinate debt, exceeding the greater of 10% of the assets of the fund or 50% of the amount of free assets of the fund.
- (2) In this rule, *free assets of the fund* means assets in excess of the capital adequacy and solvency requirements in accordance with HPS 110 and HPS 100.

Note: Section 29 of the Act provides that a transaction entered into in contravention of section 28 is of no effect unless the Federal Court makes an order in respect of the transaction, or the transaction is included in a class of transactions specified in these Rules to be transactions to which subsection 29(1) of the Act applies.

Part 3 – Restructure of health benefits funds

6. Restructure under section 32 of the Act

- (1) A private health insurer may apply to APRA in the approved form for approval under section 32 of the Act of a restructure of its health benefits fund or funds.
- (2) In the application, the insurer must set out the restructure proposal (the restructure proposal) by:
 - (a) identifying the date on which, subject to APRA's approval and compliance with the requirements of the Act, the Regulations and the Rules, the restructure proposal is to take effect (the restructure date); and
 - (b) identifying which funds of the insurer are to be restructured under the restructure proposal (the restructuring funds); and
 - (c) identifying the transferring fund (the transferring fund), being the fund whose policies are to become referable to another fund or other funds of the insurer (the receiving fund(s)) on the restructure date; and
 - (d) identifying which policy group or groups of the transferring fund are to become referable to the receiving fund(s) on the restructure date; and
 - (e) stating the risk equalisation jurisdiction or jurisdictions for each receiving fund and other funds of the insurer; and
 - (f) stating for each receiving fund whether the fund is existing or proposed; and
 - (g) if the restructure involves more than one receiving fund, specifying which policy group or groups are to become referable to which of the receiving funds on the restructure date; and
 - (h) if the restructure would result in the insurer having more than one health benefits fund in respect of a particular risk equalisation jurisdiction, explaining how that result would be consistent with section 23 of the Act; and
 - (i) specifying which of the liabilities incurred for the purposes of the transferring fund, including policy liabilities, are to become treated as incurred for the purposes of a receiving fund on the restructure date; and

Note: The specification which is sufficient for this rule is stated in subrule (3).

- (j) specifying which of the assets of the transferring fund are to become assets of a receiving fund on the restructure date; and

Note: The specification which is sufficient for this rule is stated in subrule (3).

- (k) explaining why the assets and liabilities which are to be transferred under the restructure represent a reasonable estimate within the meaning of paragraph 32(2)(a) of the Act of what would, immediately before the restructure, be the net asset position of the transferring fund; and
 - (l) if there is more than one receiving fund, explaining why the distribution of assets and liabilities between the restructuring funds is fairly distributed within the meaning of paragraph 32(2)(b) of the Act; and
 - (m) if it is proposed that some assets of the transferring fund will not become assets of a receiving fund, identifying the assets and stating why those assets are not to become assets of a receiving fund; and
 - (n) if it is proposed that some liabilities incurred for the purposes of the transferring fund are not to become treated as incurred for the purposes of a receiving fund, identifying the liabilities and stating why those liabilities are not to become treated as incurred for the purposes of a receiving fund; and
 - (o) explaining how the restructure will be consistent with:
 - (i) the solvency standard; and
 - (ii) the capital adequacy standard.
- (3) The specifications required by subrule (2) may be:
- (a) by listing particular assets or liabilities; or
 - (b) by reference to categories of assets or liabilities; or
 - (c) by a combination of (a) and (b).

7. Requirements in relation to a restructure

- (1) A private health insurer must submit to APRA with an application for approval of a restructure proposal:
 - (a) a business plan (the *Business Plan*) for each receiving fund covering the period of the first 36 months of operation from the restructure date including the following:
 - (i) a statement of the liabilities to become treated as incurred for the purposes of the fund and the assets of the fund at the restructure date; and
 - (ii) a budget statement for the fund for each month of the period of the Business Plan, setting out in detail:
 - (A) the projected income and expenditure for the fund; and
 - (B) the projected assets and liabilities at the end of each month; and
 - (C) the projected solvency and capital adequacy position of the fund at the end of each month; and
 - (iii) the ratio that the projected amount of the management and administrative expenses in respect of the conduct of the fund bears to the estimated amount of premiums paid to that fund; and
 - (iv) a summary of proposed changes, if any, to the insurer's marketing plan, including strategies and costs associated with the restructuring and promotion of the fund; and
 - (v) the estimated number of policy holders of the fund at the end of each month; and
 - (vi) a summary of any proposed changes to the insurer's contractual procedures and arrangements with health service providers and other service providers; and
 - (vii) a summary of any proposed changes to benefits or premiums; and
 - (viii) particulars of any arrangements or processes necessary for the restructure to take place, including:
 - (A) any proposed amendments to the insurer's constitution or rules required for the restructure to take place; and
 - (B) any steps required under any other law of the Commonwealth, or State or Territory required for the restructure to take place; and

