

18 December 2017

Manager, Corporations and Schemes Unit
Financial Systems Division
The Treasury
Langton Crescent
PARKES ACT 2600

Attention: Stephen Powell

By email: ASICfunding@treasury.gov.au

Dear Stephen

ASIC Fees for Service Funding Model – consultation paper

The Property Council welcomes the opportunity to comment on Treasury's consultation paper, *Introduction of ASIC's Fees-for-service under the Industry Funding Model* (the Paper).

The Property Council is the peak body for owners and investors in Australia's \$670 billion property investment industry. We represent, owners, fund managers, superannuation trusts developers and investors across all four quadrants of property investments: debt, equity, public and private.

The property industry has supported the introduction of the proposed ASIC industry funding model on the basis that the funding model will seek to equitably allocate ASIC costs across financial market participants and licensed entities, and improve ASIC's resourcing capabilities, service delivery and stakeholder engagement during policy formulation.

Importantly, the levies and fees set under the ASIC industry funding model should be clearly identifiable, not result in double charging for the same service or activity, and be appropriate having regard to the cost associated with providing the service and the value delivered to the end user and the broader community.

We appreciate the consultative approach undertaken in developing the model, which has resulted in the changes to regulatory fees being deferred until 1 July 2018.

We have the following observations and concerns regarding the regulatory fees proposal set out in the Paper:

- **Interaction with regulatory levies funding model** – we are concerned that the regulatory fees proposal, when combined with the regulatory levies funding model, will result in substantial increases in fees for market participants which may not fairly reflect the value delivered.

Under the ASIC Cost Recovery Levy, property funds (being AFSL holders) will be subject to significant increases in fees, with some property groups facing increases from circa \$60,000 to fees of over \$1,100,000 per annum. This impact will be exacerbated with the proposed regulatory fees model, which also contains substantive increases in processing fees, including for AFSL registrations – initial estimates indicate property groups could face an increase in annual fees from circa \$10,000 to \$33,000.

- **Funding to be linked to performance benchmarks with clear service delivery times** – industry supports ASIC’s proposed development of a formal assessment process to ensure the fees imposed on activities remain appropriate.

It is critical that this formal assessment process also includes:

- systems and controls to continuously improve productivity and ensure ASIC is operating as efficiently as possible and is providing value to the end user of its services; and
- benchmarks to assess performance and ensure the level of service being delivered is meeting business and community expectations.

The benchmarks should include reasonable timeframes for processing applications and registration forms. Our members have had varying experience with ASIC turnaround times over the last 18 months. For example, in relation to applications or variations of an AFSL (FS01 / FS03), response times have varied from 2 weeks to 12 weeks. The lack of certainty regarding application turnaround times makes it difficult to manage business and investor expectations and, in some circumstances, has impacted the launch of new financial projects.

Setting clear and reasonable timeframes has been successfully adopted by other regulators. For example, the Foreign Investment Review Board (FIRB) has a statutory period of 30 days to make a decision from the date of full payment of the relevant fee on application. Similarly, the Australian Taxation Office provides it will respond to private tax ruling requests within 28 days.

The proposed online portal for applications should also provide sufficient functionality to allow users to track the status of applications and provide avenues to contact the analyst assigned to review the application.

- **Regular review of fee schedule** – industry supports the proposal to review the ASIC regulatory fee schedule every three years, or earlier if there are unforeseen changes to the work required for a particular fee-for-service activity. This will ensure the fees reflect the most efficient delivery of ASIC’s services, and take into account improvements in technology and data matching which will reduce the labour hours required to undertake a task.

The review should also provide an opportunity to reflect on whether any licensing or registration process could be combined for greater efficiency, or removed if they are no longer required. This would align with the Government’s commitment to red-tape cutting.

- **Greater transparency required on how the fees have been set** – the Paper indicates that the fees applicable for each ASIC registration or licensing application has been set in accordance with the government’s Cost Recovery Guidelines, and will be calculated using a weighted average hourly rate which includes indirect costs, multiplied by the regulatory effort.

We would recommend greater transparency around what forms part of indirect costs, and how regulatory effort is measured. We also support greater reporting and transparency on the cost recovery framework, which the Paper indicates will occur in accordance with the Government’s annual Cost Recovery Implementation Statement.

- **Streamlining AFSL application fees (FS01 / FS03)** – the proposed fees are on a tiered basis depending on license type (retail vs wholesale) and complexity (low vs high). However, there is no detail provided on what factors will determine whether an application is low vs high complexity. We recommend ASIC standardise the 8 different proposed fees for an FS01 / FS03 into a more streamlined approach and provide clear direction to licensees as to what specific fee bucket the application or variation will fall within to provide greater certainty regarding costs.

- **Removal of fees for administrative updates to MIS applications** – given there is a proposed higher fee for new MIS applications of \$3,029, ASIC should waive the fee for subsequent modifications, replacement and consolidation of constitutions (5101B / 5101C / 5101D). These are merely administrative lodgments of record for ASIC.
- **Completeness of regulatory fee list** – it is our understanding that Schedule A of the Paper sets out the complete list of proposed regulatory fees under the user pay model. This framework will then sit adjacent to the regulatory levies framework, and the fees attached to the ASIC registry database. Accordingly, it is our understanding that additional fees will not be imposed on entities for any audit or compliance activity that is instigated by ASIC.
- **Clarifications** – page 18 of the Paper refers to 5101A “Notification of change to managed investment scheme’s constitution”. However, 5101A is “Initial scheme constitution” which is relevant for new MIS applications, while 5101B relates to changes in constitutions “Modification of constitution”.

We would be happy to meet to discuss these issues with you further.

Please contact me (02 9033 1929) if you have any queries.

Yours sincerely



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