

# **EXPLANATORY STATEMENT**

## **Select Legislative Instrument 2013 No. 101**

### **Issued by authority of the Minister for Financial Services and Superannuation**

*Corporations Act 2001*

*Corporations Regulations 2001*

*Corporations Amendment Regulation 2013 (No. 3)*

The *Corporations Act 2001* (the Act) provides for the regulation of corporations, financial markets, products and services including in relation to licensing, conduct and disclosure.

Section 1364(1) of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Corporations Amendment Regulation 2013 (No. 3)* makes several amendments to the *Corporations Regulations 2001* (the Principal Regulations). The amendments remove the current exemption which allows accountants to provide financial advice on self-managed superannuation funds (SMSFs) without an Australian Financial Services Licence (AFSL) from 1 July 2016 and provides alternative licensing arrangements from 1 July 2013. This will provide a three-year transition period for accountants utilising the existing exemption to transition to the new regime.

Specifically, the amendments to the Principal Regulations:

- remove the accountants' licensing exemption in regulation 7.1.29A of the Principal Regulations from 1 July 2016;
- provide that recognised accountants, partnerships or corporations who apply for an AFSL between 1 July 2013 and 30 June 2016 and only provide particular advice services do not have to demonstrate that they meet the experience required for the purposes of the organisational competence requirement in section 912A(1)(e);
- provide that licensees who receive an AFSL under this streamlined process must within three years of being granted the licence, if requested in writing by ASIC, demonstrate to ASIC they have the requisite knowledge and the competence to provide the financial services covered by their licence; and
- provide that any licensee who only provides particular advice services and does not handle client-money can lodge an annual compliance certificate instead of an auditor's report.

Details of the proposed Regulation are set out in [Attachment A](#).

A draft of the Regulation was published on the Future of Financial Advice website on 28 November 2012 for a three-week public consultation period. A total of 17 submissions were received from stakeholders, including from the Association of

Financial Advisers, CPA Australia, Institute of Chartered Accountants in Australia, Institute of Public Accountants, Financial Planning Association, Financial Services Council, National Tax and Accountants' Association, SMSF Professionals' Association of Australia and the Association of Tax and Management Accountants.

Most issues raised in the submissions were of a technical nature with a small number of submissions relating to the scope of the streamlined process proposed to be provided to recognised accountants. The Regulation retains the draft streamlined process to provide a transitional arrangement for the existing recognised accountants to move to an AFSL. Some minor changes were made to the draft Regulation in response to stakeholder feedback.

A statement of the Regulations compatibility with human rights is set out in Attachment B.

The Act does not specify any conditions that need to be satisfied before the power to make the Regulation may be exercised.

Sections 1 to 4 and Schedule 1 of the Regulation commence on 1 July 2013. Schedule 2 commences on 1 July 2016 and Schedule 3 commences on 1 July 2019.

A Regulation Impact Statement is attached at Attachment C.

## ATTACHMENT A

### **Details of the *Corporations Amendment Regulation 2013 (No. 3)***

#### Section 1- Name of Regulation

This section specifies the name of the Regulation as the *Corporations Amendment Regulation 2013 (No. 3)*.

#### Section 2 – Commencement

This section provides that sections 1 to 4 and Schedule 1 of the Regulation commences on 1 July 2013, Schedule 2 commences on 1 July 2016 and Schedule 3 commences on 1 July 2019.

#### Section 3 – Authority

This section provides the authority for the Regulation is the *Corporations Act 2001* (the Act).

#### Section 4 – Schedule(s)

This section provides that the Regulation has the effect as specified in each Schedule.

### **Schedule 1 – Amendments commencing 1 July 2013**

Item 1 repeals the existing paragraph 7.1.29A(2)(c) and replaces it with a new paragraph to reflect the new name and letters used for members of the National Institute of Accountants (NIA). The new name for the NIA is the Institute of Public Accountants and the new letters that a member referred to in the paragraph is entitled to use are ‘FIPA’ or ‘MIPA’.

Item 2 inserts a new regulation 7.6.01BA which modifies the reading of section 912A of the Act to provide a streamlined application process for ‘recognised accountants’ who apply to become a ‘limited licensee’. The purpose of regulation 7.6.01BA is to provide a streamlined process for a new ‘limited’ Australian Financial Services Licence (AFSL). The streamlined process is provided to recognised accountants including members of organisations specified by ASIC in a notice published in the *Gazette*.

Specifically, subregulations 7.6.01BA(1) and (2) provide that for a financial services licensee who is a limited licensee the obligation to maintain competence under paragraph 912A(1)(e) of the Act is replaced with an obligation to maintain knowledge of the financial services covered by the licence.

Subregulation 7.6.01BA(3) provides definitions of the relevant terms.

A ‘limited licensee’ is defined as a financial services licensee that:

- is:
  - a recognised accountant; or

- if the licensee is a corporation or partnership – a licensee that has a recognised accountant or accountants who are responsible for, and supervise, the provision of the financial services covered by its licence; and
- applied for the AFSL between 1 July 2013 and 30 June 2016; and
- is only licensed to provide one or more of the following financial services (that is, ‘limited financial services’):
  - financial product advice on self-managed superannuation funds including, but not limited to, advice to acquire (or not to acquire) or dispose of a self-managed superannuation fund;
  - 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:
    - : making a recommendation that the person establish a self-managed superannuation fund; or
    - : providing advice to the person on contributions or pensions under a superannuation product. Pensions include any payment under a superannuation product where the payment is made in the ‘pensions phase’ of the superannuation product. These payments could include a payment which constitutes a payment that is considered to be a lump sum or a stream of payments that the recipient considers to be an annuity;
  - class of product advice on the following:
    - : superannuation products;
    - : securities;
    - : simple managed investment schemes;
    - : general insurance products;
    - : life risk insurance products;
    - : basic deposit products;
  - arrange to deal in an interest in a self-managed superannuation fund.