- (b) a statement by an officer (the *certification of compliance*) confirming that:
- (i) the insurer is not being wound up; and
 - (ii) the board, or other governing body, of the insurer has considered the restructure proposal and is of the view it meets, and the operation of the restructuring funds from the restructure date in accordance with the restructure will meet, the requirements of:
 - (A) the Act; and
 - (B) any Regulations; and
 - (C) the Rules; and
- (c) a report from the insurer's appointed actuary (the *actuary's report*) which provides the opinion of the actuary:
- (i) that the aspects of the Business Plan which provide the information required in paragraph (1)(a) are well-founded; and
 - (ii) that the assets and liabilities that would be transferred to the receiving fund or funds represent a reasonable estimate of what would be, immediately before the restructure, the net asset position of the transferring funds; and
 - (iii) about how the restructure will affect the ability of the insurer to comply with:
 - (A) the solvency standard; and
 - (B) any solvency direction to which the insurer is subject; and
 - (C) the capital adequacy standard; and
 - (D) any capital adequacy direction to which the insurer is subject,
- in relation to each of the restructuring funds of the insurer at each of the following times:
- (E) the restructure date; and
 - (F) any time over the first 36 months after the restructure date; and
 - (G) any time within the foreseeable future of operation of the funds beyond 36 months after the restructure date; and

- (iv) about what effects the restructure is likely to have on the premiums for and benefits under:
 - (A) each policy group of policies which are referable to the transferring fund immediately before the restructure; and
 - (B) each policy group of policies which are not referable to a receiving fund immediately before the restructure; and

at each of the following times:

- (C) the restructure date; and
 - (D) any time over the first 36 months after the restructure date; and
 - (E) any time within the foreseeable future of operation of the funds beyond 36 months after the restructure date; and
- (d) a copy of the statement, if any, issued by the insurer in accordance with subsection 93-20(2) of the PHI Act about any proposed change of the rules of the insurer associated with the proposed restructure; and
 - (e) a copy of any statement issued in accordance with subsection 93-20(4) of the PHI Act about the aspect of the proposed restructure which involves the proposed change in funds to which policies are referable; and
 - (f) a summary of any submissions in writing (including email or other electronic form) to the insurer from a policy holder of a fund conducted by the insurer in relation to any aspect of the restructure proposal regardless of whether the submission was made in response to a statement issued under subsection 93-20(2) or subsection 93-20(4) of the PHI Act or otherwise.
- (2) Prior to the restructure date, the insurer must, except to the extent provided for in the Act, procure any amendment of its constitution and any of its rules required for the restructure proposal to take place.

Note: The Act contains relevant provisions in section 34.

- (3) Prior to the restructure date, the insurer must take all steps required under any other law of the Commonwealth, a State or a Territory required for the restructure to take place.

8. Criteria for approving or refusing a restructure

- (1) For the purposes of paragraph 32(2)(b) of the Act, a proposed distribution of assets and liabilities between receiving funds under a proposed restructure of a health benefits fund conducted by a private health insurer

is not fairly distributed if the proposed distribution will cause, or may contribute to causing, the insurer to be in breach of:

- (a) the Act; or
- (b) any Regulations; or
- (c) any of the Rules; or
- (d) a solvency direction that applies to the private health insurer; or
- (e) a capital adequacy direction that applies to the private health insurer,

at one or more of the following times:

- (f) the restructure date; or
 - (g) any time within the first 36 months after the restructure date; or
 - (h) any time within the foreseeable future of operation of the restructuring funds beyond 36 months after the restructure date.
- (2) Subrule (1) is not an exhaustive statement of criteria for refusing an application under section 32 of the Act and does not prevent APRA from taking into account considerations other than those referred to in subrule (1) to form a view that a proposed distribution between receiving funds of assets and liabilities is not fairly distributed for the purposes of paragraph 32(2)(b) of the Act.
- (3) When considering whether a restructure will result in unfairness for the purposes of paragraphs 32(4)(a) or (b) of the Act, the matters APRA may take into account include, but are not limited to, the matters referred to in subrule (1).
- (4) In considering an application under subsection 32(1) of the Act, APRA must take into account statements made in:
- (a) the application; and
 - (b) the restructure proposal; and
 - (c) the certification of compliance; and
 - (d) the actuary's report,

but is not bound by those statements and may make its own inquiries which may include, without limitation, obtaining other actuarial advice.

