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Corporations and Schemes Unit
Financial System Division
The Treasury
Langton Crescent
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ACT 2600

10 March 2017

via email: asicfunding@treasury.gov.au

ASIC Supervisory Cost Recovery Levy Bill 2017

Dear Sir/Madam

Ernst & Young Australia (**EY**) welcomes the opportunity to offer its views on the ASIC Supervisory Cost Recovery Levy Bill 2017 and related bills ("the Bills") issued on 22 February 2017. We had previously made a submission in response to Treasury Proposals Paper ("the Proposals") issued in November 2016, and we believe that it is necessary to reiterate some important concerns that we raised at that time and which appear not to be addressed in the Bills, together with some additional concerns that arise from the way that the new charging regime is proposed to be structured under the Bills.

We support the Government's direction to adopt recommendations from the Financial System Inquiry with the purpose of strengthening transparency, accountability and capabilities of the Australian Securities and Investments Commission (**ASIC**). We agree that an industry funding model for government services has the capacity to assist the achievement of these objectives, if combined with oversight and cultural change, and if the user of the services has genuine choices and alternatives. However, we have significant concerns about the provisions contained in the Bills.

1. Accountability and transparency of ASIC

The Proposals included a commitment to improve the accountability and transparency of ASIC. We welcomed this commitment. In our view, it is important that these improvements are implemented so as to drive effectiveness and efficiency, and offset the additional levies and the costs of compliance.

We note most of ASIC's services are not subject to competitive forces, are not provided within a transparent services framework, and do not have measurable quality or efficiency benchmarks for user or market participants to observe. Further, for most market participants, there is no choice or alternative, other than to cease providing the regulated service.

It is our view that the introduction of an industry funding model increases the importance of transparency and accountability and the need for the services provided to be efficient and of a high quality. In most cases, the cost to firms from any Industry Funding model will be passed through to customers. Costs will therefore be ultimately borne by individual members of the community. If the increased cost to individuals is not offset by other savings or tax reductions, then the model must provide a clear benefit to the capital market, and this can only be achieved through increased accountability and transparency for efficient, high quality services.

We are concerned that the Bills do not provide for any increased accountability and transparency for ASIC, except for the requirement that ASIC produces an annual dashboard of its costs by sector to be used in the calculation of the levies which we do not believe adequately addresses the need for accountability.

We recommend that, as a minimum, ASIC should be required to provide the following-

- A budget of costs by sector at least two months prior to the beginning of the relevant financial year
- Information related to key performance indicators of ASIC for each sector.

We also recommend that there should be established a formal framework for the regulated industries to provide feedback on the performance of ASIC. This feedback should be provided to Treasury, or to another independent entity with responsibility for the oversight of ASIC.

2. Overall costs to the community

The Proposals are effectively a new method of raising Government revenue. Their introduction will require new reporting regimes and systems by both Government and business alike. It is important that these incremental costs are offset by demonstrated benefits to the performance, capability and accountability of ASIC. Unless the benefits of the proposed regime can be clearly demonstrated, it will create an additional burden on government in terms of collecting an intricate set of levies and taxes, and additional compliance costs to businesses both in reporting to government and developing systems to pass on the charges to customers. These compliance costs will constitute a net loss to the economy and are contrary to the stated objectives of regulatory reform including reducing administrative burden and the cost of compliance.

In order to minimise these incremental costs, we recommend the following:

- ASIC should be required to publish, at the same time as its annual budget, an estimate of the levy for the forthcoming year.
- There should be a recovery cap to enable businesses to manage future costs (as this is a retrospective charge) such that the actual levy should not exceed the budgeted amount by more than 5%
- ASIC's annual levy charge change should be capped; for example increases for a fixed unit should be capped at CPI minus 1.5%. Market participants will, however, bear additional costs if they perform higher volumes of regulated activities.
- The requirement to produce an annual return to ASIC will create a new cost to business, and some of the information required in the annual return will not be routinely captured by market participants in the normal course of business. In order to help businesses plan to comply in an efficient way, we recommend that ASIC be required to provide the form of the annual return at the same time as it publishes its budget – two months before the start of the financial year.

3. Impact on the Insolvency profession

The Proposed Industry Funding Model, specifically as it relates to the insolvency profession, will likely have a negative impact on the profession in the following ways-

- The allocation of significant costs to each registered liquidator, being \$5,000 per annum and \$550 per appointment, will likely result in many liquidators leaving the profession, thereby reducing competition.
- Charging a levy on each appointment, without regard to whether or not the estate of the company is assetless, places an additional cost on liquidators which may impact on their ability

to take unfunded administrations, reducing the ability for company directors to fulfill their statutory duties.

The connection between the number and size of appointments and the cost of regulation has not been clearly articulated to registered liquidators. Whilst EY is supportive of the removal of registered liquidators who do not conduct themselves in the appropriate way, the costs of a risk-based proactive based approach – or a retrospective enforcement approach – are closely correlated to the individual registered liquidator, and not the number of appointments taken.

4. Oversight of ASIC's use of its powers to levy

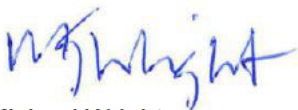
We are concerned that the proposals provide power to ASIC to fund its regulated activities with little oversight. Under the Bills ASIC has the power to determine its costs and the allocation of those costs. There is no right of appeal against the amount of the levy that we can see, although there are appeal processes in relation to waiver, late payment and shortfall. Effectively the new levy appears to have less oversight or appeal mechanism than other taxes – which have a parliamentary approval process, and an objection and appeal process.

We recommend that an appeal mechanism be established to provide appropriate oversight of the levy process.

We also believe that the recommendations made above in Sections 1 and 2 will contribute to providing disciplines over ASIC and will therefore help to minimise the incremental costs to the community of these new levies.

We would be pleased to discuss our comments further. Please do not hesitate to contact Tony Smith on (08) 8417 1999 or myself on (02) 8295 6450.

Yours faithfully



Michael Wright
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