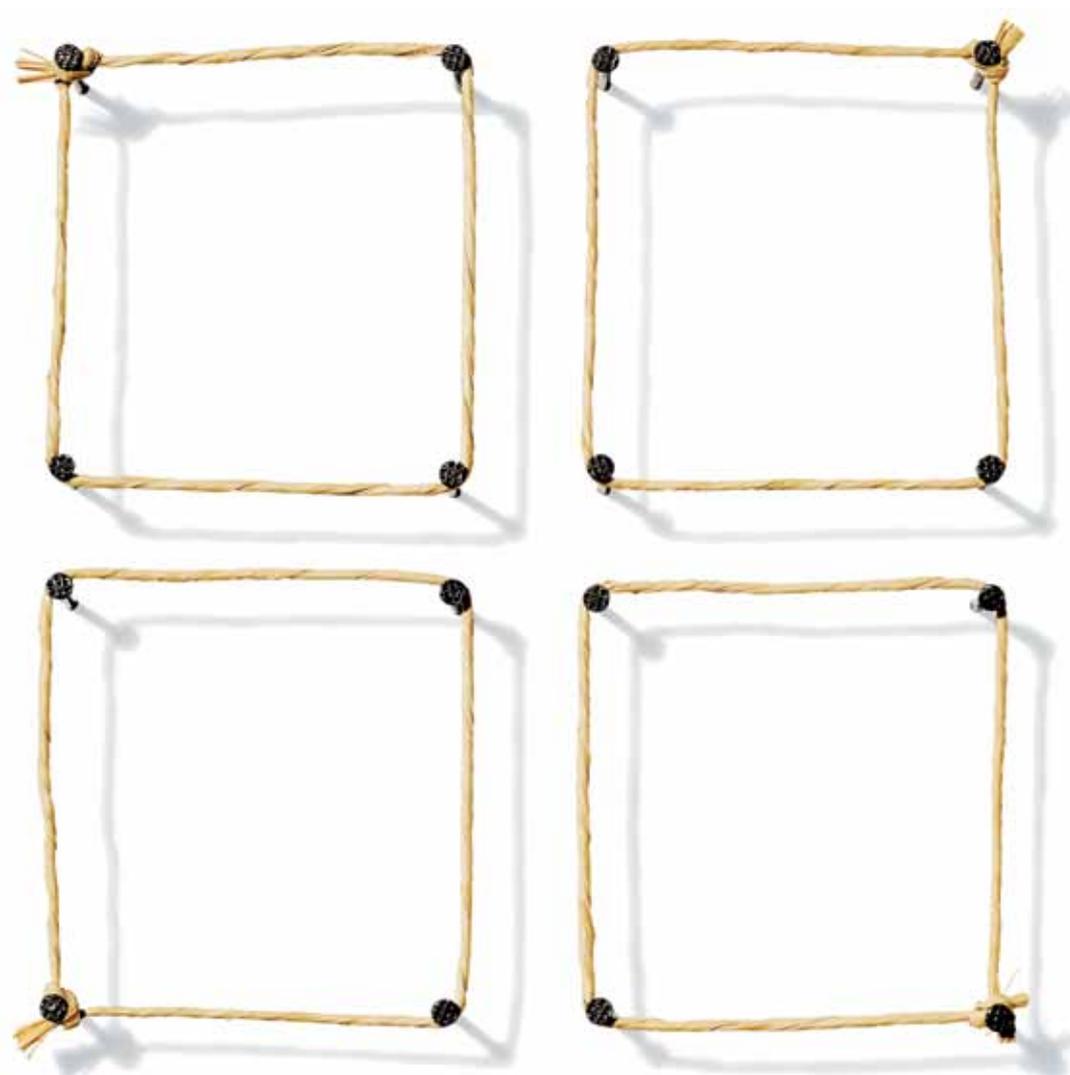




# Instruction Guide

## Application form - Authority to operate a regulated superannuation fund as an eligible rollover fund

3 October 2012



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## Glossary

ABN	Australian Business Number
Applicant	RSE licensee applying for authority to operate a regulated superannuation fund as an eligible rollover fund
APRA	Australian Prudential Regulation Authority
Board	the board of an RSE licensee that is a constitutional corporation
ERF	eligible rollover fund
PDS	Product Disclosure Statement
RMS	Risk Management Strategy
RSE	registrable superannuation entity as defined in s. 10 of the SIS Act
RSE licensee	a constitutional corporation, body corporate or group of individual trustees that holds an RSE licence granted under s. 29D of the SIS Act
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>

# Introduction

This Guide provides general information on the authorisation of RSE licensees to operate an eligible rollover fund. It does not constitute legal advice.