‘Class of product advice’ is defined as financial product advice about a class of products but does not include a recommendation about a specific product in the class. For example, a financial services licensee may give a recommendation about term deposit products but must not make a specific recommendation that a person deposit their money into a term deposit product offered by a particular bank or building society.

The classes of products that a limited licensee may be authorised to provide financial advice on has been developed based on the products that are classified as financial products at the time the Regulation is made. Amendment to this list would be required for any products that become financial products in the future and which are appropriate for inclusion in this list.

‘Recognised accountant’ means a person who holds a Public Practice Certificate issued by CPA Australia Ltd or the Institute of Public Accountants, or a Certificate of Public Practice issued by the Institute of Chartered Accountants in Australia. In each case, the member is entitled to use the letters specified in the definition for each organisation and is subject to, and complies with, the relevant organisation’s continuing professional education requirements.

‘Simple managed investment scheme’ has the same meaning as in regulation 1.0.02.

Item 3 inserts a new paragraph 7.6.04(1)(k) which provides ASIC with the ability to conduct a knowledge review of a limited licensee who has taken advantage of the streamlining arrangements in item 2. That is, for a recognised accountant who is granted a limited licence with streamlined arrangements, it would be a condition of the licence that, within three years from the date on which the licence is granted and if requested in writing by ASIC, particular persons associated with the licence must demonstrate to the satisfaction of ASIC, they have the knowledge and experience to provide financial services.

Specifically, if the licensee is an individual, that individual must demonstrate they have:

- knowledge of the licensee’s obligations under the Act and the Principal Regulations; and
- the competence to provide the financial services covered by the licence.

If the licensee is a partnership or corporations, it is each recognised accountant who is responsible for, and supervises, the provision of the financial services by the licensee who have to demonstrate those things.

ASIC will also use its existing criteria for making assessments of training and education competency set out in its regulatory guides such as Regulatory Guide 146 *Licensing: Training of financial product advisers* and Regulatory Guide 105 *Licensing: Organisational competence*.

Item 4 inserts a new subregulation 7.6.04(3) which provides the relevant definitions for the purposes of regulation 7.6.04. The definitions of ‘class of product advice’, ‘limited financial services’, ‘limited licensee’, and ‘recognised accountant’ are the same as those set out in the new subregulation 7.6.01BA(4) and (5).

Item 5 inserts a new regulation 7.8.12A which modifies the obligation on financial services licensees to lodge an auditor’s report under subsection 989B(3) of the Act. Subsection 989B(3) of the Act requires that all licensees must lodge with ASIC an auditor’s report. Subregulation 7.8.12A(1) modifies this requirement to provide that exempt licensees must lodge a compliance certificate containing the information and matters required by the regulations, instead of an auditor’s report.

For a licensee who is a limited licensee for part of a financial year and a licensee for the remainder of the financial year:

- a compliance certificate is required for the part of the financial year that the licensee was a limited licensee; and
- an auditor's report is required for the part of the financial year that the licensee was not a limited licensee.

Subregulation 7.8.12A(2) sets out the definitions of 'class of product advice', 'limited financial service', 'limited licensee' and 'simple managed investment scheme'. All definitions are the same as those set out in the new subregulation 7.6.01BA(4) except 'limited licensee'. In subregulation 7.8.12A(2), 'limited licensee' means a financial services licensee that:

- does not deal with money to which Division 2 of Part 7.8 of the Act applies; and
- is only licensed to provide one or more limited financial services.

In effect, any limited licensee who does not handle client money in the course of providing limited financial services can qualify to lodge a compliance certificate instead of an auditor's report.

Item 6 amends subregulations 7.8.13(1) and (2) by omitting references to 'subsection 989B(3)' and substituting 'subparagraph 989B(3)(b)(ii) or paragraph 989B(3)(c)'.

Item 7 inserts a new regulation 7.8.13A which makes it a requirement that with a compliance certificate, a true and fair profit and loss statement and balance sheet must be lodged with ASIC in the prescribed form and signed by:

- if the licensee is an individual – the licensee; or
- if the licensee is a corporation, partnership or trustee of a trust – an officer, partner or trustee, respectively, who performs duties in relation to financial services.

Item 8 repeals existing paragraph 7.8.14(b) and replaces it with new paragraphs 7.8.14(b) and (c) to reflect the modified audit report requirements introduced by item 5. Paragraph 7.8.14 now provides that a profit and loss statement and balance sheet in respect of a financial year must contain a declaration by the financial services licensee that:

- the profit and loss statement and balance sheet give a true and fair view of the matters stated in it;
- if the licensee is required to lodge an auditor's report – the auditor's report lodged with the profit and loss statement and balance sheet is a true copy of the report on the profit and loss statement and balance sheet of the financial services licensee;
- if the licensee is required to lodge a compliance certificate – the information in the compliance certificate lodged with the profit and loss statement and balance sheet is complete and accurate.

