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ASIC Industry Funding Model Review

Discussion Paper

Infocus, an unlisted public company, is a national wealth management organisation established in 1994 on Queensland's Sunshine Coast.

Infocus directly employs over 70 people, including 15 that are financial advisers that are operating under the Infocus AFSL. Infocus indirectly employs a further 500 people across Australia, including a further 170 financial advisers, that provide quality financial advisory solutions to over 18,000 Australians.. Infocus offers a diverse range of services including strategic financial advice, financial product advice, personal and business advisory, credit advisory, investment management and tax advisory. Infocus also owns and operates the integrated wealth technology solution Platformplus which is used within Infocus, across our network and by a broad array of external Australian Financial Services licensees.

Introduction

We thank Treasury for the opportunity to provide feedback on the ASIC Industry Funding Model: Discussion Paper (October 2022)[1]. For context we also refer to the Terms of Reference for the Review of the Australian Securities and Investments Commission Industry Funding Model[2] and the Cost Recovery Implementation Statement: ASIC industry funding model (2021–22)[3].

Infocus takes its regulatory obligations seriously and works collaboratively and professionally with regulators and other important stakeholders such as the Australian Financial Complaints Authority (AFCA) as all parties strive to serve and protect the bests interests of consumers.

We have provided feedback and made a number of comments in relation to the discussion paper and which we hope will be accepted in a constructive and positive manner. We can provide further context and information as required to achieve the most appropriate outcomes.

Opening comment

We believe that the current model, particularly with reference to financial advice in the current environment, is no longer fit for purpose.

ASIC's *ex ante* approach to determining year-on-year funding levy increases has seen unsustainable increases of over 340% in the last 4 years. This led to the extraordinary joint announcement on 30 August 2021 by the then-Treasurer and the Minister for Financial Services providing immediate "temporary and targeted relief on ASIC levies for financial advisers" by freezing the ASIC levy for 2020-21 and 2021-22 and restoring the levy to the 2018-19 level for two years.

This is against the backdrop of a dramatically reduced pool of licensees and advisers (relevant providers) with the banks and bank-owned subsidiaries exiting the wealth management arena post-Royal Commission and a swathe of advisers exiting the industry as a result of the costs of compliance, the tremendous risks incurred in provided regulated financial product advice with the Australian Financial Complaints authority acting *ultra vires*, the career-ending implications of not passing the FASEA exam and the current state of the further education requirements.

[1] Australian Securities and Investments Commission Industry Funding Model Review: Discussion Paper, Commonwealth of Australia, 2022, https://treasury.gov.au/sites/default/files/2022-09/c2022-317130-disc.pdf

[2] Terms of Reference for the Review of the Australian Securities and Investments Commission Industry Funding Model, 2022, https://treasury.gov.au/review/review-asic-industry-funding-model/terms-of-reference

[3] Cost Recovery Implementation Statement: ASIC industry funding model (2021–22), https://download.asic.gov.au/media/izkhmteh/cris-asic-industry-funding-model-2021-22-published-21-october-2022.pdf

Regarding the level of increased costs that advisers are forced to incur, it cannot be understated the dramatic impact on small business. The dramatic reduction in adviser numbers cannot be underestimated. In 2018, Figures from WealthData showed that 295 financial advisers were removed from the Financial Adviser Register (FAR) in the first week of October and in the 12 months to 5 October 2022, the number of advisers is down 2,950 or 15.64%. Accordingly, the number of financial advisers now listed on the FAR (as at 6 October 2022) stands at 15,908 (from a height of over 28,000), showing that in year-to-date terms there has been a decline of 1,261 or 7.34%.

Added to this, and reading down the discussion paper, there is an implied onus on the advice subsector that ASIC's costs to pursue any instances of consumer harm and financial losses caused by the ill deeds of persons not even appropriately authorised or licensed to provide financial product advice, such as by con-people like Melissa Caddick and others, will be included in the quantum to be collected from financial advisers because their activities are of a "like nature", which is completely implausible. We also question in what capacity unscrupulous and criminal activities are classified from the regulator's perspective – was Ms Caddick acting as an authorised representative or as promoter of an unregistered and unlicensed Managed Investment Scheme (MIS)? We also note that in the case of *Westpac Securities Administration Ltd v Australian Securities and Investments Commission [2021] HCA 3* the advice industry effectively funded 60% of the costs of prosecuting that case. We are concerned that we will be required to underwrite the costs of ASIC's supervision, monitoring and enforcement activities against a broad range of unregistered and unlicensed providers including "finfluencers".

We also refer to the lack of transparency from ASIC. The most recent Cost Recovery Implementation Statement (CRIS): ASIC Industry Funding Model (2021-22) [4] was only released this week. It gives no comfort to AFS licensees and adds little value in a business sense in trying to model the cost to the business going forward.

We also question why so little emphasis is placed on advice to investors that meet the wholesale and sophisticated investor tests and why financial advisers providing advice and services to mum and dad retail clients are being forced to bear the brunt of an increasing cost to fund ASIC's programs, when these costs need to be passed onto the very clients that ASIC is seeking to increase accessibility of advice for (as discussed in Consultation Paper 332) [5].

[4] Cost Recovery Implementation Statement: ASIC industry funding model (2021–22), https://download.asic.gov.au/media/izkhmteh/cris-asic-industry-funding-model-2021-22-published-21-october-2022.pdf
[5] ASIC, CP 332 Promoting access to affordable advice for consumers, 17 November 2020, https://asic.gov.au/regulatory-resources/find-a-document/consultation-papers/cp-332-promoting-access-to-affordable-advice-for-consumers/

There is a perception that the levy raised by ASIC partially funds ASIC's continued litigation against stakeholders who are no longer in the industry such as the banks and previously licensed bank-owned subsidiaries. It would be unconscionable for the regulator to continue to require the industry, in its current much-diminished form, to continue to bank-roll the enforcement activities of the regulator against a cohort that is no longer part of the industry.

We also call out in the strongest possible terms that in any award for costs, penalties or fines that arise as a result of successful litigation, we would expect that they are applied to reduce the quantum of costs that are recovered via the funding levy rather than being applied to general revenue.

Conclusion

In short, we believe the current funding model is fundamentally flawed, particular in relation to the financial advice subsector, which is experiencing a severe regulatory-driven transition and which has seen a roughly 40% reduction in the number of financial advisers, in an environment in which quality financial advisers are needed by Australians.

We continue to advocate for access to quality financial advice for mum and dad retail clients, and increased accessibility of advice to those who need it most.

Kind regards

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