



# **Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 3)**

## **Statutory Rules 2004 No. 113**

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I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Superannuation Industry (Supervision) Act 1993*.

Dated 27 May 2004

P. M. JEFFERY  
Governor-General

By His Excellency's Command

HELEN COONAN  
Minister for Revenue and Assistant Treasurer

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### 1 Name of Regulations

These Regulations are the *Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 3)*.

### 2 Commencement

These Regulations commence as follows:

- (a) on 1 July 2004 — regulations 1 to 3 and Schedule 1;
- (b) on 1 July 2006 — Schedule 2.

### 3 Amendment of *Superannuation Industry (Supervision) Regulations 1994*

Schedules 1 and 2 amend the *Superannuation Industry (Supervision) Regulations 1994*.

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## Schedule 1      Amendments commencing on 1 July 2004

(regulation 3)

**[1]      Regulation 3.03**

*omit*

For the purposes of subparagraphs

*insert*

- (1) For subparagraphs

**[2]      Regulation 3.03**

*insert*

- (2) For subsection 26 (7) of the Act:

***net tangible assets*** has the meaning given in Schedule 5.

**[3] After Part 3***insert***Part 3A Matters prescribed or specified in relation to licensing of trustees and of groups of individual trustees****Division 3A.1 Classes of RSE licences****3A.01 Public offer entity licences**

For paragraph 29B (2) (b) of the Act, the following classes of registrable superannuation entities are specified:

- (a) superannuation entities that are superannuation funds with fewer than 5 members (other than self managed superannuation funds);
- (b) excluded approved deposit funds.

**3A.02 Non-public offer entity licences**

- (1) For subsection 29B (3) of the Act, all classes of registrable superannuation entities, other than the following classes, are specified:
  - (a) public offer entities;
  - (b) superannuation entities that are superannuation funds with fewer than 5 members (other than self managed superannuation funds);
  - (c) excluded approved deposit funds.
- (2) The class of RSE licences provided for under subsection 29B (3) of the Act is called the class of ***non-public offer entity licences***.

**3A.03 Extended public offer entity licences**

- (1) For subsection 29B (4) of the Act, extended public offer entity licences are a class of RSE licences.

- (2) Subject to any condition imposed on an extended public offer entity licence under subsection 29EA (3) of the Act, the licence enables a trustee that holds a licence of that class to be a trustee of any registrable superannuation entity.

*Note* Under paragraphs 29D (1) (g) and 29E (3) (a) of the Act, an extended public offer entity licence may only be granted to, and held by, a registrable superannuation entity that is a constitutional corporation that meets the capital requirements under section 29DA of the Act.

## Division 3A.2 Grant of RSE licences

### 3A.04 Capital requirements

- (1) For subsection 29DA (2) and paragraphs 29DA (3) (a) and (4) (b) of the Act, the amount of \$5 000 000 is prescribed.

- (2) For subsection 29DA (6) of the Act:

***net tangible assets*** means the total assets of a constitutional corporation:

- (a) less total liabilities of the corporation; and
- (b) less any intangible assets reported in the corporation's books of account;

calculated on the basis of assets and liabilities as they would appear if, at the time of calculation, a balance sheet were made up for lodgement as part of a financial report under Chapter 2M of the *Corporations Act 2001* (the ***Corporations Act***) on the basis that the corporation is a reporting entity.

- (3) For subregulation (2):

***total assets*** does not include:

- (a) any receivables from related parties as defined by AASB 1017 and Part 2E.2 of Chapter 2E of the *Corporations Act*; and
- (b) any assets that are subject to any charge that secures the liability of a person other than the corporation, to the extent of the value of that charge; and
- (c) any assets to which the corporation is not legally and beneficially entitled or that are not held in the name of the corporation; and

- (d) any assets (*illiquid assets*) that are not capable of being converted into cash in the short term.

*total liabilities* includes all payables to related parties as defined by AASB 1017 and Part 2E.2 of Chapter 2E of the Corporations Act.