Item 9 inserts a new regulation 7.8.14B which provides that section 990B (the obligation to appoint an auditor) does not apply to a limited licensee. The definition of ‘limited licensee’ is the same as introduced by subregulation 7.8.12A(2). In addition, the regulation provides that if a licensee ceases to be limited licensee but continues to be a licensee that is not classed as a limited licensee, the licensee must appoint an auditor within one month of ceasing to be a limited licensee. Definitions of relevant terms are provided in subregulation 7.8.14B(3).

### **Schedule 2 – Amendment that commence on 1 July 2016**

Item 1 repeals regulation 7.1.29A. Regulation 7.1.29A provides the current exemption from the obligation to hold an AFSL for members of the CPA Australia, the Institute of Chartered Accountants in Australia or the Institute of Public Accountants who provide advice about acquiring or disposing of an interest in an SMSF.

### **Schedule 3 – Amendment that commence on 1 July 2019**

Item 1 repeals new regulation 7.6.01BA, removing the framework that provides a streamlined application process for recognised accountants. Removing 7.6.01BA does not result in removing the licence for those licensees who obtained their licence through the streamlined licence application process. After 1 July 2019, the full obligation in section 912(1)(e) of the Act will apply to all licensees.

## ATTACHMENT B

### Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

#### *Corporations Amendment Regulation 2013 (No. 3)*

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The *Corporations Amendment Regulation 2013 (No 3)* makes a number of amendments to the *Corporations Regulations 2001* (the Principal Regulations). The amendments remove the current exemption which allows accountants to provide financial advice on self-managed superannuation funds (SMSFs) without an Australian Financial Services Licence (AFSL) from 1 July 2016 and provides alternative licensing arrangements.

Specifically, the amendments to the Principal Regulations:

- remove the accountants' licensing exemption in regulation 7.1.29A of the Principal Regulations from 1 July 2016;
- provide that recognised accountants, partnerships or corporations who apply for an AFSL between 1 July 2013 and 30 June 2016 and only provide particular advice services do not have to demonstrate that they meet the experience required for the purposes of the organisational competence requirement in section 912A(1)(e);
- provide that licensees who receive an AFSL under this streamlined process must within three years of being granted the licence, if requested in writing by ASIC, demonstrate to ASIC they have the requisite knowledge and the competence to provide the financial services covered by their licence; and
- provide that any licensee who only provides particular advice services and does not handle client-money can lodge an annual compliance certificate instead of an auditor's report.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.



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## ***Regulation impact statement: Replacement of Accountants' Exemption***

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### **Background**

1. Advice provided by accountants and financial advisers is an important driver in the establishment and closing of a self managed superannuation fund (SMSF). As a general rule, Australian financial services providers are obliged to be licensed, that is, to obtain an Australian financial services licence (AFSL), under the financial services regime introduced through the *Financial Services Reform Act 2001* (FSR Act).

2. However since 2004, recognised accountants (who have membership of at least one of three specific accounting bodies<sup>1</sup>) have been exempt from the requirement to be licensed when providing advice concerning the acquisition or disposal of an interest in a SMSF.

3. In response to the concerns and issues identified with the licensing exemption as well as feedback from the accounting industry about the kind of advice accountants would like to provide, in April 2010, the Government announced that:

“The exemption permitting accountants to provide advice on the establishment and closing of self-managed superannuation funds (SMSFs) without holding an Australian Financial Services Licence (AFSL) will be removed. The Government is concerned that the current exemption does not provide an appropriate framework for advice in relation to SMSFs and superannuation more generally. The Government will consult with industry on an appropriate alternative to the current exemption, including a potentially a streamlined licensing regime, and there will be an appropriate transitional period.”

4. Further in December 2010, the Government responded to a recommendation of the Super System Review that the:

“Government should legislate to require advisers to hold an AFSL where they provide advice in relation to the establishment of a SMSF. The accountants' licence exemption should not be replaced by any new exemption or restricted licensing framework.”

5. The Government response stated:

“The Government agrees that the accountants' Australian financial services licence (AFSL) exemption should be removed, and is currently consulting with industry on an appropriate alternative to the exemption as

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<sup>1</sup>Includes the Institute of Chartered Accountants in Australia (ICAA), the Institute of Public Accountants (formerly the National Institute of Accountants), and CPA Australia.

part of the Future of Financial Advice process, including a restricted licensing framework.”

6. Most recently, in April 2011, the Government announced:  
“Treasury, ASIC and the accounting bodies are now working together on various initiatives that maintain a level playing field for what is needed to provide financial advice but at the same time will assist accountants to obtain a licence.”

## **Problem**

7. The licensing exemption raises consumer protection concerns as key protections afforded by the AFSL regime are not in place. Unlike other providers of advice operating within the regime, accountants operating under the exemption are not required to meet licensing and ongoing criteria including maintaining the competence of employees and ensuring they are adequately trained, having dispute resolution mechanisms and adequate compensation arrangements in place for retail clients, and adequately managing any conflicts of interest that arise.

8. Further, accountants operating under the exemption are not required to provide advice that is appropriate for their clients and disclosure obligations do not apply.

9. Under the exemption, accountants are not permitted to advise on investment strategies for the SMSF, on the relative merits of superannuation compared with other financial products or on any other superannuation product unless they are licensed financial services providers. This means the advice that unlicensed accountants can provide in relation to SMSFs may be lopsided, and skewed towards recommending a SMSF. The Government is of the view that enabling accountants to consider a broader range of issues would bring significant consumer benefits.

