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Ernst & Young
200 George Street
Sydney NSW 2000 Australia
GPO Box 2646 Sydney NSW 2001

Tel: +61 2 9248 5555
Fax: +61 2 9248 5959
ey.com.au

Senior Advisor
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

22 November 2022

Submitted via email: ASICIFMReview@treasury.gov.au

Discussion Paper - Australian Securities and Investments Commission Industry Funding Model Review

Dear Sir/Madam

Ernst & Young Australia (EY) welcomes the opportunity to provide our views on the Treasury Discussion Paper *Australian Securities and Investments Commission Industry Funding Model Review*. We support the Government's intention to identify and consider refinements to the ASIC Industry Funding Model (IFM) so that its settings remain appropriate going forward.

We believe it is essential for ASIC to provide enhanced transparency and accountability regarding how its resources are being allocated and utilised to regulate different industry sub-sectors. This would provide regulated entities with greater insight into ASIC's regulatory activities, which they are funding, and strengthen their confidence that ASIC is functioning effectively.

Since the IFM was implemented five years ago in 2017, there have been substantial levy increases for many industry sub-sectors. As an example, the auditors of disclosing entities sub-sector that EY falls within, the total levy (actual) had increased by 125% in the first four years of IFM, from A\$3.5 million in FY2017/18 to A\$7.8 million in FY2020/21. However, communications provided by ASIC thus far have not adequately explained the key factors that contributed to this significant levy increase.

Given that this review will not consider changes to the IFM's ex-post approach, we do not believe any other substantial changes to the IFM are warranted at this time. We are supportive of an equitable model in allocating costs to regulated entities that is closely aligned to the overarching principle of the Charging Framework – entities that cause the need for regulation should pay for it. Oversimplification of the IFM by allocating costs at the sector or population level and apportioning costs using a generalised proxy (e.g. turnover) would lead to excessive cross-subsidisation across regulated entities and is contrary to the overarching principle.



Please refer to Appendix A for our responses to selected questions posed in the Discussion Paper, only questions where we have formed a view on are included. Note that our responses have been provided in consideration to the sub-sectors that are most relevant to EY, particularly as auditors of disclosing entities, registered liquidators and corporate advisors.

We would be pleased to discuss our comments further. If you wish to do so, please contact Chris George at christopher.george@au.ey.com or on (02) 8295 6051.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Chris George', written in a cursive style.

Chris George
Partner – Oceania Assurance Professional Practice Director



Appendix A: Specific responses

INDUSTRY FUNDING LEVIES

Q1. Appendix D provides a catalogue of sub sector definitions, metrics and formulas. If the status quo remains (that is, there are no substantial changes to the IFM framework), are any changes required to ensure the existing industry sub-sectors, levy formulas and entity metrics remain fit for purpose in the longer-term and/or can respond to changes within industry sub sectors?

We agree with the existing IFM's sub-sector definitions, entity metrics and levy formulas that are applicable to EY, specifically, "Registered liquidators", "Auditors of disclosing entities" and "Corporate advisors".

Q2. Do stakeholders understand ASIC's methodology for allocating costs of activities that impact multiple sub-sectors? Is the current level of transparency relating to this approach appropriate?

It is difficult to understand ASIC's cost allocation methodology, particularly with respect to indirect costs which account for about 40% of the total costs recovered via IFM (Table 2). There is a high-level definition of indirect cost in the annual Cost Recover Implementation Statement (CRIS), however there are no explanations on what factors are driving the allocation of the indirect costs to particular sub-sectors.

If there is a significant year-on-year (YOY) % change of a particular direct or indirect cost activity at the sub-sector level, then there should be a clear explanation as to what contributed to this (e.g. due to 50% increase in FTE staff for that sub-sector).

As an example, indirect cost "Governance, central strategy and legal" for auditors of disclosing entities had increased by 93% in FY2018/19.

