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11 November 2013

Dear Ms Lee,

Re: ASIC Consultation Paper 216 – Advice on self-managed superannuation funds: Specific disclosure requirements

Thank you for the opportunity to comment on ASIC Consultation Paper 216 – Advice on self-managed superannuation funds: Specific disclosure requirements (CP 216).

Count Financial Limited (Count) is an Australian Financial Services Licensee (AFSL) that has been in operation since 1980. It became a wholly owned subsidiary of the Commonwealth Bank of Australia (CBA) in December 2011 and sits within the overall Wealth Management Advice business of the CBA, which includes four other AFSLs.

Count has approximately 600 accountant based financial advisers, across around 300 practices nationally. It also has approximately 120 credit representatives, assisting clients with credit related services under Finconnect (Australia) Pty Ltd, an Australian Credit Licensee that is a wholly owned subsidiary of Count. Count's advisers provide clients with holistic financial advice across a range of areas including superannuation, wealth protection (insurance), investments and credit.

We have a particular interest in the proposals under CP 216, with the significant majority of our advisers being either accountants themselves, or an employee of an accounting firm. The link to accounting has meant that the client base of our advisers has generally been one that has had a high level of interest in establishing a self-managed superannuation fund (SMSF), and for whom a SMSF may be appropriate.

Looking after your financial life

In addition, Count has a unique structure whereby it operates a franchise model, being the business-to-business relationship between Count and the accounting firms for which the authorised representatives works. This franchising model means that we also have an association with a large number of accountants who are currently providing SMSF advice to clients under the accountants' licensing exemption. Furthermore, with the removal of the accountants' exemption in 2016, we are looking to offer a licensing solution to both the accountants within the accounting practices with which we currently have an association, as well as other accounting practices looking for a solution with a licensee that understands the accounting model.

Count supports the objectives of the proposals outlined in CP 216, and recognises the importance of ensuring that SMSF members and trustees are aware of both the risks associated with having their superannuation invested through this structure, and the obligations to which a trustee must adhere.

With respect to the specific proposals, as a matter of best practice (and in line with the best interest duty requirements), a number of these are already captured in existing documents, in particular the Statement of Advice (SoA), where advice is provided in relation to a SMSF. As a result, individuals who open an SMSF following the receipt of financial advice, will generally be much better informed (even under the current disclosure requirements) than those who have established an SMSF without receiving advice. We are also aware of a number of our advisers, providing their clients with existing SMSF trustee 'education' materials available through the Australian Taxation Office (ATO). Having said this, we acknowledge that ASIC have identified a number of areas for improvement in relation to SMSF advice across the industry and that further guidance in this area is therefore warranted and likely to be of benefit.

Although we recognise the limitations of ASIC's powers with respect to individuals opening SMSF's outside of the areas in which it regulates, we are concerned that these proposals will mean that only the advised segment of the market will receive some of the important information identified by ASIC, and that individuals who do not seek advice or receive advice outside of the regulated regime will not be provided with the same warnings or disclosure. Furthermore, arguably, it is those unadvised individuals that are more in need of the information than those who are advised.

As ASIC have noted CP216, the Australian Taxation Office (ATO) currently requires all new trustees of a SMSF to sign a Trustee Declaration within 21 days of becoming a trustee or a director of the corporate trustee. The aim of the declaration is to ensure that the new trustees understand their obligations and responsibilities. It also sets out key areas that a trustee must understand to manage the SMSF such as the requirement to consider the investment strategy of the fund (including insurance requirements), and a declaration that the trustee understands that fund beneficiaries do not have access to the government's financial assistance program in the case of financial loss due to fraud or theft. In addition, the ATO's Self-Managed Super Funds – Key Messages for Trustees document, which is to be read in conjunction with the declaration, also includes a warning about the lack of financial assistance provided to SMSF's compared to funds regulated by the Australian Prudential Regulation Authority (APRA).



We would suggest that the achievement of ASIC's consumer protection objectives in this area, may be enhanced by also working with the ATO to ensure gaps in the current disclosure regime are incorporated into the Trustee Declaration and Key Messages document. This will ensure that all trustees have access to the same information regarding the risks and obligations associated with SMSF's, including aspects such as the need to be aware of the costs and time involved in running an SMSF, additional considerations in determining appropriate investment and insurance strategies, and consideration of a wind-up strategy.

We understand that ASIC wish to ensure that those clients who receive advice have the benefit of being made aware of those risks and obligations before they make the decision to establish a SMSF. We are in agreement that this is the ideal time for an individual to be made aware of these risks and support ASIC's proposals in this area. If ASIC choses to work with the ATO on this issue, it may be appropriate for ASIC to provide guidance on how advisers could use ATO materials to assist and guide them in their conversations regarding the risks associated with SMSFs. We also agree that the advisers' files should include evidence (for example through the SoA) that they have explained and given consideration to the risks relevant for that client's circumstances. We note that this would be required in order to demonstrate that the advice has been provided in the best interests of the client, considering their relevant circumstances. On this point, we also welcome ASIC's statement at paragraph 79 of CP216 that the 'level of detail in which these matters need to be explained to clients will depend on the client's relevant circumstances'.

As noted above, we are supportive of ASIC's objectives to improve consumers' understanding of the risks and obligations associated with a SMSF and are broadly comfortable with the proposals outlined in CP216. Furthermore, we would welcome collaboration between the ATO and ASIC to ensure that information received by Trustees is as consistent and streamlined as possible to ensure that the messages are clearly communicated and understood.

Should you wish to discuss any aspect of this submission, please contact me

Yours faithfully,

David Lane
Chief Executive Officer

Cc: Marianne Perkovic, Executive General Manager Advice, CBA