- (4) For the definitions of *total assets* and *total liabilities*:

*AASB 1017* means AASB 1017 Related Party Disclosures, published by the Australian Accounting Standards Board, as in force on 1 July 2004.

**[4] After Division 4.1**

*insert*

**Division 4.1A Content of risk management strategies and risk management plans**

**4.07A Risk management strategies**

- (1) In this regulation:

*material risk* means a risk to a body corporate or group of individual trustees mentioned in subsection 29H (1) of the Act that has the potential, if realised, to:

- (a) adversely affect the interests of members or beneficiaries of the registrable superannuation entity for which the body or group is the RSE licensee; or
- (b) have a significant impact on the business operations, reputation, rate of return, profitability or net assets of the body or group.

- (2) For paragraph 29H (2) (c) of the Act, the following matters are prescribed:

- (a) any material risk (a *relevant material risk*) that is relevant to the body or group;
- (b) an assessment of each relevant material risk, taking into account:
  - (i) the likelihood of the risk being realised; and

- (ii) the consequences for the body or group if the risk is realised;
- (c) the way in which the body or group proposes to treat each relevant material risk, including:
  - (i) the proposed risk response strategy or strategies for the risk; and
  - (ii) the measures and procedures that the body or group proposes to apply to address the risk;
- (d) an assessment of the residual risk for each relevant material risk, having regard to:
  - (i) the assessment of the relevant material risk under paragraph (b); and
  - (ii) the likely effect of the proposed treatment of the relevant material risk under paragraph (c);
- (e) the proposed arrangements for internal oversight, implementation and reporting in relation to the management of the relevant material risks by the body or group.

*Note* An RSE licence will not be granted unless APRA is satisfied that the risk management strategy for the body corporate or group of individual trustees meets the requirements of section 29H of the Act: see paragraph 29D (1) (e) of the Act.

#### 4.07B Risk management plans

- (1) In this regulation:
 

***material risk*** means a risk to a registrable superannuation entity that has the potential, if realised, to:

  - (a) adversely affect the interests of members or beneficiaries of the entity; or
  - (b) have a significant impact on the business operations, reputation, rate of return, profitability or net assets of the entity.
- (2) For paragraph 29P (2) (c) of the Act, the following matters are prescribed:
  - (a) any material risk (a ***relevant material risk***) that is relevant to the registrable superannuation entity;

- (b) an assessment of each relevant material risk, taking into account:
  - (i) the likelihood of the risk being realised; and
  - (ii) the consequences for the entity if the risk is realised;
- (c) the way in which the RSE licensee proposes to treat each relevant material risk, including:
  - (i) the proposed risk response strategy or strategies for the risk; and
  - (ii) the measures and procedures that the RSE licensee proposes to apply to address the risk;
- (d) an assessment of the residual risk for each relevant material risk, having regard to:
  - (i) the assessment of the relevant material risk under paragraph (b); and
  - (ii) the likely effect of the proposed treatment of the relevant material risk under paragraph (c);
- (e) the proposed arrangements for internal oversight, implementation and reporting in relation to the management of the relevant material risks by the RSE licensee.

*Note* A registrable superannuation entity will not be registered unless APRA is satisfied that the risk management plan for the entity meets the requirements of section 29P of the Act: see paragraph 29M (1) (d) of the Act.

**[5] After regulation 4.10**

*insert*

**4.10A Operating standard — ownership of units in a PST**

- (1) For paragraph 33 (2) (aa) of the Act, the standard stated in subregulation (2) is applicable to a registrable superannuation entity that is a PST:
  - (a) that came into existence on or after the start of the licensing transition period; and
  - (b) for which there is an RSE licensee.

*Note* **Licensing transition period** is defined in subsection 10 (1) of the Act.



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- (2) A trustee of the registrable superannuation entity must not offer ownership of units in the registrable superannuation entity unless the registrable superannuation entity is registered under Part 2B of the Act.

**[6] After regulation 4.11**

*insert*

**4.11A Operating standard — acceptance of deposits by an approved deposit fund**

- (1) For paragraph 32 (2) (aa) of the Act, the standard stated in subregulation (2) is applicable to a registrable superannuation entity that is an approved deposit fund:
- (a) that came into existence on or after the start of the licensing transition period; and
  - (b) for which there is an RSE licensee.