Year	Actual cost	% Increase YoY
FY2017/18	273,568	
FY2018/19	527,206	93%
FY2019/20	698,693	33%
FY2020/21	870,701	25%

Q3. Is it more important to have a simpler model that can be more readily understood by entities and administered by ASIC which may result in increased cross-subsidisation, or a more equitable model (similar to the status quo) that closely links the recovery of costs to the groups of entities causing the need for those costs?

We are supportive of a more equitable model (status quo) where cost allocation is based on the regulatory activities linked to specific groups of entities. Oversimplification of the IFM by allocating



costs at the sector level, combining sub-sectors, and/or apportioning costs based on a general volume-based proxy (e.g. revenue) would result in some entities paying for significantly more costs to cover for regulatory activities linked to other sub-sectors or entities. This would be contrary to the Charging Framework's overarching principle – entities that cause the need for regulation should pay for it.

Q4. Is cross-subsidising costs for entities within a sub-sector or sector more appropriate than cross-subsidising costs across all of ASIC's regulated population? If so, why?

If the existing IFM settings are to be changed, we believe cross-subsidising costs for entities within a sub-sector is a better option than within a sector or across the entire population. Regardless, any decision to simplify the current IFM needs to be justified by estimated cost saving for ASIC to administer a less complex IFM, and in turn a reduction in cost recovered via IFM.

Q8. Are there opportunities to improve the transparency and reporting of enforcement costs? If so, what changes could be made and what benefits would they provide?

As with any direct or indirect cost activity, we believe that if there is a significant YOY % change at the sub-sector level, then there should be a clear explanation as to why it occurred in the CRIS. For enforcement, this could be X% increase in court proceedings. If such information is already reported in another document (e.g. ASIC's corporate plan or quarterly updates) then a weblink can be provided instead.

In the current CRIS, we note that commentary is provided for material variances (actual vs. estimated cost) by regulatory activity for each of the sub-sectors. However, those reasons are too high-level and vague. Example from CRIS 2020/21 - *The variance was mainly due to higher than budgeted enforcement costs. Enforcement costs incurred in the running of a number of matters were higher than expected.* Clearer explanation for such variances should be provided.

Significant increases in costs for a particular sub-sector and/or regulatory activity should be closely linked to the priorities that ASIC had set in its annual corporate plan or a particular event (e.g. Royal Commission into a particular industry).

Q9. Is the approach of attributing costs of illegal unlicensed conduct to the most 'relevant' sub sector the most appropriate recovery method? Alternatively, how should these costs be recovered, and why?

While we agree that ASIC's activities relating to illegal unlicensed conduct benefit the licensed participants to some extent (i.e. maintaining integrity and trust in the licensed sub-sector), we believe that the general public is the key beneficiary. Thereby, the majority of such costs should be borne by the Government (i.e. taxpayers).



Q10. Are there alternative ways to recover the costs of ASIC’s activity relating to emerging sectors and legal unlicensed conduct from current industry sub-sectors, and why?

Recovering emerging sectors and legal unlicensed conduct from existing sub-sectors is contrary to the Charging Framework’s principle – entities that cause the need for regulation should pay for it. It is not the entities within the existing sub-sectors that are causing the need for the regulation. The key beneficiary for associated regulatory activities is the general public, and hence these costs should be borne by the Government (i.e. taxpayers) until new sub-sectors are introduced.

Q13. What changes could be made to the reporting of indirect costs to improve stakeholder understanding of these costs?

Refer to our response to Q8.

Q14. Do regulated entities find estimated levies useful, and how is this information used by entities?

We do not find the estimated levies in the draft CRIS useful for two key reasons, (i) inconsistent and late timing of draft CRIS release; and (ii) feedback provided on the draft CRIS have no impact on the levies in the final CRIS and actuals. To save ASIC’s efforts and costs, only one CRIS needs to be published annually and a consultation is not necessary.

Q14.1. Noting the trade-off between timing and accuracy, when is it most beneficial for entities to receive estimated levy amounts?

