



Superannuation (prudential standard) determination No. 7 of 2012

Prudential Standard SPS 521 Conflicts of Interest

Superannuation Industry (Supervision) Act 1993

I, Ross Jones, delegate of APRA, under subsection 34C(1) of the *Superannuation Industry (Supervision) Act 1993* (the Act), DETERMINE *Prudential Standard SPS 521 Conflicts of Interest* in the form set out in the Schedule, which applies to all RSE licensees.

This instrument commences on 1 July 2013.

Dated: 15 November 2012

[signed]

Ross Jones
Deputy Chair

Interpretation

In this instrument:

APRA means the Australian Prudential Regulation Authority.

RSE licensee has the meaning given in section 10(1) of the Act.

Note 1 It is a condition imposed on all RSE licences that the RSE licensee and, if the RSE licensee is a group of individuals, each of the members of the group, must comply with the RSE licensee law [section 29E(1)(a)]. RSE licensee law includes the prudential standards [section 10(1)]. APRA may direct an RSE licensee to comply with a specified condition of its RSE licence by a specified time if APRA has reasonable grounds to believe that the RSE licensee has breached the condition [section 29EB]. A failure to comply with a direction may lead to cancellation of the RSE licence [section 29G] and may be an offence attracting a penalty of 60 penalty units [section 29JB].

Schedule

Prudential Standard SPS 521 Conflicts of Interest comprises the 6 pages commencing on the following page.



Prudential Standard SPS 521

Conflicts of Interest

Objectives and key requirements of this Prudential Standard

This Prudential Standard establishes requirements for the identification, avoidance and management of conflicts of duty and interest by an RSE licensee. These requirements are essential to ensure that an RSE licensee and its responsible persons meet legislative obligations in Part 6 of the *Superannuation Industry (Supervision) Act 1993*.

The Board of an RSE licensee is ultimately responsible for having a conflicts management framework that is appropriate to the size, business mix and complexity of the RSE licensee's business operations and which applies to the entirety of its business operations. The conflicts management framework must be approved by the Board.

The key requirements of this Prudential Standard are that an RSE licensee must also:

- develop, implement and review a conflicts management policy that is approved by the Board;
- identify all relevant duties and relevant interests; and
- develop registers of relevant duties and relevant interests.

Authority

1. This Prudential Standard is made under section 34C of the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

Application

2. This Prudential Standard applies to registrable superannuation entity (RSE) licensees (RSE licensees) under the SIS Act.¹
3. All RSE licensees must comply with this Prudential Standard in its entirety, unless otherwise expressly indicated.
4. This Prudential Standard applies for the purposes of section 52(2)(d)(iv) of the SIS Act.
5. This Prudential Standard commences on 1 July 2013.

Relevant duties and relevant interests

6. For the purposes of this Prudential Standard:
 - (a) a ‘relevant duty’ refers to any duty owed by the RSE licensee, or a responsible person of the RSE licensee², to beneficiaries or to any other person³; and
 - (b) a ‘relevant interest’ of an RSE licensee, an associate of the RSE licensee or a responsible person of the RSE licensee refers to any interest, gift, emolument or benefit, whether pecuniary or non-pecuniary, directly or indirectly held by the RSE licensee, the associate or the responsible person

that the RSE licensee has determined to be relevant in accordance with paragraph 16.

7. For the purposes of this Prudential Standard, a reference to a ‘conflict’ is a reference to a conflict:
 - (a) between the duties owed by an RSE licensee, or a responsible person of an RSE licensee, to beneficiaries and the duties owed by them to any other person;
 - (b) between the interests of beneficiaries and the duties owed by an RSE licensee, or a responsible person of the RSE licensee, to any other person;

¹ For the purposes of this Prudential Standard, ‘RSE licensee’ has the meaning given in section 10(1) of the SIS Act.

² Refer to *Prudential Standard SPS 520 Fit and Proper* for the definition of responsible person.

³ For the purposes of this Prudential Standard, a reference to ‘beneficiaries’ is a reference to ‘beneficiaries of an RSE within the RSE licensee’s business operations’ and an ‘RSE licensee’s business operations’ includes all activities as an RSE licensee (including the activities of each RSE of which it is the licensee), and all other activities of the RSE licensee to the extent that they are relevant to, or may impact on, its activities as an RSE licensee.

- (c) between an interest of an RSE licensee, an associate of an RSE licensee or a responsible person or an employee of an RSE licensee, and the RSE licensee's duties to beneficiaries; and
- (d) between an interest of an RSE licensee, an associate of an RSE licensee or a responsible person or an employee of an RSE licensee and the interests of beneficiaries.

The role of the Board and senior management

8. An RSE licensee must have a conflicts management framework, approved by the Board of an RSE licensee (the Board)⁴, to ensure that the RSE licensee identifies all potential and actual conflicts in the RSE licensee's business operations and takes all reasonably practicable actions to ensure that they are avoided or prudently managed.
9. For the purposes of this Prudential Standard, the conflicts management framework is the totality of systems, structures, policies, processes and controls within an RSE licensee's business operations that identify, assess, mitigate, manage and monitor all conflicts.
10. The Board is ultimately responsible for the development and maintenance of the RSE licensee's conflicts management framework.
11. The Board must take all reasonable steps to ensure that all responsible persons and other employees of the RSE licensee clearly understand:
 - (a) the need to identify all potential conflicts;
 - (b) the circumstances that might give rise to a conflict;
 - (c) the content and purpose of the RSE licensee's conflict management framework; and
 - (d) their obligations, where applicable, as a responsible person of the RSE licensee.
12. The Board must have in place appointment procedures that require incoming responsible persons to disclose all relevant duties and relevant interests prior to the person taking up the appointment.

