AUSTRALIAN INSTITUTE of COMPANY DIRECTORS

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Corporations and Schemes Unit (CSU)
Financial System Division
The Treasury
100 Market Street
SYDNEY NSW 2000

Via email: asicfunding@treasury.gov.au

Dear Sir/Madam

Proposed Industry Funding Model for the Australian Securities and Investments Commission

The Australian Institute of Company Directors (AICD) welcomes the opportunity to make a submission on the Proposed Industry Funding Model (The Model) for the Australian Securities and Investments Commission (ASIC) issued in November 2016.

The AICD is committed to excellence in governance. We make a positive impact on society and the economy through governance education, director development and advocacy. Our membership of more than 39,000 includes directors and senior leaders from business, government and the not-for-profit sectors.

1. Overview

In summary, the AICD supports the recommendations of the Independent Capability Review of ASIC to introduce an industry funding model to:

- Ensure ASIC will be more transparent and accountable; and
- Provide ASIC with a richer database to help it to prioritise its resources.

This model will assist ASIC in meeting its objectives to promote investor and consumer trust and confidence, ensure fair and efficient markets and to provide efficient registration services.

We note that the Government is undertaking a competitive tender in respect of the ASIC Registry functions, which derive significant revenue from companies. We question whether a portion of these funds should be applied to reduce the extent of industry contribution to ASIC regulatory activity costs.

This would have the effect of limiting the costs that will likely be passed onto consumers, as fees and levies are ultimately incorporated into the cost base of corporate entities and industry participants.

2. Design objectives and achievement

The AICD supports the model design objectives, being simple, certain, proportional, commercial based and efficient processing.

We consider, however, that the objectives of simplicity and certainty have not been achieved in all circumstances.

For example, those entities that operate across multiple sub-sectors will incur separate fees existing in each sub-sector, calculated on a different basis, resulting in a complex determination. We note the justification is that ASIC regulates each of these sub-sectors on a different basis, requiring separate levies for each sub-sector. However, we encourage ASIC to explore future efficiencies when enforcing regulations within groups of entities.

We also have concerns with potential uncertainty for industry participants. The model is structured to fund ASIC regulatory activity costs in arrears, once costs have been finalised. In contrast, APRA funding is billed based on budget estimates, with unders/overs adjusted in the subsequent year. The APRA model provides more certainty to industry participants in their budgeting process. The proposed ASIC model, while it provides an estimate in advance, will be adjusted before it is billed to reflect the actual enforcement costs per sub-sector. This could vary across the budget in total as well as between sub-sectors. While we acknowledge for large entities that any changes are unlikely to be material, there could be material changes in the smaller entity/licence holder sub-sectors including private companies. We encourage a strong focus on avoiding unexpected cost increases for industry participants from initial estimates.

3. ASIC Stakeholder Engagement and Accountability

We note the accountability measures proposed in the model. This is an area where we believe that improvements could be made, with some suggestions below.

Under the Cost Recovery Framework, only the ‘efficient costs’ of ASIC’s regulatory activities would be recovered. The proposed model does not make clear how efficiency will be determined by ASIC. We consider that the funding model could be improved by strengthening governance arrangements to ensure that ASIC has a strong incentive to constrain costs and deliver efficiency. Further, we are unclear whether the governments ‘efficiency dividend will apply to ASIC and how this will be determined.

We would also encourage consideration of benchmarking of ASIC’s determination of its costs, against equivalent regulatory bodies. To ensure that ASIC’s costs and allocations are realistic and reasonable, the AICD would also support an independent review with industry input after an initial three years of the model operating.

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4. Timetable for implementation

We are concerned with the proposed timing for release of the indicative levies. Releasing the indicative levels one month prior to the period commencing does not provide sufficient timing for licence holders and entities with June year ends preparing budgets. March would be an appropriate release date of the indicative levels.

5. Other matters

We understand that determination of the tax deductibility of the levies has not yet been settled. There is a need to conclude on this matter as soon as possible, so that industry can assess the true costs of the industry funding model proposals on their business, in order to provide certainty for the upcoming 2017/2018 budgeting process. Our members are supportive of the levy being tax deductible.

We hope that our comments will be of assistance to you. If you would like to discuss our views, please do not hesitate to contact Kerry Hicks, Senior Policy Adviser, on (02) 8248 6635 or at khicks@aicd.com.au.

Yours sincerely

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