



26 October 2012

Manager
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Dear Ms. Lilley,

SMSF Auditor Registration Regulations

The Self Managed Superannuation Funds Professionals' Association of Australia (SPAA) welcomes the opportunity to make a submission in relation to the exposure draft of regulations regarding the registration of self managed superannuation fund (SMSF) auditors. SPAA supports the Government's reforms to the registration of SMSF auditors and believes that the reforms are important to ensure SMSFs are audited by competent and properly qualified auditors. However, SPAA has a number of concerns regarding the exposure draft of the regulations and believes that the regulations could be improved.

SPAA believes that a well-functioning and competency based SMSF auditor licencing regime is vital to ensuring the integrity of SMSFs in complying with their obligations under the superannuation law. Guaranteeing that SMSFs are audited by professionals with adequate professional experience and competencies will result in the public, Government and SMSF trustees and members having confidence in the SMSF and broader superannuation sector. The significance of the role that SMSF auditors play as gatekeepers in the SMSF sector underlies SPAA's concerns that the new SMSF auditor registration regime has some weaknesses in the areas of educational qualifications and transitional arrangements.

In particular, the proposed transitional arrangements will provide automatic registration to a registered company auditor (who may or may not have any SMSF auditing experience or competencies) while denying automatic registration to individuals who do have SMSF auditing competencies and are associated with a professional association.

If registered company auditors are to be given automatic registration during the transitional period, then SPAA recommends that the same concession should apply to individual SMSF auditors recognised under Schedule 1AAA of the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations), such as SPAA SMSF Specialist Auditors. SPAA SMSF Specialist Auditors are the only individually recognised approved auditors in Schedule 1AAA of the SIS Regulations for achieving a competency in SMSF auditing and can be individually identified as a provider of SMSF audit services. SPAA members that have achieved the SMSF Specialist Auditor designation have passed a SMSF audit exam set at Masters level equivalent, review of their continuing professional development activities and SMSF auditing experience, a referee check and must hold adequate professional indemnity insurance in relation to the SMSF audit services they provide.



They key points of this submission are:

- **SPAA is concerned that it is inappropriate to use courses prescribed in regulation 9.2.03 of the *Corporations Regulations 2001* to satisfy the requirement of having undertaken an audit course where a tertiary degree has not included an audit component. The course list should be updated to include SMSF education courses, or similar, offered by other professional associations which are of an equivalent education standard.**
- **SPAA believes that including registered company auditors for automatic transition into the approved SMSF approved auditor regime without appropriate SMSF competencies undermines the integrity and core purpose of the SMSF auditor registration regime. It could expose the SMSF sector to increased risk because some registered company auditors may not have the required knowledge and experience to undertake an SMSF audit.**
- **SPAA proposes that individuals currently recognised as SMSF auditors under the existing Schedule 1AAA of the SIS Regulations be included in the transitional provisions for entry into the new approved SMSF auditor regime.**

These issues and SPAA's recommendations are discussed in detail in the [Attachment](#).

About SPAA

SPAA is the peak professional body representing the SMSF sector throughout Australia. SPAA represents professionals, irrespective of their personal membership and professional affiliations, who provide advice to individuals aspiring to higher levels of participation in the management of their superannuation savings. Membership of SPAA is principally accountants, auditors, lawyers, financial planners and other professionals such as actuaries.

SPAA is committed to raising the standard of professional advice and conduct in the SMSF sector by working proactively with Government and the industry. In doing so, SPAA has contributed to SMSF advisors providing a higher standard of advice to SMSF trustees. This in turn has enabled trustees to make more informed decisions addressing the adequacy, sustainability and longevity of their own retirement savings. SMSFs offer trustees greater control and flexibility and have become an integral part of the Australian Superannuation landscape by providing significant and viable options for managers, business owners, executives and retail operators alike.

We would be happy to provide further information or to discuss any questions you may have about this submission with you.

Yours sincerely

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ATTACHMENT

Draft regulation 9A.01: Qualifications

SPAA supports the intent of the draft regulations that an approved SMSF auditor must have a university degree or equivalent qualification which includes an audit component. SPAA also supports being able to supplement a tertiary qualification that does not include an audit component by completing a separate course in audit.