*Note* **Licensing transition period** is defined in subsection 10 (1) of the Act.

- (2) A trustee of the registrable superannuation entity must not accept deposits unless the registrable superannuation entity is registered under Part 2B of the Act.

**[7] After regulation 4.13**

*insert*

**4.14 Operating standard — fitness and propriety of RSE licensee**

- (1) In this regulation:
- disqualified person*** means a disqualified person for Part 15 of the Act.
- fit and proper standard*** means the standard mentioned in subregulation (3).

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- (2) For paragraphs 31 (2) (ma), 32 (2) (fa) and 33 (2) (ba) of the Act, the standard stated in this regulation is applicable to an RSE licensee.

*Note* An RSE licence will not be granted unless APRA is satisfied under paragraph 29D (1) (d) of the Act that the standard stated in this regulation is met.

- (3) Subject to subregulations (5) and (6), an RSE licensee meets the fit and proper standard if the RSE licensee possesses relevant attributes that enable the RSE licensee to properly discharge the duties and responsibilities of an RSE licensee in a prudent manner.
- (4) The attributes include, but are not limited to:
- (a) character, competence, diligence, experience, honesty, integrity and judgement; and
  - (b) educational or technical qualifications, knowledge and skills relevant to the duties and responsibilities of an RSE licensee.
- (5) An RSE licensee that is a body corporate does not meet the fit and proper standard if:
- (a) the body corporate is a disqualified person; or
  - (b) a director of the body corporate is a disqualified person, and the body corporate does not, within 14 days after the body corporate becomes aware that the director is a disqualified person:
    - (i) notify APRA of that fact; and
    - (ii) remove the director.
- (6) An RSE licensee that is a group of individual trustees does not meet the fit and proper standard if:
- (a) an individual trustee who is a member of the group of individual trustees (the **member**) is a disqualified person; and
  - (b) the group of individual trustees does not, within 14 days after the group becomes aware that the member is a disqualified person:
    - (i) notify APRA of that fact; and
    - (ii) remove the member from the group.

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- (7) An RSE licensee must meet the fit and proper standard for all the period during which the RSE licence continues in force.

**4.15 Operating standard — adequacy of resources of, or available to, trustees of registrable superannuation entities (RSE licensees)**

- (1) In this regulation:

*adequate financial resources* includes:

- (a) adequate resources to ensure the ongoing solvency of the RSE licensee; and
- (b) adequate liquidity to support the business operations of the RSE licensee.

*adequate human resources* includes adequate levels of personnel with the necessary knowledge, skills and expertise to enable the RSE licensee to effectively carry out its operations.

*adequate technical resources* includes:

- (a) adequate technical systems, including adequate hardware and software; and
- (b) adequate systems and resources to ensure protection, security and privacy of confidential, personal and sensitive material; and
- (c) adequate technical resources to handle transaction processing and other operations; and
- (d) adequate technical resources to handle any significant changes or increases in business size or capacity that are planned or forecast or that are likely to occur; and
- (e) adequate disaster recovery and business continuity plans; and
- (f) adequate records maintenance systems.

- (2) For paragraphs 31 (2) (sb), 32 (2) (lb) and 33 (2) (jb) of the Act, the standard stated in this regulation is applicable to trustees of registrable superannuation entities as follows:

- (a) if the trustee is a body corporate that holds an RSE licence — the body corporate;
- (b) if the trustee is a member of a group of individual trustees that holds an RSE licence — the group.

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*Note* An RSE licence will not be granted unless APRA has no reason to believe that the RSE licensee law would not be complied with. The RSE licensee law includes this regulation. See subsection 10 (1) and paragraph 29D (1) (a) of the Act.

- (3) The body or group must, for all of the period during which the RSE licence continues in force, have adequate human, technical and financial resources available to it to enable it to undertake its activities as an RSE licensee.
- (4) The body or group has adequate human, technical or financial resources available to it if:
  - (a) it has adequate resources of that kind in its own right; or
  - (b) it has available to it adequate resources of that kind under an enforceable agreement or undertaking.