10. Further, there is a perception that accountants face a significant conflict of interest and bias in making recommendations about the establishment of a SMSF. An accountant may gain significant revenue from a client’s decision to start a SMSF through setting up the SMSF and providing professional services to support a SMSF, such as audit and compliance work.

11. There are also concerns that the exemption creates an uneven playing field. Many sections of the financial services industry object to the licensing carve out for accountants.

12. For these reasons, the accountants’ exemption is inconsistent with the broad intentions and objectives of the FSR Act. The FSR Act is intended to ensure that people receiving advice are fully informed of their options, and that such advice comes from those who are required to be familiar with, and educated upon, the ranges of options within the areas in which they give advice. The exemption is also inconsistent with the intention of the FSR Act to deliver a competitively neutral, single licensing regime for financial advice and dealings in relation to financial products.

13. The professional accounting bodies have also indicated to Government that they consider the current framework to be unsatisfactory as it does not enable accountants to talk to their clients about financial products outside of SMSFs. Accountants are often approached by their clients to provide feedback on a broader range of financial issues particularly in the areas of superannuation, insurance and basic deposit products. This work is often incidental to the mainstream work of accountants (providing advice to clients on taxation and accounting matters).

14. As accountants are generally not aligned to any provider of financial products, accountants have indicated that they are for the most part not interested in providing advice to clients about specific products (for example, recommending a superannuation fund that the client invest their money with). Rather, accountants are interested in providing advice at the 'class of product' level. For example, this advice might cover whether the client should invest surplus cash into a superannuation fund or a term deposit, but would not make recommendations about any specific superannuation fund or term deposit. This form of advice is sometimes referred to as 'class of product' or 'non-product' advice because it does not involve making specific product recommendations.

15. Currently, most accountants cannot provide this advice to their clients because they do not have an AFSL even though their background and experience may mean they are qualified to obtain a licence. The professional accounting bodies have advised that their members are concerned about applying for an AFSL to enable them to provide this advice because the perceived cost involved in applying for the licence may outweigh the likely revenue the accountant would receive given the incidental nature of the services they would be providing.

16. In addition, accountants have noted that aside from the cost concerns, in some cases they may not satisfy all the criteria to obtain a licence. In particular, some of the elements to obtain an AFSL specify a set period of industry experience. It may be difficult for an accountant to obtain this experience as this typically involves gaining experience with an established licensee, and many accountants do not currently operate under a licensee.

### **Objectives of Government action**

17. The objective of Government action in this area is to ensure that there is an appropriate regulatory framework governing the provision of SMSF advice to clients. As noted above, there are concerns that the existing exemption for accountants exclude the operation of the consumer protection elements introduced by FSR and proposed through the *Future of Financial Advice* (FOFA) reforms.

18. As part of this process, it would be desirable if a solution could be reached that allowed accountants the ability to provide a broader range of financial advice to their clients in situations where their experience and qualifications mean they are suitably qualified to provide

this advice. This would be consistent with the Government's objectives around improving access to financial advice.

## **Options that may achieve objectives**

### **Option A: Require accountants to provide advice within the AFSL regime and include measures to address accountants' concerns about costs**

19. Under this option, from 1 July 2016, accountants wanting to provide any financial advice, including advice relating to SMSFs would need to hold an AFSL. Accountants and others would be able to apply for a conditional AFSL customised to authorise advice on a broader range of issues than just SMSFs and also to address some of the cost concerns about coming into the regime. Importantly, anyone would be able to apply for the conditional AFSL. Access would not be restricted to accountants.

20. While anyone would be able to apply for this conditional AFSL, given the large volume of accountants expected to be entering the regime between now and 1 July 2016 streamlining, arrangements will be put in place to facilitate the transition. These streamlining arrangements will speed up the process of obtaining an AFSL for an accountant by removing the need for ASIC to consider whether each individual accountant has the necessary experience to provide advice.

21. Rather, an accountant with the public practice certificate from one of the professional accounting bodies (CPA Australia, the Institute of Chartered Accountants in Australia and the Institute of Public Accountants) would be deemed to have the necessary experience in order to provide advice on the following kinds of financial products:

- Superannuation products as a product class (but not particular products);
- SMSFs;
- Securities as a product class (but not particular products);
- Simple managed investment schemes as a product class (but not particular products);
- General and life insurance as a product class (but not particular products); and
- Basic deposit products as a product class (but not particular products).

22. In addition, accountants will also be authorised to deal (or arrange to deal) in a financial product to the extent necessary to set up a SMSF. The requirement for a public practice certificate ensure that only accountants with higher levels of training and professional oversight are able to take advantage of the streamlining.

23. These authorisations are designed to improve access for consumers to strategic, non-product advice. It is expected that under a class of product authorisation, accountants will be able to provide any

form of advice as long it does not make recommendations (in form or substance) about a specific financial product. However, an accountant may need to consider the client's existing financial products as part of determining the client's relevant circumstances.

24. Accountants will be able to make recommendations in relation to the client's existing superannuation funds to the extent needed when making a recommendation to invest in an SMSF or when providing advice to clients on contributions or pensions. This will facilitate the provision of switching or consolidation advice involving SMSFs. Importantly, anyone making switching or consolidation recommendations involving SMSFs will still need to meet the obligations on superannuation switching in section 947D of the Corporations Act and comply with the proposed best interests duty.

