

PIN:HAR

9th December 2016

Mr Mark Fitt
Committee Secretary
CC: The Treasury
Senate Economics Legislation Committee
PO Box 6100
PARLIAMENT HOUSE
CANBERRA ACT 2600

Dear Sir,

TMEFFECT SUBMISSION – CROWD SOURCED FUNDING BILL

Thank you for the opportunity to provide a further round of commentary on the CSF Corporations Amendment (Crowd –sourced Funding) Bill 2016 and regulations.

TMeffect is an independent intermediary committed to the implementation of a viable CSF framework. We are uniquely placed as an independent, non-vertically aligned industry participant, and have freedom to align our interests with the national innovation agenda and the common wealth.

Before we present our contentions with the bill we wish to applaud and corroborate the following elements of the announcements to date;

- An offer template and standard warnings
- Advertising concessions
- Secondary trading concessions (discretionary)

That said, we remain disappointed with the direction of changes made to the ‘new bill’ proposed this year.

We have worked with CAMAC, Treasury and NSW government regarding legislative change, and find the crowd funding bill the most difficult trial, not just due to the length of process.

You might expect that over 10 years post enactment of ASIC Class Order 02/273 ‘Business Matching’ - the world’s first equity crowdfunding model that Australia would continue to lead the way, but no. We have continuously been on the defensive regarding misguided assumptions about ‘crowdfunding’, as opposed to its equity cousin.

Having completely missed the opportunity to claim Australia as Asian hub as we are still arguing for the same building blocks, as laid down in preliminary negotiations with policy-makers and regulators.

As Chairman of the Crowd Funding Institute of Australia at the time, I proposed primary reforms ‘quadrants’ to enabling equity crowdfunding;

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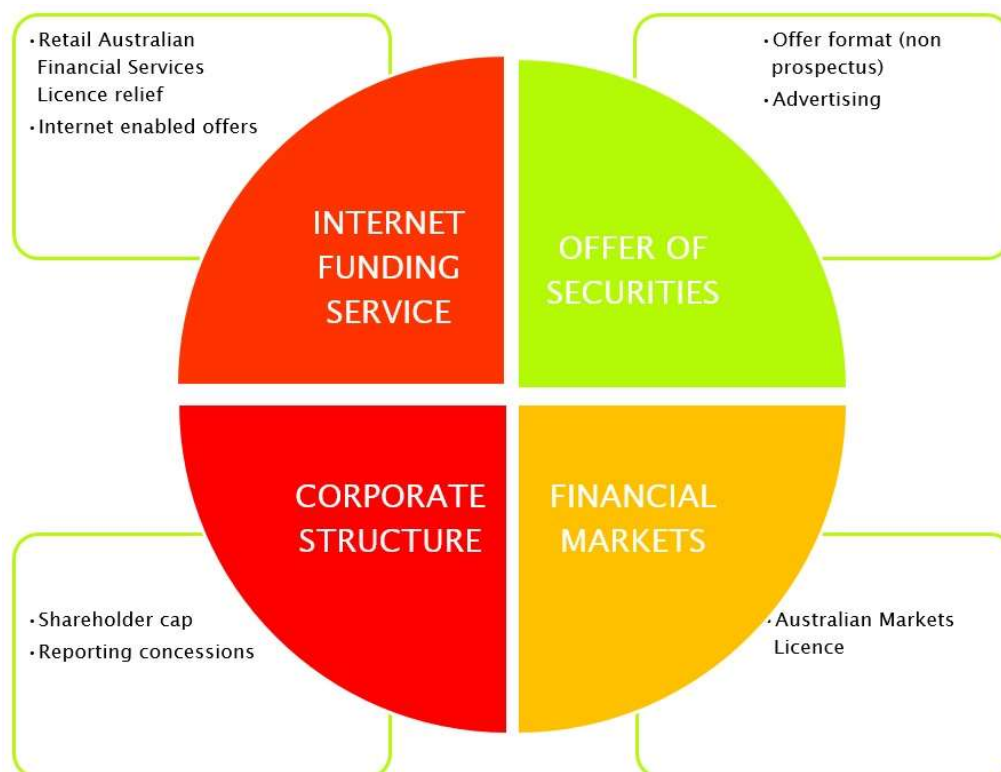
Founders:

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Equity Crowd Funding – Conditions for Success



Following a traffic light coding of green, yellow and red highlights at a glance how most view the bill put forward before the house in the later part of 2016.

