

2015: Super Forever...



A regulator's perspective on obligations - conflicts of interest, and other thematic reviews

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APRA's thematic review process

- rationale: focus on key areas, gain view of spectrum of practices, encourage better practices
- 2014: conflicts of interest, insurance
- 2015: liquidity



Conflicts: legislative framework

- SIS Act ss 52(2)(d) and 52A(2)(d)
- s 58A (tied service provider override)
- SPS 521 *Conflicts of Interest* and SPG 521
- SPS 520 *Fit and Proper*, paragraph 18
- SIS Act s 29QB and regulation 2.38 (disclosure)

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These requirements...

- recognise that a conflict (temptation to act contrary to trustee duty / member interests) will not always require absolute avoidance, but must (at a minimum) be disclosed and appropriately managed.



SPS 521 – key elements

- Conflicts management framework
- Conflicts policy
- Register of relevant duties and interests





SPS 521 – key concepts

- Relevant duty
- Relevant interest
 - Paragraphs 6 and 16 of SPS 521
- Responsible person
 - Paragraphs 11-15 of SPS 520

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The conflicts review

- First half of 2014, followed by internal analysis
- 37 entities
- Corporate, industry, public sector and retail





General observations

- Most RSEs 'adequate', some sound or strong, some vulnerable or poor
- Better practices occurred in funds that generally had a strong risk culture
- Practices are improving



Examples of conflicts

- Director also director of another RSEL
- Director holding position with service provider or parent
- Director on board of investee company





Examples of conflicts (2)

- Actuary or auditor for both RSE licensee and employer sponsor
- Senior managers (responsible persons) who have employment with conglomerate group
- Services provided by a relative of a responsible officer.





Some good practices

- Well thought-out processes for disclosure of conflicts (not just self reporting by responsible officers)
- Clear procedures for assessing conflicts
 - ... and connecting this with fit & proper assessments
- Clear procedures for regularly updating registers





Good practices (2)

- Nature and implications of conflict explained clearly on register
- Creation of a ‘master register’ of all conflicts (before applying the SPS 521 par 16 test)
- Clear and visible treatment of gifts and hospitality with realistic threshold



Good practices (3)

- Rigorous monitoring of related-party transactions
 - use of internal audit, core compliance function, conflicts committee or consultants
- Detailed pre-consideration of a range of conflict scenarios (not merely reactive)





Good practices (4)

- Where a director of the RSEL was also director of a service provider ...
 - the RSEL reviewed the conflicts management framework of the service provider, considered information flows within provider, and how the provider would handle the conflict on its side.





Good practices (5)

- Conflicts a standing item at each board meeting
- Structural changes
 - One trustee moved responsibility for conflicts from company secretary (who had many other responsibilities) to the head of compliance





Poorer practices

- Over-reliance on self-identification of conflicts
- Non-disclosure (transactional)
 - E.g. services provided by close relation of a responsible person without adequate disclosure or management (query whether manageable)
- Related parties not correctly identified





Poorer practices (2)

- Uninformative registers
 - e.g. straight listing of other directorships, some of which might not be relevant, no explanation
- No recording of RSEL's own relevant duties or interests
 - e.g. where close relationship between RSEL and promoter



Poorer practices (3)

- Lack of awareness of the scope of the ‘responsible person’ concept
 - Chief Risk Officer or auditor not listed on register
- Varying practices on whether or when to list membership of RSE as a relevant interest of the responsible officer





Poorer practices (4)

- Imposing an unrealistically high level of materiality before listing on register.
 - concern about public disclosure under regulation 2.38?
- Conflicts dealt with in a reactive or ad hoc manner



Poorer practices (5)

- No consideration of whether a structural conflict may actually be unmanageable
- Failure to advert to the implications of the tied service provider override (SIS Act, s 58A)





Multiple directorships

- APRA's view is that it is ultimately a matter for the RSEL to determine how to manage the situation where a director holds other directorships. However ...
 - If with a service provider then careful management, at least, is required (s 52A(2)(d))
 - If with another fund: are the funds *really* not in competition?



Thematic reviews: looking ahead

- Results of the insurance review
- Liquidity review