There are two sections to the authorisation kit:

- the instructions for the application form (this document); and
- *Application form – Authority to operate a regulated superannuation fund as an eligible rollover fund.*

For further information, visit APRA's website at [www.apra.gov.au](http://www.apra.gov.au) or contact your responsible supervisor.

## Penalties for false information

Applicants should note that giving false or misleading information is a serious offence (see s.136.1, s.137.1 and s.137.2 of the Criminal Code). Where information is disclosed to APRA, APRA may in turn disclose that information in any of the circumstances permitted by s. 56 of the *Australian Prudential Regulation Authority Act 1998*.

## General information

### Who needs to hold an authorisation?

An RSE licensee that intends to operate a regulated superannuation fund as an eligible rollover fund (ERF) after 1 January 2014 must seek authorisation from APRA. Only RSE licensees that hold a public offer class of licence may be authorised.

### Why is authorisation important?

From 1 January 2014, existing ERFs can no longer accept contributions unless they are authorised under the SIS Act<sup>1</sup>. RSE licensees that operate an ERF that are not authorised on 1 January 2014 will need to take the action required under the prudential standards in relation to ERF balances before the end of a period of 90 days beginning 1 January 2014<sup>2</sup>.

### When do trustees need to apply?

An RSE licensee with an existing ERF that intends to continue operating the ERF should lodge their applications by 1 July 2013, or as soon as possible after that date, in order to reduce the possibility that their application has not been decided by APRA before 1 January 2014. Applicants that have been granted authorisation may operate the ERF from 1 January 2014.

There are serious penalties for operating an ERF after 1 January 2014 without an authorisation from APRA.

### Is there a prescribed fee?

No.

### What is the application process?

The approved form will be an electronic form available on the APRA website. The electronic form will be available to Applicants from November 2012. An Applicant will be able to submit drafts of its application to APRA either online, by email or manually to enable consultation with the APRA responsible supervisor prior to formal lodgement of the application. The Applicant will have the ability to amend its draft application at any time up until it lodges the final form.

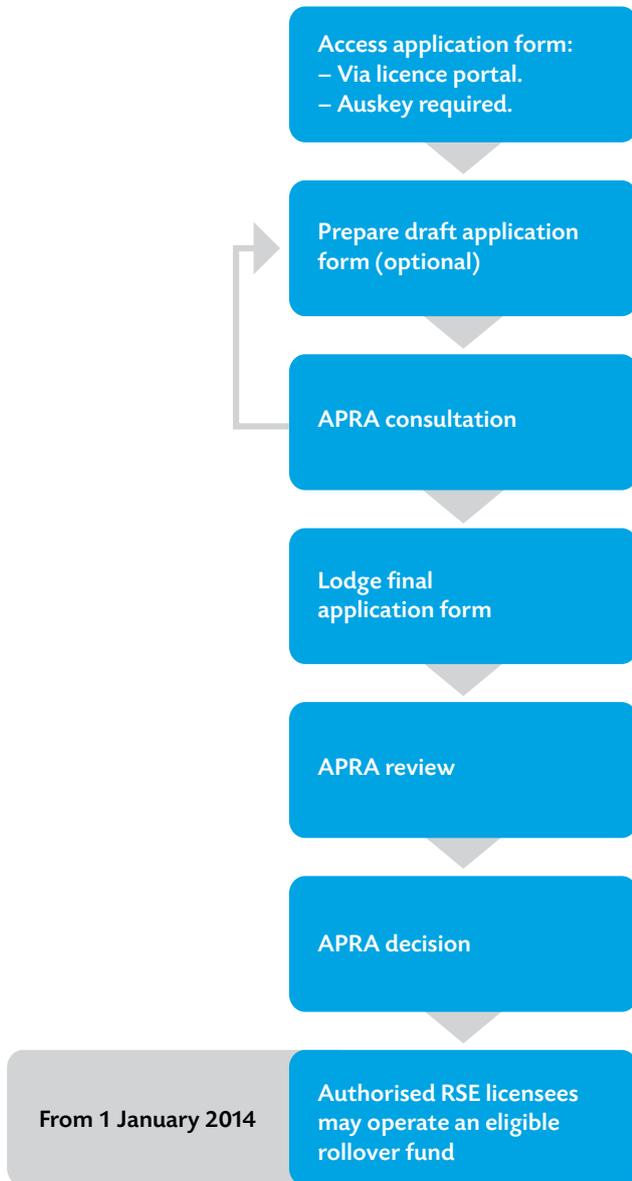
There is no legal obligation for APRA to comment on draft applications. However, APRA will endeavour to provide comments on draft applications as soon as practicable. Once the application period commences, APRA will give priority to assessing completed applications. Therefore, Applicants are strongly encouraged to submit drafts as early as possible.

