

9 October 2015

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

Dear Sir/Madam,

PROPOSED INDUSTRY FUNDING MODEL FOR THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION (ASIC)

Thank you for the opportunity to make comments on the proposed industry funding model for ASIC. Our submission is organised as a series of responses to the Consultation Questions listed in Attachment J of the Paper.

By way of background, we are a small Melbourne-based financial advisory firm which has been operating under its own Australian Financial Services Licence (AFSL) since 2004. We are also a CPA Australia public practice. Our focus is primarily on how the proposed changes would affect our business and to raise some other matters that will impact on the industry more generally.

The proposed industry funding model

- *Q9. Is the proposed methodology for determining the levy mechanisms appropriate?*

The Consultation Paper specifies six uses of the proposed funding levy, namely:

- undertaking surveillance (which includes front-line supervision);
- enforcing the law;
- providing guidance;
- developing advice for the Government;
- engaging with stakeholders; and
- certain activities in relation to educating consumers and investors.

In our view, the only justifiable use for the levy would be market surveillance. If enforcement of the law is required, those being enforced should pay the associated cost rather than being cross-subsidised by other industry participants.

It is similarly difficult to see why the financial industry should pay ASIC for ‘providing guidance.’ If someone requests a private ruling from the Australian Taxation Office (ATO) on an interpretation of tax law, they don’t have to pay for it so why should ASIC impose a charge for providing guidance on Government laws and regulations?

Likewise, if the Government wants ASIC’s assistance in ‘developing advice,’ then the user-pays principle should apply to them too.

And finally, ‘engaging with stakeholders’ is undertaken by all government agencies. The ATO doesn’t charge for its engagement with taxpayers. The same applies to educating consumers and investors - this is a public service not an industry supervision issue.

On a more general point, the purported benefits of an industry-funded compliance framework are hard to credit. Page 3 of the Consultation Paper declares that the proposed model would:

- ensure that costs are proportionately borne by those creating the need for regulation;
- establish price signals to drive economic efficiencies in the way resources are allocated in ASIC; and
- improve transparency and accountability.

Regulation obviously involves both costs and benefits but the Paper focuses almost exclusively on cost recovery. If there are benefits for the users of financial services flowing from ASIC’s work, it seems only fair that they should also pay their share.

The claim that the establishment of ‘price signals’ within ASIC would ‘drive economic efficiencies’ is bewildering. If anything, the reverse is likely to be true; there would be an incentive to rack up time and labour resources, knowing that the financial sector was there to pick up the tab. If the current proposals are implemented, it would be like giving ASIC a blank cheque and telling them to spend it wisely.

While the Paper highlights that ASIC would still be accountable because it is a government agency, this argument is unlikely to be true in practice. Although ASIC is answerable to the Government, it will not be accountable to the financial intermediaries who are paying for it (unless the Cost Recovery Stakeholder Panel has the power to claw back funds or impose penalties). With funding no longer a key concern for the Government, there will be little incentive for them to rein in ASIC’s expenses and financial intermediaries will not have the time or legal authority to keep the regulator in check.

- *Q11. Is the proposed approach for calculating fees-for-service appropriate?*

The approach for calculating fees is essentially based on the scale of participants. While this is acceptable in principle, the focus on 100% cost recovery is inappropriate when there are positive externalities for consumers and government which are being provided at no charge.

Determining ASIC’s annual funding and levies

- *Q18. How should the Cost Recovery Stakeholder Panel operate? How should the membership be determined?*

Page 26 of the Paper sets out some brief details on the proposed Cost Recovery Stakeholder Panel (CRSP). Given that the plan is to transition to a 100% industry-funded model, the membership of the panel should primarily or exclusively consist of industry players. This should include a broad cross-section of the financial industry, not just large institutional investors and superannuation funds.

Our preference would be for it to operate like a parliamentary committee with ASIC providing officers to answer questions and make written submissions. These would then be reviewed by the CRSP before reporting to the Government or released to the public if required.

Funding Model for AFS Licensees

- *Q36. Do you support the proposed arrangements for AFS Licensees' levies?*

The proposed fees for applying and/or varying an Australian Financial Services Licence are clearly exorbitant. Having been involved in this process on more than one occasion, we can attest that nearly all the paperwork and proofs for these applications is done by the applicant. If further information or documentation is required, the relevant ASIC officer will notify the applicant who will again do all the legwork.

The proposal to charge \$6,900 for a potentially minor variation of an existing licence is a massive and unwarranted impost.

- *Q37. Will the proposed levy arrangements for AFS licensees be competitively neutral?*

The proposed fees will undoubtedly act as a barrier to entry in the industry and are an unreasonable financial hurdle for new firms. It will further entrench the dominance of existing players, stifle innovation and hinder those who wish to exit the industry.