Our key areas of contention are:

- 1) the immovability of the 50 shareholder cap for proprietary companies,
 - 2) the lack of substantial reporting concessions for crowd backed enterprises,
 - 3) the increased licencing required for all intermediation,
 - 4) the 'PDF' style offer format
-
- 1) considering the multi stage fund needs of many early stage high growth companies, it is clear that a cap of 50 shareholders is far too low (for crowdfunding or otherwise). Failure to move this cap to a more manageable 200-300 has knock on effects in all of the 4 quadrants and the economy in general.
 - 2) even accountants and lawyers as the beneficiaries of fee revenue from these entities agree, the contingent concessions for public companies offer nominal concession for anything other than substantive business (who in turn have alternate means of funding)
 - 3) the firms utilising the class order are not AFSL holders. Even those that joint venture with AFSL holders typically only have a wholesale AFSL under s708 concessions. This is because retail AFSL holders have better things to do. A clean skin retail AFSL sells in the market for >\$500,000, so consider the 30k application and legal fee guidance a misdirection. Retail AFSL is a very significant barrier to intermediation.

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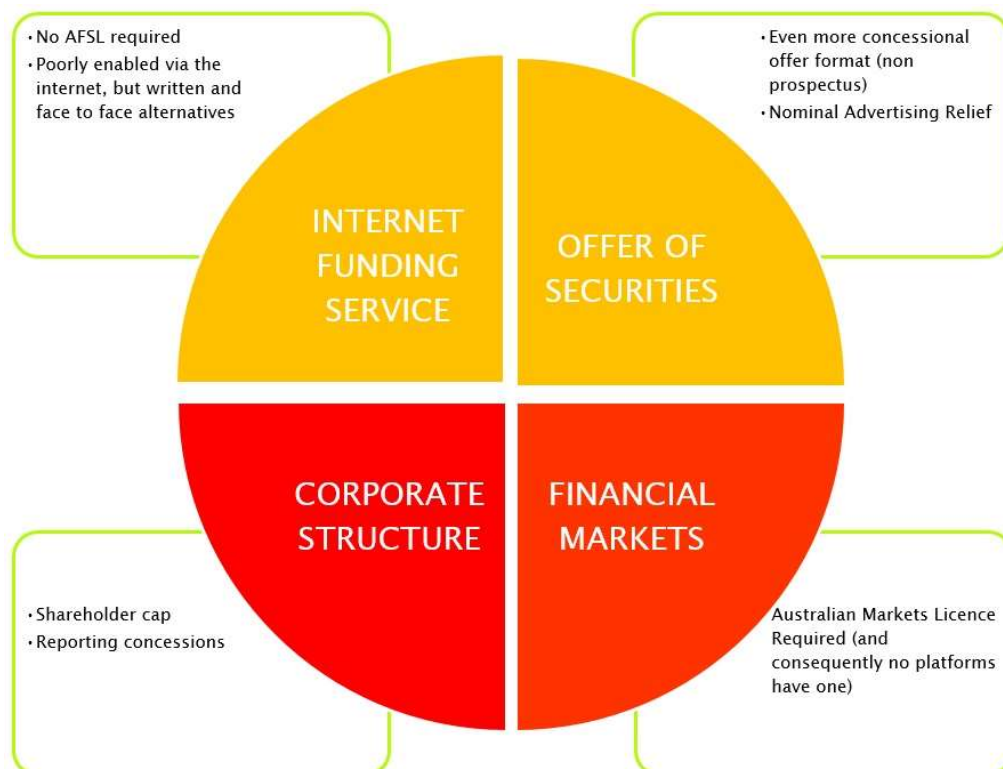


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- 4) We have hit the ‘clay ceiling’, this crowdfunding offer ‘document’ format is entirely static, shackled by undisclosed regulation and littered with automatic, defenceless pecuniary civil and criminal penalty provisions. It will bear no resemblance to internet enabled finance, other than a PDF prospectus, and crushes any flexibility for companies making these offers.