#### **4.16 Operating standard — outsourcing arrangements of RSE licensees**

- (1) In this regulation:

***material business activity*** means a business activity of the RSE licensee of a registrable superannuation entity, a disruption to which, or the poor performance of which, has the potential to:

- (a) affect the interests of members or beneficiaries of the entity; or
- (b) have a significant impact on the business operations, reputation, rate of return, profitability or net assets of:
  - (i) the entity; or
  - (ii) the RSE licensee of the entity.

***material outsourcing agreement*** means an agreement or arrangement:

- (a) under which a person other than the RSE licensee (a ***service provider***) is to perform a material business activity; and
- (b) entered into with the service provider by:
  - (i) if the RSE licensee is a body corporate — the body corporate; or
  - (ii) if the RSE licensee is a group of individual trustees — the group as a whole, or any member of the group.

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*service provider* does not include:

- (a) if the RSE licensee is a body corporate — an employee of the body corporate acting in the capacity of an employee of the body corporate, or an officer of the body corporate acting in the capacity of an officer of the body corporate; or
- (b) if the RSE licensee is a group of individual trustees — an employee of the group, or an employee of any member of the group, acting in the capacity of an employee of the group, or in the capacity of an employee of a member of the group.

- (2) For paragraphs 31 (2) (sa), 32 (2) (1a) and 33 (2) (ja) of the Act, the standard stated in this regulation is applicable to material outsourcing agreements.

*Note* An RSE licence will not be granted unless APRA has no reason to believe that the RSE licensee law would not be complied with. The RSE licensee law includes this regulation. See subsection 10 (1) and paragraph 29D (1) (a) of the Act.

- (3) A material outsourcing agreement must comply with this regulation.
- (4) A material outsourcing agreement must:
  - (a) be in writing; and
  - (b) state the commencement date of the agreement; and
  - (c) contain default arrangements and termination provisions; and
  - (d) provide for dispute resolution; and
  - (e) contain liability and indemnity provisions; and
  - (f) provide for confidentiality, privacy and security of information; and
  - (g) contain a pricing, fee and payments structure in relation to the performance of the material business activity; and
  - (h) contain audit, monitoring and assessment procedures in relation to the performance of the material business activity; and

- (i) provide for business continuity planning, including transfer protocols relating to the handover of functions from the service provider to either a successor service provider or the RSE licensee on the cessation of the material outsourcing agreement.
- (5) A material outsourcing agreement must provide that:
  - (a) the service provider must, on the written request of the RSE licensee or APRA, and within a time and at a place specified in the request that is reasonable in the circumstances, provide the RSE licensee or APRA, as requested, with any documents or information in the possession of the service provider relating to:
    - (i) the material outsourcing agreement; or
    - (ii) the material business activity performed under the agreement; and
  - (b) the service provider must, on the written request of the RSE licensee or APRA, and at a time that is reasonable in the circumstances, allow the RSE licensee or APRA, as requested, to:
    - (i) conduct on-site visits to the service provider's premises; and
    - (ii) access any documents or information relating to the registrable superannuation entity held at those premises; and
  - (c) the service provider must, on the written request of the RSE licensee or APRA, and within a time specified in the request that is reasonable in the circumstances, have an audit of its business activities under the material outsourcing agreement conducted by an independent auditor.
- (6) A material outsourcing agreement must provide that any agreement or arrangement that a service provider enters into with another service provider for the performance of a material business activity under the material outsourcing agreement must comply with this subregulation and with subregulations (4) and (5), as if the agreement or arrangement were a material outsourcing agreement.

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- (7) An RSE licensee or a service provider must not charge APRA a fee for any of the following:
- (a) the provision of, or provision of access to, any documents or information under subregulation (5);
  - (b) the provision of access to the service provider's premises under subregulation (5);
  - (c) the conduct of an independent audit requested under subregulation (5).
- (8) An RSE licensee must, if requested to do so by APRA, take all reasonable steps to enforce the material outsourcing agreement against a service provider in relation to:
- (a) any matter mentioned in paragraph (5) (a), (b) or (c); and
  - (b) the matter mentioned in subregulation (6).

