

APPENDIX 3

ADDITIONAL INFORMATION PROVIDED BY THE DEPARTMENT OF THE TREASURY



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THE TREASURY

Corporations and Financial Services Division
The Treasury
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19 June, 2003

Dr Kathleen Dermody
Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Parliament House
CANBERRA ACT 2600

Dear Dr Dermody

COST OF OBTAINING AN AUSTRALIAN FINANCIAL SERVICES LICENCE AND REGULATIONS 7.7.02 AND 10.2.38

I am writing in response to a question asked by the Parliamentary Joint Committee on Corporations and Financial Services (the Committee) in its public hearing on Monday 16 June 2003. I understand the Committee is interested in the costs associated with obtaining and maintaining an Australian Financial Services Licence (AFSL), especially for accountants. Also, enclosed is some additional information on two regulations raised at the Committee's hearing on 16 June 2003.

A. COST OF FSR LICENSING

Cost of applying for an AFSL

In evidence taken on the evening of the 16th of June, mention was made of a sum of \$20,000 for the cost associated with obtaining an AFSL.

It is difficult to provide an average single dollar amount for the costs incurred for individual applicants applying for an AFSL, and I note that the Australian Securities and Investments Commission (ASIC) does not obtain this data from applicants. As you would appreciate, the cost of obtaining an AFSL will vary widely and depend in part on the scale, nature and type of the particular financial services business. As the number of persons that apply for an AFSL increase, new applicants can (and are) leveraging off the experiences of others and consequently, the time involved and cost of applying for a licence is understood to be falling.

I also note that ASIC has designed its licensing systems and provides guidance to applicants to enable parties to apply for a licence without the need for external assistance. However, given the requirements of licensing, many applicants will engage advisers to assist them. For smaller businesses, we understand from industry participants that such advisers commonly charge in the vicinity of \$3,500 for services such as:

- a review of systems;
- assistance in completing the application; and
- assembling the required documentation.

For a larger business often much of the work will be done in-house, and would among other things involve, full due diligence and legal advice on complex issues with industry consultations having previously cited figures of around \$60,000.

Ongoing costs

I note that licensing costs were also discussed in terms of ongoing requirements. The main determinants of the costs are highlighted below:

1. Insurance

- Complying with the FSR regime may result in Professional Indemnity insurance costs to meet the FSR's compensation requirements as set out in section 912B of the *Corporations Act*.
- The need to ensure adequate compensation arrangements under the FSR should be seen in light of the fact that many applicants already hold professional indemnity insurance cover. This is especially the case for professionals such as accountants.
- It should be noted that Corporations Regulation 10.2.44 relieves licensees of the obligation to provide compensation arrangements for retail clients until the end of the FSR transition period, that is 11 March 2004.

2. FSR Training

- Many professionals already need to meet ongoing competency or professional development requirements, for example, the continuing professional development required by particular accounting bodies. As noted in Attachment A, many courses run by the accounting bodies are recognised by ASIC as part of the training requirements it sets for FSR licensing under ASIC Policy Statement 146.
- Therefore, the FSR training requirements might be expected to sit alongside rather than replace existing requirements and in many cases not result in a need for additional training. Evidence was provided to the Committee by at least some accounting representatives that they had sufficient training to advise to some extent on financial products.

3. Audit provisions

- Many professionals already have pre-existing financial and tax reporting and audit obligations to meet their current professional requirements. In many instances, there will need to be no substantial change to accommodate the FSR's requirements.

4. Systems and procedures

- Similarly, new systems may be required in some cases in others. However, many pre-FSR business systems will be capable of being adapted to meet the requirements under FSR.

B. ADDITIONAL INFORMATION ON SUBREGULATIONS 7.7.02 AND 10.2.38

Subregulations 7.7.02(4) and (5)

This regulation provides an exemption from the requirement to provide a Financial Services Guide (FSG) in limited circumstances. The regulation is based on an existing exemption from providing a

FSG in relation to material that would constitute general advice when this is provided in a ‘public forum’ (such as a billboard or newspaper).

There are analogous circumstances where comparable information is available or provided to people but where this does not occur in what has been defined in the legislation as a ‘public forum’. Examples include a brochure in a bank or advertising sent to a person by mail. It would not be practical to require a full FSG to be provided where information is provided in such situations. Provision of a FSG in such situations was not contemplated when the FSR was being developed and (on a technical reading of the Act) a requirement to do so is an unintended consequence.

There are several conditions that limit the use of this exemption, such as the advice:

- must only be general advice (ie it cannot be advice that considers a person’s personal objectives and financial situation);
- must be provided by a person linked to the product, such as a product issuer;
- cannot be provided during a meeting or telephone call; and
- must be accompanied by certain information required in an FSG namely, the provider’s name and contact details, information about remuneration or benefits and information about associations and relationships.

