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Australian Securities and Investments Commission
Level 5, 100 Market Street
SYDNEY NSW 2000

**Cost Recovery Implementation Statement: Levies for ASIC industry funding (2017-18)
October 2017 “CRIS for comment”**

The Australian Financial Markets Association (AFMA) is a member-driven and policy-focused industry body that represents participants in Australia’s financial markets and providers of wholesale banking services. AFMA’s membership reflects the spectrum of industry participants including banks, stockbrokers, dealers, market makers, market infrastructure providers and treasury corporations.

As ASIC is aware, all of AFMA’s financial markets members are subject to the industry funding arrangements, primarily in the categories of ‘market infrastructure and intermediaries’ and ‘financial advice’, but also in the categories of ‘corporate’ and ‘deposit taking and credit’.

AFMA has previously made submissions dated 9 October 2015, 19 December 2016, 8 May 2017 and 26 May 2017 in relation to industry funding of ASIC, and this submission should be read in the context of the earlier submissions.

AFMA’s stated position is that ASIC should be appropriately funded to carry out its regulatory activities, and that industry should pay its fair share of the costs of regulation.

However, we do not agree there is meaningful basis for the pronouncements by the Commission that industry funding creates price signals for industry about the cost of regulation, or that it is in fact those who create the need for regulation who bear the cost of that regulation in every case under the current model. These concerns have been heightened by proposed changes to the recovery levies described in the October CRIS for comment and the reasons that underlie those changes.

In the November 2016 *Proposed Industry Funding Model for the Australian Securities Commission – Proposals Paper*, it was stated that the \$27 million credited annually to ASIC’s Enforcement Special

Account (ESA) will be recovered from industry subsectors in the same proportion as the actual investigations funded by the ESA.¹

In our December 2016 submission to the Proposals Paper, AFMA said that the ESA should be excluded from the model for the same reasons as the CDDP's litigation costs. The ESA falls within the scope of law enforcement, and the Australian Government Charging Framework provides that the Government may consider it inappropriate to charge for a range of government activities, such as policy development, ministerial support, **law enforcement**, defence and national security.²

Following the determination that the ESA was to be included in the industry funding model, AFMA sought further information from Treasury officials as to why the Government did not consider it inappropriate to charge for law enforcement activities in this case, but did not receive a response to these queries.

In subsequent consultations, including in the Exposure Draft ASIC Supervisory Cost Recovery Levy Regulations 2017, indicative recovery amounts for each category were provided based on ASIC's budgeted allocations. While it was understood that these figures were subject to change, it is not unreasonable that entities in each category might have assumed that their proportional contribution to the overall recovery amount would remain roughly the same.

However, in the October CRIS for comment, it appears that the amounts to be recovered from large futures exchange participants and from OTC traders have increased substantially from the amount indicated in previous consultations – and in the case of futures participants, the amount has more than doubled from approximately \$1.9 million to \$5.684 in FY 2017/18. In particular, there is an amount allocated to “enforcement” which appears to be the main contributor to the increase. AFMA has not closely examined changes to the recovery amounts applying to other categories.

In response to a direct query about the change in the amount to be recovered from futures participants, AFMA has been advised by senior ASIC staff that the increased amounts are primarily attributable to the recovery of the ESA in relation to enforcement matters involving market participants, and several other enforcement actions. However, as there is no explanation of the increased amounts in the October 2017 CRIS for comment compared to the amounts previously consulted upon, in our view the CRIS fails to meet its basic purpose to explain the charges to the entities from whom the costs are to be recovered.

Furthermore, in the case of large futures exchange participants, there is no explanation or information as to why ESA amounts related to prosecutions in connection with alleged manipulation of the bank bill swap rate are to be recovered from the exchange participants – that is, how is it that these participants create the need for this regulation?

AFMA does not dispute that ASIC may have reasons for recovering the ESA in this way, but it is not possible based on the information in the CRIS to understand the rationale for applying the recovery model in this manner.

¹ Australian Government Proposed Industry Funding Model for the Australian Securities and Investments Commission – Proposals Paper, November 2016, page 8

² Australian Government Charging Framework, Resource Management Guide No. 302, July 2015, page 10.

ASIC's website (as at 30th October 2017) contains the following information:

"Why have the numbers in the CRIS changed from the 2016 Government consultation paper on industry funding?"

The Government consulted on the operation of the industry funding model in late 2016. This was one of several periods of consultation with industry. The numbers in the 2016 consultation paper related to the budget resource allocation for the 2016-17 financial year. While the numbers in the CRIS relate to ASIC's 2017-18 budget.

The figures in the 2016 consultation paper did not include additional funding received to implement and maintain several new budget measures. These include collective investment vehicles, Asia Region Funds Passport, crowd-sourced equity funding, and financial capability.

ASIC's stakeholder teams have also updated the proportion of their costs being allocated to the industry subsectors they support. Levies will change year to year and this should be expected. ASIC's business plans, base budget and enforcement activities will all have an impact."

Apart from the generic statement that "enforcement activities will all have an impact", again there is no information that helps participants understand the increased recovery amounts.

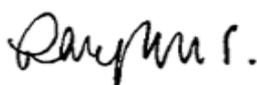
AFMA requests further information from ASIC in this regard. Alternatively, if ASIC is not able to provide this information to AFMA for confidentiality or other reasons then we request additional information to be provided directly to the participants affected by the changes.

More generally, where ASIC obtains cost orders against entities for enforcement actions that have been funded out of the ESA, then it is expected that the ESA amount to be recovered under the industry funding arrangements will be adjusted by the same amount as the costs order, or that participants from whom ESA amounts were recovered will receive a rebate in the next invoicing period. This is to avoid "double dipping" in relation to replenishment of the ESA through both cost orders *and* industry funding.

AFMA requests confirmation that it is not ASIC's or the Government's intention to over-recover the amount credited annually to ASIC's ESA.

Please contact me on 02 9776 7997 or tlyons@afma.com.au if you require any clarification.

Yours sincerely



Tracey Lyons
Head of Policy