



21 December 2012

General Manager
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Dear Irene,

AFA Response to the Exposure Draft – Accountants’ Exemption Replacement Regulations

Thank you for the opportunity to provide feedback on the draft Accountants’ Exemption Replacement Regulations.

The AFA is broadly supportive of the establishment of a limited license for accountants. In our view, it is appropriate to have accountants, who are providing financial advice, to do so under an Australian Financial Services License. We have no major concerns with this draft regulations, however we do have a few questions and points of feedback.

Scope of the Limited Licence

We note that the limited license is much broader than the current accountants’ exemption, which is restricted to advice on Self Managed Superannuation Funds (SMSF’s). The limited license will include the following areas:

- advice on SMSFs,
- advice on a person’s existing superannuation product, limited to the establishment of a SMSF or advice on contributions or pensions, and
- class of product advice on a range of financial products.

Since advice with respect to the establishment, operation and structuring of an SMSF, is already provided by accountants under the existing exemption, we have no concerns with this type of advice being provided under the new limited license. We do however seek clarity as to whether there are restrictions on recommendations with respect to the specific product investments for SMSFs. Since this goes beyond class of product advice, we are assuming that it is not permitted.

We do note that the provision of advice on contributions or pensions in an existing superannuation product invariably involves making a recommendation with respect to the existing product, and that in this context the accountant needs to have appropriate knowledge of the client and the product. Under this category, specific product advice will be provided and in the case of advice to establish a

SMSF utilizing an existing superannuation account, this will involve product replacement advice which includes additional disclosure obligations. Limited licensees will need to have access to product research in order to give specific product advice, including product replacement advice.

Our concern with respect to the class of product advice is around the clarity of the boundaries and the full appreciation of the obligations involved. Thus we believe that it is important to ensure that the explanatory statement and subsequent guidance explicitly states the additional obligations that will apply, including the requirement to provide a statement of advice when class of product advice is being given. Class of product advice is personal advice, as set out in Section 766B.

Experience Requirements

We have no particular concern with the mechanism to provide a waiver from the experience obligation for applicants for a limited licence, where they have an accounting practice certificate, as it relates to advice on SMSFs. We do have some concerns with respect to the implications of this, as it relates to the broader scope that is available under the draft regulations (superannuation advice and class of product advice).

We believe that these concerns will be manageable due to our expectation that there will initially only be a low volume of take up of the expanded scope of the limited licence and also an expectation that the obligations will be addressed by the regulatory guidance that is provided to applicants.

We note that there is a need for greater clarity under regulation 7.6.01BA(1) as to what the specific requirements are for “maintain knowledge of the financial services covered by the licence”.

Compliance Certificate Instead of an Audit Report

We have no objection to the proposed regulation 7.8.12A with respect to limited licensees being required to lodge a compliance certificate in lieu of an audit report, however we seek further details as to what the compliance certificate will be required to contain.

Cost and Take-Up of the Limited Licence

Obtaining and maintaining an AFSL, and even a limited licence, is expensive. We expect this to be a major decision for accountants and thus expect the take up to be somewhat slow initially with a significant level of delay beyond the start date of 1 July 2013. We also expect that there will be issues with how an accountant charges for class of product advice, if the client also needs to talk to a financial adviser to get specific product advice. Thus we suspect that some accountants will give consideration, over time, to transitioning from a limited licence to a full AFSL. We believe that it would be appropriate to address this potentiality at an early stage to ensure that accountants are fully informed in this important decision. If it is not going to be possible to transition from a limited licence to a full AFSL, then accountants may wish to consider a full licence or authorization under a full licence, at the beginning.

Transition Timeframes

It is the view of the AFA that the transition timeframes are generous, in that the existing exemption will continue alongside the new limited licence for three years. This will reduce the incentive to transition to the new regime on a timely basis.

We note that recognised accountants have a three year window under which the experience requirement will not apply and will also have a three year period, as a licence condition, under which they need to demonstrate to ASIC that they have the knowledge and competence. This means that

there will effectively be a 6 year transition period. We question whether it is necessary to have such a long transition period.

We also note that the Explanatory Statement, under Schedule 3 on page 5, incorrectly refers to section 912(1)(e). This reference should instead be to section 912A(1)(e).

Conclusion

We believe that this proposal is a good outcome for the financial services industry and for consumers. This represents a significant development for the industry, so it will be important that additional guidance and clarity is provided. We thank you for the opportunity to provide feedback on the draft regulations on the accountants' exemption.

Should you have any questions, please do not hesitate to contact me on 02- 9267 4003.

Yours sincerely,

Philip Anderson
Chief Operating Officer