We believe that a clear deadline needs to be set for ASIC to publish the annual CRIS, ideally by end of May. This would give regulated entities the opportunity to reflect their estimated levy in the upcoming financial year commencing 1 July.

Q15. Is it more important to have less volatile/more stable levy amounts year-on-year, or more granular and equitable apportionment of costs each year?

As stated under Q3., we are supportive of a more equitable model. We are not supportive of Option 1 (rolling average approach) or Option 2 (spreading enforcement costs across entire population) on pages 26 and 27 of the Discussion Paper. Option 1 would not reduce volatility resulting from changes to ASIC’s annual funding that is determined by the Government and regulatory priorities set by ASIC. As for Option 2, this approach would be contrary to the Charging Framework’s principle – entities that cause the need for regulation should pay for it.



FEES-FOR-SERVICE

Q17. In relation to the design, structure and legislative framework for fees-for-service:

Q17.1. Are any changes required to ensure it remains fit for purpose in the longer-term and/or can respond to changes in industry?

We believe the existing transaction-based model for fees-for-service is the most appropriate and do not think any changes are warranted at this time.

Q19. If fee amounts are to be changed, should this be amended via a one-off increase or staged to spread the impact over multiple years?

Before a decision is made to increase the fees-for-service, the regulated entities need to be advised of the new fee amounts. For those services where there will be a significant increase, explanations should be provided on key factors that have contributed to the increase. Given the advancement and investment in technology, there is most likely improved efficiencies from automation in providing certain services, in such cases the fee amount should be decreased. We believe periodic reviews and adjustments of the fees-for service (e.g. every 5 years), whether increase or decrease, should be considered.

Q20. Is it appropriate for ASIC to have the power to determine which of its regulatory activities/services it can charge a fee for?

We do not believe it is appropriate for ASIC to have such power. Decision on what type of regulatory activities/services that ASIC can charge should be subject government oversight.

Q21. Is it appropriate for ASIC to have the power to set fee amounts, or should this power remain with the Government?

We believe the power to set fee amounts should remain with the Government. As suggested under Q19., periodic reviews and adjustments of the fees-for services (e.g. every 5 years) should be considered to ensure ASIC's costs are appropriately covered.



REPORTING, TRANSPARENCY AND CONSULTATION

Q26. How do regulated entities and other stakeholders engage with ASIC's transparency and consultation mechanisms relating to the IFM? What aspects are most useful?

The draft CRIS consultation process is currently the key means for industry engagement on the IFM, however we do not find the consultation useful for the reasons provided under Q14. We are supportive of Option 1 on page 38 of the Discussion Paper, that is to publish only one CRIS annually and reframe the CRIS as a transparency document.

Q26.1 What do stakeholders seek from mechanisms to engage with the IFM? Is it more important for these mechanisms to provide transparency, or to allow for stakeholder consultation and feedback?

We believe there should be greater transparency provided in the CRIS to strengthen accountability, refer to our response to Q28. As for consultation and feedback, we are supportive of Option 2 on page 38 of the Discussion Paper. It is more beneficial to have substantive periodic consultations (e.g. every 5 years) led by the Treasury that result in actual improvements based on industry feedback.

Q27. Are the existing transparency and consultation mechanisms in relation to the IFM appropriate?

Refer to our response to Q26.

Q27.1. Would changes to existing mechanisms or alternative mechanisms be beneficial? If so, what changes could be adopted and what benefits would they provide?

Refer to our response to Q26.1.

Q28. How is the CRIS used by regulated entities and other stakeholders, and do stakeholders find the information in the CRIS useful?

CRIS would generally be used by the regulated entities to budget for their levy payable in the upcoming financial year as well as for transparency purposes in understanding what factors have contributed to the increase / decrease of their levy and how these factors link back to ASIC's annual corporate plan.