9. How a restructure takes place

- (1) If on the restructure date:
 - (a) APRA has approved a restructure proposal of a health benefits fund conducted by a private health insurer; and
 - (b) the insurer complies with the requirements of the Rules in relation to the restructure including, without limitation, the requirements under subrules 7(2) and 7(3); and
 - (c) the insurer takes the steps required for establishment of any new fund(s) required for the restructure to come into effect;then:
 - (d) the restructure takes place; and
 - (e) the relevant policies of the transferring fund become referable to the receiving fund or funds in accordance with the restructure proposal; and
 - (f) the liabilities incurred for the purposes of the transferring fund, including without limitation the policy liabilities, become treated as liabilities incurred for the purposes of the receiving fund or funds in accordance with the restructure proposal; and
 - (g) the assets of the transferring fund become assets of the receiving fund or funds in accordance with the restructure proposal.

10. Notification to interested persons of the outcome of an application

- (1) If APRA or the Administrative Appeals Tribunal approves an application for approval of a restructure of a health benefits fund conducted by a private health insurer, then within 20 days of the restructure taking place, the insurer must provide to at least one adult insured under each policy, or, for a policy covering no adults, the person who pays the premium, which is being made, or has been made, referable to a receiving fund, a statement of the outcome of the application.
- (2) The notification of outcome referred to in subrule (1) may be combined with the statement provided for the purposes of subsection 93-20(4) of the PHI Act.
- (3) If the application for approval of the restructure is refused by APRA, then no later than 10 days after the time for the lodging of an application for review of APRA's decision by the Administrative Appeals Tribunal, the insurer must provide to at least one adult insured under each policy, or, for a policy covering no adults, the person who pays the premium, which was proposed for transfer, a statement of:
 - (a) the outcome of the application; and

- (b) whether the insurer has lodged or intends to lodge an application for review with the Administrative Appeals Tribunal.
- (4) If the application for approval of the restructure is refused on application to the Administrative Appeals Tribunal, then no later than 10 days after the Tribunal's decision being delivered, the insurer must provide to at least one adult insured under each policy, or, for a policy covering no adults, the person who pays the premium, which was proposed for transfer, a statement of the outcome of the application.

Part 4 – Merger and acquisition of health benefits funds

10A Interpretation

In this Part:

financial benefit includes any consideration or payment of any kind in respect of the transfer, but does not include any benefit to a policy holder, or other insured person, arising under the policy that insures the person.

market value means the value of the business concerned if it were disposed of to an unrelated purchaser bidding in a market on an ordinary commercial basis for business of the kind disposed of, without any sort of discount or incentive for the business being offered.

not-for-profit insurer means an insurer which is not registered as a for profit insurer.

11. Merger and acquisition under section 33 of the Act

- (1) If a private health insurer (the transferee insurer) and one or more other private health insurers (the transferor insurers) enter into an arrangement (the arrangement) under which some or all of the policies that are referable to a health benefits fund or funds (transferring funds) of the transferor private health insurer or transferor private health insurers, are to become referable to a health benefits fund or funds (receiving funds) of the transferee insurer, in accordance with section 33 of the Act, the following rules apply.
- (2) The transferor insurer(s) and the transferee insurer must make a written and dated record of the arrangement which is signed on behalf of each party to the arrangement.
- (3) The arrangement must do the following:
 - (a) identify the transferring fund or funds; and
 - (b) identify the receiving fund or funds; and
 - (c) identify the date, or means of determining the date, on which the arrangement is to take effect, which must not be before APRA approves the arrangement in writing (the *transfer date*); and
 - (d) state, for each transferring fund:
 - (i) whether all of the policies are to become referable to a receiving fund; and
 - (ii) if not all of the policies are to become referable to a receiving fund, specify the policy group or groups for the policies which

