

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 343

Issued by authority of the Minister for Revenue and Assistant Treasurer

Superannuation Industry (Supervision) Act 1993

Superannuation Industry (Supervision) Amendment Regulations 2007 (No. 5)

Subsection 353(1) of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the SIS Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the SIS Act.

The SIS Act provides for the prudent management of superannuation entities. The Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations) are the core regulations considered essential to the operation of the SIS Act.

The purpose of the amendments to the SIS Regulations is to support amendments being made by the *Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007* (the Amendment Act) as well as addressing gaps that have been identified in the SIS Regulations.

The Amendment Act implements a range of measures to streamline and simplify prudential regulation in the prudential Acts (*Banking Act 1959*, *Insurance Act 1973*, *Life Insurance Act 1995* and SIS Act) and other associated legislation. In order to ensure that the amendments made by the Amendment Act operate properly, amendments to existing requirements under the SIS Regulations are needed to ensure consistency between the Acts and the Regulations.

The amendments to regulations are to be put in place now to ensure that amendments made by the Amendment Act operate as intended. The practical effect of changes is to support the measures in the Amendment Act; and also to address gaps identified by the Australian Prudential Regulation Authority (APRA) relating to the definition of approved auditor, prescribed time periods for appointing an approved auditor and submitting an audit report to APRA and notifying APRA of a change in trustee. Superannuation entities would be affected by the changes to the regulations.

Details of the Regulations are set out in the **Attachment**.

The SIS Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations are legislative instruments for the purposes of the *Legislative Instruments Act 2003*.

Targeted consultation has taken place prior to the development stages of the regulations that prescribe time periods for appointing an auditor. The regulation that prescribes the time period for a trustee to submit a report to APRA is merely restoring the status quo. In addition, amendments to the regulations which relate to the Amendment Act are consequential and minor in nature.

The amendments to the SIS Regulations which are in Schedule 2 relating to changing from RSE licence and registration numbers to the ABN commence 12 months after the Amendment Act receives Royal Assent. All other amendments to the SIS Regulations which are in Schedule 1 commence from the date the Amendment Act receives Royal Assent.

ATTACHMENT

Details of amendments to the *Superannuation Industry (Supervision) Amendment Regulations 2007 (No. 5)*

Regulation 1 specifies the name of the Regulations as the *Superannuation Industry (Supervision) Amendment Regulations 2007 (No. 5)*.

Regulation 2 provides that regulations 1 to 3 and Schedule 1 commence on commencement of the *Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007* and Schedule 2 commences 12 months after the day on which the Amendment Act commences.

Regulation 3 provides that Schedules 1 and 2 amend the *Superannuation Industry (Supervision) Regulations 1994*.

Schedule 1 Amendments

Items 1 to 6

The SIS Regulations specify the class of persons that may be appointed as an auditor. In the case of an auditor of a superannuation entity other than a self managed superannuation fund (SMSF), the auditor must be registered under the *Corporations Act 2001* (Corporations Act) and be either associated with a professional association or approved by APRA (APRA may approve an auditor where a person holds all the required qualifications as an auditor but does not belong to a professional association). Alternatively, the appointed auditor must be the Auditor-General of the Commonwealth, a State or Territory.

The requirement that an approved auditor of a superannuation entity other than a SMSF be associated with a professional body is no longer relevant given that auditing standards now have the force of law. Therefore, requirement for APRA to approve auditors that do not belong to professional associations is also no longer necessary. It is also common practice for the various Auditors-General to delegate their power. However, a delegate of an Auditor-General does not fall within the class of persons specified in the SIS Regulations.

To ensure that the SIS Regulation requirements remain up to date with current regulatory practices, the amendments to the SIS Regulations rely on the requirements of the Corporations Act relating to qualifications and experience of applicants for registration as an approved auditor, and require only that a person be a registered company auditor or an Auditor-General or a delegate of the Auditor-General.

