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Percy Bell
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The Treasury
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Dear Percy

ASIC Funding Model Submission

Thank you for the opportunity to discuss the proposed model for ASIC to be funded by all industries using their services.

The Property Council is the peak body for owners and investors in Australia's $670 billion property investment industry. We represent, owners, fund managers, superannuation trusts, developers and investors across all four quadrants of property investments: debt, equity, public and private.

Introduction.

It is in the best interests of industry and government for ASIC to be a strong and effective regulator that is seen as an active supporter of a robust and nimble financial market.

The property industry broadly supports the proposed ASIC user funding model providing the scheme:

1) fairly allocates ASIC costs across financial market users and licenced entities;

2) enhances ASIC's resourcing capabilities and service delivery; and

3) enables ASIC to focus increasingly on early industry consultation for issues impacting property industry users.

Industry is concerned however that the cost allocation for users may not reflect fair provision of services, in some cases double/triple counting fees or alternatively potentially risking insufficient levies for ASIC supervision.

Equally, fairness requires that the funding provided by users is properly scrutinised to ensure it is cost effective and put to its best use. The current proposal does not sufficiently tie user funding to encourage better resourcing and performance.

Funding that drives better outcomes.

This does not necessarily mean allocating more money, but instead a shrewd use of existing funding to balance ASIC's six aims when performing its functions and powers under the *Australian Securities and Investments Commission Act 2001* (or 'ASIC Act') subsection 1(2) – see appendix A.

Industry is acutely aware that achieving each of these aims is challenging, but critical to ensure ASIC's capability properly serves all stakeholders. Performance against these specific aims should be assessed as a part of the agreement for user funding.

Ultimately our members consider that ASIC's strongest contribution to the market is served by developing practical rules, preventing non-compliance and as a last resort, enforcing rules where there are breaches of law, sensibly and consistently.

This encourages investor and market confidence.

With the finite financial resources available, industry is supportive of an ASIC funding model that enables ASIC to prioritise activities that clarify and enhance market rules before problems develop.

This is not only easier than enforcement, but more cost effective.

In short, there is considerable ASIC budgeting for enforcement and a smaller proportion being spent on surveillance (connecting with/monitoring the market) and policy development. A greater emphasis on activities that reduce the need for enforcement will yield cost savings in the medium term.

This is facilitated by ASIC maintaining timely dialogue with market participants on all sides of the transaction, a deep engagement with industries and detailed understanding of the market.

Specific amendments for a fairer user funding model.

At Appendix B are recommended amendments to the proposal to ensure the scheme is fair for all users and reflects the services delivered by ASIC in line with the six ASIC aims including:

1. **ASIC should consult with industry on the detail surrounding ASIC services and costs to ensure the fees align appropriately and fairly reflect all users.**

2. **Clarify specifically the service levels ASIC is meant to provide for user pays funding and ensure the funding rules confirm a process for assessing performance against those metrics.**

   The funding rules should make it clear that ASIC will perform to KPI's linked to the 6 functional aims of ASIC. The funding rules should also outline the process for assessing performance against those metrics and allow for public scrutiny of the assessments.

3. **Limit increases or decreases in specific entity level levies each subsequent year to the greater of CPI or ASIC's subsequent year increased budgeted funding requirements.**

   The "over and unders" approach to setting levies may push additional cost burden to all market participants in subsequent years when prior year ASIC focus may be concentrated in a specific sector of the industry;

4. **Listed REITS and stapled entities should have their market supervision levy reduced by the amount paid by the Responsible Entity for their proposed AFS Licencee levy.**

   It is otherwise double counting. Where for instance a listed REIT has a Responsible Entity that holds an AFS Licence, the same entity may be required to pay separate ASIC levies based on the same FUM under the proposed ASIC funding model.

5. **A fixed levy should be adopted for market capitalisations between $20m and $15Bn to avoid fluctuations in fees out of kilter with ASIC's oversight effort.**

   The proposed ASIC market cap based approach for Listed Companies will potentially result in greater variability and uncertainty in proposed levies from year to year due to general market fluctuations and largely unrelated to ASIC supervisory oversight in any one year.

6. **A group should be able to consolidate the FUM for multiple AFS licences to pay a single fee.**

   Otherwise the group will be forced to pay multiple levies for essentially the same service.

7. **ASIC should consult with industry on the AFSL price tiering to ensure the fee reflects the services provided.**

   There is no real detail on how the costs were determined to reflect the services provided as each level of FUM.

If you have any queries on these points raised, please feel free to contact me on 0406 45 45 49.

Yours sincerely

Andrew Mihno
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Property Council of Australia
0406 45 45 49.

APPENDIX A

ASIC Aims and Functions under the ASIC Act

ASIC's legislative definition of its role in the *Australian Securities and Investments Commission Act 2001* subsection 1(2) equally emphasise the need for ASIC to perform its functions to:

(a) maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy; and

(b) promote the confident and informed participation of investors and consumers in the financial system; and

(c) administer the laws that confer functions and powers on it effectively and with a minimum of procedural requirements; and

(d) receive, process and store, efficiently and quickly, the information given to ASIC under the laws that confer functions and powers on it; and

(e) ensure that information is available as soon as practicable for access by the public; and

take whatever action it can take, and is necessary, in order to enforce and give effect to the laws of the Commonwealth that confer functions and powers on it.

