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Ms Meghan Quinn
Division Head, Financial System Division
The Treasury
100 Market Street
SYDNEY NSW 2000
By email: asicfunding@treasury.gov.au

Dear Ms Quinn

Proposed Industry Funding Model for the Australian Securities and Investments Commission: Proposals Paper

The Australian Bankers' Association (**ABA**) appreciates the opportunity to provide comments on Treasury's Proposals Paper *Proposed Industry Funding Model for the Australian Securities and Investments Commission* and supporting attachments (**proposals paper**)[1].

With the active participation of its members, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

The ABA has affirmed its support for an industry funding model for ASIC as part of its banking industry reform package[2]. The ABA will work with the Government and ASIC to implement the model to enhance ASIC's ability to investigate matters brought to its attention and to ensure ASIC remains a strong and properly funded regulator.

Previous comments

The ABA commented on the earlier proposed funding model (2015 model) through a submission and a number of roundtable meetings. The key observations were:

- The ASIC Capability Review should be completed prior to finalisation of the funding model.
- The funding model should be simple, easy to understand and minimise the additional compliance burden for stakeholders.
- Levies and fees should be consistent with the level and intensity of regulation and risk, and should not be based on the capacity to pay.
- There needs to be an appropriate accountability and governance framework to ensure ASIC only provides necessary services and products and that those outputs are delivered in the most cost efficient manner. This could include key performance indicators and service level agreements so that funding is transparently tied to performance. In particular, the spending envelopes and funding arrangements should be determined by parliament rather than by the regulator.

[1] https://consult.treasury.gov.au/financial-system-division/asic-industry-funding
[2] http://www.bankers.asn.au/media/media-releases/media-release-2016/banks-act-to-strengthen-community-trust

- There should be equity between peers in the fees and levies paid.
- There should be allowance for efficiencies achieved in regulating corporate groups.
- There needs to be transparency around ASIC's costs.

Evaluation

Capability Review

The ABA acknowledges this has now been achieved, with the release on 20 April 2016 of a package of reforms to improve ASIC's capabilities and enhance its capacity to deliver better outcomes for consumers. This allows for the operational requirements of ASIC to be fully specified and for the industry funding model to be finalised in the context of these operational needs.

Simplicity and minimised compliance burden

The ABA notes there will be two types of regulatory charge:

- **Regulatory levies** to meet the costs of ongoing regulatory activities. Around 88 per cent regulatory costs would be recovered through levies. There is a further wrinkle on this, with activities that are consistent with the Government's Charging Framework being recovered via a cost recovery levy, and other activities being recovered via a statutory industry levy. There is no difference in the methodology to calculate each of the levies.
- **Regulatory fees** to recover the costs of user-initiated service costs such as licensing, which accounts for 12 per cent of ASIC's regulatory costs.

The ABA remains concerned about a number of aspects of the model.

Complexity

For full service financial organisations the 2016 model is still very complex, resulting in considerable difficulties and delays among ABA members in calculating a meaningful estimate of their potential levies with any confidence. A typical banking group will be required to pay a range of levies and fees including:

- Public company levy, from a $4,000 minimum to a maximum of $662,000.
- Market participant levy, with a $9,000 fixed levy plus $0.02 per transaction plus $0.002 per message.
- Credit provider levy, with a $2,000 minimum levy plus $0.15 per $10,000 of credit provided greater than $100 million.
- Deposit product provider levy, with a $2,000 minimum plus $0.02 for each $10,000 of deposit liabilities greater than $10 million.
- Payment product provider levy, with a $9,000 flat levy in 2017-18.
- Fees for securities dealer's licences, with a $250 fixed levy plus $0.34 per $10,000 of annual trade value.
- Fees for financial advice providers, varying according to the client base and type of products.
- An insurance services levy, at $20,000 plus $0.59 for each $10,000 of net premium revenue or net earned premium above $5 million.
- Custodian levy at a flat $560.
- Possibly a levy as a responsible entity or superannuation trustee.

This requires the compilation of a significant amount of information across a range of metrics which are often across multiple lines of business within an organisation, involving substantial resources to calculate an overall bill to be paid to ASIC.

The ABA acknowledges that it is proposed the bill be assessed ex post – that is after the end of the financial year to which it relates, and therefore at that point the necessary metrics will be available. Nevertheless, it will remain an onerous and largely manual process to compile and input the necessary data through the ASIC portal and to go through the process of reconciling the final invoice with the metrics provided.