However, SPAA does not support the approach taken in draft regulation 9A.01(3)(b) which uses regulation 9.2.03 of the *Corporations Regulations 2001* to determine the auditing courses that can supplement a tertiary qualification for an approved SMSF auditor. Regulation 9.2.03 of the *Corporations Regulation 2001* prescribes auditing courses that must be completed to be registered under the *Corporations Act 2001* as a company auditor. The courses prescribed under regulation 9.2.03 are appropriate for company auditors but do not focus on the competencies required for SMSF auditors, nor the prudential requirements within the *Superannuation Industry (Supervision) Act 1994* (SIS Act) and SIS Regulations or the SMSF auditing standards explained in the Auditing and Assurance Standards Board *Guidance Statement GS009: Auditing Self Managed Superannuation Funds* (AUASB GS009). SPAA's understanding is that the regulators are concerned with the general competency level of SMSF auditors in regard to the operation of the SIS Act. This was the Cooper Review's main concern regarding SMSF auditors, with its Report explaining that "*it is critical for approved auditors to possess the necessary knowledge and skills required to undertake their duties, especially in relation to specific SIS regulatory requirements.*"¹

The auditing requirements prescribed by the *Corporations Act 2001* compared to the SIS regulatory requirements and AUASB GS009 are very different and the audit education that an approved SMSF auditor has undertaken should reflect this. Accordingly, SPAA believes that the approach taken in draft regulation 9A.01(3)(b) is inappropriate and will not ensure that SMSF auditors undertake audit education that allows them to gain the knowledge required for SMSF audits.

SPAA proposes that either Regulation 9.2.03 of the *Corporations Regulations 2001* be updated to include SMSF specific courses or that an additional sub-regulation be inserted in 9A.01(3) to make it clear that the successful completion of a course in SMSF audit offered by a professional associated listed in Schedule 1AAA of the SIS Regulations would satisfy the requirements of draft regulation 9A.01(3). Under either option, the most appropriate starting point for education should include SMSF audit courses offered by organisations listed in Schedule 1AAA of the SIS Regulations.

With this in mind, SPAA suggests current SMSF audit courses provided by professional organisations such as SPAA, the Institute of Chartered Accountants in Australia (ICAA) and the Association of Tax and Management Accountants (ATMA) be added to the regulations as courses that will meet the needs of draft regulation 9A.01(3)(b). In fact SPAA believes these courses would be far more appropriate than the existing general audit courses currently listed in Regulation 9.2.03

¹ *Super System Final Report: Part 2, Recommendation Packages* (2010), p 236.



of the *Corporations Regulations 2001*. The reason for this belief is that the aforementioned courses are specifically designed for the audit of SMSFs and the full compliance obligations of SMSF auditors. For example, the SPAA SMSF Specialist Auditor Tutorial is focused on the following areas:

- Auditor registration requirements
- SPAA Auditor requirements
- SPAA Code of Professional Conduct
- Auditing Standards relevant to planning the audit
- Auditing Standards relevant to conducting the financial statement audit
- Auditing Standards relevant to forming an opinion and completing the financial statement audit
- Auditing Standards relevant to a compliance audit
- Auditing independence requirements
- SIS audit requirements for the establishment and operation of a SMSF
- SIS audit requirements for contributions
- SIS audit requirements for investments
- SIS audit requirements for benefits & payments
- SIS audit requirements for auditor reporting (including Auditor Contravention Reports)

After updating Regulation 9.2.03 of the *Corporations Regulations 2001* or introducing a specific sub-regulation in the current tranche of amendments, it may be useful to provide the Australian Securities and Investments Commission (ASIC) with a power to maintain a register of courses that meet the requirements of draft regulation 9A.01(3)(b). This would allow new SMSF audit courses that are judged to be suitable for meeting the approved SMSF auditor qualifications to be easily added on to a register as they are released, rather than require an amendment of the regulations to add a new course. This proposal would allow flexibility for industry education developments but provide rigour through an ASIC power to approve courses.

SPAA Recommendations:

- 1) SPAA recommends that a specific sub-regulation be included which makes it clear that the successful completion of a course in audit offered by a professional associated listed in Schedule 1AAA of the SIS Regulations would satisfy the requirements of draft regulation 9A.01(3)(b).
- 2) If this approach is not taken, then Regulation 9.2.03 of the *Corporations Regulations 2001* should be amended to be updated for new courses that provide SMSF audit education.
- 3) Either approach should include a power for ASIC to keep a register and approve new courses that satisfy draft regulation 9A.01(3)(b).

Draft Regulation 9A.03: Continuing Professional Development Requirements

SPAA supports the approved SMSF auditor continuing professional development (CPD) requirements prescribed in draft regulation 9A.03. While SPAA has supported a higher level of



knowledge and recognition of specialist SMSF auditors to maintain the integrity of the SMSF sector as evidenced in SPAA's SMSF Specialist Auditor qualification, SPAA recognises the need to have a minimum industry standard that will allow a transition from the current regulation of SMSF auditors to the new regime. Consequently, we believe that 120 hours of CPD every three years is an appropriate minimum amount of CPD for approved SMSF auditors to maintain currency of knowledge and competency standards. However, SPAA has some suggestions to improve the efficacy of the draft regulations.