*Note* Part 15 of the Act also contains standards for trustees, custodians and investment managers of superannuation entities.

#### **4.17 Outsourcing arrangements for licensing transition period**

- (1) In this regulation:
- arrangements*** includes agreements or arrangements entered into at any time before the end of the licensing transition period.
- business activity*** means a business activity that would be a material business activity if the business activity was a business activity of an RSE licensee.
- (2) Any arrangements that are in place for the outsourcing of a business activity that were entered into by a person who:
- (a) was a trustee of a registrable superannuation entity at the start of the licensing transition period; and
  - (b) was not an RSE licensee, or was not a member of a group that was an RSE licensee, at the time the arrangements were entered into;

must, at or before the end of the licensing transition period:

- (c) comply with the standard stated in regulation 4.16; or
- (d) be terminated by the person.

*Note* **Licensing transition period** is defined in subsection 10 (1) of the Act.

**[8] Regulation 6.28**

*omit*

Except as otherwise

*insert*

- (1) Except as otherwise

**[9] Regulation 6.28**

*insert*

- (2) The fund to which the money is to be rolled over must not be a registrable superannuation entity that:
  - (a) is a regulated superannuation fund or an approved deposit fund:
    - (i) that came into existence on or after the start of the licensing transition period; and
    - (ii) for which there is an RSE licensee; and
  - (b) has not been registered under Part 2B of the Act.

*Note* **Licensing transition period** is defined in subsection 10 (1) of the Act.

**[10] Regulation 6.29**

*omit*

Except as otherwise

*insert*

- (1) Except as otherwise



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**[11] Regulation 6.29***insert*

- (2) The fund to which the money is to be transferred must not be a registrable superannuation entity that:
- (a) is a regulated superannuation fund or an approved deposit fund:
    - (i) that came into existence on or after the start of the licensing transition period; and
    - (ii) for which there is an RSE licensee; and
  - (b) has not been registered under Part 2B of the Act.

*Note* **Licensing transition period** is defined in subsection 10 (1) of the Act.

**[12] After regulation 7.03***insert***7.03A Acceptance of contributions — registrable superannuation entities**

- (1) For paragraph 31 (2) (d) of the Act, the standard stated in subregulation (2) is applicable to a registrable superannuation entity that is a regulated superannuation fund:
- (a) that came into existence on or after the start of the licensing transition period; and
  - (b) for which there is an RSE licensee.

*Note* **Licensing transition period** is defined in subsection 10 (1) of the Act.

- (2) A trustee of the registrable superannuation entity must not accept contributions unless the registrable superannuation entity is registered under Part 2B of the Act.

**[13] Subregulation 9.06 (1), definition of *notifiable event*, after paragraph (a)**

*insert*

- (aa) the receipt by a trustee of the fund of a written direction from the Regulator under subregulation 9.09 (1A); or

**[14] After subregulation 9.09 (1)**

*insert*

- (1A) The Regulator may direct the trustee of the fund, in writing, to obtain from an actuary a new or replacement funding and solvency certificate if the Regulator considers, on reasonable grounds, that to do so would be:
- (a) in the prudential interests of the fund; and
  - (b) in the best interests of the members of the fund.
- (1B) The trustee of the fund must comply with a written direction under subregulation (1A).

**[15] Regulation 9.29**

*omit*

A trustee of

*insert*

- (1) A trustee of

**[16] Regulation 9.29**

*insert*

- (2) The Regulator may direct the trustee of the fund, in writing, to require an actuarial investigation to be made in relation to the fund if the Regulator considers, on reasonable grounds, that to do so would be:
- (a) in the prudential interests of the fund; and
  - (b) in the best interests of the members or beneficiaries of the fund.

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- (3) The trustee of the fund must comply with a written direction under subregulation (2).

