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General Manager
Retail Investor Division
The Treasury
Langton Crescent
PARKES ACT 2600
Email: futureofadvice@treasury.gov.au

Dear Sir/Madam,

Thank you for the opportunity to comment on the draft regulations regarding the replacement for the accountants' exemption.

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to protect, promote and advance the interests of Australia's superannuation funds, their trustees and their members. We focus on the issues that affect the entire superannuation industry. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self-managed superannuation funds (SMSFs) and small APRA funds through its service provider membership, represent over 90% of the 12 million Australians with superannuation.

General Comments

ASFA's position regarding the existing accountants' licensing exemption is that it causes confusion around the extent to which the exemption applies and also has the potential to produce sub-optimal results for individuals who may be considering establishing an SMSF. Consequently, ASFA has called for the exemption to be abolished.

ASFA has always contended that accountants, or any other person, providing a recommendation in relation to the establishment or ongoing management of an SMSF (or becoming a member of an SMSF) should have appropriate training or expertise and be subject to the Australian Financial Services Licence (AFSL) requirements.

When the accountants' exemption was developed, the debate at the time centred on the fact that many of the people that accountants were servicing were business people and, as such, quite sophisticated as investors. The arrangements around SMSFs often had been part of a business strategy for commercial clients. The importance of this is the fact that there was not the contemplation that SMSFs would become as popular vehicle for "Mums and Dads" or retail clients as they have done over the intervening period.

As such, with the growth in SMSFs and the potential for unsophisticated clients to take up SMSFs, it is important that greater consumer protections be put in place. We applaud some of the requirements that have recently been introduced in relation to SMSFs, including registration and competency standards for SMSF auditors, clearer rules around investments and harsher penalties for illegal early access. But when the regulator, particularly ASIC, is openly expressing concerns about the growing number of people in SMSFs who should not be there, then we believe it is important that action be taken to protect the retirement outcomes of those for whom an SMSF may not be the best option.

Further to this, ASFA strongly urges ASIC to issue regulatory guidance in relation to the provision of advice in relation to SMSFs. This guidance should include disclosure of risks (including investment risk and other risks such as marriage breakdown, ageing, related third parties etc).

We also now have the ability for SMSF trustees to borrow money through limited recourse loans and with that money purchase property assets. We have seen the development of commercial relationships between accountancy firms, real estate agents, mortgage brokers and law firms that provide a one-stop service of purchasing property through the establishment of an SMSF. Because property is not regulated as a financial product under the Corporations Act, currently nowhere in these arrangements do we have an AFSL and certainly no obligation in relation to best interest duty or disclosure of conflicts and remuneration. The world has changed and SMSFs are part of the structure of the superannuation system. It is important that we strengthen the structure of the whole system, not weaken it.

In light of these general comments on ASFA's previously stated positions the following specific comments are provided.

Specific Comments

1. The current draft enables accountants and others to obtain an authorisation to provide financial product advice on SMSFs or to provide advice on superannuation products in relation to a person's existing holding. In ASFA's view, an authorisation limited to SMSFs may mean that there is no obligation on the accountant to assess whether or not a person is better off in an SMSF compared to their current fund or product as they do not have the authorisation to give advice on other products. There are examples where people have been advised to move from a defined benefit fund into an SMSF and have been substantially worse off as a result. We understand that the Financial Ombudsman Service and law firms are increasingly being approached by people who should not have been advised to move from their existing provider. Accordingly, in our view, there should be an 'and' between sub-paragraph 7.6.04(3)(c)(i) and sub-paragraph (ii) or collapse them together in one paragraph.
2. The timing to apply for a licence should be shortened substantially. The pooled superannuation industry and many financial services providers have had significantly shorter deadlines in implementing Stronger Super and FoFA. Whereas the StrongerSuper and FOFA reforms are new law and, as such, much more complicated to implement, the replacement for the accountant's exemption is based on existing law. We would recommend a one year transition only, with a maximum of two, but believe June 2016 is not in the best interests of consumers.

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If you have any queries or comments regarding the contents of our submission, please contact me on (02) 8079 0805 or via e-mail pvamos@superannuation.asn.au.

Yours sincerely



Pauline Vamos
CEO