

12 August 2021

Email: [REDACTED]

Australian Securities and Investments Commission  
[REDACTED]

Dear Sir/Madam

**RE: 2020-21 ASIC industry funding model submissions**

We welcome the opportunity to provide a submission in relation to the industry funding model.

Like many in the industry, we are concerned with the increases in the costs faced by financial advisors. These costs include the ASIC levy, compliance costs, professional indemnity insurance costs and other costs payable by financial advice businesses. Cost increases must be passed onto consumers and this obviously increases the cost of financial advice. This is especially true in light of generally appropriate, but nevertheless cash flow negative legislative measures that have eliminated revenue-based cross-subsidies and limited financial advisors to charging fees directly to clients in every circumstance.

ASIC states its “regulation of the financial advice sector is focused on promoting a fair, strong and efficient financial system *by holding financial advisers to account*”. This intemperate statement provides an important insight into how ASIC views financial advisers - as unprofessional people that do not follow the financial services laws. It also highlights ASIC’s preferred approach to administering the Corporations Act – by focussing on financial advisors, consumers have easy access to redress mechanisms and ASIC can gain headlines and popular support for matters which should have been assessed against the law itself. In effect, the focus on financial advisers is a regulatory shortcut that absolves ASIC from considering regulatory deficiencies elsewhere, and indeed deficiencies within the Corporations Act.

If that was not bad enough, ASIC’s attitude is underpinned by a culturally ingrained hubris, trussed up by its position as monopoly regulator, and since exempting itself from the rigor of public service protocol, a gross lack of accountability. At a seminar held in 2016, prior to the implementation of the levy I pointed out to the ASIC presenter (Johanna Bird I believe) that the proposed levy gave ASIC *carte blanche* to increase spending without constraint. Dismissed out of hand at the time, this is exactly what has happened. Further, information has now come to light that ASIC has been spending public money on advocacy matters, and that it considers itself akin to some sort of publicly owned law firm. Now we learn of further spending of almost \$400,000 on the “unmet advice needs project”, submissions to which ASIC has decided not to release.

Data published by the Australian Financial Complaints Authority (AFCA), shows that of the approximately 70,000 complaints it received in the 2020/2021 financial year only 1.8 per cent related to financial advisers. Anyone taking even a casual interest in the Royal Commission would know that the majority of complaints AFCA received in the last financial year concerned the banking industry,

the same industry that through their systemic breaches of financial services laws led to reforms of those laws and increased costs for ASIC, advisers and consumers alike.

Taking these figures into account, ASIC's position on "holding financial advisers to account" is misplaced and insulting to the vast majority of financial advisers that comply with their obligations under the financial services laws and act in the best interests of their clients. Worse, banks have mostly exited the financial advice sector, leaving the remaining advisers to deal with the substantial increase in costs and compliance. To the extent these costs arise because ASIC is passing on what it says are costs of regulatory activities, we note that ASIC incurs these costs at its own discretion. We are not aware of any serious or independent cost benefit assessment and also that as far as an intended appeal regarding the Wagyu and Shiraz case goes, the Federal Treasurer was forced to intervene to avoid further reckless spending and damage to confidence in the banking system.

In 2021 the cost of professional indemnity insurance for our business increased to \$374,984, an increase of \$284,859 over the premium paid in 2020, regardless that our business has not made a claim in 20 years. Our ASIC levy increased to \$80,071, up by \$24,310 compared with the levy paid in 2020, notwithstanding there was virtually no change in the number of advisers. We calculate the first \$827 of each client retainer fee goes to covering these two costs, to say nothing of other cost increases related to additional training, implementation of various iterations of FDS, opt-in documents and the like.

I draw your attention to Section 1(2)(a) of the Australian Securities and Investment Commission Act (Act). This very first part of the Act is entitled "Objects" and requires ASIC, in performing its functions and exercising its powers, to:

*"strive to maintain, facilitate and improve performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy."*

ASIC's ham-fisted and at times conflicted and deliberately misleading (ref - costs of running an SMSF; referring to alleged wrongdoers as financial advisers even though these people were not registered as such with ASIC), approach to regulation and enforcement is symptomatic of an organisation rooted in ideology, and which has lost sight of the objectives it is supposed to pursue. ASIC's actions have directly and indirectly resulted in exorbitant increases in business costs for financial advisers through levies and associated costs and along with it reduced commercial certainty for the financial advice industry, and increased costs for consumers. The failure of ASIC to adhere to the requirements of Section 1(2)(a) of the Act is grossly unacceptable, especially given the aging population and the complexities involved in retirement planning, which for all but the most straightforward situations, combines superannuation, taxation, investment, risk insurance and each person's personal situation and needs.

Coincident with this mess, professional indemnity insurers now consider the financial services industry at high risk of breaching the financial services laws and making claims.

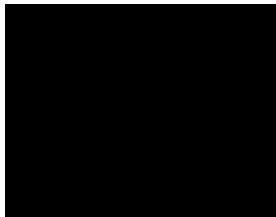
We welcome ASIC taking enforcement action against financial advisers that do not comply with the financial services laws and cause detriment to their clients. However, ASIC needs to adopt a balanced approach that does not cause costs to rise to an unsustainable level for businesses and consumers alike. In order to achieve this we suggest:

- ASIC's industry levy be replaced with an advisor registration fee, capped at no more than \$1,500 per advisor, or at least in line with other professions. We note that for the 2020/21 financial year the Medical Board of Australia set registration fees for medical practitioners at \$811,
- ASIC should consider the requirements of Section 1(2)(a) of the Act and take steps to limit the increase in the cost of professional indemnity insurance for financial services businesses,
- ASIC's consumer protection duties be moved to the ACCC, with AFCA to be subsumed into a tribunal structure within the ACCC and consumers paying a nominal fee to have complaints heard, and
- ASIC to be brought under the Public Service Act once again.

In closing I would say that ASIC needs to begin to really understand its role in the Australian financial services sector. Every announcement, direction, and even the general tone of communication is listened to by all serious participants. ASIC's performance over the past decade has done nothing but undermine confidence and trust in the financial sector in general and in financial advisers specifically. To expect industry participants to willingly finance such behaviour suggests an almost total disconnect from the real world.

If you wish to discuss the contents of this submission please do not hesitate to contact me on 

Yours sincerely

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David French  
Managing Director