

21 December 2012

Ms Irene Sim  
General Manger  
Retail Investor Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600  
AUSTRALIA  
Email: [futureofadvice@treasury.gov.au](mailto:futureofadvice@treasury.gov.au)

Dear Ms Sim,



Level 19, 1 Alfred Street  
Sydney NSW 2000  
GPO Box 3323  
Sydney NSW 2001  
T 1800 026 868  
F (02) 9241 7342  
E [info@count.com.au](mailto:info@count.com.au)  
[www.count.com.au](http://www.count.com.au)

**Re: Draft Corporations Act Regulations – Removal of the Accountants' Licensing Exemption**

Thank you for the opportunity to comment on the draft Corporations Act Regulations released on 28 November 2012, and intended to give effect to the removal of the accountants' licensing exemption. The content of this submission builds on comments in our letter to Treasury dated 24 September 2012.

Count Financial Limited (Count) is an Australian Financial Services Licensee (AFSL) that has been in operation since 1980. It became a wholly owned subsidiary of the Commonwealth Bank of Australia (CBA) in December 2011. Count has approximately 600 accountant based financial advisers, across around 300 practices nationally. It also has approximately 120 credit representatives, assisting clients with credit related services under Finconnect (Australia) Pty Ltd, an Australian Credit Licensee that is a wholly owned subsidiary of Count. Count's advisers provide clients with holistic financial advice across a range of areas including superannuation, wealth protection (insurance), investments and credit.

A key element of Count's business model over the years has been our close association with, and support of, accountants. As a result, the majority of our 300 practices are accounting firms that will be directly impacted by the removal of the accountants' licensing exemption.

The attached submission outlines Count's support for the approach being taken by the Government in regard to a number of key areas, including providing accountants with transition arrangements to move to the new regime. We also outline a number of areas where we believe further clarification would assist the industry in making that transition as seamless as possible.

We appreciate the opportunity to work with Treasury during the development of this new licensing regime for accountants. Please contact me at [david.lane@count.com.au](mailto:david.lane@count.com.au) or on 0416 177 661, or Karen Davis, Senior Executive, Business Delivery at [karen.davis@count.com.au](mailto:karen.davis@count.com.au) or on 0407 234 724, if we can provide further information or assistance.

Yours sincerely,

David Lane  
Chief Executive Officer  
**ATTACHMENT**

Looking after your financial life

## COUNT SUBMISSION

### About Count

As outlined in our covering letter, Count holds an AFSL under which it has approximately 600 authorised representatives providing an extensive suite of financial services to clients. Count has built its business on providing licensee services to accounting firms to enable them to expand their offer to clients through the provision of financial advice. This business model means that a significant majority of our advisers are either accountants, or are an employee of an accounting firm, and are a member of either the CPA, the Institute of Chartered Accountants Australia (Institute), or the Institute of Public Accountants (IPA).

We note that while Count's advisers are already subject to the current Corporations Act requirements that apply to all advisers with respect to licensing and authorisation and will also be subject to the amendments brought in through the future of financial advice reforms – there are a large number of accountants within our 300 practices that are not authorised representatives of Count and currently assist their clients with the establishment of Self Managed Superannuation Funds (SMSF), within the scope of the accountants' licensing exemption. All of these accountants will be impacted by the proposed regulations.

### Scope and Structure of the New Licence

We note that the draft regulations introduce a new category of licence – an exempt licence. Based on our reading of the draft regulations, we understand that the exempt licence serves two main purposes:

- providing recognised accountants with an exemption to the competency requirements that would be required to obtain a full AFSL; and
- allowing exempt licensees the ability to lodge a compliance, rather than an audit certificate where they are not handling client money.

We understand that the intention of these provisions is to provide accountants with time to meet the competency requirements of the full licensing regime and to reduce the compliance burden and cost associated with an AFSL audit. The provisions also recognise the qualifications that accountants already hold, and their professionalism.

Based on our understanding outlined above, and on the assumption that the above mentioned regulations are the only regulations designed to remove the accountants' licensing exemption, we assume that all other obligations of a full licence would apply to exempt licensees, including the new requirements introduced through the Future of Financial Advice (FoFA) reforms. We understand that the structure of the regulations does not prohibit existing licensees, or potentially new licensees, from providing a licensing solution to accountants wanting to continue to provide SMSF advice. This would occur through either a full authorisation or an authorisation that would limit their authorisation to superannuation and class of financial product advice (although we note that this is only defined in association with an exempt licence – further comments on this are outlined below), or potentially something in between.

