

21 December 2012

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

By email: futureofadvice@treasury.gov.au

Dear Ms Sim

Corporations Amendment Regulation 2013 (No.)

CPA Australia and the Institute of Chartered Accountants Australia (“the Institute”) welcome the opportunity to comment on the draft Corporations Amendment Regulation 2013 (No.) to implement the new form of limited licence to replace the accountants’ exemption.

CPA Australia and the Institute are both very supportive of the broad policy framework announced by the Government on 23 June 2012. It is our view that if implemented in an appropriate way, the new limited AFSL will go a long way towards ensuring that Australians have greater access to financial advice.

CPA Australia and the Institute represent over 150,000 professional accountants in Australia. Our members work in diverse roles across public practice, commerce, industry, government and academia throughout Australia and internationally. Specifically, members of the accounting profession are a vitally important part of the financial services industry..

Professional accountants play a vital role providing trusted advice to both individuals and business. The implementation in 2002 of Regulation 7.1.29A, otherwise known as the accountants’ exemption, enabled professional accountants to continue to engage in traditional accounting activities such as the provision of structuring advice without the application of the Australian Financial Services Licensing regime. While the accountants’ exemption has been instrumental in allowing this advice to be provided, it has revealed many practical challenges that will need to be addressed under the new form of limited licence announced by the Government.

The draft regulations will now establish a new framework to ensure valuable structuring advice can continue to be provided under a new form of limited licence, without imposing undue regulation and costs on professional accountants.

The streamlined experience arrangements that were announced as part of this new form of licence also reflects the strong professional framework in which ‘recognised accountants’ operate, particularly those in public practice. These members must undertake initial and ongoing additional education, ongoing compliance

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with a wide range of professional standards and ongoing monitoring to ensure quality advice and services continue to be provided to the community. This framework is also critical to continuing to protect the public interest.

It also recognises the broad range of advice and the wide scope of advisory services provided by professional accountants over many decades, which have not been limited to one area of advice such as self-managed superannuation funds (SMSFs) and like services. This diversity and depth of the strategic advisory services is again reflected in the scope of advice which will be able to be provided under the new form of licence.

While we broadly support the draft regulations and explanatory statement, we have made the following recommendations to ensure the regulations are consistent with the Government's policy objectives :

- While supporting the "class of product" definition there needs to be consideration as to how to incorporate new financial products should they be developed. For example, should limited recourse borrowing arrangements (LRBAs) be regulated as a financial product and require authorisation to provide advice in either 'securities' or 'superannuation', that the definition of class of product advice permit exempt licensees to continue to provide advice on LRBAs;
- The definition of 'exempt licensee' should be amended in the draft regulations and explanatory statement to enable the consideration of a person's existing holding in a superannuation product to the extent required for making a recommendation that a person either establish, not establish or wind-up an interest in a self-managed superannuation fund (SMSF);
- Section (k) is amended to ensure that only a professional accountant who is also the responsible manager is required to complete the knowledge update review and that this will also demonstrate to ASIC's satisfaction they have the knowledge and competence to continue to provide the financial services covered by the licence. These amendments must also be reflected in the explanatory statement; and
- Clarity should be provided to ensure with the future removal of Regulation 7.6.01BA that the limited licence framework is retained post 2016 and only the streamlined gateway is removed.

We have also recommended minor amendments to the explanatory statement, which we believe are important to reflect the basis on which professional accountants were granted streamlined licensing arrangements.

In addition to the regulations, it will be critically important that the practical guidance from ASIC ensures a smooth and effective implementation of the new licensing framework and we would expect Treasury and Government to work with ASIC to achieve this outcome..

Further, the intention of this new regulatory framework is that any individual or body corporate can apply for this new form of limited licence to provide SMSF and class of product advice on a range of financial services. In our view, the Government should only consider alternative professional qualifications that could form part of the streamlined licensing arrangements that these qualifications are at least equal to the strong robust professional framework which has been implemented and enforced by the accounting profession.

This must include not only clear and robust requirements that ensure the public interest is upheld, but a framework which is consistently and appropriately enforced and backed by strong disciplinary measures for non-compliance.

This is important to ensure that the public interest continues to be protected and that the Australian community continues to receive quality financial advice from their choice of professional adviser.

CPA Australia and the Institute recently held a roundtable to discuss the draft regulations. While our submission largely reflects the feedback provided at this meeting, we are still working through all of the issues raised at the time of lodging our submission. We expect to provide further comments to Treasury early in the new year.

If you have any questions regarding this submission, please do not hesitate to contact Keddie Waller (CPA Australia) at keddie.waller@cpaaustralia.com.au or Hugh Elvy (the Institute) at hugh.elvy@charteredaccountants.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A Malley'.

Alex Malley
Chief Executive Officer
CPA Australia Ltd

A handwritten signature in black ink, appearing to read 'Lee White'.