If a person ultimately chooses to approach the provider directly about a product advertised in this way, then the obligations to provide disclosure documents, such as a FSG and a Product Disclosure Statement would be triggered.

Subregulation 10.2.38(2)

Amendments to this subregulation were made to allow a broader range of persons to take advantage of the streamlined licensing provisions available through the Act. These persons will be eligible to make a streamlined licence application in respect of all activities lawfully carried on pre-FSR, which will require an AFSL after the FSR commencement.

The essential difference between a streamlined licence application and a ‘full’ licence application is that ASIC does not need to be satisfied that streamlined licence applicants are of good fame and character, or that they will comply with their obligations under section 912A (which includes matters such as providing financial services efficiently, honestly and fairly, and complying with the financial services laws, as defined in section 761A). Rather the applicant provides a written attestation to this effect.

Following licensing, although applicants for a streamlined licence do not have to demonstrate the above-mentioned matters to ASIC’s satisfaction as part of the licensing process, they of course have to meet these requirements on an ongoing basis. Further, their licence can be revoked if they fail to meet the relevant obligations in section 912A.

The basis on which streamlined licensing was made available was that certain categories of people (generally those who were previously licensed or registered by ASIC or APRA pre-FSR) would have already demonstrated their good fame and character, and their ability to comply with licensing obligations, as part of that pre-FSR regulation.

However, the streamlined licence application provisions in the Act presently only allowed streamlining where all of the pre-FSR activities were licensed by ASIC (or were subject to

registration under legislation administered by ASIC). Thus, even if only small proportions of pre-FSR activities were not subject to ASIC licensing, a person could not make a streamlined licence application. The practical effect of this was that the streamlined licensing procedure was open to only a very small number of applicants.

The regulations widen the scope of the streamlined licensing provisions to include persons who carried on some activities pre-FSR that were subject to ASIC regulation, even though all of their activities may not have been. It also allows persons regulated by APRA prior to FSR to make a streamlined licence application.

In relation to insurance brokers, their activities are subject to regulation through the *Insurance (Agents and Brokers) Act* (IABA) which provides the statutory basis for consumer protection regulation of insurance companies, agents and brokers. IABA is administered by ASIC.

The general basis for the amendment to the streamlining provisions is that the parties involved are already regulated by ASIC or APRA and in many cases both. Therefore, even though some aspects of a streamlined licensee's pre-FSR activities may not have been regulated by ASIC, the licensee would have been regulated to the extent required by the relevant pre-FSR regime.

It should be noted that the streamlining provisions only apply to activities that were *lawfully* carried on pre-FSR, and only relate to a particular entity or person regulated under existing law. Therefore, if an activity should have been licensed or regulated under a pre-FSR regime and was not, the streamlining provisions do not apply. Similarly, if one company in a corporate group held an ASIC or APRA licence pre-FSR, this does not enable other companies in the group to streamline.

I trust this information will be of assistance to you.

Yours sincerely

Michael Rosser
Manager, Investor Protection Unit
Corporations and Financial Services Division

SOME COURSES PROVIDED BY ACCOUNTING BODIES RECOGNISED AS PART OF FSR TRAINING

(Source: ASIC Training Register)

Training provider	Course or assessment name	Specialist knowledge component	How the course meets ASIC's minimum requirements set out in Appendices A & B of PS 146
CPA Australia	Discovering the options of Securities and Futures Markets	Securities and Futures Markets	Meets requirements for specialist knowledge component
CPA Australia	Managed Investments	Managed Investments	Meets requirements for specialist knowledge component
CPA Australia	Intensive Course in Financial Planning	Financial Planning; Managed Investments; Superannuation	Meets requirements for generic and specialist knowledge components
CPA Australia	Personal Financial Planning and Superannuation (CPA110): CPA Program	Financial Planning; Superannuation	Meets requirements for generic and specialist knowledge components
CPA Australia	Insurance and Risk Management in Financial Planning	Core and General Life Insurance; Insurance Broking	Meets requirements for generic and specialist knowledge component.
Institute of Chartered Accountants in Australia	ICAA Financial Planning Authorised Representative Course (formerly Property Authority Course) PLUS Advanced Financial Planning Course	Financial Planning; Managed Investments; Superannuation	Meets requirements for generic and specialist knowledge components
Institute of Chartered Accountants in Australia	Financial Planning Authorised Representative Course (formerly Proper Authority Course)	Financial Planning; Managed Investments; Superannuation	Meets requirements for generic and specialist knowledge components