are to become referable to a receiving fund on the transfer date; and

- (e) if there is more than one receiving fund, specify for each receiving fund which policy group's or groups' policies are to become referable to the receiving fund on the transfer date;
- (f) for each receiving fund, specify the assets of, and liabilities incurred for the purposes of, a transferring fund which are to become assets of, and become treated as liabilities incurred for the purposes of, the receiving fund on the transfer date; and
- (g) provide for carrying out the requirements under the general law for the transfer of the assets and liabilities which are to be transferred under the arrangement, including obtaining relevant third-party consents, novations of agreement and execution and lodgement of documents for execution; and
- (h) without limiting the generality of paragraph (g), in relation to each asset the transfer of which to a transferee insurer at law requires registration and the transfer of which will not be complete in law on the transfer date, impose on the transferor insurer obligations to:
 - (i) transferee may reasonably require whether before or after the transfer date, including, without limitation, provide assistance in responding to requisitions from a registrar of titles; and
 - (ii) from the transfer date until registration of the transferee's title, hold the asset on trust for the transferee on the terms set out in Schedule 1; and
- (i) in relation to an asset which cannot be transferred under the general law, impose on the transferor insurer obligations to hold the asset on trust for the transferee insurer on the terms set out in Schedule 1; and
- (j) without limiting the generality of paragraph (g) in relation to each liability, the transfer of which will not be completed on the transfer date, impose on each transferee insurer obligations to:
 - (i) take all such steps as the transferor insurer may reasonably require, whether before or after the transfer date, to achieve transfer of the liability if such transfer is possible under the general law; and
 - (ii) indemnify the transferor insurer against any claims made on or after the transfer date which are allegedly based on the liability with the obligation to indemnify being conditional on the transferor insurer responding to the claim in such manner as the transferee insurer may reasonably require, including, without limitation, allowing the transferee insurer at its own

expense to settle the claim, take over any litigation to defend the claim, or both; and

- (k) without limiting the generality of paragraph (g), provide for access for each transferee insurer to such of the business records of the transferring fund as the transferee insurer may require to act as private health insurer for the transferred policies.
- (4) The specifications required by subrule (3) may be:
 - (a) by listing particular assets or liabilities; or
 - (b) by reference to categories of assets or liabilities; or
 - (c) by a combination of (a) and (b).
- (5) If the proposed transfer of policies involves any form of financial benefit to any person, the arrangement must state the details of the financial benefit, whether or not the person to benefit is a party to the arrangement.
- (6) If the proposed transfer of policies involves the transfer of policies referable to the health benefits fund of a not-for-profit insurer to the health benefits fund of a for profit insurer, and the transferor insurer has, or will have if the application is approved, any interest in the transferee insurer, the application for approval must provide a statement by an appropriately qualified person, independent of the insurers involved, certifying as to what would be the market value if the transfer involved the sale of the transferor insurer's health insurance business.
- (7) In subrule (6), *health insurance business* means the assets and liabilities proposed to be transferred under the arrangement referred to in subrule (2).

12. Requirements in relation to a merger or acquisition

- (1) The parties to an arrangement must submit to APRA with an application for approval of the arrangement:
 - (a) a copy of the arrangement;
 - (b) a business plan (the *Business Plan*) for each receiving fund covering the period of the first 36 months of operation from the transfer date including the following:
 - (i) a statement of the liabilities incurred for the purposes of, and assets of, the fund at the transfer date; and
 - (ii) a budget statement for the fund for each month of the period of the Business Plan, setting out in detail:
 - (A) the projected income and expenditure for the fund; and;

- (B) the projected assets and liabilities at the end of each month; and
 - (C) the projected solvency and capital adequacy position of the fund at the end of each month; and
 - (iii) the ratio that the projected amount of the management and administrative expenses in respect of the conduct of the fund bears to the estimated amount of premiums paid to that fund; and
 - (iv) summary of proposed changes, if any, to the insurer's marketing plan including strategies and costs associated with the implementation of the arrangement and promotion of the fund; and
 - (v) the estimated number of policy holders of the fund at the end of each month; and
 - (vi) summary of any proposed changes to the insurer's contractual procedures and arrangements with health service providers and other service providers; and
 - (vii) summary of any proposed changes to benefits and premiums; and
- (c) for each receiving fund, a statement by an officer for the transferee insurer (the *certification of compliance*) confirming that the board, or other governing body, of the insurer has considered the arrangement and is of the view that the arrangement meets, and the operation of the receiving fund from the transfer date in accordance with the arrangement will meet, the requirements of:
- (i) the Act and the PHI Act; and
 - (ii) any Regulations; and
 - (iii) the Rules made under the Act and the PHI Act; and
- (d) for each receiving fund, a report from the transferee insurer's appointed actuary (the *actuary's report*) which provides the opinion of the actuary:
- (i) that the aspects of the Business Plan which provide the information required in paragraph (b) are well-founded; and
 - (ii) that the assets and liabilities that would be transferred to the receiving fund or funds represent a reasonable estimate of what would be, immediately before the arrangement takes effect:

