



Australian Private Equity & Venture Capital Association Limited

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,

The Australian Private Equity and Venture Capital Association (AVCAL) welcomes the opportunity to put forward this submission in response to the Government's consultation paper on the *Proposed Industry Funding Model for the Australian Securities and Investments Commission* ("the Consultation Paper").

AVCAL represents the venture capital (VC) and private equity (PE) industry in Australia, which has a combined total of over \$25 billion in funds under management by specialist investment managers. Major investors in these PE and VC funds, such as superannuation funds, fund-of-funds and other institutional investors are also members of our organisation.

The Financial System Inquiry observed that an industry funding model for ASIC would provide more funding certainty and improve the transparency of ASIC's costs and operations.

AVCAL is very supportive of efforts to promote greater transparency and certainty around ASIC's future funding arrangements, which in turn, assists with fostering a more stable world-class markets regulatory framework for our economy.

One of the guiding principles for changes to ASIC's funding model ought to be that the move towards a user-pays system should not directly or indirectly lead to an outcome where the growth and expansion of key sectors within Australia's economy is jeopardised. Unfortunately, the current model put forward in the consultation paper will, in our view, lead to significant distortions in the development of Australia's financial services sector over the medium and longer-term.

Another guiding principle of the proposed model should be that appropriate service-level agreements are put in place to ensure, to the extent possible, that the efficiency and effectiveness of ASIC's processes is comparable to that expected of any commercially-run organisation. There will be an implicit expectation on the part of those entities contributing to ASIC via a user-pays style model that the standards and timeliness of service increase.

The fees payable under the proposed model will, in many cases, undoubtedly lead to higher costs being passed on to end-consumers in the form of price rises. The excessive level of some fees payable under the proposed model could also impede competition and innovation within the financial services sector, at a time when global innovation in fintech is accelerating.

The key issues of concern for us are:

1. **The likelihood of substantially higher AFS license application and variation fees creating new barriers to entry and stifling innovation and competition.** AVCAL has a number of concerns over the potential implications of the introduction of substantially higher fees for AFS licensees, such as the 13-fold increase in personal AFS applications from \$846 to \$11,000. For example, fintech startups that require AFS licenses or small fund management firms will find the new fees prohibitively costly. This will have the effect of favouring larger participants and potentially creating a barrier to entry (and disproportionately high participation costs relative to the size of their business) for new or smaller participants, including those who are most likely to generate greater innovation and competition within the financial services industry.
2. **The need for greater efficiency to offset significant increases in fees for AFS licence applications and notifications.** It is unclear why a number of licence applications and notifications now warrant substantially higher fees. These include, for example, lodgements for: “Change of control for AFS licence” (from \$0 to \$4,400), “Application for variation of authorisation and other conditions of an AFSL” (from \$255 to \$6,900), and the “Pro Forma 63 Deed of subordination” (from \$0 to \$3,400).

Feedback from AVCAL members indicates there is significant scope for further streamlining the application and lodgement processes for AFS licences. AFS license applicants are currently required to submit large volumes of information in multiple tranches as part of the licensing application. For instance, once the initial application has been allocated for review, ASIC then often requests that a licensee provide additional evidentiary information in addition to the material lodged in the initial phase of the application. Following receipt of this additional information, ASIC may ask for further information about certain aspects of the application. The overall process will typically take between three and four months to complete, imposing a significant direct and indirect cost on the applicant.

Fund managers offering multiple products and services will need to apply for multiple AFS licenses. A considerable amount of time can be consumed supplying information which is identical to previous applications, and restating responses (already provided previously) to subsequent questions and information requests by ASIC in the processing of new license applications.

In AVCAL’s view, while there is clearly a compelling argument in support of why aspects of ASIC’s work should be funded under a user-pays system, there is also scope to explore how technology and greater efficiency in data collection and assessment can help drive down some of these costs.

3. **Significantly higher fees for applications for relief may unduly block access to relief.** In AVCAL’s view, the proposed increases in fees for applications for relief from \$0-\$1,107 currently to \$2,600 (for “Standard” applications) to \$21,000 (for “Novel” applications that require ASIC to formulate substantive new policy) needs to be reviewed for appropriateness and their potential implications for small players, innovation and competition.

For example, startups seeking to offer their employees share options of more than \$5,000 per participant per year need to seek relief from ASIC Class Order 14/1001 in order to allow these offers to be made without the startups needing to comply with all of the disclosure and financial services obligations that normally arise under the law. Under the proposed funding model, in the absence of guidance on the criteria for relief being automatically granted, it is unclear whether such applications will fall under the “Standard”, “Minor/technical” or “Novel” category. In any instance, however, the proposed fee structure will impose a new regulatory burden that will unnecessarily frustrate the policy intent of the Government’s recent Employee Share Schemes reforms for startups.

More fundamentally, the alignment of fees with the degree of novelty of the request creates a framework that discourages innovation in the Australian financial services market. The Consultation Paper itself states that “it is usually not appropriate to cost recover some government activities, such as general policy development and ministerial support”. The proposed model basically requires market participants with “novel” applications to fund new policy development. The \$21,000 fee alone potentially creates a significant barrier to entry for any disruptive startup considering a new application on a matter that has hitherto been untested in the Australian market.

4. **Crowdfunding platforms should be exempted from any new levies on Market Infrastructure Providers (MIPs).** While the regulatory framework for crowdfunding is still being developed, any proposal to regulate crowdfunding platforms as market license holders must provide appropriate fee and levy exemptions for such platforms, in light of their significant differences to traditional MIPs such as exchanges and clearing and settlement operations. The proposed annual levy ranging from \$45,000 to \$4,000,000 – not to mention the \$210,000 market licence application fee – would impose an impossibly high barrier to entry for crowdfunding platforms (most of which are startups themselves).

Australia already has a relatively high regulatory compliance cost base, and care should be taken to ensure that the proposed increased levies and fees are not passed on to consumers to the extent that they only further increase the cost of doing business in Australia and, for retail consumers, the cost of banking and investing in Australia.

In AVCAL's view, it is also important that the proposed funding model should not be primarily driven by cost recovery considerations without due regard for the need to promote market development, competition, innovation, efficiency and effectiveness of regulatory operations. There are also key issues relating to the perception of *regulator-market participant* independence which must be managed in transitioning towards a user-pays model.

AVCAL is happy to assist in providing further details on any of the issues raised in this submission. In the meantime, if you would like to discuss anything please do not hesitate to contact me or Dr Kar Mei Tang on 02 8243 7000.

Yours sincerely,



Yasser El-Ansary
Chief Executive