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

The Treasury,

Please find submission for the draft Accountants Exemption Replacement Regulations.

It is with great concern that I provide this submission with the fundamental problem being that the proposed Accountants AFSL lacks any resemblance of a level playing field when compared to existing full AFSL holders. And as such will provide an enormous cost and client winning advantage to Accountants in the SMSF advice field.

The SMSF Advice problem is certainly an ongoing demarcation style dispute and will likely continue to be as there is just so much confusion around the current and proposed legislations with the government's own announcement being a great introductory example of the type of problems faced:

"On 23 June 2012, the Hon Bill Shorten MP, [announced arrangements](#) to replace the exemption which currently allows accountants to provide financial advice on self-managed superannuation funds (SMSFs) without an Australian Financial Services License (AFSL)".

Whilst this part of the announcement is not technically incorrect the wording of it is exactly how so many Accountants currently operate and will likely continue to operate regardless of the proposed changes. The only part of providing SMSF AFSL Financial Advice Accountants are currently able to do without an AFSL is to establish or close an SMSF and nothing else. Yet this type of government statement presupposes that Accountants can provide the full range of AFSL Financial Advice for SMSF without an AFSL. And believe me that is precisely what a lot of Accountants think and how a lot of Accountants practise.

1) What constitutes "Financial Product" advice as Accountants simply don't know:

Far too many Accountants don't even understand that a SMSF is a "financial product", that is they don't even understand why the current SMSF exemption exist and how it works. And this problem will be significantly compounded and essentially approved by the government with the Accountants AFSL into all areas of advice for SMSF and beyond into all financial products.

It is common knowledge throughout the financial advice industry, the accounting industry and government authorities that Accountants already provide a very significant amount of AFSL advice without any of the required AFSL compliance. I have worked with and spoken to many accountants that fail to understand that much of the advice that they provide, verbally in relation to SMSF is "financial product" advice and thus they fail to understand they are not complying with AFSL legislation.

These examples of non-complying SMSF AFSL Advice include but are not limited to what many term Strategic Financial Advice:

- Starting SMSF pensions, both transition and retirement pensions.
- Specific contributions to a SMSF, both tax concessional and non-concessional. Especially including the transfer of existing assets such as business real property.
- Splitting super contributions between members.
- Cashout and re-contribution strategies.

- Death benefit nominations for SMFS member balances.
- Death benefit nominations for SMFS members including insurance proceeds which significantly increases the value of the death benefit and planning required.
- SMSF limited recourse borrowing arrangements and the overall Structural Advice for these Warrant arrangements. (Whilst the loan is not yet a “financial product” – it should be just like margin lending now is and certainly a warrant is a “financial product”)

And whilst all of the above advice does not require the “selling” of an actual Investment or Insurance product. All of the above are “financial products” under the FSRA and Corporations Act and thus require full AFSL compliance.

However, a huge number of Accountants remain blissfully unaware that these advice areas involve “financial product” advice. As such there is zero compliance in relation to AFSL requirements including FSG’s and disclosure of being or not being licensed or educated to provide this advice, no Professional Indemnity cover, no AFSL Fact Finds and know your client rules, no SoA’s and documented advice, no PDS’s and know your product rules, no written disclosure of upfront fees, no written disclosure of ongoing advice fees and SMSF Administration / Accounting fees and no written signed authorities to proceed.

Overall there is zero AFSL compliance and thus zero AFSL additional compliance costs which enables Accountants to provide this verbal advice comparatively very cheaply, albeit illegally.

2) **“Financial Product” comparative analysis advice disregarded by Accountants:**

This **culture of zero AFSL Accountant compliance** expands beyond “Strategic SMSF Advice” with many Accountants setting up SMSF and then “assisting clients” to rollover existing superannuation funds into a new SMSF but with zero comparative analysis of the existing super funds and or insurances already in place.

The Accountants simply set up the new SMSF and help make the transfers / rollovers without any details, written or verbal of the costs, fees, loss of existing benefits, clarification of new SMSF costs and overall Replacement of Product AFSL rules. Clearly there is “financial product” advice being provided here in relation to the replacement of a “financial product” but is any AFSL compliance ever completed – no not by Accountants.

Unfortunately for AFSL Financial Advisers trying to compete, it is extremely difficult when many Accountants simply disregard any concern for any AFSL compliance, or as in point 1) above with Strategic Advice, Accountants simply do not understand that providing such “switching advice” out of an existing superannuation product and or insurance product into the SMFS is “financial product” advice. Again the complete lack of any AFSL compliance is an obvious massive saving in time and effort for Accountants and thus a massive saving in costs to Accountants.