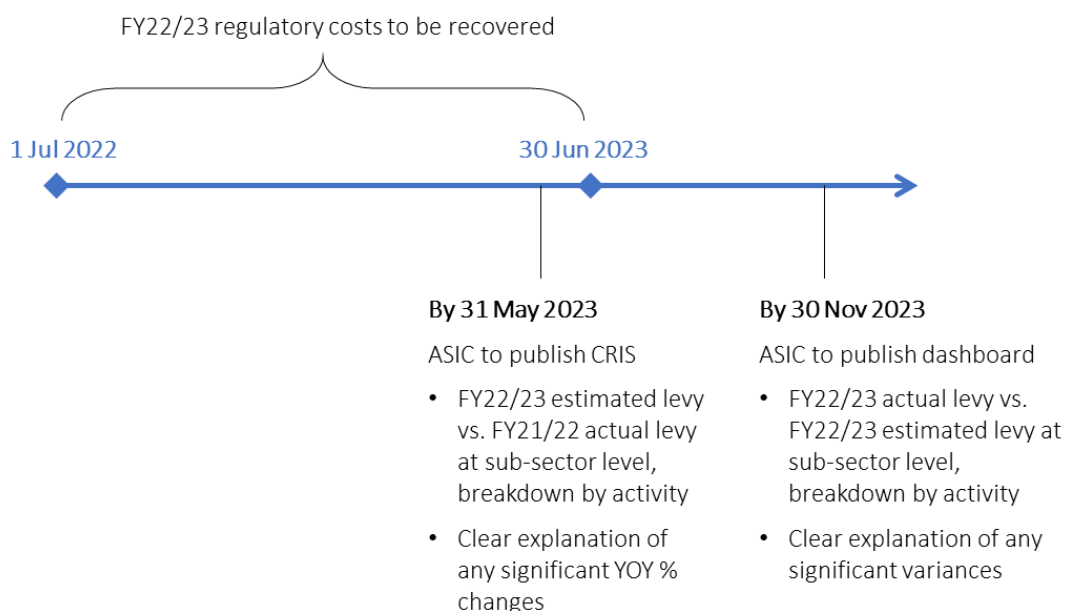
Q28.1. Could improvements be made to the CRIS, including the form/format and nature of information provided? If so, what improvements and what benefits would they provide?

Our suggestions are as follows:

- ASIC to publish one CRIS annually by end of May containing estimated regulatory costs to be recovered through levies from each of the sub-sectors.



- For the CRIS “Detailed breakdown of estimated costs of regulating each subsector” tables, add a new column with data of previous year’s actual levies. If there is a significant YOY % change in cost for any direct or indirect activity, then there should be a clear explanation as to why it occurred. If the information is already reported in another document (e.g. ASIC’s corporate plan or quarterly updates) then a weblink can be provided instead.
- ASIC to publish the annual dashboard by end of November. The variances tables (estimated levies in latest CRIS vs. actual levies) should be reported earlier in the dashboard instead of the current approach, where that information is published in the subsequent year’s CRIS.



Q28.2. At what time is it most beneficial for the CRIS to be published?

Refer to our response to Q28.1.

Q29. Noting that changes to the IFM are for the most part decisions for the Government, is annual consultation by ASIC via the CRIS useful? Would less frequent but more substantive consultation be preferable?

We do not believe the current consultation by ASIC on the draft CRIS is useful, refer to our response to Q14. Less frequent but more substantive periodic consultations led by the Treasury is preferred, refer to our response to Q26.1.



Q30. Are changes required to the criteria determining material variance? If so, what should be changed – the percentage and/or dollar value amount, or be based on the number of entities impacted?

We believe the criteria for determining material variance should just be 10% without an additional \$2 million criteria, as the levy amount for different sub-sectors vary significantly. Separately, we believe the commentary provided for variances should be more detailed and specific, please refer to our response to Q8.

Q30.1. When should information regarding material variations be published?

Refer to our response to Q28.1.