Building a financial advisory business has always been difficult but adding an \$11,000 upfront charge will make it even harder.

- *Q38. Will the proposed tiering arrangements support the growth of AFS Licensees?*

There is very little in this Paper that will encourage the growth of AFS Licensees. It is difficult to conceive of a way that adding more regulatory costs on the sector could boost growth. It will just make it more expensive to run, further concentrate industry power among large firms and deter new entrants.

- *Q39. Will the proposed levy arrangements for AFS Licensees support innovation?*

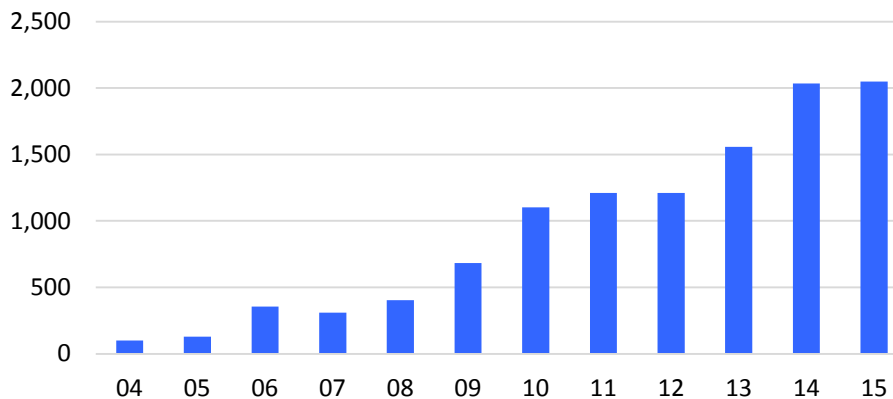
How does adding further regulatory expense support innovation? It will just encourage finance-related professionals like accountants, lawyers and real estate agents not to get licensed.

- *Q40. Will the proposed levy arrangements for AFS Licensees support small business?*

This question illustrates the scope of the ‘disconnect’ between the regulatory regime and the real world. The chart below shows our firm’s ASIC-related compliance costs since the AFS licensing system was introduced in 2004. It includes the cost of getting a full company audit each year, ASIC filing fees, the cost of being a member of FOS (previously FICS) and holding ASIC-compliant professional indemnity insurance.

Over the past eleven years, the total cost of these requirements has risen by just under 2,000 per cent – a compound rate of 31.6% per annum. The proposed ASIC funding charges will add another \$6,000 or so per annum to a small advisory company (at least initially) and history suggests that future increases will be much greater than the Consumer Price Index.

Costs imposed on AFSL holders by ASIC
(Index, FY04=100)



* Total of Audit, Filing Fees, FICS/FOS and PI Insurance

- *Q41. Will the proposed levy arrangements for AFS Licensees support access to financial services in regional Australia?*

No. They will further entrench the position of product providers who can cross-subsidise their regional distribution network from other sources. Small independent groups will not be able to compete.

Proposed Fee Schedule

- *Q58. Are the proposed fee amounts for professional registration, licensing and document compliance review forms appropriate?*

The illustrative levy proposal for a small to mid-sized financial planning practice is \$6,000 per annum. This is the same as the proposed minimum levy for a public company with a market capitalisation of up to \$20 million. It is patently unfair that a financial planning practice is paying the same levy as an organisation that is at least 20 times larger and far more complex.

In Example 5, which illustrates the case of a small AFSL holder with five employees, the

company will pay around \$6,055 per annum. Yet Example 7, which is based on a large proprietary company with \$250 million in a managed investment scheme, would only pay \$9,250.

- *Q59. Do you think that the proposed fee amounts may act as a disincentive for some entities from submitting a professional registration or licence application, or a document for compliance review, with ASIC?*

Of course they will, especially for limited AFS Licences. This has been self-evident for more than a year now. Very few accountants have applied for these licences and the odds are that they will avoid the regulatory regime altogether by claiming that everything they do is tax advice or based on a client's directive.

- *Q63. Would you support the Government only imposing partial cost recovery for applications for limited AFS licences?*

As noted above, limited AFS licences are not an attractive option because high fixed compliance costs make them uneconomic. Potential licensees like accountants would not expect to make much money from financial planning services to begin with but if they have to pay \$11,000 to apply for a limited licence, another \$6,000 per annum in ongoing ASIC funding levies, around \$20,000 per annum for professional indemnity insurance plus another \$5,000 or so for an audit and filing fees, they will not be able to breakeven.

Partial cost recovery is unlikely to redress this compliance cost issue.

Kind regards,



Andrew Quinn
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Director