

Corporations and Schemes Unit (CSU)  
Financial System and Services Division  
The Treasury  
100 Market Street  
Sydney  
NSW 2000

9 October 2015

Dear Sir/Madam

## **Re: Proposed Industry Funding Model for the Australian Securities and Investments Commission**

We appreciate the opportunity to respond to the Consultation Paper: Proposed Industry Funding Model for the Australian Securities and Investments Commission (ASIC) (the CP). We understand that the Financial System Inquiry found that an industry funding model for ASIC could provide more funding certainty and enhance the transparency of ASIC's costs. We also understand that the Government considers that an industry funding model for ASIC would:

- ensure that the costs of the regulatory activities undertaken by ASIC are borne by those creating the need for regulation (rather than all taxpayers)
- establish price signals to drive economic efficiencies in the way resources are allocated in ASIC, and
- improve ASIC's transparency and accountability.

We note that the CP specifically seeks views on the:

- appropriateness of the proposed industry funding model
- costs and benefits of introducing an industry funding model for ASIC
- impact of the proposed model on competition and innovation, and
- regulatory burden associated with the introduction of an industry funding model.

In addition, we understand that Treasury is also seeking views on those areas where there may be an opportunity to reduce the regulatory burden.

We are broadly supportive of the introduction of an industry funding model that is appropriately designed so that it achieves the objectives set out above. Other jurisdictions have successfully implemented similar models and accordingly, we encourage Treasury to develop a full understanding of those models as it seeks to refine the proposals in the CP.

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We have the following concerns with the proposed funding model:

- We understand that:
  - the proposed costs to be recouped for audit surveillance activity includes the costs in relation to the audit inspection program and ASIC's other auditor surveillance activity
  - the majority of the cost will be borne by the audit firms who audit listed entities.

We note that some of the recent auditor surveillance activity, and as a result ASIC's costs, has been in relation to auditors who do not operate in the listed entity market and therefore we have a concern as to whether it is equitable that those who audit listed entities should incur the majority of ASIC's other auditor surveillance costs.

- The proposed cost for resignation as auditor - there appears to be limited, if any, consideration of those instances where the auditor is resigning from a number of appointments simultaneously.

This is probably best illustrated by the following example:

- If a firm was seeking ASIC's consent to resign as auditor of a funds management group where the firm audits 100 compliance plans and 100 registered managed investment schemes, the proposed cost to the firm would be \$94,000 compared with the current cost of \$7,400.
- We question whether this is reflective of the actual cost of evaluating the basis for resignation and appropriateness of the proposed auditor, which should be considered in the context of the group of funds.
- In our experience, Responsibility Entities ordinarily seek to have one audit firm undertaking the audits of the individual funds and compliance plans.
- A similar situation exists where an auditor is appointed to a group of companies.
- The quantum of the costs that ASIC is seeking to recovery in respect of the surveillance of the insolvency profession is \$9 million. In the interests of fairness and transparency, we believe that a better understanding of the source of these costs is required and consideration given to whether it is appropriate to seek to recover all of these costs from the registered liquidators. It is noted that registered liquidators currently carry out work in respect to court liquidations which amounts to approximately \$40 million. The cost of these investigations is not reimbursed to the registered liquidator and in effect these investigations are being carried out on behalf of ASIC.
- We question whether a model which is designed to recover the actual costs incurred is one that supports an objective of increased efficiency in the performance of regulatory activities. In introducing any funding model there has to be some incentive to re-engineer processes to ensure that they are performed in the most efficient and cost effective manner possible. We are unclear how this will be achieved in the proposed model.
- We note that Government believes that an industry funding model would improve ASIC's transparency and accountability. It is unclear to us the basis upon which this will be assessed. ASIC's Corporate Plan 2015-16 to 2018-19 includes a section titled "*Evaluating our performance*" and, in addition, each of the individual sections of the plan includes performance indicators. We question whether these are of sufficient granularity to allow an appropriate assessment of ASIC's performance. Therefore, we encourage Treasury to obtain an understanding of how accountability is assessed for other overseas regulators that are subject to an industry funding model.
- The potential impact on individuals seeking to enter the market could be high. Should an individual decide that they wanted to establish a practice as a sole practitioner (which is ordinarily a multi-disciplinary practice, involving company audits, SMSF audits, insolvency appointments and providing financial advice), the current cost of entry, providing the criteria for each registration have been satisfied, is \$2,520 compared with the proposed cost of \$29,700 which may be prohibitively expensive for some entrants.

We have also given some consideration to those areas where there may be an opportunity to amend the Corporations Act 2001(the Act) to simplify current processes and support the deregulation agenda. We set out below an example of two areas that we believe should be explored:

- Sections 329(5), 331AC(2), 601HH(2) and 990G(1) of the Act require ASIC to consent to the resignation of the auditor of a Public Company, Registered Scheme, Compliance Plan and Australian Financial Services Licence. These requirements are quite unique, as in many other large mature capital markets the decision to change auditor is not subject to regulatory approval. Therefore, we question how the Australian capital market

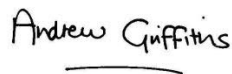
differs to other mature markets such that this requirement is necessary or even what regulatory benefit it provides for the cost and effort it imposes. We acknowledge that any proposal to amend the Act in this area would need to include a consideration of other potentially interrelated requirements of the Act. For example the Act also currently requires ASIC to appoint an auditor if one has not been appointed and accordingly, ASIC would need a means by which it can monitor this.

- Section 1280 of the Act sets out requirements in respect of the registration of auditors. The Act is quite specific in relation to the requirements for registering an individual as an auditor. As a result, the process that ASIC must follow for an individual who is registering and intends to set up practice as a sole practitioner is the same as it is for an individual who has practised as an audit partner for many years in an overseas jurisdiction and who has joined an Australian Partnership. In our view, ASIC should have some flexibility to be able to give merit to the overseas experience, in particular, where the auditor has been operating in a regulated audit market similar to Australia.

In addition, we recommend that consideration should be given to reviewing the division of responsibilities between ASIC as the Corporate Regulator and AFSA as the Bankruptcy Regulator as there is currently duplication and stakeholders may be better served by a single regulator.

If you have any queries in relation to this submission please do not hesitate to contact me via email at [andgriffiths@deloitte.com.au](mailto:andgriffiths@deloitte.com.au) or on +61 2 9322 7035.

Yours faithfully



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