SPAA suggests that sub-regulation 9A.03(2) be amended so that the 120 CPD hours over three years requirement can be satisfied on a rolling three year basis. This approach would function so that at the end of three years, the first year of CPD will drop off the auditor's total CPD. The CPD period then "rolls" forward and the member has one more year to accrue enough CPD points as required for the current year and the two previous years. This approach would comply with how the majority of professional associations expect their members to fulfil their CPD obligations.

SPAA also suggests that the requirement in sub-regulation 9A.03(4) that requires approved SMSF auditors to keep their training records for three years after the end of the calendar year in which the training occurred be amended to use the term 'financial year.' This change would simplify the requirement to keep written records for three years for SMSF auditors.

These proposed amendments would be consistent with the way the majority of professional organisations ask their members to maintain CPD records and audit their members CPD obligations.

Draft Regulation 9A.05: Auditor Independence Requirements

SPAA supports the approved SMSF auditor regime ensuring that SMSF auditors meet audit independence requirements.

However, SPAA believes that the regulations should not prescribe only one standard for SMSF auditors to follow. The current approach in draft regulation 9A.05 uses APES 110 (issued in December 2010) as the only standard which auditors can meet to satisfy the audit independence requirement. SPAA believes this approach is biased towards members of the Joint Accounting Bodies (JAB), who are required by their professional organisation (which is a member of the Accounting Professional & Ethical Standards Board) to follow the APES 110 standard. Other professional organisations, such as SPAA, set their own independence standards which their auditor members must follow. For example, SPAA already has best practice customised independence standards that address the potential conflicts and independence requirements for SMSF auditors (not auditors generally) which must also be met by SPAA accredited SMSF Specialist Auditors. SPAA'S SMSF audit independence standards have adopted the International Ethics Standards Board for Accountants (IESBA) requirements for audit independence which are identical to those contained in APES 110. SPAA also requires its SMSF Specialist Auditors to meet the audit independence standards contained in AUASB GS009. These independence requirements were approved as part of the rigorous evaluation process when SPAA applied to have Schedule 1AAA of the SIS Regulations amended to incorporate SPAA SMSF Specialist



Auditors as an approved auditor, also adding SPAA as an Approved Auditor Association. As such, there should be no reason to omit SPAA's independence requirements in the draft regulations.

Accordingly, SPAA supports a more appropriate and neutral approach which could be implemented by amending draft regulation 9A.05 to allow for audit independence standards developed by a professional association listed in Schedule 1AAA of the SIS Regulations be used for the audit independence standards. ASIC should have the power to approve independence standards developed by professional associations to make certain that the independence standards are of an appropriately rigorous standard. This would ensure that all professional organisations with SMSF auditor members are kept on a level playing field in regard to appropriate audit independence standards.

An alternative approach to using audit independence standards developed by professional associations is to use the audit independence standards set by the International Ethics Standards Board for Accountants. The IESBA standards are rigorous auditor independence standards that can be adhered to by SMSF auditors without having to belong to an accounting body affiliated with the APESB.

If the Government persists with using the APES 110 as the audit independence standard for SMSF auditors, it is important that this does not result in SMSF auditors having to become members of one of the JAB organisations. While this result is not apparent on reading draft regulation 9A.05, SPAA believes that it might be prudent to clarify this in the explanatory statement accompanying the draft regulations.

SPAA Recommendations:

- 1) Draft regulation 9A.05 should be drafted to allow audit independence standards developed by a professional association listed in Schedule 1AAA of the SIS Regulations to be used to satisfy the audit independence requirement in proposed paragraph 128F(d) of the SIS Act.
- 2) If the approach above is not followed, AASB GS009 should be used as an audit independence standard to satisfy the audit independence requirement in proposed paragraph 128F(d) of the SIS Act.

Transitional Arrangements

SPAA supports the approach taken in the draft regulations to ensure that existing SMSF approved auditors who have appropriate levels of practical experience and competency in SMSF audits be transitioned into the new approved SMSF auditor regime without having to sit a competency exam.

However, SPAA opposes the inclusion of registered company auditors in item 3 of the table in draft regulation 14.01. Item 3 has the effect that registered company auditors are considered to have sufficient practical experience and competency in SMSF audits so that they are transitioned into the SMSF approved auditor regime without having to pass a competency exam. However, the requirement does not place any specific experience or competency requirements directly relating to SMSF audits on registered company auditors. This appears to be an inconsistent with the policy



intent of the SMSF auditor registration regime to ensure a high and consistent standard of competency for SMSF auditors due to their crucial role in providing assurance that SMSFs are complying with the superannuation laws, as well as their financial reporting obligations.

