Australian Shareholders' Association

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Advisers and Brokers Unit
Financial Services Reform Taskforce
Markets Group
The Treasury
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**ASA – RESPONSE TO INVITATION TO COMMENT STAMPING FEE EXEMPTION**

Dear Sir or Madam

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by, and operating in the interests of, its members. These are primarily individual and retail investors and self-managed superannuation fund (SMSF) trustees.

ASA also represents those investors and shareholders who are not members, but follow the ASA through various means, as our relevance extends to the broader investor community.

We thank you for the opportunity to submit comments to the four-week targeted public consultation on the merits of the current stamping fee exemption in relation to listed investment entities. We are concerned that this short commentary period, at the start of the year, and absence of an associated discussion paper, will interfere with achieving the best outcome for this review.

**ASA position**

In summary, we acknowledge the potential for conflict to be caused by heightened remuneration, but highlight the offsetting considerations being retail investor access to appropriate investments at time of their initial public offer, whether investment or non-investment entities, and the overarching requirement of advisers to act in best interest of their clients. We propose improved disclosure of stamping fees in dollar terms to the applicant in association with clarification to the applicant of whether "general advice", "personal advice" or "no advice" has been provided when granting access to IPOs.

**What is a stamping fee?**

The IPO company must attain the required shareholder spread of 300 non-affiliated shareholders with holdings valued at a minimum of $2,000 each on listing. Further retail shareholders as a class can be a stabilising influence on the register and are attractive.

The IPO company pays a fee for the capital raising, incorporating stamping fees in order to attain the shareholder spread and as recompense for activity in terms of time and administration by the broker.

There is heightened risk of conflict because the fee is success-based (no application, no fee and no allocation, no fee). A well-sought IPO will sell itself, whereas one that is struggling to attract applications will take more time from the salesforce. ASA doesn't want genuine investor focussed innovations to be prevented from coming to market.

**The stamping fee exemption**

The current stamping fee exemption is contained in Corporations Regulations REG 7.7A and applies to listed entities. There is no exemption specifically directed at listed investment entities (such as listed investment companies, listed investment trusts or real estate investment trusts - LICs, LITs or REITs).

Australian Investment and Securities Commission (ASIC) Regulatory Guide 246 *Conflicted and other banned remuneration* (RG 246) outlines this exemption at page 74:

*A monetary benefit is not conflicted remuneration if it is a 'stamping fee' given to facilitate an offer to issue or sell a financial product where the purpose of the offer is to raise funds for the person issuing or selling the financial product (i.e. capital raising). A stamping fee is a fee, or part of a fee, that a person, including an issuer of a financial product or a person acting on behalf of the issuer, pays either directly or indirectly to an AFS licensee or its representatives in connection with:*

*an offer by the issuer to issue or sell a financial product; or*
*an invitation by the issuer for an application to issue or sell a financial product. This exclusion only applies to financial products that are:*
*debentures, stocks or bonds that are, or are proposed to be, issued by a government;*
*shares in, or debentures of, a body that are, or are proposed to be, listed on a prescribed financial market;*
*interests in a managed investment scheme that is, or is proposed to be, listed on a prescribed financial market; or*
*a right to acquire, by way of issue, the shares, debentures or interests referred to in the preceding two bullet points.*

RG246 at page 29 emphasises how acceptance of a stamping fee is not conflicted remuneration, but advice can still breach other obligations of advice providers contained in Div. 2 of Pt 7.7A. The advice provider must consider or investigate the clients' objectives, financial situation and needs, and apply the best interests duty in s961B with the obligation to prioritise the clients' interests in s961J. The advice provider may also be in breach of the appropriate advice requirement in s961G.

**We recommend there is no carve out of a subset of listed entities from this exemption.** One of the benefits of an ASX listed company or trust is a set of rules and practices that are similar conditions across the market.

We are concerned carving out of listed investment entities from the stamping fee exemption will give greater advantage to the larger established funds which have existing distribution networks and will prevent innovative offerings coming to market.

**Why do retail investors invest in Listed Investment Entities?**

Listed investment entities are often specifically designed to respond to perceived needs of retail investors. They provide access to asset classes usually only available to large investors, for diversification within one entity, professional management, liquidity (ability to trade securities on ASX) and to obtain regular income via dividends or distributions (franked or unfranked). The trading and market disclosure regimes are known.

**Assessing performance of listed investment entities**

When assessing whether an investment is performing appropriately, the market cycle for the underlying assets is relevant. For shares which has historically been around 7 years, although the current growth/momentum cycle has lasted longer than that. This means a diversifying investor strategy such as value has lagged during that time. There different times to fully invest for an underlying Private Equity asset for a Private Equity Fund.