Clarity

Some levy metrics and applicability require clarification:

- One area concerns the number of invoicing and metrics inputting touchpoints. It is unclear whether ASIC will issue invoices for each licensee or will issue a single invoice for a whole integrated corporate entity. Additionally, where there are a number of entities operating under a single licence (for example, multiple ABNs providing credit under one Australian credit licence), it is unclear whether the invoice would be made out per licensee or divided somehow among the entities.
- A related issue is whether the data inputting requirements are directly linked to the number of invoicing touchpoints, so for example, if invoicing will be done for each licensee, whether that will require that all metrics are input on a per-licence basis (and, for the corporate levy, on a per-entity basis) rather than for the integrated entity (i.e. corporate group) as a whole.
- For the deposit taking and credit sector, the definition of "The total amount of credit provided under credit contracts" could refer to either the value of loans approved, or the value of loans drawn down. More rigorous and fulsome definitions would be helpful including clarification of the delineation between where an entity may be charged levies as a "credit provider" versus a "credit intermediary". On its current reading, an entity may pay both levies for the same instance of credit provision. Confirmation is also required that credit provided and intermediated refers only to consumer credit, not commercial credit, and that it is for credit flows during the year, not the balance outstanding on balance sheet at year end. Guidance is also required on the treatment of refinancing – would the levy be based on the gross new credit provided or only on the net increase in credit?
- For financial advice, clarity is required on whether the number of financial advisers on which the levy is based is year average, year end or year start.
- For custodians, it would be useful to clarify how the role of settlement participant is captured.
- For insurance product issuers where this function is outsourced, e.g. where mortgage home insurance is provided by a third party it needs to be clarified which party pays the insurance provider and insurance distributor levies.
- The subsector definitions for financial advice should be revised to make sure the model works for businesses which provide a range of different advice to different client types on different products. It is not currently clear whether levies such as "licensees that provide personal advice on Tier 2 products only to retail clients" or "licensees that provide general advice only to retail and wholesale clients", apply to these hybrid business models on a cumulative basis.

Cost

There will be development and operational costs for the technological interface with the new ASIC portal and for the systems to extract and forward the new data requirements for industry funding. On this point the ABA notes there are 10 levy metrics with new reporting requirements, although not all entities will be required to report all of these. The ABA understands that for the foreseeable future, all source data (the levy metrics) will need to be submitted for each licensee and entity, even where ASIC already has the information via other channels. These data reporting requirements are large and complex. For many banks the system build and reporting requirement is a very significant piece of work in its own right.

Many entities have more than one AFSL, and will be levied against multiple touchpoints - meaning many data points need to be collected and input or verified against data that ASIC collects. In some instances this data is not currently collected or maintained in a manner conducive to simple extraction. Furthermore, there is currently insufficient information available about many of the data points to facilitate accurate scoping or costing of any system build to address ongoing reporting. This complexity increases the operational risk associated with compliance. Taking into account the typical lifecycle for funding approvals and systems development work, the ABA requests that detailed specifications be made available at least 18 months prior to the go-live date so that entities have an opportunity to minimise operational risk through system enhancements where possible.

Double counting

There needs to be clarification that entities with more complex organisational structures will not be charged twice for the same service.

There may also be an issue of double counting regarding the origination and provision of mortgages, where there is a chain of entities involved spanning brokers (who arrange the loan and pay the levies according to the flow of loans they originate), mortgage managers (who may also consider they arrange the loan and pay levies), and the ultimate provider of the funds (who pays levies based on the flow of funds actually lent). This could lead to over collecting from this subsector through double counting such that it bears more than its share of the regulatory cost. This could impact on the competitiveness of the sector and consumer outcomes.

Solutions

One suggestion to reduce the reporting burden is to give further consideration to pre-populating the database so as to minimise the amount of new data which needs to be submitted. Additionally, it would significantly reduce the reporting burden if data could be input for each metric for the whole integrated entity rather than for each individual touchpoint (licensees and entities).

A further suggestion is to utilise information already reported to other regulators. For example, the APRA reporting requirements are a potential source of data for ASIC, and the use of this data would reduce the duplication of reporting by the industry to both regulators. ASIC may also wish to consider leveraging the existing portal used by APRA to minimise the complexity of maintaining multiple reporting portals.