**Applicants are strongly encouraged to consult with the APRA responsible supervisor before lodging a final application for authorisation.**

<sup>1</sup> Refer s. 242D SIS Act.

<sup>2</sup> Refer s. 395 SIS Act.

# Application process



# The ERF authorisation application form

Applicants must complete all three parts of the application form.

## Part A

Part A of the form requests details of the Applicant and other general information.

## Part B

Part B requests information from the Applicant to assist APRA in assessing whether the RSE licensee is likely to comply with the enhanced trustee obligations applying to RSE licensees that operate an ERF and the general fees rules.

## Part C

Part C contains attestations that will need to be made by the RSE licensee.

## Part D

Part D contains elections pursuant to ss. 242B and 242C of the SIS Act that will need to be made by the RSE licensee.

## Further guidance on completing the application form

The data items from the draft approved form are listed below, together with commentary on selected items.

Lodgement of each authorisation application, each document required by the approved form and each attestation or election will need to be approved by the board of the RSE licensee.

## Part A – Details of the Applicant and general information

### Item A1

**Requirement:** Name of RSE licensee

**Instruction for completion:** This field will be automatically pre-filled with the name of the RSE licensee as stated on the RSE licence, based on the Auskey security code entered by the Applicant.

**Comment:** Only an RSE licensee that holds a public offer entity class of licence can apply to operate an ERF<sup>3</sup>. Entities not yet licensed as an RSE licensee may submit simultaneous applications for an RSE licence and registration of an RSE and a draft authorisation application to operate an ERF. Once APRA has determined the RSE licence and registration applications the entity will be able to submit a completed ERF application.

### Item A2

**Requirement:** Australian Business Number (ABN) of RSE licensee

**Instruction for completion:** This field will be automatically pre-filled with the ABN of the RSE licensee as stated on the RSE licence, based on the Auskey code entered by the Applicant.

### Item A3

**Requirement:** Name of RSE

**Instruction for completion:** This field will offer a drop down menu listing the names of all RSEs for which the RSE licensee is trustee, based on the Auskey code entered by the Applicant.

**Comment:** The authority to operate an ERF relates to a regulated superannuation fund<sup>4</sup>. If the fund is not registered at the time of application, an RSE licensee may submit, simultaneously, an application for registration of an RSE and a draft authorisation application to operate an ERF. Once APRA has determined the registration application, the entity will be able to submit a completed ERF authorisation application.

<sup>3</sup> Refer to s. 242(A)(1) of the SIS Act.

<sup>4</sup> Refer to s. 242A of the SIS Act.

### Item A4

**Requirement:** ABN of RSE

**Instruction for completion:** This field will be automatically pre-filled with the ABN of the RSE as stated on the RSE registration, based on name of the RSE selected by the Applicant.

**Comment:** Required under s. 242A(2) of the SIS Act.

### Item A5

**Requirement:** Attach an up-to-date copy of the trust deed and governing rules of the RSE.

**Instruction for completion:** Upload an electronic copy of the trust deed and, to the extent that the trust deed does not fully define the ERF, the governing rules of the fund.

**Comment:** If any part of the governing rules is unwritten, the Applicant must consult with the APRA responsible supervisor before lodging the application. The RSE licensee must attest at item C1 that the trust deed and governing rules satisfy, in relation to the ERF which is the subject of the application, the requirements specified in s. 242F(1)(e) of the SIS Act

### Item A5.1

**Requirement:** Attach a statement setting out the basis on which the RSE licensee is satisfied that the governing rules of the RSE satisfy s. 242F(1)(e) of the SIS Act.