Item 4 removes paragraph 1.04(2)(b)(i) and replace it with a new paragraph so that to be an approved auditor of a superannuation entity other than a SMSF a person must be a registered company auditor under Part 9.2 of the Corporations Act. The approved auditor is no longer required to be either associated with a professional association or approved by APRA. Item 6 repeals subregulations 1.04 (2A) to (2C), which relate to APRA approving an auditor, as APRA will no longer approve auditors. Item 1 deletes paragraphs (a) and (b) from the definition of 'reviewable

decision' under subregulation 1.03(1), as sub-regulations 1.04(2A) and (2C) are referred to in paragraphs (a) and (b) and these are being repealed.

Item 2 amends subparagraph 1.04(2)(a)(i) to replace 'Corporations Law' with '*Corporations Act 2001*' so that the correct reference is made.

Subparagraphs 1.04(2)(a)(iii) and (b)(ii) refer to an individual who is "the Auditor-General of the Commonwealth, a State or Territory". Items 3 and 5 amend subparagraphs 1.04(2)(a)(iii) and (b)(ii) to include a delegate of the Auditor-General in the class of persons that can be an approved auditor for a SMSF and for a superannuation entity other than a SMSF.

Item 7 to 10 and 12

The Amendment Act consolidates the reporting requirements currently found under Parts 4 and 13 of the SIS Act into Part 4. As a result of the amendments, a number of sections in the SIS Act have been renumbered, which requires corresponding amendments to be made to the SIS Regulations where reporting obligations refer to sections of the SIS Act. The amendments to the SIS Regulations ensure that the correct references to the sections of the SIS Act are made in the SIS Regulations.

Item 7 amends regulation 8.01(1) so that it applies for the purposes of paragraphs 35B(1)(a) and (b) rather than paragraphs 112(1)(a) and (b). Item 9 amends regulation 8.02(1) so that it applies for the purposes of paragraph 35B(1)(c) rather than paragraph 112(1)(c). Item 10 replaces the references in 8.02(2) to paragraphs 112(1)(a) and (b) with references to paragraphs 35B(1)(a) and (b). Item 12 amends regulation 8.03 so that it applies for the purposes of subsection 35C(6) rather than subsection 113(4).

Item 8 repeals regulation 8.01A which states that the requirement to prepare cash flow statements does not apply to Self Managed Superannuation Funds (SMSFs). Previously, this regulation was necessary to override current paragraph 112(1)(ba) in the SIS Act, which required SMSFs to prepare a statement of cash flows. This is because there is no need for SMSFs to prepare cash flow statements. The Amendment Act creates new section 35B which replaces the requirements previously found under section 112 and which deletes the reference to cash flow statements. Therefore, regulation 8.01A is no longer required.

Item 11

Under the SIS Act, there is a requirement for a trustee of a superannuation entity to ensure that an approved auditor is appointed within a specified time set out in the regulations. As no time period is set out in the SIS Regulations, amendments are required to remedy this gap.

Item 11 inserts new regulation 8.02A which prescribes the period within which an auditor must be appointed for the purposes of new subsection 35C(1) inserted by the Amendment Act.

For a superannuation trustee of a registrable superannuation entity, the period prescribed to appoint an auditor is as soon as practicable but in any event, no later

than the last day of each year of income. For a superannuation trustee of a SMSF, the prescribed period to appoint an auditor is as soon as practicable but, in any event, no later than 30 days before the date by which the auditor must give a report mentioned in subsection 35C(6) of the Act to the trustees of the fund. A note is inserted at the end of sub-regulation 8.02A(b) to make it clear that regulation 8.03 provides the period for which the report mentioned in subsection 35C(6) of the SIS Act must be provided.

The different prescribed time period for SMSFs reflects the difference in the regulatory requirements between APRA regulated funds and SMSFs, which are regulated by the Australian Taxation Office.