25. Streamlining arrangements for experience would only be available during limited transitional period from 1 July 2013 to 1 July 2016. After this time, accountants seeking to obtain an AFSL will be required to satisfy the same experience requirements as anyone else.

26. In order to ensure that only accountants with the necessary skills and knowledge are licensed to provide financial advice, the existing training requirements will continue to applying to accountants that seek a licence during the transition period. In addition, accountants that take advantage of the streamlined experience requirements will need to undergo a knowledge update review at the end of three years to ensure their skills are up to date.

27. Anyone holding this form of conditional AFSL would be expected to meet all the other licensing and ongoing obligations, with the exception of lodging an annual audit.

28. In order to minimise the additional regulatory costs of operating within the AFSL regime, holders of this conditional AFSL would be able to lodge a compliance certificate rather than an annual audit. Currently, all AFSL holders are required to undergo an annual external audit of their financial statements and internal controls to ensure compliance with the Corporations Act. The reduced audit requirement would only apply where the AFSL holder does not make any product recommendations (except in relation to SMSFs) and does not handle any client money in connection with the provision of the advice.

29. In addition, the Government has provided ASIC with funding to further simplify and upgrade the licensing application process in the 2012-13 Budget. This is expected to reduce cost and inconvenience for anyone (including accountants) wishing to apply for an AFSL.

### **Option B: Status Quo**

30. Under this option, the current arrangements would continue to operate, despite previous Government announcements. Accountants would continue to provide advice relating to SMSFs outside the regulatory regime.

## **Impact analysis**

### **Option A: Require accountants to provide advice within the AFSL regime and include measures to address accountants' concerns about costs**

31. Under this option, accountants wishing to provide advice on SMSFs, or any other financial advice, would need to hold an AFSL. As described above, this would be a conditional AFSL targeted at the kind of advice accountants want to provide and also at addressing cost concerns about coming into the AFSL regime.

32. A key benefit of this option is that it provides an appropriate regulatory framework for accountants and others providing limited financial advice including advice relating to SMSFs.

33. All the consumer protections provided by the AFSL regime would be in place. These protections include licensing requirements such as complying with all financial services laws, maintaining the competence of employees and ensuring they are adequately trained, having dispute resolution mechanisms in place and adequate compensation arrangements for retail clients and adequately managing any conflicts of interest that arise.

34. The streamlining of the experience requirement is designed to recognise the skills acquired by accountants both in providing financial advice under various exemptions in the Corporations Act (including the exemption relating to self-managed superannuation funds) and also the knowledge acquired as part of obtaining a public practice certificate. The streamlining is designed to make it more cost-effective both for accountants when lodging their applications and for ASIC when considering the applications.

35. The only AFSL requirement that would be different for holders of the limited authorisation AFSL is the requirement to lodge an independent annual audit. Under this option, the AFSL holder would be able to lodge a compliance certificate (a form of self certification) under certain limited circumstances. This would be restricted to AFSL holders that do not make product recommendations, except in relation to SMSFs, and do not handle clients' money in relation the provision of the advice. Given the limited nature of services provided it is not considered necessary to require these AFSL holders to conduct a full audit every year.

36. In addition to the licensing protections, full disclosure requirements would apply and holders of the limited AFSL would need to comply with the best interests duty (to be introduced under the FOFA reforms) when providing advice. As such, this option addresses any concerns about conflicts of interests that exist with the current licensing exemption.

37. Under this option, consumers will benefit from an overall expansion in the availability of advice as the number of providers of advice would expand significantly and the range of issues accountants could consider would expand. The accounting bodies have estimated

that under this proposal, approximately 5,000 to 10,000 accountants would apply for an AFSL.

38. In addition to expanding the availability of advice, this option will also expand new markets for accountants and others wanting to provide limited financial advice. At the same time as consumers would benefit from receiving more advice from their licensed accountant, accountants would benefit from expanding the advice side of their business.

39. The addition of potentially thousands of new entrants into the advice market is expected to increase competition and put downward pressure on the cost of advice, particularly for piece-by-piece or scaled advice as opposed to full service holistic advice.

40. A further benefit of this option is that it overcomes level playing field concerns. Accountants would be required to hold an AFSL to provide advice on SMSFs and would therefore be treated the same as other providers of advice from a licensing perspective. In this sense, this option is more consistent with the original intent of the FSR Act.

41. Representatives of the financial advice industry have indicated their support for requiring accountants to hold an AFSL and have advocated that all providers of advice should be subject to the same regulatory requirements. The Financial Planning Association (FPA) has given in principle support for the approach outlined in this Option. In addition, the professional accounting bodies have also given their support to the approach.

42. While there may be some risk that scaling back the audit requirement would benefit holders of the conditional AFSL over those who hold broader AFSLs, it is important to note that anyone can apply for the conditional AFSL and benefit from the scaled back audit requirement as long as they meet the criteria. It does not favour one part of the industry over another.

43. Compared with Option B (status quo), there would be significant additional costs involved in obtaining an AFSL for accountants. The application fee, prescribed by law, when applying for a licence is \$159 for a natural person and \$287 for a company. In the 2012-13 Budget, the Government announced these fees would be increasing to \$825 for a natural person and \$1,485 for a company.

44. This figure is relatively modest; however it does not include the costs to the applicant of preparing the application and ensuring they can satisfy the license criteria. This would increase the true cost significantly. In some instances, licence applicants have engaged the services of a compliance consultation to assist them in obtaining a licence. The cost of these services can be in the thousands of dollars.

