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Mr Mark Fitt
Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Mr Fitt,

Inquiry: the Corporations Amendment (Crowd-sourced Funding) Bill 2016 [Provisions]

Thank you very much for inviting me to make a submission to the inquiry into the Inquiry: the Corporations Amendment (Crowd-sourced Funding) Bill 2016 [Provisions]. I would like to make the following comments.

1. s 45A of the *Corporations Act 2001(Cth)*

As per s 45A of the *Corporations Act 2001(Cth),* the major distinction between a proprietary company and a public company is by the number of shareholders. As at March 2015, approximately 99 per cent of all registered Australian companies were proprietary companies. There were approximately 2,188,000 proprietary companies (the vast majority likely to meet the definition of small proprietary company) and approximately 22,100 public companies. Why using 50 shareholders as the cutting off point? How about 100? Or 200? The extant regulatory model heavy rests on the definition of a proprietary company and henceforth the reporting and disclosure requirements. It may be worth thinking whether the number of the shareholders is related, if not proportionate, to the risks associated with failing to regulate some of the companies. If one agrees that the regulatory risks vary according to certain criteria, a fundamental question is how one can identify a set of criteria which differentiates risky businesses from their non-risky counterparts. The evidence for such risk-based regulatory criteria is still lacking. If the market is able to addressing the financing needs of large companies, why do they still need crowdfunding? Would the large companies' involvement in the market disadvantage the smaller players?

In addition, the proposed legislation seemingly assumed that the crowd-funders are keen equity-holders, who may qualify them as shareholders or members of a company. However, crowdfunding examples in US and UK have shown that investor are not solely interested in equity returns. In other words, the requirements of debt-based crowd-funders will be different from equity-based crowd-funders, which will in turn be different from those philanthropists.

2. ASIC or ATO or both?

The proposed legislative reform for crowdfunding exerts limits on individual investors, as a safety precaution. It will be very difficult, if not impossible, for ASIC to regulate it, in that ASIC has limited access to the financial data of individual investors, a large proportion of whom are tax-payers. Would ATO be a better regulator in terms of the investor protection? Should ASIC and ATO work together?

3. A centralised investor and investee registrar?

Information asymmetry is one of the major problems facing stakeholders crowd-sourced funding. The function of the financial market is to maintain the free flow of information and trust. Would it be justifiable if the regulator facilitates a central registrar for investors and investees to keep track of their dealing history and maintain the market confidence for the provision of correct information?

4. A one size fits all model? What are the alternatives?

A proposed model is to establish a responsive regulatory model based on criteria such as industry, business development stage and business size. It is obvious that from the crowdfunding exercises in US and UK, crowdfunding may not suit every industry. Hence the "one size fits all model" of revising the Corporations Act may have unintended consequences on the industries in which crowdfunding is seldom used. Professor John Braithwaite's responsive regulatory model may be used as Option 5 in order to achieve better compliance outcomes.

5. Rethinking the corporate governance model

The traditional corporate governance model aims to solve three types of conflicts, namely the conflicts between owners and managers, between shareholders and non-shareholding stakeholders, and between majority and minority shareholders. In the crowdfunding regime, a few more conflicts may be created between the funders and the investee, the funders and the platforms (in particular in the New Zealand model), the platforms and the investors, all the stakeholders and the regulators.

Merely offering corporate governance concessions to public companies using crowdfunding may be contradictory to the objectives of introducing good corporate governance principles and may create more loop-holes in the system.

Please feel free to contact me if any further information is required.
Yours sincerely,

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