Item 13

Under subsection 36(1) of the SIS Act, each trustee of a superannuation entity must, within the prescribed period after the year of income, ensure that APRA is given a copy of the report given to the trustee of the entity. As no time period is set out in the SIS Regulations, amendments are required to remedy this gap.

Item 13 inserts new regulation 8.04 which, for the purposes of new subsection 36(1) inserted by the Amendment Act, prescribes the period for a superannuation trustee of a registrable superannuation entity to submit a copy of the audit report to APRA is as soon as practicable but within four months after the year of income to which the report relates.

Items 14 to 19

Currently, under the SIS Regulations, there is no provision requiring an RSE licensee to advise APRA when it ceases to be the trustee of an RSE and is replaced by another RSE licensee. This does not assist APRA in maintaining up to date information. In addition there have been cases where outgoing licensees have effectively retired before arrangements have been made for the appointment of a new trustee, leaving members exposed for a period where no trustee is actively looking after their interests. This has occurred during transfers between RSE licensees as well as when small APRA funds have transferred to SMSFs. The amendments to the SIS Regulations remedy these gaps.

Item 15 inserts new paragraph 11.07(1)(d) which requires the trustee to provide notice in writing to APRA of any change in the RSE licensee of the entity. Item 14 makes a drafting amendment to paragraph 11.07(1)(c) to insert a semicolon and 'or' as a consequence of item 15 which inserts new paragraph 11.07(1)(d).

Item 16 inserts new sub-regulation 11.07(2A) which requires an incoming trustee of a superannuation entity other than a SMSF to give written notice to APRA that it has commenced as the trustee of the entity. Item 16 also inserts new sub-regulation 11.07(2B) which requires that the written notice be given to APRA as soon as practicable after the incoming RSE licensee has commenced as the trustee of the entity but in any event no later than five days after that date.

Item 17 expands subsection 11.07(3) so that the trustee must give APRA notice in writing of a decision or resolution to retire as trustee of an entity. Items 18 and 19 make consequential amendments to reflect the changes made by item 17.

Item 20

Item 20 repeals Division 13.1 of the SIS Regulations, as it relates to Part 31 of the SIS Act which is being repealed by the Amendment Act. The Amendment Act repeals Part 31 of the SIS Act as the provisions relating to management companies of superannuation funds are obsolete.

Items 21 to 25

The term ‘non-ADI financial institutions’ was removed from the SIS Act in 2000. The amendments are required to the SIS Regulations to remove the references to “non-ADI financial institutions”.

Items 21 to 25 removes references to approved non-ADI financial institution in paragraph 13.17(2)(b), subparagraph 13.17(2)(c)(i), paragraph 13.17A(2)(b) and subparagraph 13.17A(2)(c)(i) and subsection 13.17AA(1) respectively.

Schedule 2 Amendments

Items 1 to 20

Currently, APRA is required to allocate a unique licence number to each RSE licensee as well as a registration number to each RSE. The Amendment Act replaces the requirement for APRA to allocate RSE licence and registration numbers and the requirement for licensees to display RSE licence numbers and relevant registration numbers with the requirement to obtain and display an ABN. An ABN will be required for each RSE licensee and each RSE. These amendments are aimed at achieving the long term objective of making the ABN the sole business identifier for all entities in their dealings with the Government and its agencies.

As a result of the measures contained in the Amendment Act, amendments will be required to the SIS Regulations to repeal references to RSE licence numbers and RSE registration numbers. In line with the introduction of the ABN as the sole business identifier for RSE licensees and RSEs, references to superannuation fund number (SFN) and Australian Company Numbers (ACNs) are also required to be repealed.

Items 1, 2 and 3 delete references to ACN in subparagraphs 11.04(b)(i), 11.05(b)(i) and 11.06(b)(i) as the ACN is no longer prescribed information in relation to regulated superannuation funds, approved deposit funds and pooled superannuation trusts.

