From the Desk of Director Marija Pajeska

Association of Securities & Derivatives Advisers of Australia Limited

15 December 2016

Corporations and Schemes Unit (CSU)
Financial System Division
The Treasury
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PROPOSED INDUSTRY FUNDING MODEL FOR THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

The Association of Securities and Derivatives Advisers of Australia (ASDAA) appreciates the opportunity to provide these comments to Treasury in respect of the proposed industry funding model for the Australian Securities and Investments Commission.

ASDAA is an association which represents its members from the Securities and Derivatives advisory profession. Its members are comprised of individuals who are either directors or employees of firms which hold Australian Financial Services Licences (AFSLs).

ASDAA has a strong desire to raise professional standards and improve investor protection. ASDAA members rely on the ongoing trust of their clients and on the integrity of the Australian financial markets for their livelihood. Without both, clients wouldn't participate in the markets and trade in shares, exchange traded options and other listed financial products.

ASDAA understands that the intent of the proposed changes is to:

- create a user pays model whereby the licensees and entities that are regulated by ASIC pay for services provided by ASIC;

- setup an industry funding model for ASIC which is designed to comply with the principles of the Australian Government Charging Framework being:
  - efficiency and effectiveness;
  - transparency and accountability; and
  - stakeholder engagement.

In principle ASDAA agrees with ASIC charging for its regulatory function however we wish to highlight the following key issues:

- ASIC's registry function should be part of the industry funding model as the revenue generated is substantial in comparison to the expenses incurred. It is highly likely that the current industry funding model of ASIC's registry business does not comply with the design objectives of the Australian Government Charging Framework, ie. it requires an alignment between the expenses of the regulatory activity (the costs involved in providing it) and the revenue (the income generated through charges for it). We question how the government undertaking a competitive tender process to test the market on the capacity of a private operator to upgrade and operate the ASIC registry is consistent with the principles within the Australian Government Charging Framework (ie. transparency and accountability).

- The advisor fee of $960 per adviser is steep and unreasonable. Taking into consideration the following the estimates provided by ASIC as a cost for regulating providers of personal advice are hard to justify:
    - the additional charges that apply to those who provide personal advice via higher PI insurance costs;
    - the proposed charges that advisers will incur as a result of the proposed increased training requirements;
    - the fees that advisers will incur as a result of being a member of an association (which will effectively be responsible for regulating the activities of advisers that provide personal advice); and
    - furthermore, if ASIC insist personal advice advisers need to pay $960 pa, then ASIC should now insist that any retail investor who complains to an EDR like CIO/FOS (or the new one body being considered by the EDR Expert Panel) should have to pay a reasonable complaint lodgement fee if their complaint seeks financial compensation of $10,000 or more. ASIC can't keep piling on more and more costs onto this sector.

- We note that those that provide advice in the credit industry are not expected to pay a per adviser fee and don't understand how they have a lesser regulatory exposure than financial product advisers. Furthermore, the fee to appoint a credit representative has been waived whilst the fee to appoint an adviser and authorised representative (if applicable) has not.

- ASIC needs to consider the impact on the industry of such fees as it may inadvertently create a disservice to the population it is trying to protect, being the retail clients that benefit from receiving personal advice. For a small business that provides personal advice the future seems bleak as it is faced with high regulatory fees, high PI insurance costs, high adviser training costs and membership fees.

- All of these higher costs will most likely be passed to the consumer potentially forcing some licensees out of business as its services become too expensive and ironically neither ASIC nor Treasury have bothered to highlight the benefits for the consumer as the funding of ASIC shifts from tax payers to regulated bodies.

ASDAA appreciates the opportunity to provide this Submission to Treasury on these significant proposals. We would be happy to discuss any issues arising from our submissions on this issue, or to provide any further material that may assist. Should you require any further information, please contact Brad Smoling, Communications Executive, on (07) 5532 3930 or email brad@asdaa.com.au

Yours sincerely,

Marija Pajeska
Compliance Director

Annexure A: Response to ASIC Questions

Chapter 2: Overview of proposed industry funding model

ASIC Costs to be recovered

	ASIC Question	Response
1.	Do you agree with the proposal that all of ASIC's regulatory costs should be included in the industry funding model, excluding ASIC's registry costs and criminal prosecutions incurred by the DPP? If not, please describe your preferred approach and reasons for it.	No, the ASIC Registry costs and funds recovered by ASIC on an annual basis should form part of the industry funding model as ASIC recovers a substantial amount of money from the Annual review fee (which all companies need to pay) which could be used to reduce some of the costs that are being passed on via the proposed Industry Funding Model.