**Instruction for completion:** Upload an electronic statement.

**Comment:** Before authorising an RSE licensee to operate an ERF, APRA must be satisfied that the offering complies with s. 242F(1)(e) of the SIS Act. As part of the application for authorisation, the Applicant will be required to attest that this requirement is satisfied. At item A5.1, the Applicant must provide a statement setting out the basis on which it is able to make the relevant attestation. This may describe or attach external advice, or set out the internal due diligence conducted by the Applicant in order to achieve the required level of satisfaction. This statement will support the attestation of compliance with s. 242F(1)(e) of the SIS Act made at item C1.

## Item A6

**Requirement:** Contact person

**Instruction for completion:** Provide the name, position title, telephone number and email address for the person to whom enquiries relating to this application should be directed.

**Comment:** This is the person to whom any enquiries will be directed by APRA.

## Part B.1 – Information required to assist APRA to determine whether the RSE licensee and its directors are likely to comply with their enhanced duties in relation to ERFs

### Item B1.1

**Requirement:** Attach a copy of the RSE licensee's conflicts management policy as required under *Prudential Standard SPS 521 Conflicts of Interest (SPS 521)*.

**Instruction for completion:** Upload an electronic copy of the RSE licensee's conflicts management policy.

**Comment:** Notwithstanding that SPS 521 does not become effective until 1 July 2013, if the authorisation application is to be lodged prior to 1 July 2013, the Applicant is required to provide a copy of the conflicts management policy prepared as though SPS 521 were in effect as at the date of application.

### Item B1.1.1

**Requirement:** Attach a copy of the RSE licensee's register of relevant duties and interests as required under SPS 521.

**Instruction for completion:** Upload an electronic copy.

**Comment:** SPS 521 defines the concepts of relevant duty and relevant interest and sets out the types of conflicts that may arise.

## Item B1.2

**Requirement:** Attach a copy of the RSE licensee's risk management strategy, including the risk appetite statement (possibly by separate document) as required under *Prudential Standard SPS 220 Risk Management (SPS 220)*.

**Instruction for completion:** Upload an electronic copy of each document.

**Comment:** Notwithstanding that SPS 220 does not become effective until 1 July 2013, the authorisation application requires provision of a copy of the risk management strategy prepared as though the standard were in effect as at the date of application.

## Item B1.3

**Requirement:** Attach copies of the investment objectives and investment strategy as required under *Prudential Standard SPS 530 Investment Governance (SPS 530)*, as well as the investment reserving strategy (if any) for the ERF.

**Instruction for completion:** Upload an electronic copy of the RSE licensee's objectives and investment strategy as required, as well as the investment reserving strategy (if any) for the ERF.

**Comment:** Notwithstanding that SPS 530 does not become effective until 1 July 2013, if the authorisation application is to be lodged prior to 1 July 2013, the authorisation application requires the Applicant to provide a copy of the investment strategy prepared as though the standard were in effect as at the date of application.

#### **Item B1.4**

**Requirement:** Attach a statement detailing all reserves to be held in the ERF and, in respect of each reserve, the purpose and the policy regarding its development, maintenance and distribution.

**Instruction for completion:** Upload an electronic statement. The information requested may be provided in tabular form.

**Comment:** Pursuant to new s. 52(2)(i), an RSE licensee must, for any reserves of the entity, formulate, review regularly and give effect to a strategy for their prudential management, consistent with the entity's investment strategies and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due. The Statement should make it clear that each reserve supports the RSE licensee's obligation to promote the financial interest of the beneficiaries of the ERF.

#### **Item B1.5**

**Requirement:** Attach the RSE licensee's business plan in respect of the ERF, which includes projected business volumes, costs and fee income.

**Instruction for completion:** Upload an electronic copy of the RSE licensee's business plan in respect of the operation of the ERF.

**Comment:** The business plan is expected to provide insight into the RSE licensee's capacity to promote the financial interests of beneficiaries with an interest in the ERF. Additionally, the business plan must also include the targets (number of members and value of benefits) that have been set for each of the next three years as a result of activities undertaken to transfer lost members to an active superannuation account, as described in Item B2.1. The business plan must also explain the reasoning and formulation of targets that have been set by the Applicant for the next three years. This information may be provided within the business plan or by attaching a separate statement.

