



ASIC

Australian Securities & Investments Commission



APRA

30 January 2015

To RSE licensees that are superannuation dual-regulated entities

LEGISLATIVE REFORM—SUPERANNUATION DUAL-REGULATED ENTITIES (“SDREs”)

The Australian Securities and Investment Commission (ASIC) and the Australian Prudential Regulation Authority (APRA), are writing to entities that are both a responsible entity of a registered managed investment scheme (MIS) and a registrable superannuation entity licensee (RSE licensee) regarding changes to the regulatory requirements that apply for these entities.

Currently, SDREs are exempt from obligations under the *Corporations Act 2001* (the Corporations Act) to have in place adequate resources (s912A(1)(d)) and adequate risk management systems (s912A(1)(h)) for non-superannuation related business activities.

Subsection 912A(1) of the Corporations Act was amended on 26 June 2013 by the *Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Act* to improve the governance arrangements for responsible entities of registered MISs. As a result, from 1 July 2015, the current exemptions cease to have effect on SDREs. SDREs therefore will need to ensure that their business as responsible entity of an MIS complies with the adequate resources and adequate risk management systems requirements.

The purpose of this letter is to clarify the requirements that will apply to SDREs from 1 July 2015 and to provide an opportunity for industry to raise any concerns with regards to practical issues in the application of the changes to particular SDREs.

Current requirements

Activities of RSE licensees are governed by the *Superannuation Industry (Supervision) Act 1993* (SIS Act), and in many cases, the Australian financial services (AFS) licensee requirements in the Corporations Act. Similarly, activities of responsible entities are governed by the MIS and AFS licensee requirements in the Corporations Act.

AFS licensees must have adequate resources to provide the financial services covered by their licence and to carry out supervisory arrangements. This includes financial, technological and human resources: see s912A(1)(d). Further detail as to the financial

resource requirements for responsible entities is included in ASIC class order CO 13/760 and ASIC Regulatory Guide 166 *Licensing: Financial requirements* (RG 166) includes guidance on compliance with these requirements.

Further, under s912A(1)(h) of the Corporations Act, responsible entities have an ongoing obligation to maintain adequate risk management systems, unless they are regulated by APRA. RSE licensees must comply with risk management requirements in both the SIS Act and *Prudential Standard SPS 220 Risk Management* (SPS 220).

Where a responsible entity of an MIS is also regulated by APRA as an RSE licensee, the requirements of ss912A(1)(d) and (h) of the Corporations Act do not currently apply. This means that, to date, SDREs have only had to satisfy requirements for adequate resources and risk management systems under the SIS Act, *Superannuation Industry (Supervision) Regulations 1994* and APRA's prudential standards.

The RSE licensee requirements, however, are not designed to ensure that either adequate resources are maintained in respect of non-superannuation business or risks relating to the non-superannuation business are fully captured in risk management frameworks.

Requirements from 1 July 2015

The reforms mean that from 1 July 2015, SDREs will need to meet the requirements of both regulators with regards to adequacy of resourcing and in relation to risk management.

In particular, from 1 July 2015, responsible entities will be required to meet the requirements in s912A(1)(d) to have adequate resources, in s912A(1)(h) to have adequate risk management systems, regardless of whether that entity as an RSE licensee is required to comply with similar obligations under the SIS Act.

ASIC's requirements in relation to both financial resources and risk management are outlined in further detail below.

Adequate financial resources

In 2013, ASIC released [CO 13/760] *Financial requirements for responsible entities and operators of investor directed portfolio services* (Class Order 13/760), following an earlier modification in 2011 in CO 11/1140.

Under Class Order 13/760 a responsible entity holding scheme property or other assets of a registered scheme or IDPS property must hold net tangible assets (NTA) of the greater of \$10 million or 10 per cent of 'average RE and IDPS revenue', subject to limited exceptions relating to 'special custody assets' or 'Tier \$500,000 class assets'.

This means that in assessing the requirement to hold NTA for a responsible entity, the revenue from its business as a RSE licensee will be taken into account. For information about APRA's requirements see *Prudential Standard SPS 114 Operational Risk Financial Requirement*. The NTA requirement must be met by the SDRE's assets and not assets it holds in trust such as in a superannuation fund or registered scheme.

Risk management systems

ASIC's policy on risk management for AFS licensees, including responsible entities of MIS, is set out in Regulatory Guide 104 *Licensing: Meeting the general obligations* (RG 104).

Under RG 104, a responsible entity must have measures in place to ensure they comply with the obligation to have in place adequate risk management systems on an ongoing basis. In particular, in RG 104.62, ASIC states that it expects that risk management systems will:

- (a) be based on a structured and systematic process that takes into account obligations under the Corporations Act;
- (b) identify and evaluate risks faced by the business, focusing on risks that adversely affect consumers or market integrity (this includes risks of non-compliance with the financial services laws);
- (c) establish and maintain controls designed to manage or mitigate those risks; and
- (d) fully implement and monitor those controls to ensure they are effective.

SDREs may also find it helpful to consider ASIC's feedback on the risk management practices of responsible entities in ASIC's Report 298 *Adequacy of risk management systems of responsible entities*, released in 2012.

As SDREs will already have established risk management arrangements to comply with APRA's policy in SPS 220, and risk management requirements are reflective of prudent business practices in any event, ASIC does not anticipate that this change will be burdensome to SDREs.

Further changes

Under regulation 7.6.04(1)(a) of the *Corporations Regulations 2001* (Corporations Regulations) an AFS licence has a condition that the licensee must lodge a notification within 3 business days of being aware of certain material adverse changes to its financial position. Previously, there have been exceptions to this notification arrangement for SDREs.

However, as a result of changes to the Corporations Regulations introduced with the *Superannuation Legislation Amendment (MySuper Measures) Regulation 2013*, regulation 7.6.04(1)(a) has been modified so that notification under this regulation will be required in the case of SDREs.

Next steps and further information

While this letter outlines expectations of SDREs as of 1 July 2015, we encourage SDREs to discuss with ASIC and APRA any concerns regarding compliance with these requirements several months ahead of the commencement of the reforms on 1 July 2015.

Questions about APRA's prudential framework should be directed to your APRA supervisor and questions about ASIC's requirements may be made to Andrea Corfield on (03) 9280 3340 or by email at andrea.corfield@asic.gov.au.

Yours sincerely



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