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The Treasury
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Dear Percy

ASIC Supervisory Cost Recovery Levy Bill

Thank you for the opportunity to discuss the ASIC Supervisory Cost Recovery Levy Bill (ASIC Levy Bill) as part of the proposed ASIC industry funding model. As you know, the Property Council is the peak body for owners and investors in Australia's \$670 billion property investment industry. This submission below reflects the views of our broad industry of owners, fund managers, superannuation trusts, developers and investors across all four quadrants of property investments: debt, equity, public and private.

Introduction

As previously stated, the property industry supports the proposed ASIC industry funding model so long as the model:

- 1) equitably allocates ASIC costs across financial market participants and licenced entities; and
- 2) improves ASIC's resourcing capabilities, service delivery and increased stakeholder engagement during policy formulation.

Additionally, we commend your inclusion in the ASIC Levy Bill to allow one party to pay ASIC fees on behalf of other leviabile entities under the party's responsibility. This will reduce administrative and compliance burden.

The industry has four principle issues that need to be resolved:

- 1) Ensure adequate industry consultation without rushing through the implementation of the ASIC industry funding model;
- 2) Ensure the fees paid reflect the supervisory effort required by ASIC, not simply the size of the organisation;
- 3) Ensure late penalty rates do not create unnecessary complexity for companies with complex structures and different reporting seasons; and
- 4) Ensure ASIC performance is tied to its intended objectives. This ensures ASIC has a strong focus on its objectives, without compromising its independence.

Adequate Industry Consultation

Industry is very concerned that Treasury may not have allocated adequate time for consultation with industry on the ASIC Levy Bill and also subsequent regulations outlining the detail behind the ASIC industry funding model. In particular, we are extremely concerned to ensure regulations are prospective from date of introduction. Regulations that take effect retrospectively are unfair, cause chaos and create uncertainty in the market.

The proposed industry model is highly complex and requires in-depth understanding of the unique and varying operations of different leviable entities. Rigorous consultation with industry will ensure smooth and effective operations of the ASIC industry funding model. We are eager to meet with you at your earliest convenience.

Unfair Allocation of Fees

Industry remains concerned that allocation of fees and levies do not fairly and directly align with provision of ASIC's services. The current model creates onerous financial burden for the same services delivered by ASIC. For some companies, ASIC fees will increase by more than 10 fold from circa \$60,000 a year to over \$1,100,000 a year. There is no reasonable justification for such a massive hike in fees.

We need greater clarity on costs and fees, particularly outlining under which circumstances fees apply. We are keen to meet with you to discuss in detail the costings. This will allow us to better assess the proposal. We would be willing to discuss how the proposed fees structures would affect some companies.

Timing of Fee Payments

Additionally, the ASIC Levy Bill grants ASIC the power to impose significant late penalties. For example, 20% p.a, simple interest and applicable for the full month, even if the payments are made on the second day of the month.

Industry is also concerned that the late penalty fee system has not taken into account differing reporting systems in conglomerates or companies that have complex structures. In order to avoid late penalty fees, conglomerates or companies with complex structures will require each leviable entity to pay their fees separately. This would impose undue administrative burden on companies.

It is very common for conglomerates or companies with complex structures to have head companies that have subsidiaries or unlisted arms with differing reporting dates. For example, listed companies have a financial reporting season which ends 60 days after the 30th of June, unlisted reporting entities report 3 months after the 30th June, non-reporting entities are entitled to 4 months after the 30th June and some companies have financial years ending on dates other than the 30th June. We recommend the late penalty provision allow responsible entities to pay on behalf of any subsidiaries, in one aggregated payment to ASIC, without incurring any late penalties.

Public Disclosure of how Funding is tied to Improved ASIC Performance

Overall, the ASIC industry funding model does not sufficiently tie user funding to improved resourcing and performance, despite the funding model's stated objectives. Industry wants to see a transparent and accountable system where funding retrieved by ASIC is aligned and measured against performance metrics and deliverables. If existing funding is used efficiently, it must achieve ASIC's six aims under the *Australian Securities and Investments Commission Act 2001* (or 'ASIC Act') subsection 1(2) – see appendix A. Performance against these specific aims should be assessed as a part of the agreement for user funding. We note that this disclosed report is critical to good governance and transparency whilst maintaining ASIC's independence.

In summary, ASIC can achieve an efficient industry funding model through maintaining timely dialogue with market participants on all sides of the transaction, a deep engagement with industries and detailed understanding of the market.

We are keen to discuss these issues with you directly as they are critical to appropriately aligning ASIC's objectives. Our previous submissions have detailed policy suggestions for the broader ASIC industry funding model. We have included them again in Appendix B as necessary inclusions in upcoming regulations. Please let us know when you can meet.

In the meantime, if you have any queries on these points raised, please feel free to contact me on

04 06 45 45 49.

Yours sincerely

A handwritten signature in black ink, appearing to read 'AM', with a horizontal line underneath it.

Andrew Mihno
Executive Director – International & Capital Markets
Property Council of Australia

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;
- (b) promote the confident and informed participation of investors and consumers in the financial system;
- (c) administer the laws that confer functions and powers on it effectively and with a minimum of procedural requirements;
- (d) receive, process and store, efficiently and quickly, the information given to ASIC under the laws that confer functions and powers on it;
- (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 12 DECEMBER 2016.