**[17] Subregulation 10.06 (1)**

*substitute*

- (1) For subsections 31 (1) and 32 (1) of the Act, and subject to regulation 10.07, the standard stated in subregulation (2) is a standard applicable (in addition to other standards applicable under these Regulations) to the operation of an eligible rollover fund.

**[18] After regulation 10.06**

*insert*

**10.07 Operating standard — restriction on acceptance of rollovers**

- (1) For paragraphs 31 (2) (d) and 32 (2) (a) of the Act, the standard stated in subregulation (2) is applicable to a registrable superannuation entity that is an eligible rollover fund:
- (a) that came into existence on or after the start of the licensing transition period; and
  - (b) for which there is an RSE licensee.

*Note* **Licensing transition period** is defined in subsection 10 (1) of the Act.

- (2) A trustee of a registrable superannuation entity that is an eligible rollover fund must not, unless the registrable superannuation entity is registered under Part 2B of the Act, accept payment of:
- (a) benefits; or
  - (b) shortfall components; or
  - (c) amounts paid from the Superannuation Holding Accounts Reserve.

**[19] After Part 11***insert***Part 11A Register to be kept by APRA****11A.01 General**

- (1) For subsection 353 (2) of the Act, APRA must keep a register of:
  - (a) registrable superannuation entities that have been registered under Part 2B of the Act; and
  - (b) the RSE licensees of those entities.

- (2) APRA may determine the form and manner in which the Register will be kept.

*Note* The form of register determined by APRA must be a form that would allow the register to be inspected and copied under subregulation (3).

- (3) A person may:
  - (a) inspect a register; and
  - (b) make a copy of, or take extracts from, the register.

**11A.02 Regulated superannuation funds**

- (1) The Register must contain the information set out in subregulations (2) and (3) for each registrable superannuation entity that is a regulated superannuation fund.
- (2) The Register must contain the following information for each registrable superannuation entity:
  - (a) the name of the entity;
  - (b) the registration number of the entity;
  - (c) the postal address of the entity;
  - (d) the registered address of, or an address for service of notices on, the entity;
  - (e) a contact person and contact telephone and facsimile numbers for the entity;
  - (f) the status of the entity under section 42 of the Act;

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- (g) the Australian Business Number (the **ABN**), if any, of the entity.
  - (3) The Register must also contain, in relation to each registrable superannuation entity, the following information:
    - (a) the class of RSE licence held by the RSE licensee;
    - (b) for an RSE licensee that is a body corporate — the RSE licensee's:
      - (i) unique licence number; and
      - (ii) name; and
      - (iii) registered address; and
      - (iv) telephone number; and
      - (v) Australian Company Number (**ACN**); and
      - (vi) ABN, if any;
    - (c) for an RSE licensee that is a group of individual trustees:
      - (i) the RSE licensee's unique licence number; and
      - (ii) the name of each individual trustee who is a member of the group.

### **11A.03 Approved deposit funds**

- (1) The Register must contain the information set out in subregulations (2) and (3) for each registrable superannuation entity that is an approved deposit fund.
- (2) The Register must contain the following information for each registrable superannuation entity:
  - (a) the name of the entity;
  - (b) the registration number of the entity;
  - (c) the postal address of the entity;
  - (d) the registered address of, or an address for service of notices on, the entity;
  - (e) a contact person and contact telephone and facsimile numbers for the entity;
  - (f) the status of the entity under section 43 of the Act;
  - (g) the ABN, if any, of the entity.

- (3) The register must also contain, in relation to each registrable superannuation entity, the following information:
  - (a) the class of RSE licence held by the RSE licensee;
  - (b) the RSE licensee's:
    - (i) unique licence number; and
    - (ii) name; and
    - (iii) registered address; and
    - (iv) telephone number; and
    - (v) ACN; and
    - (vi) ABN, if any.

