9th June 2020

Stamping Fee Team
The Treasury
By Email: StampingFeeTeam@treasury.gov.au

Submission re Exposure Draft of the Corporations Amendment (Stamping Fee Exemption) Regulations 2020

Dear Sir/Madam,

The proposed legislation will inappropriately and inadvertently prevent Arranger/Managers to share issues being paid for their legitimate services in preparing and distributing PDSs (in certain circumstances), despite unlisted managed funds and ETFs being allowed to pay these very same costs. This is not the true intent of the legislation.

Why is there a problem?

The Conflicted Remuneration provisions are designed to ensure that a person providing advice can provide that advice impartially. Accordingly the legislation seeks to prohibit LIC/LIT issuers paying fees to a financial advisor and instead expects clients to pay an advisor directly for the provision of advice.

However the term "Stamping Fee" is defined very loosely and includes any fees paid to a group which also provides advice, even where those fees are for legitimate other services entirely unrelated to the provision of advice.

In particular, Arrangers/Managers also provide services to an Issuer in connection with a listed entity issue. Typically these services consist of:

- Liaison with investors and advisers to ascertain the demand for a product and the pricing of the issue;
- Assistance with preparing the product PDS and conduct of due diligence on the PDS
- Distribution of a PDS to advisory groups (including presentations to those advisory groups)
- Administering and underwriting settlement

The payment by an Issuer for these Arranger/Manager services does not constitute conflicted remuneration in its own right. The fees are not paid to a party providing advice and the services do not involve the provision of advice.

Yet in circumstances where that Arranger/Manager ALSO has a financial advisory division, then these fees for Arranger/Manager services are technically paid "to a provider" of financial advice – even though the fees are paid for an entirely different service.

Accordingly, in these circumstances the proposed Corporations Amendment would prevent the Issuer paying for the legitimate services provided to it by the Arranger/Manager, despite these fees being paid for a service that is entirely unrelated to the provision of advice to an investor. This is clearly NOT the primary intent of the legislation.

It is clearly illogical and inappropriate to ask clients to pay for the arranger/manager fee when this is a cost of the Issuer (not the client)

As outlined in ASIC's Regulatory Guide 246 on Conflicted Remuneration, it is expected that a client/customer shall pay advisers directly for advice. This is logical and possible as the client is paying for a service provided to them.

However it is clearly NOT logical and NOT practical for Arranger/Manager fees to be paid by an advisory client, as Arranger/Manager fees relate to a service provided to the Issuer, not to a service provided to the client.

[The problem is subject to a very material further complication in practice, as there may be multiple Arranger/Managers on an issue, each providing differing services. The implication being not only that asking a client to pay is illogical, but that clients can't be required to pay multiple arrangers/managers.]

Are ETFs and Unlisted Managed Funds allowed to directly pay for the equivalent costs of Arranger/Manager fees (being costs of PDS preparation, sales, marketing and distribution)? YES.

ETFs and Unlisted Managed Funds pay the costs of their significant sales, marketing and distribution activities and PDS preparation either directly as a cost of the Fund or indirectly through the ongoing management fees paid to the fund manager.

These costs and fees are not considered conflicted, and clients are certainly not required to pay directly for such costs. Instead the fund cost or management fee is clearly disclosed in the PDS, and this is considered an appropriate method of eliminating potential conflict.

We would contend that LIC/LIT arranger/manager fees (which are also clearly disclosed in a PDS) should be treated similarly and not considered conflicted.

Ensuring Investor Protection

Fees paid to Arranger/Managers for the legitimate arranger/manager services they provide to an Issuer are unrelated to the provision of advice to an investor, and in their own right do not constitute conflicted remuneration.

Under the proposed amendment fees paid to advisors for the provision of advice would be directly agreed and paid by the client to the adviser, thus eliminating potential conflicts in the manner presecribed by ASIC Regulatory Guide 246. This will apply even where an Arranger/Manager has an advisory division that also provides advisory services to client.