Opportunity cost – ASIC Class Order 02-273 sunset

Before accepting the above signpost infographic as a given, the Senate should consider the failed ASIC Class Order 02/273 with hindsight, due to its >15 years in the market.



In a nutshell, Treasury & ASIC are giving the industry an advertising concession and in turn removing an awful lot of flexibility, and mandating substantial licencing and compliance.

The upshot is the remaining intermediaries will be akin to any other stockbroker, underwriter or merchant banker, none of whom get out of bed for less than half a million dollars in fees or commission.

This is significant, as it assumes that the million dollar plus setup cost of these intermediation services is well spent in a market where there is a cap on any entity using the service of \$5 million, when no such cap exists for other retail AFSL holders.

Any doubt over this statement should be dispelled by NZ’s Equitise entrance into the Australian regulated market. Equitise Equity Crowdfunding already operate by proxy, offering fully regulated product through a fully licenced retail AFSL holder, i.e. some parts of the

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crowdfunding industry are already selling out to existing players looking to exploit any market or promotion concession, rather than lobby for real reform.

Improving CSF Attractiveness for Issuers

We remain unimpressed by the few measures to include early stage ventures in crowdfunding and expect that many will join this chorus, only be superficially relieved by the announcement of a proprietary company regime in early February 2017.

We have worked on this too long to concur with the direction that has been taken, and believe that any proprietary company announcement will do little to relieve small CSF issuers from the true cost of this funding pathway.

This view is based upon Treasury's 'one size' model, grouping proprietary and public under a single umbrella, and a refusal to look at the alternate of a separate regime for small issuers (including crowd funders).

We believe that the basis for a two tier system is well established by the s708 2/12/20 rule and Class Order and ought to have been modernised and updated for inflation.

The failure to review alternate small business friendly models after this length of time is inexplicable.

CSF Market Failure

Given that this model proposes a trade-off between unlicensed low-regulation and licenced high-regulation 'plus advertising', one would expect the design to aid intermediaries would be assured of the value of their licence, however it does not.

By inexplicitly providing for simultaneous s708 offers the measures proscribe an advertising service without yield or quality offers.

Despite a series of concerns raised, the Bill encourages quality issuers to quit the CSF round at any time, which is counter logical to the promotional licence model.

We may assume that this is wonderful for Angel syndicates and VC's and assume the funding gap is solved, however how does an industry reliant on contingent commission and quality offers go forward on this basis?

Equally, why should retail investors get cut out of all good investments?

Parting Insights

Unsurprisingly, those who benefit from the existing bottlenecks (including Angel Syndicates, VC, Advisory) opposed CSF for long enough to cripple political will and disable real reform, but it is the perceived industry leaders that are now reliant on this compromised regime for promotion and dominance of quasi crowd based equity funding.

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Those that sought a 25 million dollar cap, and increased funding levels have done so to the detriment of good policy, start-ups, investors and wider Australia public.

Do not reward them with a private club that offers nothing new to early stage companies. Do not waste your regulators time with administering a system that ungracefully codifies the end of the class order model. Do not ignore the mountain of international evidence that dynamic, web enabled equity crowdfunding can offer an alternate to traditional funding mechanisms.

A late CSF regime cannot afford to fall short on half of the core enabling quadrants and as such it is beholden on the Senate to redouble the political mandate and re-target this regime at small high growth companies, enabled by technology and supported by a meaningful cohort of intermediaries.

We look forward to the result of this Senate review.

Yours Faithfully,

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DIRECTOR

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