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Dear Sir or Madam

SUBJECT: PROPOSED INDUSTRY FUNDING MODEL FOR ASIC

CPA Australia represents the diverse interests of more than 150,000 members in 120 countries. Our vision is to make CPA Australia the global accountancy designation for strategic business leaders.

Against this background, we provide this submission in response to the Australian Government's consultation paper on the proposed industry funding model for the Australian Securities and Investments Commission (ASIC).

CPA Australia is supportive of an appropriate, equitable user pays element to the funding of ASIC. We agree with the ASIC Chairman, Greg Medcraft, that careful consideration should be given to implementing a funding model that delivers a 'price signal' to those that participate in the market, with those requiring the most attention paying the most. With such a model adopted to varying degrees in other jurisdictions, the Chairman should be praised for raising the issue for public discussion.

We see the model as proposed by the Government, however, as problematic. Across the board flat fees and a one-size-fits-all approach would not deliver on the objective outlined by the Chairman.

The consultation paper is flawed in another significant way. The release of the consultation paper prior to the completion of the 'Capability review of the Australian Securities and Investments Commission' makes it very difficult to form a considered view on the most appropriate funding model for ASIC. All stakeholders, including ASIC, would be in a far better position to understand future funding demands once the future capabilities and functions of the regulator have been determined.

We note that the Capability Review team is due to report to the Government by the end of 2015. Given this, we recommend that the consultation paper be withdrawn for the time being so that the model can be further developed in concert with the outcomes of the capability review.

Comprehensive consultation with CPA Australia and other key stakeholders in a circumstance where ASIC's future functions (as determined by the capability review) can be considered in concert with funding demands is a preferable approach to improving the efficiency and effectiveness of ASIC.

CPA Australia's key concerns about the funding model, as proposed in the consultation paper, include:

- the proposed fees are excessive;
- it takes a narrow interpretation regarding those that create the need for regulation - and therefore regulated entities carry a disproportionate cost burden. The community expects a well-functioning, efficient capital market that operates with integrity, and hence society as a whole creates the need for and benefits from appropriate regulation;
- it may have a negative impact on the retention of those that are currently licensed;
- it may also have a negative impact on new entrants to various regulated occupations/ professions, creating greater market concentration and for Australian financial services licence holders, possibly eroding independence;
- it is not clear how the proposed model can assist in improving the efficiency and effectiveness of ASIC.

If the Government is to proceed with any of this proposal, we recommend:

- that the start date of the new funding model be deferred and phased in over a longer period than is suggested in the consultation paper;
- the registration and application fees for various licenses be reduced significantly to reduce disincentives to people/ entities obtaining the relevant licences;
- the proportion of ASICs total funding paid by regulated entities be reduced to reflect the benefits that the exercise of ASICs regulatory powers provides the community as a whole
- company liquidators be excluded from the industry funding model; and
- the Government work with regulated entities to increase the transparency over how fees are determined.

Regarding transparency, if Australia is to move to a user pay model for funding ASIC, then the costs of regulation should be identified and be transparent.

SPECIFIC COMMENTS

We make the following specific comments in response to the attachments in the consultation paper:

Funding model for companies

CPA Australia supports the proposed funding model for companies.

Funding model for Australian Credit Licensees

CPA Australia does not support the proposed industry funding model for Australian credit licensees. We are uncertain as to how the capability review of ASIC may impact the cost of regulation in this area and whether the current regulatory model is efficient and needs improvement. We also need greater transparency over how costs are calculated.

We also do not support the proposed flat Australian credit licence application fee or the quantum of the fee for smaller applicants for the following reasons:

- such a fee will act as a barrier to entry for small business and therefore have a negative impact on competition, independence and innovation;
- the fee would not be competitively neutral as it would favour larger licence holders;
- we expect that the costs to ASIC to approve a sole trader is significantly different to that of a large credit provider.

Funding model for AFS licensees

CPA Australia does not support the proposed industry funding model for Australian financial services licensees. If implemented in its current form it will lead to proportionately higher costs for small licence holders.

This lack of competitive neutrality in the model will no doubt impact the viability of smaller licence holders, lead to greater market concentration, and may have a negative impact on independence. The proposed high costs of the fees for smaller license holders may even encourage some to act outside the Corporations Act.

The industry has informed us that the costs the industry is experiencing under the existing regime are already significant and rising and have resulted in consolidation. At a time where Australia's population is ageing and superannuation savings are growing, people need access to affordable quality financial advice – policy actions that may inadvertently lead to greater market concentration and a lessening of independence are therefore not in the public interest.

It is possible that the high cost of the proposed fee will discourage licence holders from fee for service remuneration arrangements as they may require commission-based remuneration to better help them meet the high cost of compliance and ASIC levies.

We also note that many small licence holders, including in rural and regional Australia are part of multi-disciplinary practices and may have to pay significantly higher fees to ASIC for their AFS licence, their Australian credit licence, their registered company auditor licence, their liquidator licence and their self-managed superannuation fund auditor licence. The cost of the entire industry funding model on such practices will be significant and may lead to some cancelling one or more of their current licences. This will reduce consumer choice particularly in regional and rural Australia.

As with the flat Australian credit licence application fee, we do not support the introduction of a flat Australian financial services licence application fee of \$11,000 for the same reasons (see above).

We are also uncertain as to how the capability review of ASIC may impact the cost of regulation in this area and whether the future regulatory model is efficient and needs improvement. We also we need greater transparency over how costs are calculated.

Funding model for registered liquidators

CPA Australia does not support the proposed industry funding model for registered liquidators. We observe that the rationale presented in Attachment D of the consultation paper is misplaced and obscures the totality of the functions served by this group of regulated professionals. Specifically, there seems to be little regard given to the functions, and the beneficiaries of their effective execution, of registered liquidators.