⁴ For the purposes of this Prudential Standard, a reference to 'the Board' is a reference to the Board of directors or group of individual trustees of an RSE licensee, 'group of individual trustees' has the meaning given in section 10(1) of the SIS Act and a reference to 'a director' is a reference to a director of an RSE licensee which has a Board of directors or, in the case of a group of individual trustees, an individual trustee.

RSE licensees that are part of a group⁵

13. Where an RSE licensee is part of a corporate group, and the RSE licensee utilises group policies or functions, the Board must approve the use of group policies and functions and must ensure that these policies and functions give appropriate regard to the RSE licensee's business operations and its specific requirements.

Conflicts management framework

14. An RSE licensee's conflicts management framework must be appropriate to the size, business mix and complexity of the RSE licensee's business operations.
15. An RSE licensee's conflicts management framework must provide reasonable assurance that all conflicts are being clearly identified, avoided or prudently managed and must, at a minimum, include:
- (a) a conflicts management policy, approved by the Board, that meets the requirements of this Prudential Standard;
 - (b) clearly defined roles, responsibilities and resources for the oversight of conflicts management within the RSE licensee's business operations;
 - (c) an up-to-date register of relevant duties; and
 - (d) an up-to-date register of relevant interests.
16. An RSE licensee's conflicts management framework must include a process that outlines how the RSE licensee determines a duty or an interest to be relevant for the purposes of this Prudential Standard. A relevant duty or a relevant interest is one that might reasonably be considered to have the potential to have a significant impact on the capacity of the RSE licensee, the associate of the RSE licensee or the responsible person with the relevant duty or holding the relevant interest, to act in a manner that is consistent with the best interests of beneficiaries.
17. An RSE licensee must have procedures to ensure that all its relevant business units are made aware of, and have processes and controls for monitoring compliance with, the RSE licensee's conflicts management framework.

Conflicts management policy

18. An RSE licensee must have a conflicts management policy that is approved by the Board. At a minimum, the conflicts management policy must include controls and processes applying to all responsible persons and all employees of the RSE licensee for:
- (a) identifying and monitoring all potential and actual conflicts;

⁵ For the purposes of this Prudential Standard, a reference to 'a group' is a reference to a group comprising the RSE licensee and all connected entities and all related bodies corporate of the RSE licensee, 'connected entity' has the meaning given in section 10(1) of the SIS Act and 'related body corporate' has the meaning given in section 50 of the *Corporations Act 2001*.

- (b) avoiding conflicts where required to do so⁶;
 - (c) where there is a conflict, managing that conflict, or ensuring that the conflict is managed in accordance with the requirements to give priority to the duties to, and interests of, beneficiaries in sections 52(2)(d) and 52A(2)(d) of the SIS Act;
 - (d) ensuring that appropriate action is taken in the event of a conflict arising, including on-going evaluation of management of the conflict and provision for escalation or alternative action if required;
 - (e) recording in the minutes of Board, board committee and other relevant meetings details of each conflict identified and the action taken to avoid or manage this conflict; and
 - (f) processes for the development and maintenance of the registers required in paragraphs 15(c) and (d).
19. An RSE licensee's conflicts management policy must include processes for undertaking regular and thorough enquiry to identify all conflicts arising from the RSE licensee's relationship, or the relationship of a responsible person or employee, with an existing or prospective service provider or adviser, including those conflicts that have the potential to affect the service provider's performance in respect of the obligations undertaken for the RSE licensee's business operations.⁷

Review of conflicts management framework

20. An RSE licensee must ensure that the appropriateness, effectiveness and adequacy of its conflicts management framework are subject to a comprehensive review by operationally independent, appropriately trained and competent persons at least every three years.
21. The scope of the comprehensive review of an RSE licensee's conflicts management framework must have regard to the size, business mix and complexity of the RSE licensee's business operations, the extent of any change to those operations and any changes to the external environment in which the RSE licensee operates.
22. At a minimum, the comprehensive review of the conflicts management framework must consider:
- (a) whether all relevant duties and all relevant interests have been identified and are being addressed in accordance with the RSE licensee's conflicts management framework;

⁶ Nothing in this Prudential Standard authorises a person to manage a conflict if the general law requires the person to avoid it.

⁷ Refer to *Prudential Standard SPS 231 Outsourcing* for requirements relating to performance under outsourcing agreements.

- (b) the level of compliance with the conflicts management policy, including reporting on the registers of relevant duties and relevant interests; and
 - (c) any non-compliance with the conflicts management policy, including steps taken to return to, and improve, ongoing compliance.
23. In addition to the comprehensive review required in paragraph 20, an RSE licensee must, on an annual basis, review its conflicts management framework and report the results of this review to the Board.

Adjustments and exclusions

24. APRA may, by notice in writing to an RSE licensee, adjust or exclude a specific prudential requirement in this Prudential Standard in relation to that RSE licensee.⁸

⁸ Refer to section 34C(5) of the SIS Act.