AUSTRALIAN BANKERS' ASSOCIATION INC.
Strong banks – strong Australia

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Manager Corporations and Schemes Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600
By email asicfunding@treasury.gov.au

Dear Sir/Madam

ASIC Supervisory Cost Recovery Levy Bill 2017 and related Bills

The Australian Bankers Association (ABA) welcomes the opportunity to comment on the exposure draft legislation for the introduction of an industry funding model for ASIC comprising ASIC Supervisory Cost Recovery Levy Bill 2017 and related Bills.

With the active participation of its members, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

General comments

The ABA notes that the proposed Bills establish the overarching framework for the ASIC industry funding model, but the mechanisms used to calculate the levies will be detailed in draft regulations following appropriate consultation. The ABA notes that there is still a great deal of ambiguity about the details of the cost recovery model. The Government is urged to consult with the banking industry early and thoroughly, and to publish draft regulations for review at the earliest opportunity. It is the regulations that will shape the internal systems build and processes to produce the data metrics which underpin the funding model, and so it is crucial that the industry is closely engaged in the development of these requirements.

Another crucial element of the infrastructure underpinning the industry funding model will be the ASIC portal through which returns on data metrics will be lodged. The ABA believes there would be benefits for both ASIC and the banking industry from early engagement on the design of the portal and from agreement on a firm timeline for its testing.

The objective of the legislation is stated as being "that the total amount of levy payable by all leviable entities…..equals the amount of ASIC's regulatory costs for the financial year".[1] The ABA would appreciate an explanation of how this maps with the statement in Treasury's Consultation Paper *Proposed Industry Funding Model for the Australian Securities and Investments Commission* to the effect that regulatory levies would recover around 88 per cent of regulatory costs, and regulatory *fees* would account for 12 per cent of ASIC's regulatory costs. It may be, for example, that the term "levies" in the exposure draft legislation is being used more broadly to include both levies and fees.

[1] (Section 9(2)(a)) ASIC Supervisory Cost Recovery Levey Bill 2017

The ABA notes that the legislation gives ASIC scope to vary the due date for the annual return and for the issuing and payment of invoices. The industry would benefit from firmer guidance on the dates for the input of metrics and payment of levies, particularly in the first billing year commencing 1 July 2017, to provide a more certain basis for systems and process development.

Finally, it would be useful if guidance could be provided to individual banks on the levies they are likely to pay in the first year (2017/18) as a cross-check and validation of the estimates produced from their own calculations. This comparison will provide insights into the robustness of internal systems and processes.

Specific comments on the Bills

ASIC Supervisory Cost Recovery Levy (Collection) Bill 2017

Section 5: Extraterritorial application states that the Act extends to acts, omissions, matters and things outside Australia.

> The ABA requires clarification on whether this extends the reach of the industry funding model to offshore activities, that is, the metrics on which the fees and levies are based are to include both domestic and offshore activities of institutions. It would be our strong preference that there be a more express acknowledgement that the model apply only to Australian territorial activities of regulated entities.

Section 8: When levy due for payment states that levies are payable not less than 30 business days after notice is given.

> The ABA notes there is some concern that a 30 day minimum notice period for payment may be insufficient, and suggests 60 days might be more appropriate.

Section 10: Returns (subsections 4 and 5) provides that a return must be lodged with ASIC by 31 October of the following year unless ASIC has determined an earlier date for the return to be lodged. If ASIC has determined an earlier date, then they must publish a notice on their website setting out what day returns will be due, and the manner in which ASIC requires the return to be lodged. While ASIC may choose to specify an earlier date than 31 October of the following financial year, they cannot set a date earlier than 31 August of that financial year. They also cannot specify a date if it would be within two months from the date on which the notice is first published on their website. ASIC is able to specify a different day for different classes of leviable entity.

> These provisions give ASIC a great deal of flexibility in specifying when returns are due, but the consequence of that is they create a great deal of uncertainty for reporting entities on their reporting obligations. Given the large number of metrics to be reported by some institutions it would create difficulties if there were different dates for different metrics and if the reporting dates for some metrics were to change. It would be preferable, in order to create greater certainty, to specify firmer timing for the lodgement of reports.

Section 11: Default notice provides that ASIC can issue its own estimate of levies to be paid where a leviable entity has failed to lodge a return or ASIC is not satisfied as to the accuracy of the return.

> The ABA would appreciate an explanation of the methodology ASIC would use to estimate a default notice if they do not have sufficient data metrics for a precise calculation.

Section 12: Shortfall penalty provides a penalty on the underpayment of levies of double the amount of the shortfall.

The ABA would appreciate confirmation that the "shortfall penalty" does not apply to any dry run of the system for submitting metrics.

Closing

I would welcome the opportunity to discuss these issues with you.

Yours faithfully

Signed by Tony Pearson

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