Levies and fees linked to the intensity of regulation and risk

A related point is that the ABA observed in the 2015 model that some elements of the proposal seemed based more on capacity to pay than the level and intensity of ASIC's regulatory activity and risk. These included annual supervisory levies based on market capitalisation and levies for credit licences based on credit volume.

The ABA observes that these funding metrics remain in the 2016 model. While the ABA continues to question whether these metrics accurately align with regulatory effort, it is noted that the levy for publicly listed companies is subject to a levy cap in recognition that regulatory effort does not increase indefinitely with size.

There is not unanimous agreement among ABA members that this is necessarily appropriate. Some banks believe it provides too generous a concession for very large entities and confers an unfair burden on smaller entities. One approach to mitigating these concerns would be to raise the market capitalisation threshold at which the levy is capped.

Accountability and governance

The ABA noted in the 2015 model the importance of an appropriate governance framework, in particular with the parliament rather than ASIC determining the funding envelope. It was also suggested governance could be improved through the creation of a separate ASIC Board to which the ASIC executive team would report.

The ABA notes that in the 2016 model a separate board has not been proposed.

Nevertheless, the ABA is satisfied that the governance and accountability arrangements proposed are sufficiently rigorous. It is noted that:

- The Government will determine the overall policy design and legislative framework as well as ASIC's funding arrangements and the setting of financial and corporate legislation and regulations.
- Industry groups will not be given any additional oversight function in relation to ASIC's decision-making, but ASIC will engage with stakeholders prior to the start of each period on its strategic and regulatory risks and expected levies, and will be accountable for how it allocates its budget at the end of the period.
- The funding model will comply with the principles of the Australian Government Charging Framework. Among other things the framework requires there be an alignment between the expenses of the regulatory activity and the revenue, and that that there must be a rolling 5 year review of all existing and potential charging activities.
- The Government will be informed by the advice of ASIC and industry on the form that an industry funding model may take which best achieves the objectives of Government.

Equity between peers

The ABA suggested in the 2015 model there should be a mechanism for ASIC to advise industry participants on how the funding contribution compares with industry peers.

In the 2016 model the enhanced transparency of ASIC's costs, and fees and levies collected, provides sufficient information to address this point.

Transparency around ASIC's costs

The ABA is of the view that this issue has been adequately addressed and that the proposed accountability arrangements for the 2016 model would provide sufficient transparency of ASIC's costs as follows:

- The Corporate Plan published each August would explain ASIC's regulatory priorities, the means by which it intends to address those priorities, and the allocation of resources to each regulatory activity, given its current assessment of the risk environment.
- The sector level dashboard reporting published each October would include a breakdown of costs by regulatory activity, both direct (staff and suppliers) and indirect (IT, compliance, governance). There would be transparency in how funding had been spent, the regulatory activities undertaken, and the outcome delivered.
- The Cost Recovery Implementation Statement published each October would explain how ASIC's regulatory activities are cost recovered from the relevant sectors.

Other issues

Financial literacy

The ABA supports the inclusion in the industry funding model of program costs for ASIC's financial literacy program, including its activities undertaken as part of the National Financial Literacy Strategy[3]. Banks and the ABA have been long-term, strong supporters of financial literacy and capability and believe this is an important part of the regulatory and consumer protection framework.

Tax deductibility

At the consultation roundtable for the corporate sector there was discussion on whether the fees and levies paid to ASIC would be tax deductable, as is the case for levies paid to AUSTRAC and APRA. Early confirmation of this tax treatment would be desirable. Prima facie, being a cost of doing business, the levies and fees paid to ASIC should be tax deductable.

Robo advice businesses

Another issue would be to consider a different charging framework for robo advice entities. Under the 2016 model, a robo advice business is charged the same as a human adviser licensee. It is not clear as to the relative intensity of ASIC's oversight required for robo advice, but it is noted that a robo advice operation has the potential to service many more clients than a human adviser. If this also resulted in a higher intensity of oversight it would be appropriate for this to be reflected in the structuring of fees.

A further consideration is that the proposed charging model may create incentives for organisations to prefer doing business under one operating model (robo advice) over another (human advice).

If you have any questions in relation to this letter, please do not hesitate to contact me.

Yours sincerely

Signed by

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[3] http://www.financialliteracy.gov.au/