



# Superannuation Industry (Supervision) modification declaration No. 1 of 2007

## *Superannuation Industry (Supervision) Act 1993*

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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 in relation to the class of persons described in the attached Schedule, as if it were modified in the manner specified in the attached Schedule.

This declaration comes into force on 1 July 2007.

Dated 28 June 2007

[Signed]

Thomas Karp  
Executive General Manager  
Supervisory Support Division

### **Interpretation**

Document ID: 129791

In this instrument

**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 1999*.

*Note 1* This instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (the LIA) (see section 5 and Item 15 of section 7 of the LIA). Under section 56 of the LIA, the obligation under section 336 of the Act, to publish this exemption in the Gazette, is satisfied by its registration on the Federal Register of Legislative Instruments.

28/06/2007

*Note 2* Under paragraph (zb) of the definition of **reviewable decision** in subsection 10(1) of the Act, the decision to make this declaration is a reviewable decision. If you are dissatisfied with this decision, you may request APRA to reconsider it in accordance with subsection 344(1) of the Act. The request for reconsideration must be made in writing, must set out the reasons for making the request, and must be given to APRA within 21 days after the day on which you first received notice of this decision, or within such further period as APRA allows. If you are dissatisfied with the outcome of APRA's reconsideration of the decision, you may, subject to the *Appeals Tribunal Act 1975*, apply to the Administrative Appeals Tribunal for review of the reconsidered decision.

*Note 3* The address where the request for reconsideration referred to in this instrument may be given to APRA, is Level 26, 400 George Street, Sydney, NSW 2000.

**Schedule - the class of persons to whom this declaration applies**

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All RSE Licensees

**Schedule – the manner in which the specified modifiable provisions are modified**

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

- (6A) 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:
    - (i) the custodian and a sub-custodian; or
    - (ii) a sub-custodian and another sub-custodian; and
  - (b) the material outsourcing agreement contains a provision that the custodian accepts responsibility for any liability arising from the failure of any 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 any 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 or another sub-custodian, performs any custodial function, in relation to the assets of a registrable superannuation entity, that the custodian is required to perform under a written contract with the RSE licensee of the 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.