45. Overall, estimates of the full cost of obtaining an AFSL are approximately \$10,000 to \$20,000 or potentially higher. This includes the costs associated with meeting all the licensing and ongoing requirements including having adequate professional indemnity (PI)

insurance, membership to an external dispute resolution scheme, and lodging an annual audit as well as the application fee described above.

46. These costs would not exist under Option B as accountants would continue to provide advice on SMSFs without an AFSL or any other kind of licence.

#### *Annual audit*

47. To address concerns about the cost of coming into the AFSL regime, this option contains measures to minimise the regulatory cost of operating within the AFSL regime. As outlined, holders of the conditional AFSL would be able to lodge an annual compliance certificate instead of conduct a full annual audit.

48. An annual compliance certificate is less costly and potentially less onerous than an audit for a licensee. It would generate a significant ongoing cost reduction for holders of the conditional AFSL that do not make product recommendations and do not deal with clients' money.

49. Importantly, lodging a compliance certificate instead of an audit would be available to anyone who meets the narrow criteria and would not be restricted to accountants. As such, this option ensures a level playing field and does not benefit one part of the industry over another. However, it is expected that licensees that have complex operations (and therefore higher audit costs) would be unlikely to satisfy the proposed narrow criteria to only lodge a compliance certificate.

50. In terms of the savings from the replacement of the audit requirement, current cost estimates for audits range from \$2,000 to \$10,000 depending on the nature, complexity and size of the business. These costs would be substantially reduced following the introduction of the compliance certificate requirement.

51. The cost saving for accountants and others who meet the criteria for substituting a compliance certificate for an annual audit is clear. However, the corporate regulator, the Australian Securities and Investments Commission (ASIC), has expressed concern about scaling back the audit requirement. It has argued that a certificate is less likely to reflect misconduct or non-compliance compared to an independent audit.

52. As such, ASIC argues that removing the audit requirement for some AFSL holders makes it more difficult to ensure compliance. Compared to a compliance certificate, an annual audit is more likely to promote discipline in the AFSL holder's processes and it provides an external assurance that a licensee is meeting its obligations. Without an audit, ASIC argues it would largely be relying on complaints by the public and its surveillance activities to become aware of breaches.

53. However, given the very limited nature of services being provided by limited authorisation AFSL holders and the tight conditions that would apply for lodging a certificate instead of an audit, the risks identified by ASIC are considered to be low. If an AFSL holder is restricted to class of product advice and does not make financial product



recommendations, the risk of consumer detriment is arguable much lower compared to other AFSL holders with broad advice authorisations on their licence.

54. Weighing these risks against the cost it would save accountants, substituting a compliance certificate for the audit is considered an appropriate and cost effective option.

55. In addition, there is a precedent for using compliance certificates in the Consumer Credit Regime. ASIC notes there are similarities between small credit licensees and the types of accounting businesses likely to seek an AFSL.

*Other costs*

56. The Government has provided ASIC with funding to simplify the AFSL application process. This would involve reducing the number of questions in the application form, changing the system to make more use of online processing and providing increased support and guidance for applicants. In addition, accountants that are members of a professional accounting body will not be required to provide evidence of experience when applying. These measures will significantly reduce the cost involved in applying for a licence, and also the time required for ASIC to process applications. ASIC expects the time taken to lodge an application to be reduced by 50 per cent.

57. ASIC has expressed concerns with streamlining the experience requirement for accountants particularly in relation to providing advice on managed investment schemes. ASIC notes that often these products can be complex and consumers potentially run the risk of losing significant sums of money if advised incorrectly.

58. Steps have been taken to effectively manage this risk. Importantly, the streamlining of experience will only apply to managed investment schemes that are classified as 'simple' under the Corporations Act. This is limited to managed investment schemes that are able to realise their holdings within 10 business days. This could include, for example, cash management trusts or equity funds, but would exclude illiquid schemes like real estate development trusts and mortgage trusts. In addition, accountants will not be able to recognise any particular product. Rather the advice provided will need to be at the class of product level. Clients that want advice on a particular product will need to talk to a financial adviser.

59. Other parts of the financial advice industry may also express concerns that only accountants will be able to benefit from the streamlined experience requirements. They may consider that this would provide accountants with a regulatory advantage that is not available to others that are still required to provide their experience to ASIC before becoming licensed.

60. It should be noted that the streamlining arrangements are designed to facilitate the transition of a large volume of accountants, who already provide advice, into the licensing regime in a short period of time. At the end of a three year transitional period, the streamlining

arrangements will be removed. Similar streamlining arrangements were put in place when both the AFSL and credit licensing regimes were introduced. Once licenced, accountants providing financial advice will be subject to the same regulatory obligations as anyone else that provides advice.

61. Accountants coming within the licensing regime will need to have mandated minimum levels of professional indemnity insurance. Accountants have advised that the minimum levels exceed their current levels of insurance and will increase premiums possibly by a few thousand dollars. In addition, accountants will need to be a member of an external dispute resolution body once they obtain a license. This is likely to cost around \$1,000.

62. The higher costs for accountants associated with this option potentially raises distributional issues. The cost of obtaining a licence is reasonably fixed in relation to the size of the business in question. For example, the cost for a small accounting practice to obtain a licence is similar to the cost for a larger business. However, relative to total revenue and other costs, the licensing cost represents a barrier to entry that is much more significant for smaller accounting practices, and puts them at a disadvantage compared to larger businesses.