#### **11A.04 Pooled superannuation trusts**

- (1) The Register must contain the information set out in subregulations (2) and (3) for each registrable superannuation entity that is a PST.
- (2) The Register must contain the following information for each registrable superannuation entity:
  - (a) the name of the entity;
  - (b) the registration number of the entity;
  - (c) the postal address of the entity;
  - (d) the registered address of, or an address for service of notices on, the entity;
  - (e) a contact person and contact telephone and facsimile numbers for the entity;
  - (f) the status of the entity under section 44 of the Act;
  - (g) the ABN, if any, of the entity.
- (3) The Register must also contain, in relation to each registrable superannuation entity, the following information:
  - (a) the class of RSE licence held by the RSE licensee;
  - (b) the RSE licensee's:
    - (i) unique licence number; and
    - (ii) name; and
    - (iii) registered address; and
    - (iv) telephone number; and

- (v) ACN; and
- (vi) ABN, if any.

**[20] Paragraphs 13.15A (1) (c) and (d)**

*omit*

risk management

*insert*

derivatives risk

**[21] After Schedule 4**

*insert*

## **Schedule 5 Net tangible assets**

(subregulation 3.03 (2), definition of ***net tangible assets***)

### **1 Net tangible assets**

For subsection 26 (7) of the Act:

***net tangible assets*** means the total tangible assets of an applicant, less any adjusted liabilities.

### **2 Adjusted liabilities**

- (1) For the definition of ***net tangible assets*** in clause 1:

***adjusted liabilities*** means total liabilities plus:

- (a) subject to subclause (2), amounts owing from, or invested in, any person who:
  - (i) is an associate of the applicant; or
  - (ii) was an associate of the applicant at the time the liability was incurred or the investment was made; or
  - (iii) became liable to the applicant because of, or in connection with, the acquisition of interests in a managed investment scheme operated by the applicant; and

(b) subject to subclauses (2) and (3), amounts owing from, or invested in:

- (i) any trust, managed investment scheme or prescribed interest undertaking; or
- (ii) any regulated superannuation fund, approved deposit fund, pooled superannuation trust or public sector superannuation scheme (*superannuation scheme*);

in respect of which the applicant or an associate of the applicant may exercise any form of power or control; and  
minus:

- (c) the value of any subordinated debt approved by APRA; and
- (d) the value of any ADI undertakings, except to the extent that the payment of any amount under the undertaking gives rise to an obligation, actual or contingent, on the part of the applicant to pay any part of that amount to any person or an obligation of any other person to pay money secured over property of the applicant.

*Note* Under Part 2 of the Act, APRA may approve a trustee, subject to conditions. An approval of subordinated debt mentioned in paragraph (c) would occur under the approval process in Part 2 of the Act.

(2) The amounts referred to in paragraphs (1) (a) and (b) are not to be treated as adjustments to total liabilities to the extent that those amounts are:

- (a) adequately secured; or
- (b) owing from an Australian ADI or owing from a disclosing entity (other than a registered scheme of which the applicant or an associate of the applicant is the responsible entity) that has net tangible assets of:
  - (i) more than \$50 000 000; or
  - (ii) at least 4 times the amount owing;

whichever is the greater as shown in the most recent accounts of the entity lodged with APRA; or



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- (c) owing by way of fees from, or under rights of reimbursement for expenditure by the applicant out of property of, a superannuation scheme, an Investor Directed Portfolio Services, a registered scheme or a prescribed interest undertaking to which an approved deed relates (the *Scheme*) provided that that amount:
- (i) exceeds amounts:
    - (A) invested by the Scheme in; or
    - (B) lent directly or indirectly by the Scheme to the applicant or a group entity (other than loans that are deposits with an Australian ADI in the ordinary course of its banking business); and
  - (ii) if owing by way of fees, represents no more than fees owing for the last 3 months; and
  - (iii) if owing under rights of reimbursement for expenditure by the applicant, has not been owing for more than 3 months.
- (3) The amounts referred to in paragraph (1) (b) are not to be treated as adjustments to total liabilities to the extent that those amounts are invested in:
- (a) a registered scheme; or
  - (b) a prescribed interest undertaking to which an approved deed relates;
- unless any part of the amount invested is, in substance, directly or indirectly, invested in the applicant.
- (4) For paragraphs (1) (a) and (b) and (2) (b):
- associate* has the meaning set out in Division 2 of Part 1.2 of the *Corporations Act 2001*, and includes the meaning set out in sections 13 and 15 of that Act.

