Bendigo and Adelaide Bank

9 October 2015

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

By email: asicfunding@treasury.gov.au

Dear Minister O'Dwyer,

Proposed industry funding model for ASIC

We refer to the *Proposed Industry Funding Model for Australian Securities and Investments Commission* released by the Australian Government on 28 August 2015 (the **Proposed Mode**l).

We appreciate the opportunity to participate in this consultation process, both through this written submission and an earlier roundtable discussion on 21 September 2015.

ASIC plays an extremely important role in our financial system, helping ensure that trust and confidence in our system is maintained. It goes without saying that in order to perform its function effectively ASIC must be properly funded and we generally support the introduction of an industry funding model for ASIC as recommended by the Financial System Inquiry.

We acknowledge that it is not possible to deliver a perfect industry funded regime. As everyone benefits from an effective regulator, there will always be a trade-off between simplicity and fairness. However, we are concerned that the Proposed Model is too simplistic in many areas and fails in many ways to strike the right balance.

Intended benefits of Proposed Model

According to the consultation paper, the introduction of an industry funding model would:

- ensure that costs are proportionately borne by those creating the need for regulation;
- establish price signals to drive economic efficiencies in the way resources are allocated in ASIC; and
- improve transparency and accountability.

It is notable, however, that the paper does not substantiate how the Proposed Model delivers these benefits, nor is there any evidence in the paper as to how industry funding models that have been adopted overseas have delivered these benefits.

We consider that the Proposed Model falls well short of delivering these stated benefits and we have set out in detail below the reasons why we have formed that view.

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Are the costs borne proportionately by those creating the need for regulation?

No, for the following reasons.

It is proposed that the funding model for listed companies be determined by market capitalisation. However, there does not appear to be any evidence that a company's value, as determined by the stock market, in any way correlates with regulatory burden. In fact, the proposed funding model for companies seems counter-intuitive to us. Generally speaking, listed companies will have proportionally more resources dedicated to governance, compliance and risk management programmes (including, in particular, structured training programmes) and are therefore far less likely to breach their regulatory obligations.

Moreover, capping the levy at $15 billion market capitalisation creates a disproportionate, regressive system where smaller listed companies bear more of the cost burden. This is justified in the paper on the basis that there are "economies of scale" in supervising larger listed companies. However, it is difficult, in the absence of any evidence to the contrary, to understand how economies of scale could be relevant to "enforcement" activities, which according to the graph on page 33 of the paper comprises the majority of the activities to which these costs relate. For listed companies, enforcement costs are not spread, they relate to a relatively small number of specific issues.

The same can be said for the proposed funding model for credit licensees and financial services licensees, where the majority of the costs also relate to enforcement.

For these reasons, the methodology appears to us to be arbitrary, disproportionate and too simplistic, derived more from convenience (i.e. capacity to pay) than anything else.

On the information available to us, it appears that the total annual levy for Bendigo and Adelaide Bank and its subsidiaries would be about $1 million under the Proposed Model. By way of comparison, it appears that the levy paid by the major banks, which are much larger (> 10x) and more complex businesses than us, would be less than $2 million. Such an outcome would be grossly disproportionate and unfair for us. Either we would be paying too much, or the major banks would not be paying enough.

Clearly, this example shows that the costs are not applied proportionately, placing Bendigo and Adelaide Bank at a competitive disadvantage.

Does the Proposed Model establish price signals to drive efficiencies?

No. There are no price signals for regulated entities because the levy is not correlated with risk or non-compliance. The Proposed Model does not create any *additional* discouragement for entities to improve governance, risk and compliance programmes. Such an outcome would, in our view, be a missed opportunity.

A better industry funded model would incorporate aspects of the WorkCover insurance methodology for calculating insurance premiums. Under the WorkCover model, a higher claims experience over recent history (say 3 years) results in higher premiums for employers. This creates a monetary incentive for employers to reduce claims experience to drive down the cost of its premiums. The resultant benefits for the community from incentivising employers in this way are obvious.

By applying a similar structure to the ASIC funding model, regulated entities would be incentivised to improve their governance, compliance and risk management programmes, which would in turn reduce the need for regulatory oversight, creating efficiencies within ASIC, as well as reducing the broader cost of non-compliance that is borne by the community.

Does the Proposed Model improve transparency and accountability?

An important distinction between the current public funded model and the Proposed Model is that under the Proposed Model ASIC would not be directly accountable to those that will bear the costs. In fact, it is conceivable that both ASIC and the Australian Government will actually be incentivised, on balance, to increase the level of ASIC's resources over time in a manner that outpaces economic growth.

We therefore expect that, when the finer details are being fleshed out, appropriate protections deliberately designed to keep costs down will be built into the budgetary approval process.

Conclusion

Bendigo and Adelaide Bank strongly supports ASIC being properly funded to meet its responsibilities and generally supports an industry funding model. However, because the Proposed Model does not link cost with risk or non-compliance, if it was introduced as proposed it would apply unfairly to Bendigo and Adelaide Bank and many other companies.

For these reasons, alternative models should be considered.

If you would like to discuss any of the issues raised in this letter, please contact me on (03) 5485 6774 or by email will.conlan@bendigoadelaide.com.au.

Yours sincerely,

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Company Secretary
Bendigo and Adelaide Bank Limited