63. There is a risk that this cost may be prohibitive for some smaller businesses and may act as a deterrent for such businesses to apply for an AFSL at all. However, the accounting bodies have indicated smaller practices have a strong interest in being able to provide advice and recommend SMSFs in particular.

64. Finally, there are likely to be some significant costs for the Government associated with this approach including significant costs for ASIC in assessing licence applications. This cost would depend on the actual number of accountants that apply for an AFSL, however ASIC estimates the cost may be approximately \$14.6 million over three years. ASIC received additional funding for this work in the 2012-13 Budget.

65. In addition to the cost of processing licences, there would also be a cost of approximately \$1.2 million associated with ASIC simplifying the licensing application process in order to save all applicants time and money.

66. A further risk for Government is that uptake of accountants applying for a licence is low. This would not be a desirable outcome given the announced reform, the need to provide an appropriate framework for accountants to provide SMSF advice, and the broader objective of the reforms to expand availability of advice.

	<i>Benefits</i>	<i>Costs</i>
<b>Consumers</b>	Provides an appropriate regulatory regime for advice on SMSFs and maintains the full range of consumer protections of	There is a risk consumers may not clearly understand the advice they are receiving and any limitations associated with

	<p>the AFSL regime.</p> <p>There is less complexity for consumers with a single advice regime.</p> <p>Consumers would benefit from an overall expansion in the availability advice, as accountants wishing to provide advice will be brought into the AFSL regime.</p>	<p>it.</p> <p>Reduced ongoing protections for consumers as the removal of the audit requirement will potentially make it more difficult for ASIC to identify non-compliant advisers.</p> <p>However, the reduction in consumer protection is not considered a significant risk.</p>
<b>Industry (accountants)</b>	<p>Provides a more appropriate framework for accountants to provide SMSF and other limited advice compared to the existing exemption.</p> <p>Ensures a level playing field as all providers of advice would be required to hold a licence.</p> <p>Opens up new advice markets for accountants.</p> <p>Contains measures to address cost concerns:</p> <ul style="list-style-type: none"> <li>- scaling back of audit requirements would save between \$2,000 and \$10,000 or more;</li> <li>- simplifying the AFSL application process;</li> <li>- streamlining the experience requirement for accountants with a public practice certificate from a professional accounting body.</li> </ul>	<p>Despite measures to address cost concerns, there will be significant additional point-of-issue and ongoing licensing compliance costs for accountants compared to the status quo. This is expected to affect approximately 5,000 to 10,000 accountants.</p>
<b>Industry (other licensees and applicants)</b>	<p>All AFSL applicants would benefit from streamlining and simplifying the application process.</p> <p>All AFSL holders and new</p>	<p>Minimal.</p> <p>Non-accountants that provide advice may believe they are placed at a regulatory disadvantage because the streamlined</p>

	<p>applicants would be able to apply for the conditional AFSL – the licence would not be restricted to accountants.</p>	<p>experience requirements only apply to accountants. This streamlining will only stay in place for the transitional period (three years) solely to facilitate the transition of accountants into the AFSL regime. Once licenced, accountants providing financial advice will be subject to the same regulatory obligations as anyone else that provides advice.</p> <p>There may also be some risk that scaling back the audit requirement would benefit holders of the conditional AFSL over those who hold broader AFSLs. However, anyone can apply for the conditional AFSL and benefit from the scaled back audit requirement as long as they meet the criteria. It does not favour one part of the industry over another.</p>
<p><b>Government</b></p>		<p>There is a risk that uptake of accountants applying for a licence is low.</p> <p>There may be significant costs for ASIC. ASIC has been provided with funding in the 2012-13 Budget.</p>

**Option B: Status Quo**

67. Under this option, accountants would continue to provide advice relating to SMSFs without holding a licence.

68. This option does not meet the Government's objective of ensuring there is an appropriate regulatory framework governing the provision of SMSF advice. Nor does it address investor protection concerns as accountants would still be operating outside the regime.

69. This option does not address level playing field issues as accountants would continue to benefit from providing advice on SMSFs outside the AFSL regime while other providers need to be licensed.

70. This is not the preferred option as it does not achieve the Government's policy objectives and does not address concerns about the adequacy of consumer protections in place for advice relating to SMSFs.

	<b>Benefits</b>	<b>Costs</b>
<b>Consumers</b>	Nil	Significant consumer protection concerns remain as accountants are providing advice outside the regulatory regime.
<b>Industry</b>	Accountants would benefit over other providers of advice as they could continue operating without a licence.  Regulatory costs for accountants would remain minimal, compared to Option A.	Does not provide a level playing field for all industry players.
<b>Government</b>		The Government has announced the exemption will be removed. This option would be embarrassing for the Government.  Government would be allowing unlicensed advice to continue.

## **Consultation**

71. The issue of an appropriate replacement for the accountants' exemption and the delivery of 'non product' forms of advice have been canvassed in some detail at the Future of Financial Advice Peak Consultation Group (PCG) meetings. The PCG is the primary forum through which the Government has consulted with industry on the implementation details of the FOFA reforms. The PCG has considered the issue of non-product advice at four meetings.