***Recommendation:** To provide increased certainty to the industry, it would be helpful if the explanatory statement or other guidance specifically stated that all other licensing and associated obligations will be applicable to exempt licensees – if that is in fact that the intention.*

### Exemption from the Competency Requirement

Under the modified s912A(e), an exempt licensee is only required to maintain knowledge of the financial services covered by the licence, whereas all other licensees are required to maintain knowledge and competence to provide the financial services covered by the licence.

*Recommendation: We recommend that the industry is provided with further clarity on the difference between knowledge and competence as referred to in the relevant sections outlined above. We suggest that this could be achieved through commentary in the explanatory statement making reference to the knowledge requirements in RG105, with a specific reference to excluding the experience requirements.*

### Training and education standards

We note that there is no waiver of the requirement in s912A(f) which requires that a licensee ensure that its representatives are adequately trained, and are competent, to provide those financial services. We therefore assume that accountants will be required to be trained to a standard which meets RG146 for the relevant knowledge areas. We note, however that the concept of class of financial product advice is a new one, for which training standards have not yet been clearly established.

*Recommendation: That industry be provided with further clarity regarding the training requirements that accountants will be subject to under the new regime and in particular about the application of RG 146 requirements where class of financial product advice is being given. This will also need to have regard to the existing knowledge held by accountants.*

### **Licensee Requirements**

Whilst we note that the announcement contemplates the waiver of some other compliance requirements, such as the requirement to have an AFSL audit conducted, we assume that all other licence obligations, including the FoFA reforms, and obligations associated with the services provided under that licence, will apply. For this reason, we do not believe it will be practical, efficient, or cost effective, for the majority of accountants to apply for an 'exempt licence' either individually, or in many cases as an accounting firm.

As Treasury would be aware, there are significant costs associated with obtaining and maintaining an AFSL, including managing and monitoring compliance requirements, having in place appropriate infrastructure to ensure that these requirements are met, and ensuring authorised representatives are competent to provide advice. On this basis, it is likely that many accountants will look for an existing licensee to provide those services. It is therefore critical that the regulations do not limit the ability for existing licensees to offer that service to ensure the seamless provision of advice to clients.

It is important for accountants and consumers that existing licensees can offer services to accountants that support the transition to the new licensing and regulatory regime. This provides accountants with an option which will ease the compliance burden and cost associated with the requirements and it benefits accountants and their clients in the ability to leverage the expertise that a licensee can offer by way of compliance services, tools and other support.

### Definition of Class of Financial Product Advice

We note that the definition of class of financial product advice only exists by way of reference to an exempt licensee. That is, sections 912A and 989B are modified to include the definition of exempt licensee which limits that licensee to providing class of financial product advice.

While we understand the rationale for this, it is critical that it is made clear through the explanatory statement or through ASIC guidance that other licensees will be able to offer authorisations to accountants which enable them to provide this type of advice within an existing licensing structure.

AFSL licensees must be able to clearly authorise representatives to provide advice that fits within the definition of class of financial product advice (provided the AFSL licence covers the relevant products). That is, class of financial product advice should not be advice that can only be provided by exempt licensees (and contemplated by ASIC as occurring within that framework, for example, when developing any Regulatory Guides).

*Recommendation: We suggest that Treasury clarify through the explanatory statement that class of financial product advice can be provided through existing licensing structures despite the definition only being linked to the exempt licence category. Equally, we would suggest that ASIC consider means of supporting the various ways in which accountants and licensees may look to address the removal of the current exemption, for example, through the provision of limited authorisations which enable class of product advice. This would need to be issued at the same time as the final regulations to provide industry with certainty.*

### Professional Indemnity Insurance

We note that the Minister's June 2012 announcement stated that ASIC has committed to reviewing the minimum professional indemnity insurance requirements in light of the limited advice accountants would generally be providing.

Further to the point above, one of the areas that a licensee can provide support in regard to is professional indemnity insurance. Holding professional indemnity insurance through a licensee, rather than through the accountant's own professional indemnity insurance which covers the accounting business, is likely to be an area where a licensee is able to provide accountants with benefits of scale, efficiency and expertise in regard to knowledge of the regulatory regime and its impact on claims.

*Recommendation: We would welcome an update as to the progress of consultation and analysis in reviewing the minimum professional indemnity insurance requirements. We believe this review must consider the segregation of services provided under the licensing and regulatory regime and those accounting services provided outside of it.*