Lee White
Chief Executive Officer
Institute of Chartered Accountants in
Australia

CPA Australia and the Institute have provided the following comments and amendments in regards to the draft Corporations Amendment Regulation 2013 (No.). It is imperative that the final regulations accurately reflect the policy objectives announced by the Government on 23 June 2012.

We believe that all of the issues outlined in the following section fall within the ambit of the policy framework set out by the Government.

Definitions – 7.6.01BA, 7.6.04 (2), 7.8.12A, 7.8.14B

Definition: *class of product advice*

Following member consultation and review, we believe the definition of ‘class of product advice’ appears appropriate and will provide much needed clarity to the industry on the intended meaning of the term. It is also clear that draft definition aligns with one of the main objectives of introducing this new form of licence, being to enable the provision of strategic financial advice rather than specific financial product recommendations.

However, consideration must be also given to how existing and future financial instruments or structures which are not currently not regulated as a financial product may be impacted by this definition. One example, which was raised during the consultation on this reform, is the intended future regulation of limited recourse borrowing arrangements (LRBAs) as a financial product.

Earlier this year draft regulation to the *Corporations Regulations 2001* was released for public comment seeking feedback on the Government’s proposal that an Australian Financial Services Licence covering securities or derivatives would be required to provide advice on LRBAs. While we did not support this additional regulation, we recommended that should the decision be made to regulate LRBAs as a financial product the most appropriate authorisation would in fact be superannuation.

We recommend that should LRBAs be regulated as a financial product and require authorisation to provide advice in either ‘securities’ or ‘superannuation’, that the definition of class of product advice permit exempt licensees to continue to provide advice on LRBAs. Importantly, professional accountants often provide advice and guidance on LRBAs. If these arrangements are regulated as a financial product and a professional accountant who is an ‘exempt licensee’ is unable to continue to provide this guidance, it would severely diminish consumers’ access to trusted, qualified advice.

To ensure there are no unintended consequences of this potential regulation, we also recommend further discussions with Treasury to ensure there is consistency and alignment between these two areas of reform.

Further, it is important that the new licensing framework is flexible enough that it can consider new financial products as they evolve.

Recommendation:

While supporting the “class of product” definition there needs to be consideration as to how to incorporate new financial products should they be developed. For example, should limited recourse borrowing arrangements (LRBAs) be regulated as a financial product and require authorisation to provide advice in either ‘securities’ or ‘superannuation’, that the definition of class of product advice permit exempt licensees to continue to provide advice on LRBAs.

Definition: *exempt licensee*

One of the existing practical constraints of Regulation 7.1.29A is that a recognised accountant cannot consider a client’s existing interest in superannuation when recommending to establish or wind up an interest in a self-managed superannuation funds (SMSF). Further, the regulation does not permit the recommendation to ‘not establish’ an interest in a SMSF.

It is important that these practical issues currently being experienced when providing advice under the existing regulation are not carried into the new licensing framework.

We therefore recommend that section (c) in the definition of 'exempt licensee' is amended as follows:

'(c) is only licensed to provide one or more of the following financial services:

- (i) financial product advice on self-managed superannuation funds;
- (ii) financial product advice on superannuation products in relation to a person's existing holding in a superannuation product but only to the extent required for:

(A) making a recommendation that the person either establish, not establish or wind-up an interest in a self-managed superannuation fund; or;

(B) providing advice to the person on contributions or pensions under a superannuation product;' (emphasis added)

Making these amendments to the draft regulations ensures the advice that can currently be provided under Regulation 7.1.29A continues to be permitted and that the practical issues of providing advice under the regulation are not carried into the new regime. This would also ensure the future regulatory outcome aligns with the policy objectives of enabling a recommendation not to establish a SMSF or to wind-up an interest in a SMSF. Further, it ensures that an exempt licensee is able to provide appropriate advice to the consumer which is in their best interests.

The explanatory statement would also need to be amended to reflect this important change.

Recommendation:

The definition of *exempt licensee* is amended in the draft regulations and explanatory statement to enable the consideration of a person's existing holding in a superannuation product to the extent required for making a recommendation that a person either establish, not establish or wind-up an interest in a self-managed superannuation fund.

Definition: *recognised accountant*

The purpose of Regulation 7.1.29A was to allow professional accountants to continue to engage in traditional accounting activities such as the provision of structuring advice without the application of the Australian Financial Services Licensing regime.

The fundamental purpose of the new form of limited licence is to provide an appropriate alternative to Regulation 7.1.29A and enable professional accountants who are granted the new licence to provide a much broader range of financial advice.

In line with the Government's policy objective of increasing access to financial advice, anyone will be able to apply for the new licence. However, the announced streamlined experience requirements for the new licence for professional accountants who hold a practicing certificate issued by one of the three professional accounting bodies is recognition of the expertise of our members and the robust professional framework in which they must operate in order to provide a broad range of advice and services to the community.