APPENDIX B

PROPOSED INDUSTRY FUNDING MODEL FOR ASIC CONSULTATION PAPER DATED 28 AUGUST 2015.

Submission	Comment
Fees paid by the right users for the right services	**Recommendation: ASIC should consult with industry on the detail surrounding ASIC services and costs to ensure the fees align appropriately and fairly reflect all users.** Industry cannot adequately determine if the fees and levies properly apply to all users of ASIC services, nor cost and level of those service activities. In addition, it is clear that a greater emphasis on preventative activities and services to aide compliance will help combat the need for high cost enforcement. This would be a valuable and necessary discussion.
Funding linked to Performance	**Recommendation: Clarify specifically the service levels ASIC is meant to provide for user pays funding and ensure the funding rules confirm a process for assessing performance against those metrics.** Fairness requires that the funding provided by users is properly scrutinised to ensure it is cost effective and put to its best use. The funding rules should make it clear that ASIC will perform to KPI's linked to the 6 specific functional aims of ASIC. The funding rules should also outline the process for assessing performance against those metrics and allow for public scrutiny of the assessments.
Proposed Levy Arrangements – Public Companies (Listed, Disclosing)	**Recommendation: Listed REITS and stapled entities should have their market supervision levy reduced by the amount paid by the Responsible Entity for their proposed AFS Licencee levy. It is otherwise double counting.** Where a listed REIT has a Responsible Entity that holds an AFS Licence, the same entity may be required to pay three separate ASIC levies under the proposed ASIC funding model - 1. Public Company – Listed – based upon market capitalisation; 2. Public Company – non-listed i.e. although nominal fee where the Responsible Entity is required to hold a AFS Licence; and 3. AFS Licence fee levy – based upon FUM, this may or may not be in alignment with the entity's market capitalisation Critically, the proposed Public Company – listed levy does not address circumstances specific to publicly listed entities such as REITs and stapled structures. To the extent that market capitalisation is a proxy for intensity of services provided this has already been expressly covered by the fees to be charged to AFSL holders. Listed REITS and stapled structures, through their Responsible Entities, are subject to additional ASIC legislative compliance oversight and governance framework via:- • Compliance plans and AFS Licence governance and self-reporting obligations, and • Enhanced "gatekeeper" oversight of AFS Licence holders through annual Compliance Plan and AFS Licence independent audit requirements.

	The proposed funding model for AFS Licencees captures these costs. For Listed REITS including stapled structures to be required to pay both fees in full would put them at a commercial disadvantage to listed companies.
Proposed Levy Arrangements – Public Companies (Listed, Disclosing)	**Recommendation: A fixed levy should be adopted for market capitalisations between \$20m and \$15Bn to avoid fluctuations in fees out of kilter with ASIC's oversight effort.** The proposed ASIC market cap based approach for Listed Companies will potentially result in greater variability and uncertainty in proposed levies from year to year due to general market fluctuations and cycles that may be largely outside the company's control and largely unrelated to ASIC supervisory oversight in any one year. This may result in circumstances where ASIC is undertaking heightened surveillance activities on a specific company and due to a decrease in market capitalisation, (which may be a result of ASIC supervisory activities) the company would incur a lower future levy. This puts ASIC's "user pays" policy under pressure - in this case other market participants will potentially pay for ASICs supervisory activities into a specific entity.
Proposed Levy Arrangements – AFS Licences	**Recommendation: Where a group holds one or more AFS Licences, and where the Responsible Entities are full owned subsidiaries (or related entities) of the same group, FUM associated with those responsible entities should be consolidated for the purposes of determining the AFS Licence levy to be paid. Otherwise the group will be forced to pay multiple levies for essentially the same service.** The proposed ASIC levy does not address circumstances where one group holds one or more AFS Licences as part of a fully consolidated ownership structure. While each RE / AFS Licence is subject to separate licensing and governance, where all licences are held under the one group and particularly where assets are held within the same asset class, it is likely that similar processes are being adopted and ASIC oversight will be on an organisational basis and the cost of oversight will be considerably less. Typically there will be one set of oversight, governance policies and procedures across entities within a group.
Proposed Levy – AFSL Licences	**Recommendation: ASIC should consult with industry on the AFSL price tiering to ensure the fee reflects the services provided.** Industry is unsure why the particular tiering and pricing was determined and consider that the proposed sliding scale of levies should be discussed in more detail to ensure the fee reflects the service provided at each level of FUM.
Proposed ASIC Overs and Unders Approach	**Recommendation: Limit increases or decreases in specific entity level levies each subsequent year to the greater of CPI or ASIC's subsequent year increased budgeted funding requirements.** The proposed ASIC overs and unders approach will result in greater variability and uncertainty in proposed levies from year to year due to ASIC specific activities.