Model design objectives

	ASIC Question	Response
2.	Will the proposed model design objectives ensure consistency of approach to setting levies and fees across ASIC's regulated population? Are there other objectives that should be considered? If so, why?	ASIC to date has been funded by tax payers and the proposal looks at how to change the manner in which ASIC is funded from a tax payer funded model to a regulated population funded model. The proposal fails to consider that ultimately clients of the regulated population will be funding the model and the impact that this will have to the industry. Interestingly the model does not discuss how tax payers will benefit now that there will be less of a burden on tax payers to fund the costs of ASIC, arguably one would expect reduced taxes otherwise we ask where these funds are being redirected to. We also note the inconsistency in ASIC's approach whereby in some circumstances ASIC provides for a base levy and then a graduated levy to ensure that small companies within a particular sector are not disadvantaged. This same theory should be applied across all sectors. Take MDA Operators for example, an MDA Operator with \$2 million under management would pose less of a regulatory burden than an MDA Operator with \$20 million under management. Financial advisers are another example that are to pay a flat levy with no consideration of either how many clients they have or funds under advice. Surely, an adviser with \$50 million under advice poses a larger regulatory cost than an adviser with \$5 million under advice.

Model description

	ASIC Question	Response
3.	Do you agree with the proposed model for calculating levies? Is there an alternate approach you would prefer? If so, please explain why.	We have no objections as long as this calculation is applied across all sectors where it is reasonable to do so.
4.	Do you agree with the proposed definitions for industry subsectors and levy metrics at Schedule 1? Is there an alternative approach you would prefer? If so, please explain why.	For the most part we do. We feel that the following sectors could benefit from some further refinement: • MDA Operators – There are MDA Operators that provide MDA Services to wholesale clients only. As ASIC has differentiated between Responsible Entities and Wholesale trustees then it should do the same in terms of MDA Operators. • Retail OTC derivative issuer – The description here may require further refinement to ensure that OTC foreign exchange issuers are captured as they are part of the regulated population and arguably at the moment post a large regulatory burden for ASIC whilst it is still working on how to regulate them. • A category that has not been included and is part of the regulated population are entities that hold client funds. We understand that this is a difficult sector to quantify however also recognize that we are going through a period of reform when it comes to this sector.

Chapter 3: ASIC stakeholder engagement and accountability

Other accountability measures

	ASIC Question	Response
5.	Do you agree with the proposed timeline for the annual reporting? Are there any reasons as to why the suggested timelines may not work for your organisation's business cycle?	We have no comments regarding the proposed timeline.
6.	Do you agree with the proposed engagement and accountability measures? Are there additional measures you would prefer? If so, please explain why.	We have no comments.

Chapter 4: Implementation

Transition arrangements with other industry levies

	ASIC Question	Response
7.	Do you have any preliminary comments on the legislative arrangements?	We are concerned with the proposed late lodgement fee of 20% per annum. We feel that it is excessive on the basis that if an AFS Licensee or Credit Licensee were to charge a penalty rate of 20% per annum then ASIC would most likely consider it as excessive and take action accordingly.
8.	Do you have any comments on the proposed implementation timetable? Please provide details of any concerns.	We have no comments
9.	What do you estimate the regulatory cost of complying with the new requirements in the model to be? In order to answer this, you may wish to consider information such as the following: • How many hours will it take to train relevant staff about the new compliance requirements? • How many hours will it take to implement / update systems to ensure compliance? • Will you need to procure professional advice or services to comply with the model? What is your estimate of the total cost of this procurement? • How many hours will it take for relevant staff to evaluate and plan for the new regulatory requirements? • How many hours will it take for staff to assemble and report any information required? • What is the estimated total labour cost of these activities? Please only consider the cost of additional activities, beyond compliance activities that you currently perform. Please do not include the costs of levies and fees to be paid or opportunity costs in answer to this question. We seek this feedback elsewhere.	The regulatory costs are difficult to estimate at this point in time as we are not privy to the system ASIC intends to use. Past experience indicates that initially the regulatory costs will be high as the systems that ASIC has historically released have not been fit for purpose during the initial release and required months of refinement. For example, the Money Smarts Financial Adviser Register which is maintained via ASIC connect was not a very user friendly system and required substantial refinement after its release. Most licensees that we engage with require the assistance of an external consultant to assist with the implementation of the reporting requirements as they neither have the capacity or in some cases skills to navigate through the systems implemented by ASIC. ASIC should ensure that any system it releases for the purposes of capturing data via the online portal should be released once it is in a user friendly and complete form, free from errors. Another issue ASIC should ensure that it takes into consideration is access to its systems. A major issue is being able to access the online portal within the given timeframe to ensure the relevant information is provided to ASIC. Historically, ASIC systems experience a lot of downtime which can be frustrating and time consuming. This does lead to increased costs if staff are constantly being redirected between tasks as a result of ASIC systems being inaccessible.