#### **Item B1.6**

**Requirement:** If the Applicant wishes to do so, provide any additional statement setting out matters the RSE licensee considers that APRA should take into account in determining whether the RSE licensee is likely to comply with the enhanced trustee obligations in relation to operating an ERF.

**Instruction for completion:** This field is discretionary.

**Comment:** If the RSE licensee considers that there are matters not otherwise sought in the approved form, that it wishes APRA to take into account, it should upload an electronic copy of a statement addressing those matters. This item in the application is intended to give the RSE licensee the opportunity to address any others areas it believes may be relevant to its application.

In addition to matters directly included in the application form, APRA's supervisory view of the RSE licensee and its directors may be relevant to its consideration of the likely compliance with the enhanced trustee obligations in relation to operating an ERF. The weight to be given to this factor in assessing the likelihood of future compliance will depend on a number of matters including the circumstances surrounding any issues of concern, and the conduct since.

Before APRA makes a final decision to decline an application for authorisation, whether or not the applicant's prior conduct is a factor, it will advise the applicant of its preliminary view and the reasons for it. The Applicant will have the opportunity to show cause why the proposed decision should not be made, and its submission will be taken into account in APRA's final decision.

## Part B.2 – Information required to assist APRA to be satisfied that the only purpose of the fund is to be a temporary repository for amounts transferred to the fund from other regulated superannuation funds in circumstances allowed by the RSE licensee law

APRA requires information to form a view of the ability of the RSE licensee to fulfill its obligations under s. 242F(1)(e)(i) of the SIS Act.

### Item B2.1

**Requirement:** Attach a copy of the RSE licensee’s policies and procedures to ensure that the only purpose of the fund is to be a temporary repository for amounts transferred to the fund from other regulated superannuation funds in circumstances allowed by the RSE licensee law.

**Instruction for completion:** Upload an electronic copy of each document.

**Comment:** Applicants should attach relevant policies and procedures which demonstrate that the main purpose of the fund is to be a temporary repository; that is, how it takes active steps to reunite members with their lost superannuation. The policies and procedures must detail the mechanisms used by the RSE licensee to contact lost members (for example, advertising, ATO SuperSeeker register and data warehouses), the frequency of attempts to contact lost members and rules governing the successful or otherwise unsuccessful engagement by ERF members.

### Item B2.2

**Requirement:** Detail the number of members and the value of benefits that have been transferred to an active superannuation account in each of the past 3 years.

**Instruction for completion:** Complete the table for each of the past 3 financial years ending 30 June. Where an alternative balance data applies to the ERF, enter the data relevant to that balance date.

**Comment:** The columns relating to the percentage of total members and the percentage of total funds under management relates to the ERF which is the subject of this application.

## Part B3 – Information required to assist APRA to determine whether the RSE licensee is likely to comply with the general fees rules

### Item B3.1

**Requirement:** Detail the proposed administration and investment fee structure for the ERF as charged directly by the RSE licensee.

**Instruction for completion:** Complete the table showing the maximum administration fee and the investment management fee charged to each member with an interest in the ERF. If only a flat dollar fee or a percentage of the member’s interest is to be charged, record zero in the other applicable cell.

### Item B3.2

**Requirement:** Specify the other fees which may be charged to members with an interest in the ERF.

**Instruction for completion:** Select as many items as are applicable from the drop down menu specifying buy-sell spread, exit fee, activity fee and other, such as member-reuniting fee.

### Item B3.3

**Requirement:** Attach a description of the mechanism by which the RSE licensee will ensure that each fee detailed in B2.2 is charged on a cost recovery basis in accordance with s. 99C of the SIS Act.

**Instruction for completion:** Upload an electronic copy of the relevant policy and procedures of the RSE licensee.

**Comment:** APRA expects that a single document will describe the policy and procedure for establishing cost recovery across all relevant activity areas.

### Item B3.4

**Requirement:** Detail any indirect fees or offsets to gross investment earnings that affect the interests of the ERF members. Provide a definition of each fee and how the fee differs from fees charged directly to the member.

**Instruction for completion:** Complete the table showing the definition and purpose of each fee or offset and how this differs from fees charged directly to the member.

**Comment:** Indirect fees include any costs that are not deducted directly from a member's or product holder's account that are deducted from the ERF's assets or earnings prior to determining the crediting rate or unit price.