- (A) if there is one transferring fund—the net asset position of the transferring funds; and
 - (B) if there is more than one transferring fund—the sum of the net asset positions of each of the funds;
- (iii) about how the arrangement will affect the ability of the insurer to comply with:
- (A) the solvency standard; and
 - (B) the capital adequacy standard,
- in relation to each of the relevant funds of the insurer at each of the following times:
- (C) the transfer date; and
 - (D) any time over the first 36 months after the transfer date; and
 - (E) any time within the foreseeable future of operation of the funds beyond 36 months after the transfer date; and
- (iv) about what effects the arrangement is likely to have on the premiums for, and benefits under:
- (A) each policy group of the policies which are referable to the transferring fund immediately before the restructure; and
 - (B) each policy group of the policies which are referable to a receiving fund immediately before the restructure,
- at each of the following times:
- (C) the transfer date; and
 - (D) any time over the first 36 months after the transfer date; and
 - (E) any time within the foreseeable future of operation of the funds beyond 36 months after the transfer date; and
- (e) for each transferring fund, a statement by an officer for the transferor insurer (the *certification of compliance*) confirming that the board, or other governing body, of the insurer has considered the arrangement and is of the view that the arrangement meets, and the operation of the receiving fund from the transfer date in accordance with the arrangement will meet, the requirements of:
- (i) the Act; and

- (ii) any Regulations; and
 - (iii) the Rules; and
- (f) a report from the transferor insurer's appointed actuary (the *actuary's report*) which provides the opinion of the actuary:
- (i) that the assets and liabilities that would be transferred to the receiving fund or funds represent a reasonable estimate of what would be, immediately before the arrangement takes effect:
 - (A) if there is one transferring fund—the net asset position of the transferring fund; and
 - (B) if there is more than one transferring fund—the sum of the net asset positions of each of the funds; and
 - (ii) that for each transferring fund to which subparagraph 33(1)(b)(i) of the Act applies, the net asset position of the fund immediately after the arrangement takes effect will not be greater than zero; and
 - (iii) about how the arrangement will affect the ability of the insurer to comply with:
 - (A) the solvency standard; and
 - (B) the capital adequacy standard,at each of the following times:
 - (C) the transfer date; and
 - (D) any time over the first 36 months after the transfer date; and
- (g) a copy of the statement, if any, issued by a party to the arrangement in accordance with subsection 93-20(2) of the PHI Act about any proposed change of the rules of the transferor private health insurer associated with the arrangement; and
- (h) a copy of any statement issued by a party to the arrangement in accordance with subsection 93-20(4) of the PHI Act about the aspect of the arrangement which involves the proposed change in funds to which policies are referable; and
- (i) a summary of any submissions in writing (including email or other electronic form) to a private health insurer party to the arrangement from a policy holder of a policy of a fund conducted by the insurer in relation to any aspect of the arrangement regardless of whether the submission was made in response to a statement issued under

subsection 93-20(2) or subsection 93-20(4) of the PHI Act or otherwise.

- (2) Prior to the transfer date, each party to the arrangement must, except to the extent provided for in the Act, procure any amendment of its constitution and any of its rules required for the arrangement to take place.

Note: The Act contains relevant provisions in section 34.

- (3) Prior to the transfer date, each party to the arrangement must take all steps required under any other law of the Commonwealth, a State or a Territory required for the arrangement to take place.