Importantly, this framework is committed to the continued protection of the public interest and for this reason consists of ongoing education, a wide range of professional standards which implement broad ongoing requirements, monitoring compliance with these professional standards and disciplinary procedures for non-compliance.

This framework has been developed over many decades to ensure it continues to deliver on the underlying objective and its success can be demonstrated through the continued trust the wider community has in the accounting profession.

In line with this objective and to ensure the continued protection of investors, consideration to expanding the streamlined arrangements to other qualifications should only be considered if these same robust standards and outcomes can be clearly demonstrated.

Section [3] After paragraph 7.6.04(1)(j)

Consistent with the announcement of the new limited licence framework, professional accountants who take advantage of the streamlined licensing experience requirements and are granted the licence will be required to undertake a knowledge update review (KUR). The objective of this requirement is to ensure the knowledge and skills of the professional accountant, or exempt licensee, are up to date.

While the Government's announcement stated that the KUR will need to be completed at the end of three years after being granted the licence, we believe to ensure flexibility and availability of resources that the wording in the draft regulations be retained to say 'within 3 years'.

However, we recommend that 7.6.04(1)(k) is amended to ensure that the regulation accurately reflects that completion of the KUR will demonstrate to ASIC's satisfaction that the exempt licensee has the knowledge and competence to continue to provide the financial services covered by the licence.

Further, clarity is needed to ensure the regulations only require the professional accountant who is also the responsible manager for the licence to complete the KUR. Currently the draft regulations refer to '...each recognised accountant that supervises and has responsibility for the provision of financial services covered by the licence' which could be interpreted to apply more widely than the intended policy.

Therefore, the following amendments must be made to ensure consistency with the announced policy and to provide clarity that completion of the KUR by the responsible manager will satisfy the specific requirement to demonstrate the required skills are up to date:

- '(k) if the financial services licensee is an exempt licensee – a condition that the licensee must, within 3 years from the date on which the licence is granted, demonstrate to ASIC through the completion of a knowledge update review, to the satisfaction of ASIC, that:
 - (i) if the licensee is an individual – the licensee has:
 - (A) knowledge of the licensee's obligations under the Act and these Regulations; and
 - (B) the competence to provide the financial services covered by the licence; or
 - (ii) if the licensee is a partnership or body corporate – each responsible manager who is a recognised accountant that supervisors and has responsibility for the provision of financial services covered by the licence has:
 - (A) knowledge of the licensee's obligations under the Act and these Regulations;
 - (B) the competence to provide the financial services covered by the licence.' (emphasis added)

The explanatory statement would also need to be amended to reflect this important change and provide clarity around this obligation.

Recommendation:

Section (k) is amended to ensure that only a professional accountant who is also the responsible manager is required to complete the knowledge update review and that this will also demonstrate to ASIC's satisfaction they have the knowledge and competence to continue to provide the financial services covered by the licence. These amendments must also be reflected in the explanatory statement.

Section [5] Modification of section 989B of the Act

As stated in the explanatory statement, the exempt licensee will not be able to handle any client money in the course of providing financial services given the limited advice and services permitted under the licence. Therefore the exempt licensee will be able to lodge a compliance certificate instead of an audit.

While it may be more appropriate for ASIC to issue specific guidance on this requirement, it should be clear that the sole basis that permits an exempt licensee to lodge a compliance certificate rather than be required to appoint an auditor is because no client monies can be handled under the licence.

Schedule 3 Amendment commencing on 1 July 2019

Schedule 3 will enact the removal of Regulation 7.6.01BA from 1 July 2019. The removal of this regulation signifies the end of the three year transition period where professional accountants can take advantage of the streamlined experience arrangements.

However, we believe further clarity is necessary to ensure that removal of this regulation does not result in the newly established licence and relevant framework from also being removed, as this would be in conflict with the intention of the policy and would also impact accessibility to advice.

This may be able to be achieved by ASIC issuing specific guidance or amendments to the licensing application process.

Recommendation:

Clarity is provided to ensure the future removal of Regulation 7.6.01BA does not result in the newly established licence and relevant framework from also being removed, as this would be in conflict with the intention of the policy and would also impact accessibility to advice.

Explanatory Statement

The following recommended amendments to the explanatory statement will ensure the explanatory statement both accurately reflects the policy intention and provide clarity for the new licensing framework.

Page 1 - second bullet point

- 'provide that that recognised accountants, partnerships or corporations who apply for an AFSL between 1 July 2013 and 1 July 2016 and only provide particular advice services do not have to demonstrate that they meet the experience requirements for the purposes of the organisational competence requirement in section 912A(1)(e)' (emphasis added)

Page 2 –Schedule 1 Amendment that commence on 1 July 2013

'The purpose of this regulation is to provide that exempt licensees do not have to demonstrate the experience requirements for the purposes of meeting the organisational competence requirement in paragraph 912A(1)(e).' (emphasis added)