Registered liquidators are granted extensive powers in relation to the external administration of companies. The accompanying duties and responsibilities are accordingly onerous. The law recognises the inevitability of corporate stress and failure and, as such, provides a statutory mechanism for efficiently and transparently handling these eventualities.

The purposes of the external administration scheme are well acknowledged and include maximising returns to unsecured creditors, analysing and putting into effect business recoveries, the investigation and reporting of possible misconduct and the winding up of insolvent companies. The statutory powers to achieve these outcomes are extensive and are essential to the proper conduct of the overall scheme of corporate law within its economic setting.

Conceptually, these activities could be conducted by a government agency. There are obvious benefits in having external administration performed by professional specialists subject to oversight. That it is done for commercial return may be regarded as a relief on government finances, and, in no way, undermines the regulatory and market outcomes properly achieved.

The notion of 'industry funding', which has strong overtones of a user-pays approach to agency service provision, obscures who and what it is that ultimately benefit from application of external administration, being:

- market integrity and confidence,
- avoidance of abuse,
- punishment of misconduct,
- maximisation of returns to unsecured creditors.

The regulatory activities for registered liquidators shown in Chart 2D, whilst of course correct and valid, are carried out in this wider context of ensuring the proper, predictable and efficient application of the external administration provisions of the Corporations Act 2001.

In summary then, the discussion in Attachment D does not reflect the complex nature of relationships presenting a possible misunderstanding of roles and interaction between the regulator, registered liquidators, financially stressed companies, directors and officers, creditors – both secured and unsecured, and the wider market.

Further, there seems little or no acknowledgement given to the co-regulatory context where a significant part of managing the profession is undertaken by the relevant professional bodies. This occurs across a diversity of service provision including training, development of ethics standards, quality reviews, complaint handling and disciplinary procedures. CPA Australia for its part has very deliberately chosen to bear the cost of its quality assurance program within its practitioner member services.

To reiterate, the consultation paper seems to understate the complex regulatory environment involving a range of public policy considerations.

Finally, regarding the registered liquidator element of the proposal –this relates to who ultimately are the direct victims of corporate failure – unsecured creditors -we make the following comments. For very sound reasons unsecured creditors surrender their pre-insolvency remedies and must prove their entitlements to be part satisfied in collectivised pari passu terms.

Again for sound policy reasons, unsecured creditor entitlements rank behind the expenses incurred “by a relevant authority in preserving, realising or getting in property of the company, or in carrying on the company’s business” – “relevant authority” including both liquidators and administrators (refer section 556 Priority Payments). Notwithstanding provisions such as those dealing with a committee of creditors agreement to the remuneration of an administrator (section 449E), we argue that there is a sound basis to conclude that unsecured creditors will ultimately bear, through reduced dividends, the impact of the type of funding structure being contemplated. Hence, the proposed funding model for liquidators should not proceed.

Funding model for auditors

CPA Australia does not support the proposed industry funding model for auditors. The industry funding model for auditors proposes to recoup \$6 million of the cost of the regulation of auditors through:

1. SMSF auditors - flat annual levy of \$60: total \$426,000
2. Registered Company Auditors– flat annual levy of \$170: total \$799,000
3. Authorised Audit Companies and Audit firms – based on the percentage of total listed company audit fee revenue attributable to the firm: total \$4.5 million
4. Unexplained shortfall: total \$275,000

The most significant increase in levies are proposed to be imposed on auditors for listed companies. As the amounts relate directly to audit fees, it is unlikely, given the size of the proposed levy, that it will be absorbed by the firms. This would therefore effectively be a new tax on listed companies collected by audit firms. This may be seen as an unfair burden not shared with other companies, particularly large private companies, for which good regulation is still critical to protect creditors and consumers.

In addition to the Authorised Audit Company or Audit Firm levy, through which listed company auditors will already shoulder most of the cost burden of audit regulation, firms will pay a levy for each Registered Company Auditor, arguably a duplication of levies.

Requiring audit fee revenue to be separately reported is an additional reporting burden for listed company auditors. As these fees are disclosed in the financial report of listed companies, we suggest that, should this information be used as a basis for the levy, then it should be extracted by ASIC on lodgment of the financial report by listed entities, perhaps through lodgement in XBRL format.

ASIC is only responsible for the registration of SMSF auditors, for which separate fees are proposed, but not ongoing monitoring, which is the ATO's responsibility through their inspection program. Therefore there does not seem to be a clear connection between the annual levy proposed to be charged to SMSF auditors by ASIC and the cost of monitoring activity conducted by the ATO. Consequently, we do not consider that the proposed annual levy for SMSF auditors is justified.

The proposed fee schedule for professional registrations proposes significant increases in the fees for registration of company auditors, SMSF auditors and Authorised audit companies and removing the existing higher rates for paper lodgment. With the eligibility requirements to register as an auditor already being significant, the registration fees proposed would add additional barriers to entry that may have a negative impact on the number of new registrations, particularly of SMSF auditors, many of whom are from small and regional practices.

We also note that the registration fee may impact auditor registrations in regional Australia as practices in such areas may have a registered company auditor as just one of many services offered, as individual practitioners and small firms in such areas often need to be jack of all trades for their clients.

In short, the proposed increase in registration fees are likely to discourage new auditor registrations, which over time will reduce competition for audit services. We recommend that the proposed registration fees be cut significantly.

If you have any questions regarding this submission, please contact Gavan Ord, Manager Business and Investment Policy, on (03) 9606 9695 or via email at gavan.ord@cpaaustralia.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alex Malley', with a flourish extending to the right.

Alex Malley FCPA
Chief Executive

cc: G Ord