13. Criteria for approving or refusing a merger or acquisition

- (1) For the purposes of paragraph 33(3)(b) of the Act, a proposed distribution of assets and liabilities between receiving funds under a proposed arrangement is not fairly distributed if the proposed distribution will cause, or may contribute to causing, a transferee insurer to be in breach of:
 - (a) the Act; or
 - (b) any Regulations; or
 - (c) any of the Rules; or
 - (d) a solvency direction that applies to the private health insurer; or
 - (e) a capital adequacy direction that applies to the private health insurer,at one or more of the following times:
 - (f) the transfer date; or
 - (g) any time within the first 36 months after the transfer date; or
 - (h) any time within the foreseeable future of operation of the restructuring funds beyond 36 months after the transfer date.
- (2) Subrule (1) is not an exhaustive statement of criteria for refusing an application under section 33 of the Act and does not prevent APRA from taking into account considerations other than those referred to in subrule (1) to form a view that a proposed distribution between receiving funds of assets and liabilities is fairly distributed for the purposes of paragraph 33(3)(b) of the Act.
- (3) When considering whether a distribution between receiving funds pursuant to a restructure is fairly distributed for the purposes of paragraph 33(3)(b) of the Act, the relevant matters APRA may take into account include, but are not limited to, the matters referred to in subrule (1).

- (4) In considering an application under subsection 33(2) of the Act, APRA must take into account statements made in:
- (a) the application; and
 - (b) the arrangement; and
 - (c) the certifications of compliance; and
 - (d) the actuaries' reports,

but is not bound by those statements and may make its own inquiries which may include, without limitation, obtaining other actuarial advice.

13A Additional criteria for approving or refusing a merger or acquisition

- (1) For the purposes of subsection 33(5), additional criteria for refusing to approve applications under section 33 are specified in this rule.
- (2) If the application is in respect of an arrangement which involves the transfer of policies referable to the health benefits fund of a not-for-profit insurer and there is any financial benefit to any person, the criteria for refusal are that the arrangement would result in a financial benefit:
- (a) to any person who is not a policy holder of, or another person insured through, the health benefits fund conducted by the transferor insurer; or
 - (b) being distributed inequitably between policy holders, or another person insured through, the health benefits fund conducted by the transferor insurer; or
 - (c) not being distributed at all to policy holders of the health benefits fund conducted by the transferor insurer.
- (3) If the application is in respect of an arrangement of a kind referred to in subrule 11(6), the criteria for refusal are that:
- (a) the transferee insurer has not paid the market value for the transferor insurer's health insurance business; or
 - (b) if subrule (2) also applies to the transfer, the financial benefit in respect of the transfer does not represent the market value for the transferor insurer's health insurance business.
- (4) In considering the market value of the transferor private health insurer's health insurance business, APRA may have regard to the statement referred to in subrule 11(6) and any other information it thinks fit.
- (5) If APRA requests the applicants to amend in a particular way the arrangement that is the subject of the application, it is a criterion for

refusal that the applicants fail to amend the arrangement within a time specified by APRA in writing to the applicants.

14. How a merger or acquisition takes effect

- (1) If, on the transfer date:
 - (a) APRA has approved an arrangement; and
 - (b) the transferor and transferee insurer(s) have:
 - (i) complied with rules 11 and 12 including, without limitation, subrules 12(2) and 12(3); and
 - (ii) taken the actions referred to in Schedule 1,
- then:
- (c) each transferee insurer is substituted for the transferor insurer as the private health insurer for each policy identified in the arrangement as a policy which is to become referable to a receiving fund of the transferee insurer; and
 - (d) the policy operates on and from the transfer date as if all references in the policy to the transferor insurer were references to the transferee insurer; and
 - (e) policies referable to the transferring fund(s) become referable to the receiving fund(s) in accordance with the arrangement; and
 - (f) the liabilities incurred for the purposes of the transferring fund(s), including without limitation the policy liabilities, become treated as incurred for the purposes of the receiving fund(s) in accordance with the arrangement; and
 - (g) the assets of the transferring fund(s) become assets of the receiving fund(s) in accordance with the arrangements.

Note: Subsection 33(7) of the Act provides that, for the purposes of the Act, an insurance policy that becomes referable to a health benefits fund of the transferee insurer as a result of the arrangement is treated, after the arrangement takes effect, as if it were an insurance policy issued by the transferee insurer.

15. Notification to interested persons of outcome of a section 33 application

- (1) If APRA or the Administrative Appeals Tribunal approves an application for approval of an arrangement for a merger or acquisition, then within 20 days of the arrangement taking effect, the private health insurers who made the application must provide to at least one adult insured under each policy, or, for a policy covering no adults, the person who pays the

premium, which is being made, or has been made, referable to a receiving fund, a statement of the outcome of the application.