SPAA acknowledges that a registered company auditor is likely to have extensive practical experience and competency in company audits, but a company auditor should not be presumed to have experience in the audit of SMSFs. The Australian Taxation Office regards the SIS compliance aspect of the SMSF audit as the most significant part of an SMSF audit and it should be the primary focus of the SMSF auditor. The SIS compliance part of a SMSF audit is highly technical and complex, requiring specialist knowledge of the SIS Act and Regulations which company auditors may not have if they have not previously audited SMSFs. Consequently, it seems incongruous that company auditors, some of who may have had either no SMSF auditing experience or have no real expertise in SIS law compliance, are able to be transitioned automatically to the SMSF auditing regime as an approved SMSF auditor upon application. In contrast, existing SMSF approved auditors currently approved under Schedule 1AAA of the SIS Regulations must have signed off on at least 20 SMSF audits in the 12 months before applying for registration as an approved SMSF auditor.

Further, SPAA has concerns that transitioning all registered company auditors into the SMSF auditor regime will provide competitive advantages to businesses whose professionals have not previously provided these services over those businesses whose professionals provide SMSF audit services. This competitive advantage could result in a weakening of the standard of audits applied to SMSFs, which in turn could hinder the effectiveness of the Australian Taxation Office's oversight of SMSFs.

SPAA believes that the best outcome for the transitional arrangements is that any auditor who is to be transitioned into the new regime must meet the conditions in Items 1 and 2 in draft regulation 14.01.

However, if company auditors are to be transitioned into the SMSF approved auditor regime, SPAA would encourage an alternative approach where a registered company auditor is taken to have satisfied the experience requirement in proposed subparagraph 128B(1)(a)(ii) of the SIS Act, but where they have not completed at least 20 SMSF audits in the 12 months preceding registration they should either complete the ASIC competency exam or undertake an education course in SMSF audit. This would help to ensure that a company auditor has a competency level in the field of SMSF audits that is consistent with the approved SMSF auditor regime. SPAA believes that adding this requirement to draft regulation 14.01 will help ensure company auditors that are entering the SMSF regime under the transitional rules have a suitable minimum knowledge of the operation of SMSFs and SMSF audit procedures.

Finally, the transitional arrangements result in auditors being admitted to the SMSF approved auditor regime on the basis of individual recognition, particularly company auditors. Accordingly, SPAA believes that the recognition of individual auditors should be extended to individuals currently recognised as SMSF auditors under the existing Schedule 1AAA of the SIS Regulations.

SPAA Specialist SMSF Auditors are recognised as individuals that have the requisite experience and competencies to be an SMSF auditor under Schedule 1AAA. SPAA SMSF Specialist Auditors



are the only individually recognised approved auditors in Schedule 1AAA of the SIS Regulations for achieving a competency in SMSF auditing and can be individually identified as a provider of SMSF audit services. Conversely, other Schedule 1AAA approved auditors are not individually identified auditors nor able to be identified within their association as members who provide SMSF audit services. Those other Schedule 1AAA approved auditors are members are only recognised due to their membership status of an association listed in Schedule 1AAA.

The individually identified SMSF auditors who are members of SPAA have achieved the SMSF Specialist Auditor designation. This means they have passed a SMSF audit exam set at Masters level equivalent, have met a stringent review of their CPD activities, have had a review of their historical SMSF auditing experience, undergone a rigorous referee check and individually hold adequate professional indemnity insurance in relation to the SMSF audit services they provide. The SPAA SMSF Specialist Auditors have also committed to the SPAA Code of Professional Conduct's ethical and professional conduct requirements, and have committed to SPAA's auditor independence requirements based on the IESBA independence standards and include adherence to the standards provided in AUASB GS009.

SPAA believes that SPAA SMSF Specialist Auditors should have their competence and experience recognised by being specifically included in the transitional arrangements, if the transitional arrangements take the approach of recognising individual auditors for grandfathering into the new licencing regime.

SPAA Recommendations:

- 1) SPAA recommends that draft regulation 14.01 should be limited to Items 1 and 2 in the table in draft regulation 14.01.
- 2) If Item 3 is retained in the table in draft regulation 14.01, then it should include a requirement that a company auditor has undertaken a course in SMSF audit competencies prior to registering and being accepted by ASIC as an approved SMSF auditor.
- 3) If Item 3 is retained, SPAA SMSF Auditors, as currently recognised in Schedule 1AAA of the SIS Regulations, should be included in an Item 4 of the table in draft regulation 14.01.

Superannuation Auditor Registration Imposition Regulation 2012

SPAA understands that there is an intention by ASIC to ensure that the register of approved SMSF auditors is publicly available on the ASIC website. SPAA supports this intention.

SPAA believes that it may be worthwhile to state that ASIC intends to make the register free to the public in the Explanatory Statement accompanying the draft regulations to clarify any confusion between "inspecting or searching" for a current or historical extract of the register which would cost the applicant nine dollars per search, and the free public search.



Audit Report Regulations

SPAA has reviewed the proposed regulations and supports the amendments. This change will allow for more flexibility and certainty for SMSF auditors.