



Friendly Societies of Australia

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Mr Percy Bell
Senior Adviser
Corporations and Schemes Unit - Financial System Division
The Treasury
100 Market Street
SYDNEY NSW 2000

By email: asicfunding@treasury.gov.au

Dear Mr Bell

Proposed Industry Funding Model for ASIC

The Friendly Societies of Australia (FSA) welcomes the opportunity to comment on Treasury's Proposals Paper *Proposed Industry Funding Model for the Australian Securities and Investment Commission (ASIC)*.

The FSA represents friendly societies regulated by APRA, the majority of which are member-owned mutual organisations. FSA members provide investment products, financial services, healthcare, retirement living, aged and home care services to some 800,000 members. Collectively, our sector manages around \$7 billion in funds, and in 2015, paid out more than \$675 million in benefits.

Friendly societies mainly offer simple financial products being investment bonds, funeral bonds and scholarship plans. These products are issued by friendly societies and other APRA-regulated entities under the Life Insurance Act 1995 (*Life Act*).

The FSA acknowledges the Government's decision to recover ASIC's costs from industry. The FSA supports the model's design objectives to be simple, certain, proportional, commercially based and efficient processing.

The FSA welcomes the changes to the earlier draft (October 2015) model for friendly societies. The change to a graduated levy from a flat levy more fairly distributes the amount of ASIC's costs to be recovered between regulated entities.

However, the FSA believes the proposed model continues to be unfair in respect of friendly societies as it is not proportional or commercially-based. The proposed model should be adjusted to:

- reflect a different (and reduced) basis for the application of a levy to friendly societies;
- exclude friendly society funeral products from the calculation of 'net policy revenue'; and
- ASIC's enforcement costs should not be recovered.

Recommended changes to the proposed model structure

The overarching principle of any ASIC levy should be those entities that require greater levels of regulatory oversight pay higher levies. The proposed model recognises this stating that the levy should both be proportional and commercially-based.

The model posed in the consultation paper has adopted a graduated approach for friendly societies with a minimum levy. Under the proposed model friendly societies will pay a minimum levy of \$20,000 and an additional \$0.59 per \$10,000 on net policy revenue above \$5 million.

The proposed model has grouped friendly societies with life insurers. We believe it is inappropriate to include friendly societies with life insurers as the two groups are substantially different. Friendly societies operate benefit funds for their bond-holding customers whereas life insurers offer insurance products to their customers. By grouping life insurers with friendly societies there may be a level of cross subsidisation that may see friendly societies pay more than ASIC's costs in regulating them.

ASIC has reduced oversight for friendly societies as they are regulated under the Life Act. Unlike companies or managed investment schemes there are no registration or supervision requirements for friendly societies for which ASIC is responsible. Additionally, the Life Act specifically prescribes the requirements for the content of the friendly society rules and also the process for amending those rules. This means that ASIC devotes less supervisory time and resources in relation to friendly societies compared to other sectors.

APRA, rather than ASIC, has the responsibility for the ongoing supervision of the operation of the benefit funds operated by a friendly society. This means APRA performs the vast majority of the regulation of friendly societies. For example, APRA:

- has the responsibility for the approval of the creation of any new benefit fund, the amendment of any of the Rules of a benefit fund, and for the termination of a friendly society benefit fund; and
- requires, for example, friendly societies to, on an ongoing basis, file specified returns in relation to the investment of the assets of each benefit fund, regular reporting in relation to the operation of benefit funds and their management, including the operations of the friendly society itself.

Additionally, ASIC's supervisory intensity of friendly societies may also be further reduced as they are subject to ongoing external independent monitoring and reporting by an appointed actuary. Under the Life Act, friendly societies are required to appoint an actuary to provide impartial advice in relation to their operations. This provides consumers with an added protection in contrast to other retail investment products. This requirement also alleviates the need for additional regulatory oversight by ASIC.

Friendly societies are required to issue product disclosure statements (PDS) in relation to their products. However, ASIC's role in this process is quite limited. While a PDS needs to be lodged with ASIC, ASIC has no supervisory role in approving its content. Moreover, it should be noted that many of the friendly society benefit funds are in fact closed products and no longer offer a PDS. Therefore, the number of such documents lodged with ASIC by friendly societies is quite limited.

The tracking and data information systems which ASIC has relied upon to formulate its current proposal should demonstrate and support the differentiation of friendly society from other entities including other life insurers.

Funeral bond products should be excluded from the calculation of the levy

In terms of the definition of a 'financial product' for AFS licensing purposes, section 764A(f) and 765A(w) of the *Corporations Act 2001* specifically excludes a life policy to the extent that it encompasses the provision of a funeral benefit.

Most friendly societies have operated funeral benefit funds over a long period of time, since their investor demographic relies upon the security of this type of benefit rather than funeral insurance. Therefore, ASIC has no regulatory role in respect of a significant proportion of the friendly society operations.

The FSA recommends that net policy revenue that relates to funeral benefit funds should be excluded for the purposes of the levy calculation for friendly societies. This will ensure that the levy calculated for a friendly society will accurately reflect ASIC's costs in regulating them.

Enforcement costs should not be recovered

The FSA notes that the revised draft funding model has been expanded to recover the costs of all regulatory activities, with limited exceptions. It now includes the costs of all enforcement activities, going further than the first model to now include the Enforcement Special Account (ESA).

The FSA notes that the Government's Cost Recovery Guidelines¹ notes that "*it is usually inappropriate to cost recover some government activities such as ... law enforcement*" as it "*may also be contrary to intended policy outcomes*".

The FSA recommends that these costs should be excluded from cost recovery.

Recommended alternative

The FSA recommends that friendly societies be separated from life insurers and be placed into their own group for the purposes calculating the levy payable. Additionally:

- net policy revenue that relates to funeral benefit funds should be excluded; and
- ASIC enforcement costs should be excluded from being subject to cost recovery.

Incorporating these changes would mean that the proposed levy calculation is fairer and would better represent the true costs incurred by ASIC in regulating friendly societies. The changes would also ensure that the levy would better reflect the proposed model's objectives of being proportional and commercially based.

If you have any questions please contact Alex Thrift on (02) 8035 8447 or by email, athrift@coba.asn.au.

Yours sincerely



Matt Walsh
FSA President

¹ Department of Finance, *Australian Government Cost Recovery Guidelines*. July 2014, page 6.