Submission	Comment
<p>Fees paid by the right users for the right services</p>	<p>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. Fees will increase by up to 10 fold for some companies, putting them at a market disadvantage.</p> <p>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. Preliminary cost analysis show that certain sub-groups (i.e. managed investment schemes or other well-regulated companies with complex structures) will disproportionately pay up to 10 fold higher fees under the new proposal. Industry costings are available and further information is sought from ASIC. This would be a valuable and necessary discussion.</p>
<p>Funding linked to Performance</p>	<p>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.</p> <p>Fairness requires that the funding provided by users is properly scrutinised to ensure it is cost effective and put to its best use.</p> <p>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.</p>
<p>Proposed Levy Arrangements – Public Companies (Listed, Disclosing)</p>	<p>Recommendation: listed REITS and stapled entities are exempted from the market supervision levy where the Responsible Entity is subject to the proposed AFS Licensee levy. It is otherwise double counting.</p> <p>The proposed Public Company – listed levy does not address circumstances specific to publicly listed entities such as REITs and stapled structures.</p> <p>Listed REITS and stapled structures, through their Responsible Entities, are subject to additional internal governance requirements via:-</p> <ul style="list-style-type: none"> • 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. <p>The costs of compliance with these requirements are a significant impost to listed REITs and stapled structures and serve to reduce the cost burden of monitoring and oversight that would otherwise fall to the regulator.</p> <p>Listed companies are not subject to the same internal governance requirements as are required for Listed REITs and stapled structures. Given the additional governance and compliance costs already imposed on AFSL holders, our position is the requirement to pay an additional listed supervisory levy places an unreasonable cost burden on Listed REITs and stapled structures. This conflicts with one of the underlying tenets of the Australian Government Charging Framework of promoting equity given the differing treatment between listed REITs and listed companies.</p>

	<p>Where a listed REIT has a Responsible Entity that holds an AFS Licence, the same entity may be required to pay two separate ASIC levies under the proposed ASIC funding model -</p> <ol style="list-style-type: none"> 1. Public Company – Listed, Disclosing – based upon market capitalisation; 2. Responsible Entity levy – based upon FUM, this may or may not be in alignment with the entity’s market capitalisation depending on whether a REIT is trading at a premium or discount to NTA. <p>Furthermore listed REITS that are subject to both the proposed Public Company – Listed, Disclosing levy and the proposed responsible entity levy will be effectively paying two separate ASIC levies based upon largely the same underlying assets.</p> <p>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.</p>
<p>Proposed Levy Arrangements – Public Companies (Listed, Disclosing)</p>	<p>Recommendation: Market Capitalisation should not be used as a proxy for the level of ASIC oversight. Fees charged are severely misaligned to the level of ASIC oversight and services required.</p> <p>Market capitalisation is a poor proxy for level of ASIC oversight and services required. Often, larger companies and companies that list publicly undergo greater levels of scrutiny and existing regulation thus requiring less further regulation.</p> <p>It is noted that Listed Disclosing Entities are already subject to supervision, compliance requirements and monitoring from ASX and that the proposed ASIC fees are effectively doubling counting expenses.</p> <p>Well-regulated companies are disproportionately subsidising companies that require ASIC surveillance.</p>
<p>Proposed Levy Arrangements – AFS Licences</p>	<p>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.</p> <p>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.</p> <p>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.</p> <p>In the context of externally managed Managed Investment Scheme’s, it is unclear whether the AFS Licence Fee would be a re-imbursable cost. This would be a significant expense against the fees received by responsible entities that would go to their underlying profitability. Query whether part of these costs should properly be characterised as relating to the Managed Investment Scheme.</p>

<p>Proposed Levy – AFSL Licences</p>	<p>Recommendation: ASIC should consult with industry on the AFSL price tiering to ensure the fee reflects the services provided.</p> <p>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.</p>
<p>Proposed ASIC Overs and Unders Approach</p>	<p>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.</p> <p>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.</p>
<p>Proposed Wholesale Trustee levy</p>	<p>Recommendation: Retention of the fixed levy for the Wholesale Trustees</p> <p>ASIC’s consideration of a move from a flat levy for Wholesale Trustees to a graduated FUM levy will not necessarily result in the achievement of ASIC objectives of promoting investor and consumer trust and confidence as arguably wholesale investors do not require the level of ASIC oversight and protection provided to retail investors.</p> <p>The investor base for wholesale property funds and mandates it typically comprised of institutional investors including industry superannuation funds , sovereign wealth funds and offshore pension funds.</p> <p>Such investors are not currently afforded, and do not require, the consumer protections offered under the Corporations Act for retail investors. Wholesale investors have the resources and capability through direct relationships with Wholesale Trustees managers to undertake a greater level of due diligence prior to investing funds and are able to procure from wholesale fund managers tailored investment management arrangements and a greater level of detailed ongoing reporting and oversight.</p> <p>In addition, Wholesale Trustees are not currently required to report FUM under management. Imposition of a graduated FUM levy will result in an additional regulatory reporting requirement for Wholesale Trustees simply for the purpose of calculating a FUM based levy.</p>
<p>Levy exemptions for Incidental Services</p>	<p>Recommendation: An exemption to apply for individual authorisations that are incidental e.g. in-house custodial services or in-house general insurance</p> <p>Under the current submission, levies are applicable to individual authorisations, including where the service is incidental to operations of the company’s own property e.g. incidental custodial services or incidental general insurance. Levies should not be applicable for in-house services.</p> <p>Using RG166 as a precedent, an exemption should apply to an authorisation if it meets a criteria deeming it to be an incidental service.</p>