### Item B3.5

**Requirement:** Attach a description of the manner in which the operational risk financial requirement (ORFR), as required under Prudential Standard SPS 114 Operational Risk Financial Requirement (SPS 114) is to be held and the way in which ERF members will contribute to its funding. Include details of any reserves to be maintained for this purpose. Reference may be made to information provided at B1.4 if appropriate.

**Instruction for completion:** Upload an electronic copy of the relevant policy and procedures of the RSE licensee.

**Comment:** Notwithstanding that SPS 114 does not become effective until 1 July 2013, if the authorisation application is to be lodged prior to 1 July 2013 APRA expects that the RSE licensee will have developed mechanisms to address the ORFR in anticipation of it coming into effect.

## Part C – Attestations

### Item C1 - Governing rules

**Requirement:** The Applicant attests that the governing rules of the ERF, the subject of this application, comply with s. 242F(1)(e) of the SIS Act.

**Instruction for completion:** Select yes or no from the drop down menu.

**Comment:** 'Yes' should only be selected if the RSE licensee has formally determined that the governing rules of the ERF comply with s. 242F(1)(e) of the SIS Act. Making a false attestation may have serious consequences for the RSE licensee. This attestation of compliance would be supported by the statement attached at item A5.1.

The Applicant should note that s. 29E imposes an additional condition on each RSE licensee that is authorised to operate a regulated superannuation fund as an ERF. The condition is that the RSE licensee must ensure that the governing rules of the fund are not varied so that:

- the only purpose of the fund is no longer to be a temporary repository for amounts transferred to the fund from other regulated superannuation funds in circumstances allowed by the RSE licensee law; or
- a single diversified investment strategy is no longer adopted in relation to assets of the fund.

### **Item C2 – General fees rules**

**Requirement:** The Applicant attests that, in accordance with s. 99B of the SIS Act, the RSE licensee will not charge entry fees.

**Instruction for completion:** Select yes or no from the drop down menu.

**Comment:** Making a false attestation may have serious consequences for the RSE licensee.

### **Item C3 – Information contained in the application**

**Requirement:** The Applicant attests that this application is lodged with the authority of the Applicant; the information contained in this application is correct at the time the application is lodged; and it will notify APRA of any changes to the information contained in the application as soon as practicable.

**Instruction for completion:** Select yes or no from the drop down menu.

**Comment:** ‘Yes’ should only be selected if the RSE licensee has formally determined that the information contained in the application is accurate at the time of submission and will be updated as soon as practicable if found to change. Making a false attestation may have serious consequences for the RSE licensee.

## **Part D – Elections**

### **Item D1 - Election to transfer amounts held in eligible rollover fund if authorisation cancelled**

**Requirement:** In accordance with s. 242B, the Applicant elects to take the action required under the prudential standards in relation to amounts held in the eligible rollover fund, if the authority to operate the fund as an eligible rollover fund is cancelled under subsection 242J(1) of the SIS Act; and to do so before the end of a period of 90 days beginning on the day on which notice of the cancellation is given to the RSE licensee under subsection 242J(3) of the SIS Act.

**Instruction for completion:** Select yes or no from the drop down menu.

**Comment:** APRA will determine a prudential standard on the movement of amounts held in existing ERFs that may include provisions requiring an RSE licensee of an existing ERF that is not authorised to operate as an ERF to transfer the amount to a regulated superannuation fund that is an ERF or offers a MySuper product; setting out the requirements that must be met in relation to the transfer of such an amount; and dealing with other matters relating to such an amount.

### **Item D2 - Charging related to conflicted remuneration**

**Requirement:** In accordance with s. 242C of the SIS Act, the Applicant elects that if the authority is given, the RSE licensee will not charge any member of the fund a fee all or part of which relates directly or indirectly to costs incurred by a trustee or the trustees of the fund: in paying conflicted remuneration to a financial services licensee, or a representative of a financial services licensee; or in paying an amount to another person that a trustee of the fund knows, or reasonably ought to know, relates to conflicted remuneration paid by that other person to a financial services licensee, or a representative of a financial services licensee.

**Instruction for completion:** Select yes or no from the drop down menu.

**Comment:** Under s242J(2)(a)(i) of the SIS Act, failure to give effect to an election given in accordance with s. 242C of the SIS Act provides grounds for APRA to cancel the authority of an RSE licensee to operate an ERF.



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