CORPORATE SUPERANNUATION ASSOCIATION Inc.

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Mr Pat Brennan
General Manager
Policy Development
Australian Prudential Regulation Authority
GPO Box 9836
SYDNEY NSW 2001

Dear Mr Brennan

GOVERNANCE REQUIREMENTS FOR RSE LICENSEES: COMMENTS FROM THE CORPORATE SUPERANNUATION ASSOCIATION

We refer to APRA's Discussion Paper, draft Prudential Standards and Prudential Practice Guides issued on 31 August 2015.

The Corporate Superannuation Association

Established in 1997, the Association is the representative body for large corporate not-for-profit superannuation funds and their employer-sponsors.

The Association represents a total of 25 funds controlling $65 billion in member funds, held in a total of 695,396 individual accounts. In general, these funds are sponsored by corporate employers, with membership restricted to employees from the same holding company group, but we also include in our membership several multi-employer funds with similar employer involvement and focus. Typically, these multi-employer funds have defined benefit members.

Our Concerns

In general, we urge APRA to avoid imposing rigid rules beyond the primary legislative requirements in situations where the beneficiaries of our member funds would not necessarily benefit from adopting these rules.

SPS 510: Proposed formal requirement to set maximum term for directors

We do not believe that this should be a hard and fast rule.

In defined benefit funds in particular, practical knowledge and experience needs to be maintained on the Board.

In respect of defined benefit members, it is the employer who is bearing the risks in relation to the performance of the fund. The risk is not transferred to the members as it would be in a defined contribution arrangement. Many employer-sponsors of defined benefit funds consider it essential to maintain experienced senior management participation on the trustee board.

In general, in corporate maintained employer-sponsored funds, the maintenance of corporate memory is helpful, and this may not be achieved by regular compulsory turnover of directors. We believe it is a matter for the trustee to decide in accordance with the policies and frameworks the trustee has adopted, whether board members are to remain in office and for how long. We do not consider a universal mandatory rule to be appropriate.

SPS 510: Duplication of existing requirements

In the new Governance Framework under SPS 510, we have identified the following areas of potential duplication of material in existing standards:

- ***Conflicts management***: The requirement to include policies relating to conflicts of interest appears to duplicate material that would already be included in the trustee's Conflicts Management Framework.
- ***Fitness and propriety***: Policies and processes used to manage risks relating to fitness and propriety will generally have already been addressed in the Fit and Proper Policy or the Risk Management Framework.
- ***Dispute resolution:*** Disputes on appointment and renewal processes may already be covered by the trustee's Dispute Resolution Procedures.

While trustees would reasonably be expected to expand the relevant policies if they do not meet the new requirements, we trust that APRA would accept incorporation by reference rather than requiring full duplication, which would introduce risk of inconsistencies creeping into these multiple frameworks over time.

SPS 512: "preliminary assessment"

Under the new draft Prudential Standard SPS 512, the transition plan is to be completed by 1 January 2017, but a "preliminary assessment" is required by the original deadline of 30 June 2016, including consideration of the independence of the existing board members at that time.

The requirements for the "preliminary assessment" to be completed by 30 June 2016, as set out in paragraph 7 of the draft Standard, include:

(a) the key changes required to the RSE licensee's governance framework and risk management framework for the RSE licensee to comply with the new governance requirements;

(b) whether each existing director, including the chairperson of the Board, is independent within the meaning in [proposed section 87 of the SIS Act]; and

(c) the number of directors the Board of the RSE licensee (the Board) intends to have at the end of the transition period, including the number of independent directors the Board will have in order to meet the obligations in [proposed section 86 of the SIS Act].

The detailed review required under sub-paragraph (b), in particular, raises the need for significant consideration of legislation not currently settled and the interpretation of which will still be under review well into 2016. The requirements of the Standard are then expanded significantly in the Draft Practice Guide, paragraphs 13 to 18, seemingly beyond the legislative remit.

We do not consider that there will be sufficient time prior to 30 June 2016 for the preliminary assessment to be completed. In addition, with the third anniversary of the commencement of Stronger Super on 30 June 2016, many trustees will still be conducting their comprehensive reviews of various existing policies and frameworks under the Prudential Standards at or about that time.

Decisions as to how to address the independence requirements will be extremely significant for many funds, and trustees should be able to make such important decisions without being rushed or distracted by other matters.

We therefore consider that the later deadline of 1 July 2017 should not be amended by an exercise of APRA's power to make Standards.

SPS 512: Transition timing

The statement in SPG 512, paragraph 5, is problematic for corporate funds:

> APRA expects each RSE licensee Board to comply with the new governance requirements at the earliest reasonable opportunity, as seeking early compliance is likely to be in the best interests of beneficiaries.

We do not agree that early compliance will necessarily be in the best interests of the members of our funds. The removal of equal representation and other aspects of the current trustee arrangements may affect current fund members, depending on process adopted under the new regime to maintain member representation if, indeed, that decision is taken.

From a financial perspective, where directors are currently unpaid and the employer-sponsor is unwilling to meet the costs of independent directors, those costs will necessarily be borne by fund members. Under these circumstances, members will be financially better off if the independent directors are appointed as late as possible in the transition period.

As argued elsewhere, we do not believe that the governance benefits, if any, of compelling a fixed proportion of independent directors, will outweigh the additional cost to members.

Further, the possibility exists that corporate fund employer-sponsors will elect to withdraw support from their fund.

In that case, in our view it is likely to be in the best interests of fund members for the existing arrangements to continue for as long as possible, to enable the member representatives to have input into decisions on the transfer out of members and winding up of the fund. This is discussed further below.

Winding up Funds

In relation to funds that propose to wind up by the end of the transition period, we have difficulty with APRA's statement (paragraph 29) that:

> APRA expects that the process to wind-up an RSE licensee's business operations would ordinarily take no longer than 18 months to complete. Where an RSE licensee's exit plan indicates a timeframe longer than 18 months, APRA expects the plan would provide a detailed explanation of why the additional timeframe is deemed necessary.

We consider that the three year transition period has been determined with a view to ensuring that transition to a new fund is made with due care, and that members' insurance and other additional benefits are safeguarded to the extent possible. Funds would be able to justify a period longer than 18 months, but we suggest that APRA should not impose its own discretionary deadline and require such justification.

In a corporate fund context where the employer elects to withdraw support for the fund, it is most unlikely that any employer fee or insurance premium subsidies will continue outside the corporate fund. Conducting the wind-up as late as possible may therefore be in members' best interests.

In any case, we consider the trustee's response to the independent director requirements to be an operational matter that is correctly the trustee's responsibility, and we do not consider it appropriate for APRA to be involving itself in such operational matters while not being legally responsible for the operations of the fund.

Yours sincerely

Mark N Cerché
Chairman
Corporate Superannuation Association