72. The PCG includes a broad range of stakeholders including industry (Association of Financial Advisers, Financial Planning Association, Financial Services Council, Australian Financial Markets Association, Industry Super Network, Association of Super Funds of Australia, Australian Bankers Association, Law Council of Australia, the professional accounting bodies, Australasian Compliance Institute, Insurance Council of Australia, National Insurance Brokers Association, Abacus and Self-Managed Superannuation Fund Professionals' Association of Australia Limited), as well as consumers groups (CHOICE and Consumer Action Law Centre), the Financial Services Ombudsman, the Financial Sector Union and ASIC.

73. In addition to PCG meetings, Treasury has met separately with targeted stakeholders (including the professional accounting bodies, ASIC, the Financial Planning Association and superannuation industry bodies) to discuss this issue on numerous occasions.

74. The professional accounting bodies have indicated support for arrangements that involve lower thresholds to entry and regulatory costs and that enable them to provide class of product advice on a broader range of issues including investments such as shares and managed investment schemes. They are of the view that the AFSL framework fails to adequately recognise the obligations imposed on members of professional accounting bodies through their professional standards.

75. In contrast to the view held by the accounting bodies, ASIC and consumer groups have expressed concerns over adopting any kind of 'lighter touch' regulatory framework in relation to class of product advice. It has been argued that this form of advice is often strategic and can be complex depending on the financial circumstances of the client. In addition, a lighter touch regime (or significant relaxation of licensing thresholds) has the potential to give accountants a competitive advantage by allowing them easier access into the financial advice regime.

76. The FPA (which represents around 12,000 financial planners) has indicated its strong support for removing the licensing exemption and has formally stated that it supports an approach that is consistent and that promotes professional equality. The FPA indicated it supports limited authorisation AFSLs which is consistent with Option A. The FPA also strongly advocated that all providers of advice should be subject to the same regulatory requirements. It does not support any reduction or exceptions in the AFSL requirements for accountants.

77. The arrangements proposed under Option A place the same licensing and advice requirements on holders of the conditional AFSLs, with the exception of streamlined experience requirements and scaling back the audit requirement under certain limited circumstances. ASIC has opposed the streamlined experience requirements to the extent that it applies to advice on investments arguing that accountants should not be able to provide advice in this area unless they can meet the standard experience requirements.

78. Industry stakeholders generally supported the replacement of the audit requirement with a compliance certificate in relation to class of product advice. However, ASIC has raised concerns that it will make it more difficult for them to identify non-compliant licensees. It may result in ASIC having to increase its monitoring of these licensees.

### **Conclusion and recommended option**

79. Option A most fully achieves the Government's objectives. Bringing accountants that provide SMSF advice under the existing exemption into the AFSL regime will significantly increase the level of consumer protection associated with this form of advice. This will address any perceived conflicts of interests with accountants providing this form of advice.

80. Option A appropriately targets the ongoing regulatory requirements associated with providing financial advice with the underlying risks involved in the provision of the advice. Although class of product advice has a lower element of risk for consumers compared to holistic financial product advice, it is still crucial to ensure investor protections are in place.

81. Option A ensures that investors will benefit from all the protections of the AFSL regime when receiving advice from an accountant or anyone else.

82. Importantly, Option A also contains elements to minimise the additional costs for accountants of becoming licensed. Accountants that are members of a professional accounting body will benefit from streamlined experience requirements during the transitional period. Further, licensees would be able to lodge a compliance certificate in lieu of engaging an auditor annually. Importantly, this would be tightly restricted to where the license is not providing product recommendations (except in relation to SMSFs) and is not handling clients' money.

83. In addition, under Option A the Government has provided ASIC with funding to simplify the AFSL application process which will benefit all AFSL applicants.

84. These measures ensure that the costs for accountants to come within the AFSL regime are better balanced with the benefits to consumers. Ultimately, the ongoing benefits to consumers through enhanced protections make the streamlining arrangements necessary to bring accountants into the regime worthwhile.

85. By requiring accountants wishing to provide financial advice to obtain an AFSL, Option A helps to level the playing field in relation to the provision of financial advice. The advice provided by accountants will be subject to the same regulatory requirements as financial advice provided from any other source.

86. Option B is not preferred as it does not address the concerns about the current licensing exemption, nor does it achieve the Government's objectives. Critically, it would mean accountants

continue to operate outside of the regulatory framework with limited protections available to clients.

### **Implementation and review**

87. Option A would be implemented via amendments to the *Corporations Regulations 2001*. The regulations would come into effect on 1 July 2013.

88. It is expected that further consultation will take place on the draft regulations that will give effect to the new arrangements. This would occur in the second half of 2012.

89. Given the volume of accountants that may apply for a licence, it is envisaged that transitional arrangements will be necessary to assist both industry and ASIC in adapting to the new regime. It is envisaged that a three year transitional period is appropriate and this period would commence from 1 July 2013 and conclude on 1 July 2016. This would provide sufficient time for ASIC to update its systems as necessary and process a significant number of licence applications. It also provides sufficient time for accountants to go through the AFSL application process and make adjustments to their businesses if necessary. It is envisaged the licensing exemption would remain in place until 1 July 2016 at which time it would expire.

90. Following the conclusion of the transitional period, the arrangements would be reviewed to determine whether the Government's objective, both in terms of providing a stronger regulatory framework for SMSF advice and improving access to advice, have been satisfied. ASIC will continue its role in the ongoing monitoring of the regulation in this area. If there is evidence that these objectives have not been satisfied the options outlined above will be reassessed.