

9 October 2015

Corporations and Schemes Unit
Financial System and Services Division
The Treasury
100 Market Street
Sydney NSW 2000

Email: asicfunding@treasury.gov.au

Dear Sir/ Madam

Proposed Industry Funding Model for the Australian Securities and Investments Commission

The Australian Institute of Company Directors (AICD) welcomes the opportunity to make this submission in response to Federal Treasury's Consultation Paper, *Proposed Industry Funding Model for the Australian Securities and Investments Commission* (Consultation Paper).

The AICD is committed to excellence in governance. We make a positive impact on society and the economy through governance education, director development and advocacy. We have a significant and diverse membership of more than 36,000 from across a wide range of industries, commerce, government, the professions, private and not-for-profit sectors.

General comments

The Australian Securities and Investments Commission (ASIC) provides in the Chairman's Report for the 2013-2014 financial year that "ASIC's objective is to allow markets to allocate capital efficiently to fund the real economy and, in turn, economic growth. This contributes to improved standards of living for all Australians." The AICD supports ASIC's objective and agrees in principle that an industry funding model may be an appropriate mechanism to ensure that ASIC has the necessary financial resources to perform its regulatory and oversight role in the capital markets. However, it should be acknowledged that any industry funding may ultimately be passed on to consumers as these fees and levies are likely to be incorporated into the cost base of corporate entities.

Once the nature and extent of the funding model has been agreed on, an additional process is required to put in place the appropriate performance management metrics to ensure ASIC manages its costs in a transparent way. The AICD acknowledges that although the Consultation Paper specifically excludes ASIC's registry business, this business earned income of \$763 million in the 2013 -2014 financial year. Should that funding (in part or full) be available to support ASIC's activities and not appropriated to the Official Public Account, it would reduce the scale of the additional call on business proposed under the industry funding model.

Various market participants have questioned whether the market participants that ASIC have oversight responsibilities for, should be responsible for funding the regulatory activities of ASIC. They are concerned that this change in relationship may impede ASIC's independence and that certain market participants may be able to assert undue

influence on the regulator. It is important when developing this model, that these concerns are addressed and that appropriate measures be put in place to minimise this risk.

The changes proposed in the Consultation Paper are significant and it may be appropriate to extend the transition period beyond the three years proposed. By extending the transition period, this would allow ASIC to monitor the impacts of the new funding model and better check on unintended consequences that may materialize during the implementation of the new funding model.

Given the short consultation period for such a significant change to the way in which ASIC will be funded in the future, the AICD will confine its comments to key issues that in its view need to be considered in the development of an industry funding model for ASIC.

The AICD has also not commented on the levies proposed for each sector or analysed each of the fees for service. Instead we have attempted to limit our comments to the principles that should inform how these levies and fees should be calculated.

Industry levies

The AICD has long called for the regulator to have sufficient financial resources to undertake its activities to ensure that the financial markets are efficiently and effectively run. As such, we support a funding model that is fair and equitable to all participants in the Australia's financial market. Further, the funding model needs to balance effective regulation with appropriate accountability and transparency to ensure that ASIC manages its cost base appropriately.

In developing the funding model it is important that the model consider what costs should be included and what should be outside of the scope of the model. For example, in Chapter 4 of the Consultation Paper, it states that the costs of capital expenditure would be recovered from industry. The AICD queries whether it is appropriate that capital expenditure should be recovered from industry.

The AICD further queries whether a greater portion of ASIC's funding should continue to be funded by government, as all Australian's benefit if the capital markets are regulated appropriately.

In setting the levies for market participants it is important to ensure that the proxy used for determining these levies does not encourage inappropriate behaviour. For example, the Consultation Paper in determining the levies for registered liquidators (Attachment D) proposes that the levy is based on 'assets realised'. Should the levy be based on 'assets realised' it may discourage liquidators from ensuring that the assets under liquidation achieve the highest price possible, as that would result in increased levies. Further, if the external administrations include voluntary administration this does nothing to encourage restructuring and may deter liquidators from calling in assets.

The Consultation Paper is silent on what checks and balances will be included in the system to ensure that ASIC accurately accounts for its costs in a manner that enables companies to accurately determine the costs that ASIC incurs in the performance of its regulatory activities and what performance management metrics would be appropriate to require ASIC to report on in the future.

The Consultation Paper is silent as to the nature and extent of expected disclosures within ASIC's annual report to transparently inform the market as to the nature and extent of the costs incurred in carrying out its strategic priorities.

When considering the role of the Stakeholder Advisory Panel, it is important to ensure that the remit of such a panel is clearly defined upfront. This will ensure that the Panel achieves its objectives and provides a mechanism for ensuring industry participants have a clearly articulated role in the consultation process for the setting of levies and fees. Items that would be required to be considered in respect of the Panel include its members, tenure, number of meetings and a clearly defined charter. It may be appropriate to mirror the good governance practices undertaken in the private sector with respect to board committees.

Fees for services

The AICD supports the three year cycle for the review of fees for services, and agrees with the Consultation Paper that this is an appropriate time frame that provides certainty for industry participants.

We note that certain of the fees for services have increased significantly against what is currently charged by ASIC for those services. The Consultation Paper does not effectively articulate how these amounts are determined and what incentives are in place to ensure that ASIC manages its costs effectively.

Given the substantial increase to the fees for service to reflect the costs incurred by ASIC in performing these services, the AICD recommends that these fees should be benchmarked against similar overseas regulators. This would ensure that Australian entities would not be disadvantaged on the costs of doing business in comparison to other foreign markets.

In respect of the fees for applications for relief, Attachment G, Proposed Fee Schedule sets out the amounts that will be charged by ASIC for applications for relief. The AICD is concerned about the high cost of novel applications which is set at \$21,000. It is our view that this amount is prohibitive and does not appropriately encourage market participants to go to ASIC with innovative proposals for relief in policy areas that ASIC may not have considered.

We hope that our comments will be of assistance to the Committee. Please do not hesitate to contact Senior Policy Advisor, Nicola Steele on (02) 8248 6600 if you would like to discuss.

Yours sincerely



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