In the circumstance where an Arranger/Manager also has an advisory division, while the client would directly pay for any advisory fee, it is not logical nor appropriate for the client to pay for the services provided by the Arranger/Manager to the Issuer. Instead we would contend that an appropriate degree of investor protection is achieved through the clear disclosure of that Arranger/Manager fee in the PDS.

As noted above, this is the treatment already considered appropriate for the costs of sales, marketing, distribution and PDS preparation paid by ETFs and unlisted managed funds and which form part of ongoing management costs of those entities.

On the following page we have tabulated the parallel conflict management processes that would apply for both listed investment entities and ETFs and unlisted funds with regard to Arranger/Manager Fees or equivalent costs, assuming allowance is made for Arranger/Manager fees to be paid by an issuer.

BACKGROUND COSTS OF CAPITAL RAISING	Closed-End Entities [All ASX Listed entities including LICs/LITs/REITs]	Open-Ended Funds [ETFs, Unlisted Managed Funds]
Defining Characteristic	Raise capital in a single block	Raise capital continuously
Work Performed: PDS and Due Diligence assistance, market assessment, issue pricing, intermediary liaison	As capital is raised irregularly this work is performed by one or more external Arranger/Managers who specialize in the area.	As capital is raised continuously this work is performed by the sales, marketing and distribution teams of the Fund or Fund Manager.
How is work paid for?	A service **fee to the external Arranger/Manager** at the point of issue.	**Ongoing costs** of operation of the fund or **ongoing management fees** to the Fund Manager.
Could the costs/fee create a conflict for an advisor providing advice to an investor?	The fee could potentially create a conflict when the advisor works for the same (or an associated) business that provides the arranger/manager service.	Management fees could potentially create a conflict when the advisor works for the same (or an associated) business that benefits from the management fee.
How are potential conflicts Avoided/Managed?	**Awareness:** Clear disclosure of Arranger/Mgr fee in the PDS Conflict disclosure requirements at advisor level. **Consent/Authorisation:** Agreement to proceed **Protections around advice quality:** Advisor & advice subject to AFS regulatory framework	**Awareness:** Clear disclosure of ongoing costs/fees in PDS Conflict disclosure requirements at advisor level. **Consent/Authorisation:** Agreement to proceed **Protections around advice quality:** Advisor & advice subject to AFS regulatory framework
Would it make sense for the investor to provide more explicit consent and to pay the cost out of their own funds?	No. The service has been legitimately provided for the **issuer (not the investor) and the issuer** is obliged to meet the cost.	No. The work has been legitimately performed for the **issuer (not the investor) and the issuer** is obliged to meet the cost.

Conclusion

We contend that listed entities should be entitled to pay for the legitimate services provided by arrangers/managers to the issuer on a share issue, and by so doing be provided with equivalence of treatment with the ability for ETFs and unlisted managed funds to pay for their costs of sales, marketing, distribution and other costs of issuance.

However the Amendment Legislation in its proposed form will prohibit the payment of fees for such services by issuers in many circumstances.

We contend that the proposed legislation should be adjusted to allow the payment of fees to an Arranger/Manager for services provided to the issuer. This could be achieved through adjustment of subsection (1) along lines such as:

(1) A monetary benefit is not conflicted remuneration if:

(a) it is a stamping fee given to facilitate an approved capital raising; and

(b) in a case where the benefit is given on or after 1 July 2020

(i) the approved capital raising does not relate to interests, or proposed interests, in:

(a) a listed company (other than an infrastructure entity) whose main purpose is investing in passive investments; or

(b) a listed managed investment scheme (other than real estate investment trust or an infrastructure entity); OR

(ii) the stamping fee is a fee paid to an Arranger or Manager of the capital raising for services provided to the Issuer and has been fully disclosed in the issue PDS

Yours faithfully,

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Listed Investment Companies & Trusts Association Ltd

The Listed Investment Companies & Trusts Association Ltd represents ASX listed investment companies and trusts, and their 700,000 underlying share/unit holders. There are over 100 LICs and LITs on ASX which collectively invest more than $45 billion in Australian businesses. ASX listed investment companies and trusts have been one of the most trusted and long-standing investment sectors chosen by Australian retail investors and their advisers.