This massive saving in compliance and costs is often disregarded as a proper fee paying advice opportunity by Accountants as they simply want to earn the SMSF establishment fees and the ongoing Tax / Accounting fees which are very lucrative. Thus they can happily forgo charging for this other real “financial product” verbal advice.

With these clear and common breaches of AFSL compliance and the very large amount of Accountants involved, along with the massive size of the growing SMSF market, one would think this issue is of significant government regulatory concern. **But there has never, ever been a single Accountant ever pulled up for this non AFSL compliance and complete disregard for any of the AFSL laws. Never pulled up by any of the accounting bodies such as ICAA, CPA, not by SPAA and most of all not by ASIC.**

How is this situation a level playing field when so many Accountants AFSL breaches go unregulated in the wonderful world of lawless Accountant SMSF AFSL advice?

Given the very significant lack of Accountants understanding of what constitutes “financial product” advice under AFSL legislation and even if they do understand it, the complete disregard of these laws as they stand. It is hard to see any increase in enforcement of these problems with the potential 10,000 new Accountants believing they will be fully qualified to continue to provide such advice with zero AFSL compliance.

3) “Investment Strategy” generic minutes provided by Accountants as SMSF Investment Strategy Advice.

Another area that is almost completely unregulated involves Accountants providing stock standard one or two page generic investment minutes, post-dated at the end of the year the Investment Strategies are relating too and often nearly two years in areas from when a planned SMSF Investment Strategy should have been written and implemented.

Accountants continue to produce these farcical two page SMSF minutes that is signed by the client / trustee so far in arrears it is a joke. And yet these documents continue to pass ATO audits for compliant SMSF Investment Strategies without fail.

Not only are non AFSL Accountants unlicensed to provide such Investment Strategies, if an AFSL Financial Adviser was ever audited, in court or in FOS with such a bare bones Investment Strategy document it would be laughed at by all the authorities as completely lacking AFSL compliance. Yet accountants who aren't even licensed to provide SMSF Investment Strategies get away with this approach in a very significant number of the over 400,000 SMSF's country wide.

4) Education for Accountants AFSL disregarded by government:

With the bar already set far too low to be PS 146 compliant, the new Accountants AFSL is simply going to waive any education specific requirements to Financial Advice completely for Practise Certificate Accountants. Yet at the same time there has been an ongoing argument from both the government, accounting and finance industry that the existing PS 146 education levels are way too low.

Clearly the current education requirements are way too low and the majority of all involved believe that PS 146 Proper Authority status should be a degree qualified level of attainment. The government should at least start to make PS 146 equivalent to one full year of undergraduate university and make it the full Diploma of Financial Planning, effective now. And then move towards a full Financial Advice degree qualification within three years.

So with the government and overall finance industry all concerned about the current low level of education for entry to AFSL Proper Authority status, this new Accountants AFSL goes completely against the approach to increase education by allowing the estimated 10,000 new Accountants into the AFSL advice area with nil, zero, nothing in the way of specific Financial Advice or SMSF education required.

How is that approach meant to raise the education levels of all AFSL advisers? And more to the point help protect AFSL Advice clients.

Given the entry level PS 146 AFSL Proper Authority education is waived for the Accountants AFSL, let's just let all the 10,000 Accountants lose to advise whatever SMSF AFSL advice they want for the next three years before they even have to think about any ongoing AFSL CPD education. What a complete farce this proposal is to furthering the AFSL education requirements.

Yet again the Accountants via the proposed limited AFSL are provided a significantly different compliance level, this time via education requirements, compared to existing AFSL Financial Adviser. And yet again the Accountants will be working on a lower cost structure as they simply do not have

to comply. This ongoing lower cost structure to the Accountants AFSL is not providing a level playing field for all SMSF AFSL advisors to work under.

5) Business Perspective and Risk of Strategy Advice versus Investment Advice

As everyone knows many investments have blown up since the onset of the GFC and poor investment performance continues to be a major source of Financial Advice complaints. And certainly the Storm, MIS products, WestPoint and all Debentures, Trio Capital, etc to name just a few are investments and or strategies that have caused so much consumer and regulatory angst, thus we have FoFA and this newly proposed Accountants Limited AFSL.

Yet where were the government regulators when these debacles were developing?
How many times were ASIC warned about the Storm gearing strategic model and even audited Storm several times, yet did nothing?
How many government subsidised and Accountant promoted MIS projects were allowed to develop and then completely failed?