**Judging success**

Success will be determined by the fund doing what it has claimed it will. It will relate to the role the investment plays in the investor's strategy. investors should have taken into account whether the fund's structure, investment style and underlying portfolio suits their personal investment objectives.
Is it designed to produce higher volatility at a higher risk, or provide access to asset classes which are typically not available to retail investors?

Most recently listed LICs have provided access to fixed interest assets and have traded above NTA as investors look at alternative ways of producing yield and are prepared to pay more than the underlying NTA either before or after tax in order to access the distributions. We also suggest a premium is paid because do-it-yourself diversification can be difficult with minimum investment sizes far above $500.

**Why LICs trade at prices different to NTA?**

Costs - Prior to around 2017, newly listing LICs paid the listing and set up costs out of the funds raised (of around 2% to 3%) with a 18-24 month option being issued to give the investor an aggregate value of the listed option and the LIC summing to 100% NTA on the first day as a listed entity. But the new norm, which we consider an improvement, is for the manager to pay these costs as an investment cost in setting up the LIC from which it derives an income from its management contract.

Time to invest - as with do-it-yourself investment, funds raised must be used to create a portfolio of assets and buying may be staggered over a period of months.

Premium for liquidity - Investors prefer to able to trade when they want and in a size suitable to them ($500 is minimum parcel for trading on ASX, and securities can be traded on any trading day) unless suspended from trading. In contrast, investors in unlisted managed funds are required to submit a redemption request to the fund to redeem their units. In the usual course of operating this redemption process can take time, for example five working days, which can easily be managed. However, the fund constitution will most likely allow for longer periods in some circumstances (such as a global financial crisis) if there is insufficient cash to meet redemptions. And in a worst-case scenario, this period can exceed a year. In comparison a listed investment security price will fall until someone is prepared to take the risk of buying the securities.

Premium for access – different asset classes have different minimum investment parcels, (for example corporate bonds minimum investment parcel is $500,000) may exclude retail investors or prevent diversification. Recent listings of LITs, KKR Credit Income Fund and the Partners Global Income Fund, offer exposure to global credit which retail shareholders otherwise have difficulty accessing.

Transparency – companies must conform to market disclosure obligations plus price discovery of different opinions regarding price and value through the market price.

Manager outperformance – a premium has been paid in past for historic outperformance and an expectation that this will continue for the holding period. While at times the premium can appear excessive, ASX and media reporting of the premium provides publicity of the anomaly. We note for retail shareholders this may be decades, if an investment forms part of investors long term strategy.

**Access to IPOs**

Previous submissions by ASA have addressed the lack of access of the general retail shareholder population to capital raisings by profitable companies, which are typically offered preferentially to institutional shareholders and other preferred stockbroking clients. We have suggested a practice of requiring a proportion of offers (10%) being reserved for retail shareholders is as is the case in Singapore and Hong Kong.

During 2018 ASA lodged: **Submission to Royal Commission into banking - IPO lockout** and we also have a longstanding ASA voting guideline 46: **Retail shareholder access to capital raisings which states:**
**ASA supports initiatives which lift retail shareholders' access to high quality capital raisings and make the capital raising process fairer and more transparent. ASA will explore legislative reform which facilitates direct retail participation in bookbuilds associated with capital raisings. Companies should facilitate retail shareholdings which provide stability to the share register, which may involve using ASX OnMarket Bookbuilds service or retail stockbrokers to raise capital.**

**Buyer protection**

Notwithstanding the above discussion, we consider there needs to be better disclosure of stamping fees which are to some degree hidden because they are paid by or on behalf of the issuing entity (IPO company) rather than the applicant client. It may be a cap is appropriate.

**Stamping fee disclosure**

As with other advisor remuneration and fees, transparency of fees is crucial. Potential retained stamping fee in dollar terms should be clearly stated to the applicant. The application process for should ensure it is clear to the applicant if there is higher than usual risks. Where there has been "personal advice" or "general advice", there should be an acknowledgement of the investor's risk profile.

The potential investor however needs to be clear both about the size of the fee received by the broker who is offering them access to the IPO stock, and the nature of any advice provided to the investor by the broker in respect of the offer.

If you have any questions about this submission, please do not hesitate to contact Fiona Balzer, Policy & Advocacy Manager on (02) 9252 4244.

Yours sincerely,

John Cowling
Chief Executive Officer
Australian Shareholders' Association