



8 October 2015

Senior Adviser
Financial System and Services Division
The Treasury
100 Market Street
Sydney NSW 2000

Email: asicfunding@treasury.gov.au

Dear Sir/Madam

Proposed Industry Funding Model for the Australian Securities and Investment Commission

As the union representing staff in the the Australian Securities and Investment Commission (ASIC), the Community and Public Sector Union (CPSU) welcomes the opportunity to make a submission regarding the proposed industry funding model for ASIC.

ASIC plays an essential role in protecting investors and creditors and ensuring public confidence in Australia's financial markets. The CPSU is concerned that cuts to ASIC funding are affecting its ability to do its job.

In the 2014-15 Budget, cuts of \$120.1m over five years to ASIC were announced¹ as well as the imposition of an efficiency dividend of \$47m over four years.² The cuts for the 2014-15 financial year alone were \$44 million, or around 12 per cent of ASIC's budget.³

ASIC had warned that the cuts would result in a substantial reduction of proactive surveillance⁴ and earlier this year revealed that it had scaled back activities aimed at uncovering corporate wrongdoing. Specifically, ASIC's chief of operations confirmed a scaling back of proactive surveillance where investigators target as-yet unreported corporate misbehaviour according to its "statutory" role of registering and regulating companies.⁵ Continuing the 2014-15 cuts would mean that less than 2 per cent of financial advice licensees will be subject to proactive surveillance by ASIC.⁶

Reversing these budget cuts however, will not be sufficient provide ASIC with the resources to properly target corporate misbehaviour as underfunding of the Commission has been long term. In 2012, an International Monetary Fund report concluded that while ASIC earned its

¹ Commonwealth of Australia, 2014-15 Budget, Budget Paper No.2: Budget Measures – Part 2: Expense Measures – Treasury, 13 May 2014, http://budget.gov.au/2014-15/content/bp2/html/bp2_expense-22.htm

² K Kachor, 'ASIC user-pays model gains momentum', *Financial Observer*, 5 June 2014, <http://www.financialobserver.com.au/articles/asic-user-pays-model-gains-momentum>

³ G Wilkins and N Khadem, 'ASIC lashes budget cuts', *Sydney Morning Herald*, 29 October 2014, <http://www.smh.com.au/business/asic-lashes-budget-cuts-20141029-11dr2c.html#ixzz3l71d0lx9>

⁴ *ibid*

⁵ F Anderson, 'Cash-strapped ASIC scales back proactive surveillance', *Australian Financial Review*, 26 March 2015, <http://www.afr.com/news/politics/cashstrapped-asic-scales-back-proactive-surveillance-20150326-1m8655#ixzz3l72iDbw3>

⁶ Andy Kollmorgen, 'ASIC, FCA and the ACCC all felt the sting of the 2014-15 budget', *CHOICE*, 27 April 2015, <https://www.choice.com.au/money/budget/cost-of-living/articles/budget-cuts-to-acc-and-consumer-protection-270415>

reputation as an effective regulator, it was *"hampered in its ability to fully carry out proactive supervision because of the lack of budgetary resources."*⁷ The CPSU also notes that this year, ASIC's chairman stated that ASIC is *"very thinly resourced across the board and everyone from the day I first started the job has been saying 'you don't have enough money."*⁸

The CPSU supports greater resourcing and a more stable funding model for ASIC. However, it has significant concerns about moving to a hybrid model where many regulatory activities, such as surveillance, enforcement and policy advice, are funded by industry while ASIC's overall funding is still determined through the Budget process.

ASIC's overall funding will still be determined through the Budget process undermining one of the key benefits of a user-pays model, allowing ASIC to no longer be reliant on year-by-year funding determined by the Budget process, while problems, such as large firms attempting to exert undue influence on funding, remain.⁹

The CPSU notes there is strong opposition to the industry funding model by banks and listed companies¹⁰ and would be concerned about political pressure to reduce fees and therefore resourcing to ASIC if it is adopted. The industry consultation process associated with the user pays model and identified in the consultation process creates an ongoing mechanism for the organisations regulated by ASIC to lobby for reductions in ASIC's funding

The consultation paper states that ASIC's total funding will be set out in the Commonwealth Budget with the levies to be determined each year to cover the relevant shares of ASIC's funding for that year. While the consultation paper states that any shortfall in collections would be recovered in the relevant area in the following year, there may be pressure from industry to lower levies and fees, resulting in the reduction of regulatory activities to meet funding levels set by the Budget process.

The CPSU is particularly concerned about the potential increase in influence from industry, which may result in reduced resourcing to an already underfunded ASIC. The proposed consultation process is that each September, industry will be able to comment on whether ASIC funding levels are appropriate and charges are being minimised, creating an incentive for industry to continually push for lower levies and reduced regulatory activities.

The CPSU notes that, if implemented, industry stakeholders will be given the opportunity to shape the implementation of the industry funding model through involvement in the Cost Recovery Stakeholder Panel. The close involvement of industry in developing and implementing the industry funding model creates a risk of regulatory capture.¹¹

The CPSU is also concerned that the adoption of an industry-funding model has been linked to the privatisation of the ASIC registry.¹² The CPSU does not support the privatisation of the registry as it is an effective organisation which also provides a significant source of income for government. The adoption of any industry-funding model for ASIC must not be contingent on privatisation.

⁷ *ibid*

⁸ News.com.au, 'ASIC penalties, budget cuts slammed', 24 March 2015, <http://www.news.com.au/finance/business/asic-penalties-budget-cuts-slammed/story-e6frfkur-1227276914038>

⁹ Senate Standing Committee on Economics, The performance of the Australian Securities and Investments Commission, 26 June 2014, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/ASIC/Final_Report/c25


¹¹ R Maddock, User-pays ASIC model shift costs, but is bad for the public interest, The Conversation, 31 August 2015, <http://theconversation.com/user-pays-asic-model-shift-costs-but-is-bad-for-the-public-interest-46852>

¹² P Durkin, 'ASIC seeks to levy banks and big business', *Australian Financial Review*, 18 February 2014, <http://www.afr.com/business/banking-and-finance/financial-services/asic-seeks-to-levy-banks-and-big-business-20140218-ixrfi>

The CPSU is happy to provide information on the matters raised in this submission and supplementary information on other relevant issues. Given that a change of this magnitude to ASIC has potential implications for workload and staffing, an ongoing process of consultation with the CPSU is requested.

For further information please contact Dr Kristin van Barneveld, Director of Research via email Kristin.vanbarneveld@cpsu.org.au or 0420 316 825.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Alistair Waters', written in a cursive style.

Alistair Waters
National President

