

Funds Management & Financial Services Alert

Accountants' limited AFS licence: is it right for your practice?

August 2013

As part of the Future of Financial Advice (**FOFA**) reforms, the exemption in the *Corporations Regulations 2001* (Cth) which allows accountants to give advice about self-managed superannuation funds (**SMSFs**) without holding an Australian financial services (**AFS**) licence will be repealed on 1 July 2016. This means that accountants who wish to continue giving advice to their clients about SMSFs will need to obtain an AFS licence.

To facilitate accountants moving to the AFS licensing regime, the Federal Government has created a new form of AFS licence referred to as a 'limited' AFS licence.

But what is the difference between a 'limited' AFS licence and a 'full' AFS licence? Which one best covers the services you want to provide to your clients? What obligations do you not need to comply with under a 'limited' AFS licence and if you are going to get an AFS licence, why not just get a 'full' AFS licence?

Set out in the following table is a comparison of the features of a limited AFS licence compared with a full AFS licence:

TABLE 1: Limited AFS licence vs full AFS licence: a comparison

	Full AFS licence	Limited AFS licence
Financial services that can be provided	All possible authorisations are available.	Limited to: <ul style="list-style-type: none"> • providing advice on SMSFs; • providing advice on superannuation products in relation to a client's existing holding in a super product but only to the extent required for making a recommendation that the person establish an SMSF or advice on contributions or pensions under a super product; • providing 'class of product' advice on a range of financial products; and • arranging for a person to deal in an interest in an SMSF.

	Full AFS licence	Limited AFS licence
Organisational competence	The applicant must have responsible managers who hold the qualifications and have the experience set by ASIC in RG 105. There are five options which the nominated responsible managers can meet. Commonly, responsible managers meet the option which requires the responsible manager to have an undergraduate degree in a relevant discipline and a short industry course to meet the knowledge requirements, and three years out of the last five years' experience as a representative of an AFS licensee.	If the responsible managers nominated are 'recognised accountants', then they do not need to meet ASIC's <i>experience</i> requirements. They will, however, need to meet the <i>knowledge</i> requirements. If an entity obtains a limited AFS licence and nominate 'recognised accountants' as the responsible managers, then the entity is subject to a condition that three years after receiving its licence, ASIC can call on the entity to prove its responsible managers have the appropriate knowledge <i>and</i> skills.
Professional indemnity insurance requirements	If services are provided to retail clients, then professional indemnity insurance must be held.	No difference
Internal and external dispute resolution procedures	If services are provided to retail clients, then the licensee must have an internal dispute resolution mechanism and be a member of an external dispute resolution scheme.	No difference
Financial requirements	Solvency, cash flow projections and where client money is held, surplus liquid funds requirements apply.	No difference
Disclosure requirements	Financial services guides must be provided to retail clients and if personal advice is given, a statement of advice.	No difference
General licensing obligations	Licensees must, among other things, provide their services efficiently, honestly and fairly, manage conflicts of interest, comply with the financial services laws and the conditions on their licence.	No difference
Application fee	\$1,522	No difference
Audit requirements	A registered company auditor must be appointed to undertake an annual audit of the licensee. A licensee must lodge its profit and loss statement and balance sheet annually.	If client money is not handled, then the limited AFS licensee can lodge a compliance certificate rather than an audit. However, the licensee will still need to lodge its profit and loss statement and balance sheet annually.
Application process	Lodgement of form FS01, core proofs and additional proofs.	No difference, other than the omission of the requirement that responsible managers lodge two business references with ASIC where those responsible managers are 'recognised accountants' and the application is made during the transition period (i.e., 2013 to 2016).

What financial services can I provide under a limited AFS licence?

The financial services you can provide to clients under a limited AFS licence are limited to the following:

- Providing financial product advice on SMSFs. 'Financial product advice' includes both 'general' financial product advice and 'personal' financial product advice. Personal financial product advice is where the provider of the advice has considered one or more of the client's objectives, financial situation and needs.
- Providing advice on superannuation products in relation to a client's existing holding in a super product but only to the extent required for making a recommendation that the person establish an SMSF or advice on contributions or pensions under a super product.
- Providing 'class of product' advice about the following financial products:
 - superannuation;
 - securities;
 - general insurance;
 - life risk insurance;
 - basic deposit products; and
 - simple managed investment schemes.

Financial products which have been excluded from this list include non-basic deposit products, derivatives, foreign exchange products, government debentures, managed investment schemes other than simple managed investment schemes, retirement savings account products and margin lending facilities.

'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, you may give a recommendation about term deposit products but not a specific recommendation about a particular term deposit product offered by a particular bank.

- Arranging for a person to deal in an interest in an SMSF. 'Arranging' refers to the process by which a person negotiates for, or brings into effect, a dealing in a financial product (e.g. an issue, variation, disposal, acquisition or application).

The new regime requires licensees to provide advice in accordance with the consumer protection provisions of the *Corporations Act 2001* (Cth) including the best interests duty obligation enacted through the FOFA reforms.

What is the application process?

A streamlined application process applies until 1 July 2016 to allow accountants to transition into the AFS licensing regime in recognition of their existing professional qualifications.

However, the application process is the same as for any other AFS licensee applicant other than the following:

- If the responsible managers nominated are 'recognised accountants', then they do not need to meet ASIC's experience requirements, which are generally three out of the last five years' experience in providing financial services. They will, however, need to meet the knowledge requirements. 'Recognised accountants' are those who hold a certificate of public practice issued by the Institute of Chartered Accountants in Australia or those who hold a public practice certificate issued by CP Australia Ltd or the Institute of Public Accountants.
- The requirement that responsible managers lodge two business references with ASIC where those responsible managers are 'recognised accountants' and the application is made during the transition period (i.e., 2013 to 2016).

This means that applicants must complete an ASIC form FS01, provide the core proofs required by ASIC and any additional proofs ASIC requires. Please [click here](#) to refer to our publication *Applying for an AFS licence: A Thomsons Guide* for more information about the application process.

What type of licence should I obtain?

Given the requirements associated with obtaining and holding a limited AFS licence and the limitations on the kind of services that can be provided under this licence, consideration should be given as to whether a 'full' AFS licence would be all that more difficult to obtain and maintain. The most significant relaxation for accountants during the transition period is the exemption from the experience requirement. However, it is possible for accounting practices to appoint experienced responsible managers on a contract basis for the first three years of holding an AFS licence as the practice principals themselves gain the relevant experience in providing

financial services under an AFS licence to transition to the responsible manager roles.

If you are considering applying for a 'limited' AFS licence or are not sure about whether you might qualify for a full AFS licence, then we can assist you by:

- preparing the necessary proofs and lodging the application;
- reviewing proofs which you prepare;
- advising you on the authorisations that you require;
- advising you on the knowledge requirements for your responsible managers; and
- advising on your prospects of obtaining a limited or full AFS licence.

Please contact Chris Mee for further information.

Chris Mee

Special Counsel

+61 7 3338 7589

cmee@thomsonslawyers.com.au

For further information, please [click here](#) to contact our national Funds Management & Financial Services team

www.thomsonslawyers.com.au