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**EXPLANATORY STATEMENT for**  
**ASIC Corporations (Recognised Accountants: Exempt Services) Instrument**  
**2016/1151**

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (**ASIC**) makes *ASIC Corporations (Recognised Accountants: Exempt Services) Instrument 2016/1151* under subsection 926A(2) of the *Corporations Act 2001 (the Act)*. This paragraph of the Act provides that ASIC may declare that the provisions in Part 7.6 (other than Divisions 4 and 8) of the Act apply in relation to a person or financial product, or a class of persons or financial products, as if the specified provisions were omitted, modified or varied as specified in the declaration.

**1. Background**

Under the *Corporations Amendment Regulation 2013 (No 3) (the Amending Regulation)*, regulation 7.1.29A of the *Corporations Regulations 2001 (the Regulations)*, which allowed recognised accountants to provide advice relating to the acquisition or disposal of interests in a self-managed superannuation fund (**SMSF**) without being covered by an Australian financial services (**AFS**) licence (accountants' exemption), was repealed on 1 July 2016. A recognised accountant was defined as:

- (a) a member of CPA Australia who:
  - (i) is entitled to use the letters "CPA" or "FCPA"; and
  - (ii) is subject to, and complies with, CPA's continuing professional education requirements; or
  
- (b) a member of the Institute of Chartered Accountants in Australia (**ICAA**) who:
  - (i) is entitled to use the letters "ACA", "CA" or "FCA"; and
  - (ii) is subject to, and complies with, ICAA's continuing professional education requirements; or
  
- (c) a member of the Institute of Public Accountants (**IPA**) who:
  - (i) is entitled to use the letters "MIPA" or "FIPA"; and
  - (ii) is subject to, and complies with, IPA's continuing professional education requirements.

To facilitate accountants moving to the AFS licensing regime, the Amending Regulation created an alternative form of licence, known as a limited AFS licence. Accountants (and other advisers) have been able to apply for a limited AFS licence from 1 July 2013.

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A limited AFS licensee can be authorised to provide the following services:

- financial product advice on SMSFs including, but not limited to, advice to acquire (or not to acquire) or dispose of an SMSF
- financial product advice on superannuation products in relation to a person's existing holding in superannuation products but only to the extent required for:
  - making a recommendation that a person establish an SMSF; or
  - providing advice to the person on contributions or pensions under a superannuation product
- class of product advice in relation to 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 superfund

"Class of product advice" is defined as financial product advice about a class or products but does not include a recommendation about a specific product in the class.

The removal of the accountants' exemption has given rise to an unintended consequence for limited AFS licensees who wish to provide advice in relation to the taxation implications of financial products which are not covered by their licence in circumstances contemplated by regulation 7.1.29(4).

Regulation 7.1.29(4) enables a person to provide advice on taxation issues (including advice in relation to the taxation implications of financial products) without a licence. If the tax advice is also financial product advice to a retail client, this exemption is only available if it is accompanied by a written statement which states:

- (a) the person providing the advice is not licensed to provide financial product advice under the Act; and
- (b) taxation is only one of the matters that must be considered when making a decision on a financial product; and
- (c) the client should consider taking advice from the holder of an AFS licence before making a decision on a financial product: regulation 7.1.29(4)(c)(ii).

Limited AFS licensees cannot comply with the requirement to provide a written statement advising that they are not licensed and therefore cannot rely on the exemption in regulation

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7.1.29(4). They are unable to provide taxation advice that is financial product advice on classes of financial products not covered by their licence or on specific financial products, other than SMSFs or the client's existing superannuation product. In other words, they are restricted from providing advice that can be provided by an unlicensed accountant or by a full AFS licensee.

This unintended consequence stems from the drafting of the Regulations which took place without contemplation of a future limited licensing regime.

## **2. Purpose of the instrument**

The purpose of *ASIC Corporations (Recognised Accountants: Exempt Services) Instrument 2016/1151* is to correct the regulatory inconsistency which prevents limited AFS licensees from providing advice to retail clients in relation to the taxation implications of financial products which are not covered by their licence in circumstances contemplated by regulation 7.1.29(4). It does this by declaring that a limited AFS licensee, or an authorised representative of a limited licensee, is able to rely on the exemption in regulation 7.1.29(4) to provide tax advice (which is also financial product advice) on financial products that are not covered by their licence.

## **3. Operation of the instrument**

*ASIC Corporations (Recognised Accountants: Exempt Services) Instrument 2016/1151* modifies regulation 7.1.29(4)(c)(ii) as it applies to limited AFS licensees and their authorised representatives so that a limited AFS licensee, or the authorised representative of a limited licensee, can rely on the exemption to provide tax advice to a retail client which is not covered by an authorisation in their licence. Instead of providing a written statement which must state, among other things, that the person providing the advice is not licensed under the Act, a limited AFS licensee must provide a written statement that:

- (a) the person providing the advice is a limited licensee or an authorised representative of a limited licensee who is authorised to provide one or more limited financial services; and
- (b) taxation is only one of the matters that must be considered when making a decision on a financial product; and
- (c) the client should consider taking advice from the holder of an AFS licence before making a decision on the financial product.

## **4. Consultation**

*ASIC Corporations (Recognised Accountants: Exempt Services) Instrument 2016/1151* is of a minor or machinery nature and, therefore, consultation is unnecessary. Nevertheless, ASIC conducted a targeted consultation with key stakeholders as part of the process of developing new guidance about the recent changes to the licensing requirements for accountants who

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provide SMSF services. On 11 August 2016, ASIC wrote to CPA, ICAANZ, IPA, the Tax Practitioners Board (*TPB*), the Financial Ombudsman Service and the SMSF Association seeking comments about the proposed guidance and views about:

- (i) whether a strict interpretation of regulation 7.1.29(4) would result in a regulatory inconsistency in relation to limited AFS licensees; and
- (ii) whether a class order would be an appropriate means to address this inconsistency.

All five stakeholders who responded to the consultation (CPA, ICAANZ, IPA, SMSFA and TPB) expressed concern about the regulatory inconsistency and supported the making of a class order to correct it.

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## Statement of Compatibility with Human Rights

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

### **ASIC Corporations (Recognised Accountants: Exempt Services) Instrument 2016/1151**

*ASIC Corporations (Recognised Accountants: Exempt Services) Instrument 2016/1151* 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**

*The Corporations Amendment Regulation 2013 (No 3) (the Amending Regulation)* has repealed regulation 7.1.29A of the *Corporations Regulations 2001 (the Regulations)* which allowed recognised accountants to provide advice relating to the acquisition or disposal of interests in a self-managed superannuation fund without being covered by an Australian financial services (AFS) licence.

To facilitate accountants moving to the AFS licensing regime, the Amending Regulation also created an alternative form of licence, known as a limited AFS licence.

However, this has given rise to an unintended consequence for limited AFS licensees who wish to provide advice in relation to the taxation implications of financial products which are not covered by their licence in circumstances contemplated by regulation 7.1.29(4). Limited AFS licensees are unable to provide tax advice to retail clients under regulation 7.1.29(4) because they cannot comply with requirement in sub-paragraph 7.1.29(4)(c)(ii) to provide a statement that they are not licensed to provide financial advice.

This instrument corrects that unintended consequence by declaring that limited AFS licensees and their authorised representatives can rely on the exemption in regulation 7.1.29(4) to provide tax advice on financial products that are not covered by their licence.

#### **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.