Items 4, 5 and 6 amend paragraph 11.07A(3)(b), 11.07A(3)(g) and subparagraph 11.07A(3)(f)(ii) so that they only refer to ‘its ABN’ rather than the SFN for the purposes of the trustee having to tell the Commissioner of Taxation in writing of a change in status. Item 7 repeals the definition of SFN as it is no longer used.

Items 8 to 11 makes changes to regulation 11A.02 in relation to the register that must be kept by APRA in respect of regulated superannuation funds. Item 8 deletes paragraph 11A.02(2)(b) which requires a unique registration number for the entity be provided on the register, as this number is no longer mandated. Item 9 amends paragraph 11A.02(2)(g) to delete “if any” as the fund will be required to have an ABN. Item 10 repeals subparagraph 11A.02(3)(b)(i) which requires the unique licence number for the RSE licensee to be provided on the register as it is no longer mandated. Item 10 also repeals subparagraph 11A.02(3)(b)(v) as an ACN will no longer need to be included on the register. Item 11 amends subparagraph 11A.02(3)(b)(vi) to delete “if any” as each corporate licensee will be required to have an ABN. Item 12 removes subparagraph 11A.02(3)(c)(i) and replace it with a reference to the ABN for the group of individual trustees as a unique licence number is no longer mandated.

The effect of these changes would be for each superannuation entity the register must contain the name of the entity, the postal address of the entity, the registered address of, or an address for service of the notices on, the entity, a contact person and contact telephone and facsimile numbers for the entity, the status of the entity under section 42 of the Act and the ABN of the entity. The register must also contain the class of RSE licence and where the RSE licensee is a body corporate, the RSE licensee's name, registered address, telephone number and ABN. Where the RSE licensee is a group of individual trustees, it must include the RSE licensee's ABN and the name of each individual trustee who is a member of the group.

Items 13 to 16 make changes to regulation 11A.03 in relation to the register that must be kept by APRA in respect of Approved Deposit Funds (ADFs). Item 13 repeals paragraph 11A.03(2)(b) as registration numbers are no longer mandated for ADFs. Item 14 amends paragraph 11A.03(2)(g) by deleting “if any” as ADFs will be required to have an ABN. Item 15 repeals subparagraphs 11A.03(3)(b)(i) and 11A.03(3)(b)(v) as the unique licence number of the and ACN are no longer mandated for RSE licensees of ADFs. Item 16 amends subparagraph 11A.03(3)(b)(vi) by deleting “if any” as the licensee will be required to have an ABN.

The effect of these changes is for each ADF entity the register must contain the name of the entity, the postal address of the entity, the registered address of, or an address for service of the notices on, the entity, a contact person and contact telephone and facsimile numbers for the entity, the status of the entity under section 43 of the Act and the ABN of the entity. The register must also contain the class of RSE licence and the RSE licensee's name, registered address, telephone number and ABN.

Items 17 to 20 make changes to regulation 11A.04 in relation to the register that must be kept by APRA in respect of Pooled Superannuation Trusts (PSTs). Item 17 deletes paragraph 11A.04(2)(b) as the registration number is no longer mandated for PSTs. Item 18 amends paragraph 11A.04(2)(g) by deleting “if any” as PSTs will be required to have an ABN. Item 19 deletes subparagraphs 11A.04(3)(b)(i) and 11A.04(3)(b)(v) as unique licence numbers and ACNs are no longer required to be included on the register kept by APRA in respect of RSE licensees of PSTs. Item 20 amends subparagraph 11A.04(3)(b)(vi) by deleting “if any” as the RSE licensee will be required to have an ABN for the register in respect of PSTs.

The effect of these changes is for each PST the register must contain the name of the entity, the postal address of the entity, the registered address of, or an address for service of the notices on, the entity, a contact person and contact telephone and facsimile numbers for the entity, the status of the entity under section 44 of the Act and the ABN of the entity. The register must also contain the class of RSE licence and the RSE licensee's name, registered address, telephone number and ABN.