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

Re: Proposed Industry Funding Model for the Australian Securities and Investments Commission (ASIC) – Consultation Paper

National Seniors Australia welcomes the opportunity to provide a response to this consultation paper.

With 200,000 individual fee-paying members, National Seniors is by far the country's largest organisation for the over-50s. For 39 years it has had a strong record in representing older Australians in a broad range of community, business and government environments.

National Seniors believes a user-pays funding model for ASIC based on recovering costs from industry is critical to delivering positive regulatory outcomes for consumers, particularly older Australians as an increasingly important market segment. The new industry model must provide adequate funding for ASIC to undertake proactive monitoring and greater enforcement functions to underpin consumer-oriented financial services regulation.

While the overall approach is a step in the right direction, some measures outlined in the consultation paper are of concern. These relate to the scope of ASIC activities that will be cost recovered, the degree to which levy-paying entities can influence ASIC activities and how design of the new model will integrate outcomes of the ASIC Capability Review.

ASIC's activities

National Seniors does not support the exclusion of financial literacy programs from the scope of recoverable costs to be funded by industry. This is a shortcoming of the proposed approach as it fails to recognise that improving financial literacy of consumers is a complement to improved transparency.

We believe financial literacy activities are a critical part of ASIC's role in driving regulatory outcomes that allow consumers to participate effectively in and benefit from the growth in financial markets. Further, industry will be able to gain value from improved financial

literacy as consumers will be more informed and therefore have a higher propensity to seek out financial advice and services.

Cost recovery should extend to financial literacy programs in addition to those ASIC educational tools and guidance material that are already earmarked for inclusion under the new arrangements. The inclusion of financial literacy programs would focus on consumer interests and allow ASIC to give more prominence to consumer protections in its educational material, advice to government and guidance to industry on their processes and behaviours.

Also, the costs of operating the MoneySmart website should continue to be recovered from industry. National Seniors supports a consolidated approach whereby all financial literacy programs are covered under the ASIC funding model so agencies such as the ATO and APRA would no longer have to recover these costs on ASIC's behalf.

National Seniors recommends that:

- financial literacy programs to educate investors and consumers on financial matters be included in the cost recovery from industry;
- cost recovery for consumer financial literacy be in addition to cost recovery for educational activities relating to ASIC tools and guidance material; and
- existing cost recovery for operating the MoneySmart website be retained and consolidated into the new funding model.

International funding models

National Seniors considers the UK model to be a viable option for implementation in Australia. The UK model includes a levy on industry for counselling and financial literacy initiatives. It is also oriented towards consumer interests with the UK Financial Services Consumer Panel assuming a prominent role in developing policy and guiding regulatory frameworks.

The proposed industry funding model

ASIC has forecast costs of \$196M for regulatory activities in 2016-17, which would be recovered from industry through annual levies and fees-for-service.

National Seniors understands that different annual levies would apply to individual entities based on risk profiles and ASIC's supervisory intensity. Under this proposed approach, ASIC's assessment of risk will be critical in determining the levy for a regulated entity.

We believe there needs to be specific consideration of consumer risk within the broader risk assessment framework. In particular, the consumer protection obligations of ASIC must weigh heavily into the risk matrix as opposed to the narrower focus on operational and legal risks of the entities. ASIC's Consumer Advisory Panel should have a formal role in the risk assessment process.

The distribution of costs across sub-sectors and across categories of ASIC activities appears reasonable. National Seniors notes the relatively high proportion of cost recovery for supervision and enforcement activities in all industry sub-sectors. If the funding is applied as intended, we believe this will help promote positive consumer outcomes. Incorporating stronger penalties would also send a clear message to financial service providers that their activities will be subject to close scrutiny.

National Seniors supports the intent to apply an industry levy to those costs that cannot be attributed to an individual entity. It follows that ASIC would continue to charge fee-for-service activities which are completed at the request of specific entities and these will be based on ASIC's processing costs and historical volumes. Implementing fee categories to ensure equity, fairness and transparency of costs across industry is also appropriate.

Determining ASIC's annual levies and funding accountability

National Seniors is concerned about governance arrangements and the proportionate influence certain regulated entities may have on ASIC's activities. There is insufficient detail about the objectives and remit of operations for the Cost Recovery Stakeholder Panel, which will comprise of ASIC, Treasury and representatives from each regulated industry sector.

Given the proposed levy structure and funding it generates will tend to follow the pattern of market concentration in the financial services sector, there is risk that a few large players would have a dominant impact on how the Cost Recovery Stakeholder Panel operates. This raises questions about the extent to which ASIC can resist industry pressure given the funding dependency. National Seniors highlights the importance of maintaining the integrity of decision-making processes on how ASIC uses its resources to carry out its regulatory functions, particularly in terms of supervision and enforcement.

Operations of the Cost Recovery Stakeholder Panel have potential to adversely impact competition and innovation in the financial services sector. National Seniors questions how effectively ASIC will be able to consider competition and introduce new innovative regulatory measures that would enhance consumer protection under the proposed approach. A better focus on competition in ASIC's mandate, including conducting three-yearly external reviews of the state of competition, was a recommendation of the Financial System Inquiry's Final Report.

Other aspects of the governance framework are welcomed, including public reporting of ASIC's performance and the Cost Recovery Implementation Statement to reflect the costs behind each fee and levy and how these costs have been determined. These measures will improve transparency and bolster industry acceptance of the new arrangements.

National Seniors is supportive of the proposed process to consult on the levy mechanisms and ASIC funding ahead of the Federal Government's annual budget process. The proposed 5-yearly review of the levy methodology is also appropriate and allows adequate time to assess the new arrangements before making adjustments.

Phase-in arrangements and levy administration

National Seniors notes the proposed commencement date of 1 July 2016 with phase-in arrangements for levies that would give industry up to three years to adjust their systems and cash flows. The consultation paper does not give any indication as to how outcomes of the ASIC Capability Review will be integrated into the new funding arrangements within this proposed timeframe.

National Seniors believes there is scope to improve ASIC's regulatory capabilities with respect to identifying misconduct and poor industry practices that pose risks to consumers.

We believe there is also a leadership role for ASIC to research and establish leading processes and behaviours that would drive a customer-oriented financial advice culture.

These capability improvements should have a direct link to the new industry funding model. Furthermore, the design of the funding model should integrate future, more frequent ASIC capability reviews in line with changing market dynamics and consumer expectations.

If you have any questions regarding this feedback, please contact Ms Sarah Saunders, Deputy Chief Executive & General Manager Public Affairs on 07 3233 9105 or s.saunders@nationalseniors.com.au.

Yours sincerely

Michael O'Neill
Chief Executive