



Superannuation Industry (Supervision) modification declaration No. 2 of 2006

Superannuation Industry (Supervision) Act 1993

I, Thomas Karp, a delegate of APRA, under section 332 of the *Superannuation Industry (Supervision) Act 1993* (the Act), DECLARE that regulation 4.16 of the Regulations has effect as if it were modified as specified in the attached Schedule.

The declaration comes into force upon registration on the Federal Register of Legislative Instruments and ceases to have effect on 1 July 2007.

Dated 29 June 2006

[signed]

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Thomas Karp
Executive General Manager
Supervisory Support Division

Interpretation

In this Notice

APRA means the Australian Prudential Regulation Authority.

Federal Register of Legislative Instruments means the register established under section 20 of the *Legislative Instruments Act 2003*.

Regulations means the *Superannuation Industry (Supervision) Regulations 1994*.

Schedule – the class of persons to whom this declaration applies

All RSE licensees

Schedule - the manner in which the specified modifiable provision is modified

Regulation 4.16 of the Regulations is modified by including, after subregulation 4.16(6):

- (6A) However, subregulation (6) does not apply to a material outsourcing agreement between an RSE licensee of a registrable superannuation entity and a custodian to the extent that:
 - (a) the agreement or arrangement is between the custodian and another service provider that is a sub-custodian; and
 - (b) the material outsourcing agreement contains a provision that the custodian accepts responsibility for liability arising from the failure of the sub-custodian to exercise reasonable care in the custody of the assets of the registrable superannuation entity.
- (6B) For the purposes of subregulation (6A), the liability of a custodian to an RSE licensee must not be dependent upon any recovery of losses by the custodian from the sub-custodian.
- (6C) For the purposes of subregulations (6A) and (6B), a *sub-custodian* means a person (other than an RSE licensee of a registrable superannuation entity or a securities depository) who, under a written contract with a custodian, holds assets of a registrable superannuation entity.
- (6D) For the purposes of subregulation (6C), *securities depository* means a book-entry or other settlement system or clearing house or agency through which a custodian or a sub-custodian may transfer, settle, clear, deposit or maintain securities, whether in certificated or uncertificated form, and includes any services provided by any network service provider or carriers or settlement banks used by a settlement system or clearing house or agency.