

21 December 2012

General Manager
Retail Investor Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: futureofadvice@treasury.gov.au

Dear Sir/Madam,

Exposure Draft - Accountants' exemption replacement regulations

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose mission is to protect the interests of Australia's \$500 billion not-for-profit superannuation sector. AIST's members are the trustee directors and staff of industry, corporate and public-sector superannuation funds, who manage the superannuation accounts of two-thirds of the Australian workforce.

AIST welcomes the opportunity to comment on the draft regulations. As the peak body for trustees of not-for-profit superannuation funds that are subject to prudential regulation, we have an interest in ensuring that consumer protections are available to all Australians in the superannuation system, regardless of the vehicle through which their superannuation monies are invested.

It is in this context that AIST supports the requirement for exempt licensing and the regulation that comes with it. AIST's comments apply solely to accountants' abilities to provide financial advice to their clients in regards to superannuation as a class of financial product, however we have concerns regarding the expanded scope provided to accountants as part of this measure. Whilst we acknowledge that a transitional period and the relaxed experience requirements are appropriate for those who are presently advising on superannuation, we question whether this is appropriate for advisers who plan to provide advice on the other classes of financial products which are made available in the measure.

Exempt licences

AIST welcomes the creation of exempt licences as a category of financial services licence. We note that the new measure has a transitional period commencing 1 July 2013 through to 30 June 2016 where accountants who apply for an AFSL will not need to satisfy the experience requirements.

Ordinarily, it would be expected that a transitional period such as this would be designed to allow for accountants who are presently advising on the classes of financial product covered in the draft regulations at Schedule 1. However, we note that the present exemption only covers accountants who provide advice on self-managed superannuation funds. We therefore question the appropriateness of allowing accountants a transition period with regards to experience requirements for the purposes of section 912A(1)(e) with regards to the five new classes of financial products that are presently not exempted.

We support the requirement to have this experience for applications received from 1 July 2016 onwards.

AIST also has concerns with regards to the transition period itself. Whilst we agree that a transitional period allows for accountants to acclimatise to the new regime, such acclimatisation is not possible if, for example, a firm of accountants were to delay their transition on 30 June, 2016. During the intervening period, such a hypothetical firm may have made no attempts to provide even basic consumer protections which would be required for clients of financial planners as a condition of their AFSL.

We also consider that three years is an inordinately long period of time for customers to continue to be denied these consumer protections.

We therefore strongly recommend that some basic protection be made mandatory from 1 July 2013 in the meantime for accountants who are yet to transition across to holding an AFSL. The intention of Financial Services Guides (FSGs) is to provide vital consumer information for investors who are seeking financial advice about the licensee whom they are about to conduct business with. We strongly recommend that, in cases where the accountant is not yet licensed by ASIC during the transition period, FSG-like disclosure be required to be provided by accountants prior to providing advice with regards to any class of financial services products. Ideally, this disclosure should contain a statement advising the client that the accountant with whom they are dealing is not presently licensed by ASIC and that, as a result, ordinary consumer protections may not be available.

We point to the Trio Capital collapse as an example of where consumer protections that are normally in place through both financial services and prudential regulation were not available to clients of accountants with horrific consequences.

Recognised accountant

We note that the requirement regarding licensing extends to accountants who are presently holding a Certificate of Public Practice issued by the ICAA or a Public Practice Certificate issued by the CPA or IPA ("Public Practice Certificates"). We welcome this requirement but note that this requirement merely extends to application for the licence.

We believe that this measure would be strengthened if it were a licence condition that accountants continue to hold Public Practice Certificates in order to continue to be eligible to hold their AFS licence.

We also note that, although this is outside the scope of this measure, we are uncertain as to whether it is appropriate that the determination of Public Practice Certificates should be left to professional associations. We point to medical and legal practitioner registration boards as examples of the success of independent practitioner registration.

Scope of regulation

AIST is supportive of measures designed to ensure that consumer protection is extended to all consumers of financial services. We have vigorously supported the new best interest duty as well as the new bans on conflicted remuneration. We welcome the fact that accountants who provide advice services will be subject to these new requirements.

We note that, as with all 'normal' AFS licensees, there will be requirements around disclosure, in particular, requirements to provide FSGs and Statements of Advice (SOAs). We also are strongly supportive of the requirement that licensees who provide financial product advice are required to join a complaints resolution body such as the Financial Ombudsman Service (FOS). Lastly, we welcome the fact that with this measure, the financial services regulator will be able to police advice provided to clients who may have previously been unable to benefit from this coverage.

If you have any further questions regarding this submission, please contact Richard Webb, Policy and Regulatory Analyst on 03 8677 3835 or at rwebb@aist.asn.au.

Yours sincerely,

A handwritten signature in black ink that reads 'Fiona Reynolds'.

Fiona Reynolds
Chief Executive Officer