- (2) The notification of outcome referred to in subrule (1) may be combined with the statement provided for the purposes of subsection 93-20(4) of the PHI Act.
- (3) If the application for approval of an arrangement is refused by APRA, then no later than 10 days after the time for the lodging of an application for review of APRA's decision by the Administrative Appeals Tribunal, the insurers must provide to at least one adult insured under each policy, or, or, for a policy covering no adults, the person who pays the premium, which was proposed for transfer, a statement of:
 - (a) the outcome of the application; and
 - (b) whether either of the insurers has lodged or intends to lodge an application for review with the Administrative Appeals Tribunal.
- (4) If the application for approval of an arrangement is refused on application to the Administrative Appeals Tribunal, then no later than 10 days after the Tribunal's decision being delivered, the appellant must provide to at least one adult insured under each policy, or, or, for a policy covering no adults, the person who pays the premium, which was proposed for transfer, a statement of the outcome of the application.

Part 5 – Private health insurers to notify APRA about certain matters

16. Notification of current chief executive officer

For section 124 of the Act, a private health insurer must ensure that, if the name or contact details of its *chief executive officer change, the change is notified, not more than 28 days after the change takes effect, to APRA, in the *approved form.

16A Notification of changes in board membership or name and contact details of a director

For section 124 of the Act, a private health insurer must tell APRA about a change in board membership or a change in the name or contact details of a director:

- (a) within 28 days after the change; and
- (b) in a form approved by APRA.

16B Copies of reports to APRA

For section 123 of the Act, a private health insurer that makes a report to all or any of the policy holders of a health benefits fund conducted by the private health insurer, must, if requested by APRA, give a copy of the report to APRA.

Such a report must be given to APRA within 1 month after making the report, or within such further time as APRA allows.

Part 6 – Transition arrangements

17. Transition arrangements

Any approval, determination or other exercise of discretion by PHIAC under Part 1, Part 2, Part 3 or Part 4 of the *Private Health Insurance (Health Benefits Fund Administration) Rules 2007* as they existed prior to 1 July 2015 will continue to have effect following 1 July 2015 as though exercised pursuant to a corresponding power under these Rules.

Schedule 1 – Mergers and acquisitions

1. Trust

The trust referred to in subrule 11 is to include the following terms:

- (c) [the transferor insurer] must, at [the transferee insurer's] expense (including [the transferor insurer's] internal costs and any legal fees), enforce or exercise any rights relating to those assets against any third party in the manner that [the transferee insurer] reasonably directs.
- (d) [the transferor insurer] must, if [the transferee insurer] cannot lawfully perform an obligation or exercise a right of [the transferor insurer] in relation to those assets, at the request and expense of [the transferee insurer], perform that obligation or exercise that right.
- (e) [the transferor insurer] must pay all benefits arising from those assets (or the affected part of the business) to [the transferee insurer].
- (f) [the transferee insurer] must duly perform any obligations in relation to those assets on behalf of [the transferor insurer] at its own expense.

2. **Actions for transfer of assets and liabilities for purposes of subparagraph 14(b)(ii) of the Rules**

For each transferring fund, the transferor insurer must give to the relevant transferee insurer for the assets and liabilities of the transferring fund which are being transferred to the transferee insurer:

- (a) possession of assets which are physical assets; and
- (b) certificates of title, registration certificates and other documents or instruments which evidence ownership of assets of the fund; and
- (c) duly executed assignments or novations of relevant contracts and evidence of the written consent of relevant third parties to the assignments or novations of the contracts; and
- (d) duly executed assignments or novations of leases and evidence of the written consent of the landlord to the assignments or novations of the leases; and
- (e) occupation of any leasehold properties which are assets of the transferee fund; and
- (f) duly executed assignments or change of ownership forms to transfer intellectual property assets of the fund to the Transferee; and
- (g) an irrevocable notice of cancellation of all signatories for each bank account containing fund assets (fund bank account) addressed to the

relevant bank and a notice of consent to the appointment of the transferee's nominees as signatories on the account; and

- (h) an irrevocable written direction addressed to each relevant bank on and from the transfer date to act in relation to a fund bank account with the bank only on the directions of the transferee; and
- (i) all notices, executed transfers in registrable form, certificates and other instruments or documents required under any applicable law in connection with the transfer of the assets of the fund required to transfer title to the transferee; and
- (j) all other notices, executed transfers in registrable form, certificates and other instruments or documents required under any applicable law to enable the transferee to conduct the business of the fund and to use any business names and websites of the fund.