(5) For paragraph (1) (d):

**ADI undertakings** means the amount of a financial commitment provided by an Australian ADI, in the form of an undertaking to pay the amount of the financial commitment to the applicant, that:

- (a) is enforceable and unqualified; and
- (b) is to pay on written demand by the applicant, except to the extent that payment has previously been made by the ADI to the applicant under the undertaking; and
- (c) remains operative (even if, for example the applicant ceases to hold a securities dealer's licence or ceases to be a responsible entity of registered schemes), until:
  - (i) APRA has consented in writing to the cancellation of the undertaking; or
  - (ii) the undertaking is discharged by payment to the applicant of the maximum amount payable under the undertaking (either upon request of the applicant or at the ADI's initiative).

(6) For paragraph (2) (a), an amount is **adequately secured** if it is secured by:

- (a) an enforceable charge over securities, promissory notes or bills of exchange (other than securities, promissory notes or bills of exchange of the applicant or any group entity) for which there exists an active market and the market value of these securities, promissory notes or bills of exchange always equals not less than 105% of the particular amount owing; or
- (b) a registered first mortgage over real estate that has a fair market valuation at least equal to the amount owing.

(7) For paragraph (6) (a):

**group entity** means any entity which controls the applicant or any entity controlled by any entity which controls the applicant.

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- (8) For paragraph (6) (a), an ***active market*** is taken to exist for:
- (a) securities, promissory notes or bills of exchange traded in a recognised market in which independent, bona fide offers to buy and sell are regularly made so that a price reasonably related to the last sale price or current bona fide competitive bid and offer quotations can be determined promptly and where payment will be received within the customary period; and
  - (b) any security which APRA has approved in writing for the purposes of this definition.

### **3 Calculation of value of net tangible assets**

For section 26 of the Act, the value of the net tangible assets of an applicant must be calculated on the basis of assets and liabilities as they would appear if, at the time of calculation, a balance sheet were made up for lodgement as part of a financial report under Chapter 2M of the *Corporations Act 2001* on the basis that the applicant is a reporting entity.

## **Schedule 2      Amendments commencing on 1 July 2006**

(regulation 3)

**[1]      Subregulation 1.04AAA (3)**

*substitute*

- (3) For subsection 17A (5) of the Act, the non-member spouse is to be treated as being a member of the fund in which the interest is held from the end of 6 months after the operative time for the payment split.

**[2]      Subregulation 1.04AAA (5)**

*omit*

and section 121A

**[3]      Regulations 3.02 and 3.03**

*omit*

**[4]      Subregulation 4.10A (1), including the note**

*substitute*

- (1) For paragraph 33 (2) (aa) of the Act, the standard stated in subregulation (2) is applicable to a registrable superannuation entity that is a PST.

**[5]      Subregulation 4.11A (1) , including the note**

*substitute*

- (1) For paragraph 32 (2) (aa) of the Act, the standard stated in subregulation (2) is applicable to a registrable superannuation entity that is an approved deposit fund.

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**[6] Paragraph 6.28 (2) (a)**

*substitute*

- (a) is a regulated superannuation fund or an approved deposit fund; and

**[7] Subregulation 6.28 (2), note**

*omit*

**[8] Paragraph 6.29 (2) (a)**

*substitute*

- (a) is a regulated superannuation fund or an approved deposit fund; and

**[9] Subregulation 6.29 (2), note**

*omit*

**[10] Subregulation 7.03A (1), including the note**

*substitute*

- (1) For paragraph 31 (2) (d) of the Act, the standard stated in subregulation (2) is applicable to a registrable superannuation entity that is a regulated superannuation fund.

**[11] Subregulation 10.07 (1), including the note**

*substitute*

- (1) For paragraphs 31 (2) (d) and 32 (2) (a) of the Act, the standard stated in subregulation (2) is applicable to a registrable superannuation entity that is an eligible rollover fund.

**[12] Schedule 5**

*omit*