So what is the government's solution to all these problems?

Let's allow Accountants to get a cut down, low cost, nil compliance limited AFSL to do all the safe, guaranteed, clever, strategic advice work that has very little or no chance of blowing up and then leave full AFSL Financial Advisers to carry all the risk with the Investment and Insurance placement work only.

How is that a level playing field and a fair outcome under competition law?

SMSF Strategic work such as transition and retirement pensions, contributions, etc carries very little, to no risk as the whole Strategic Advice process is about using the tax effective superannuation rules legislated to ensure that clients get the most benefit possible out of the laws. There are no unknown results and thus very little chance of clients not achieving the expectations of the Strategic Advice put in place.

Further this Strategic Advice is a very important part of client relationship development for full AFSL Financial Advisers. Many Financial Adviser like I focus on doing the Strategic Advice first, or only the Strategic Advice, thus getting the clients SMSF established and developed as well as possible, via the various contributions, pensions, death benefits, etc.

And once this almost guaranteed not to fail or non-disappoint advice work is completed the clients have developed a much better trusting relationship with the Financial Adviser.

Only after the SMSF is in a well established Strategic Advice position do we then follow up and look at the fair riskier part of Financial Advice, that being Investment and Insurance advice.

Further, many clients set up an SMSF as they want to do some, most or all of their own investment management. That is without doubt one of the major draw cards for establishing an SMSF. But if Financial Advisers have lost all the Strategic Advice work which nearly no SMSF clients / trustees know how to do themselves, compared to the Investments or Insurance. It means full AFSL Financial Advisers have no chance to build this trusting adviser / client relationship pre the much riskier Investment or Insurance advice.

Thus the Accountants AFSL will enable Accountants to completely take over SMSF Financial Strategic Advice, the nice and business risk safe side of SMSF advice with almost zero risk.

And then the Financial Advisers are lucky to maybe pick up some Investment or Insurance advice work but will lack the pre-developed client Strategic Advice trusted relationship.

Further, the Financial Advisers are left scrapping around for Investment or Insurance work the Accountants will have already be able to sprout whatever Investment or Insurance Advice they

verbally choose to discuss with the client and layout as much of the overall Investment and Insurance advice, as they like, with zero AFSL compliance.

Then and only if the SMSF client wants Investment and Insurance advice, full AFSL Financial Advisers are reduced to being an Investment and Insurance placement facilitator. As the Accountant has already been able to verbally strategise and advise the outline of the whole Investment and Insurance plan, with zero AFSL compliance.

So why are SMSF clients going to want to pay good money for full AFSL Financial Advisers simply placing / facilitating the already overall, verbally advised Investment and Insurance outcomes?

And don't forget the massive amount of full AFSL compliance the Financial Adviser then has to do for their part of the advice, if they get any.

Yes this includes full Fact Finds and know your client rules, FSG's, full SoA's, full fee disclosure and on and on it goes – but the Accountants can happily talk and verbally provide whatever overall Investment and Insurance Advice they like with zero AFSL compliance.

Surely that is not a level playing field for SMSF AFSL advice.

6) Accountants AFSL Audit Requirements significantly reduced

Of course as the proposed Accountants AFSL is already so heavily in favour of the Accountants and they have far less costs to enter the market, to continue to advise in the market, so why would they have to do an normal Audit like full AFSL Financial Advisers.

The Accountants AFSL will again provide a lower cost alternative to give them even more advantages of not having to compete on a level playing field with full AFSL Financial Advisers.

7) Accountants should need Full AFSL's to make a Level Playing Field for SMSF Advice

With the current AFSL education requirements already so low, why lower them to nil?

Surely if Accountants want to provide AFSL advice they can easily meet these low education standards and then they should have to get a full AFSL and compete on the same compliance cost basis as full AFSL Financial Advisers. Why should Accountants be given such a lower cost, lower compliance regulatory system when both Accountants and Financial Advisers are providing exactly the same SMSF Advice.

If Accountants want to restrict their own full AFSL activities to SMSF Strategic Advice only then that is a business choice for them to make. But allow them only to make that under full AFSL rules and this will ensure Accountants more clearly understand the AFSL rules, compliance and costs of providing this advice fully and just maybe they will start to comply with AFSL laws.

Quite simply make it a level playing field for all.

Adam Passwell Partner / Authorised Rep
B.Ec, Dip FP, SMSF Specialist Advisor

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