



1 May 2018

Manager, Corporations Policy Unit
Consumer and Corporations Division
The Treasury
Langton Crescent
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By email to ASICfunding@treasury.gov.au

Re: ASIC Fees-for-Service Exposure Draft Legislation and Explanatory Materials

Thank you for the opportunity to comment on the Treasury Laws Amendment (ASIC Fees) Regulations 2018 which are associated with the proposed new fee-for-service regime. ASX supports appropriate fees being charged directly to entities for demand driven regulatory services.

As a general observation, there remains uncertainty around how the two elements of the ASIC Industry Funding Model (the annual ASIC levy and the fee for service charges) fit together to ensure there is no 'double recovery' of ASIC costs.

The regulations and explanatory material for both the levy and fee for service legislation/regulations do not make clear how the new arrangements will interact in practice. For example, if the annual levy for an industry subsector will automatically adjust to recover only the net ASIC costs after revenue from the fee for services charged has been deducted. Given that fee for service charges are collected when the service is provided and the annual levy amount is calculated after the end of the financial year such a mechanism can be put in place.

ASX also believes that it is important that any explanatory material, including any subsequent published industry guidance should clearly articulate how the link between the annual levy and fee for service charges operates. There should also be greater public transparency around how the fee for services will be applied in practice.

For example, where a market or clearing and settlement facility operator proposes to make an operating rule change that is subject to a regulatory disallowance process (under s793D or s822D of the Corporations Act) it will be subject to a significantly higher fee under the new arrangements.

While a tiered fee approach to operating rule changes is appropriate, given the large difference in fees between 'low' (\$2,580) and 'high' (\$38,651) complexity rule changes additional guidance should be published to identify the criteria that will be used to determine which category a particular rule change falls into.

The published guidance should also set out:

- At what point in the rule review process will the levy be determined and payable by the applicant?
- How will proposals that involve changes to multiple rulebooks be handled?
- Will the fee be applied to all rule changes or just those that involve new (or changed) products or services? That is, will the fee for service arrangements apply to rule changes that are required as a result of changes to legislation or other regulatory requirements (i.e. Corporations Act, ASIC Market Integrity Rules, requirements of foreign regulators)?

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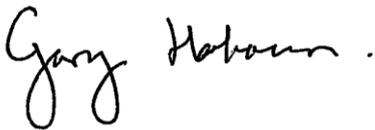
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It is also important that the fees are regularly reviewed and there is a process to ensure accountability that the levels are appropriate and there is transparency around the efficiency and effectiveness of those activities in achieving their objectives. We note the earlier advice that the formal assessment process for the regular review of fees will be released at a later date.

In relation to the detail for the specific fees set out in the regulations, ASX notes a discrepancy in the approach to the fees for the lodging annual reports by market licence holders under subsection 792F(1) (Item 15) and clearing and settlement licence holders under subsection 821E(1) (Item 17CA). The fee is waived for the former group while a \$330 charge imposed on the latter group of licensees.

These licensee reports set out how the entity has complied with its licence obligations. It makes sense that the fee should be waived for both groups of licensees given the reports are designed to assist ASIC in undertaking its regulatory oversight – it is not a demand driven activity.

Kind regards



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