



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 288

Crowd-sourced funding: Guide for public companies

June 2017

About this paper

This consultation paper seeks feedback on our proposed guidance for public companies seeking to raise funds through crowd-sourced funding.

Our proposed guidance will assist companies to understand their role and comply with their obligations when making offers of shares under the crowd-sourced funding (CSF) regime in Pt 6D.3A of the Corporations Act. We are seeking feedback from companies seeking to make CSF offers, their advisers and other interested stakeholders.

This paper attaches a draft of the proposed Regulatory Guide 000 *Crowd-sourced funding: Guide for public companies* (RG 000).

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This paper was issued on 22 June 2017 and is based on the Corporations Act as at the date of issue.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on guidance provided to unlisted public companies intending to raise funds or have raised funds under the CSF regime. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section C, 'Regulatory and financial impact'.

Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy at www.asic.gov.au/privacy for more information about how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 3 August 2017 to:

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What will happen next?

Stage 1	22 June 2017	ASIC consultation paper released with draft regulatory guide
Stage 2	3 August 2017	Comments due on the consultation paper and draft regulatory guide
Stage 3	September 2017	Regulatory guide released

A Background to the proposals

Key points

The *Corporations Amendment (Crowd-sourced Funding) Act 2017* introduced a new regulatory regime for equity-based crowd-sourced funding. It enables eligible unlisted public companies to make offers of ordinary shares to retail investors, through a licensed intermediary's platform, using a crowd-sourced funding (CSF) offer document.

This consultation paper seeks your feedback on our proposals to give new guidance to assist eligible public companies to understand their role and comply with their obligations when making offers of shares under the CSF regime.

Note: See the attached draft regulatory guide for a list of the 'Key terms' that are also relevant to this consultation.

Introduction of the new CSF regime

- 1 The *Corporations Amendment (Crowd-sourced Funding) Act 2017* was passed by Parliament on 22 March 2017 and received royal assent on 28 March 2017.
- 2 It introduced a new regulatory regime (commencing on 29 September 2017) for equity-based crowd-sourced funding. The crowd-sourced funding (CSF) regime aims to facilitate access to capital for small to medium sized unlisted public companies by reducing the regulatory requirements for making public offers of shares, while ensuring adequate protections for retail investors.

Note: See the [Explanatory Memorandum](#) to the Corporations Amendment (Crowd-sourced Funding) Bill 2016.
- 3 Under the CSF regime, which is contained in Pt 6D.3A of the *Corporations Act 2001* (Corporations Act), eligible public companies can make offers of ordinary shares to investors to raise up to \$5 million in any 12-month period.
- 4 The CSF regime has a number of unique features, including:
 - (a) *reduced disclosure*—CSF offers must be made using a CSF offer document that contains prescribed minimum information and is worded and presented in a 'clear, concise and effective' manner. The CSF offer document must be published on a licensed CSF intermediary's platform;
 - (b) *intermediary's gatekeeper role*—the CSF intermediary has a number of important obligations in relation to CSF offers, which include performing checks on the company making the CSF offer, its directors and the CSF offer document;

- (c) *retail investor protections*—there is an investment cap of \$10,000 per company in any 12-month period and a cooling-off period allowing investors to withdraw from a CSF offer up to five days after making an application; and
 - (d) *temporary concessions*—eligible companies can access concessions, available for up to five years, from certain reporting, audit and corporate governance requirements that usually apply to public companies.
- 5 The CSF regime forms part of the Government’s [National Innovation and Science Agenda](#), released in December 2015, and the Government’s [FinTech Priorities](#), released in March 2016, which identify the potential of crowd-sourced funding to provide new and innovative businesses with access to capital to develop their products or services and contribute to productivity growth.

ASIC’s approach to facilitating CSF offers

- 6 We recognise the potential of crowd-sourced funding to provide an additional funding option for start-ups and small and medium sized businesses. We want to facilitate eligible companies making offers of shares under the CSF regime, while also ensuring that investors are provided with sufficient information to help them make informed investment decisions.
- 7 It is critical for the success of a CSF offer, and for the success of the CSF regime more broadly, that companies making CSF offers understand their role and obligations under the regime. There are consequences if a company making a CSF offer does not comply with its obligations under the Corporations Act.
- 8 Many companies using the CSF regime will likely be start-ups or early-stage companies that will not have experience in raising funds from the public and may not be familiar with the obligations that apply to public companies.

Our proposed guidance and relief

- 9 To help facilitate companies raising funds under the CSF regime, we propose to provide practical guidance to assist companies to understand their role and comply with their obligations when making CSF offers under the Corporations Act.
- 10 Specifically, we propose to provide guidance explaining:
- (a) the eligibility requirements for making offers of shares under the CSF regime;

- (b) the process for making CSF offers and the obligations and investor protections that apply to CSF offers;
- (c) the minimum information requirements for CSF offer documents—this includes a template CSF offer document that companies can use to help them prepare their offer documents; and
- (d) the temporary concessions available to eligible companies from certain reporting, audit and annual general meeting (AGM) obligations that usually apply to public companies.

11 Our proposed guidance is contained in the draft regulatory guide at Attachment 1 to this consultation paper—draft Regulatory Guide 000 *Crowd-sourced funding: Guide for public companies* (RG 000).

12 We also propose to update the relief in [ASIC Corporations \(Consents to Statements\) Instrument 2016/72](#) so that it applies to statements made in CSF offer documents: see the draft instrument at Attachment 2 to this paper.

13 This consultation paper asks questions about specific aspects of the proposed guidance. We are also interested in any comments you may have on the other guidance we are proposing. Any final guidance that we give will take into account your comments.

14 Our proposed guidance is based on the CSF regime in the Corporations Act, which will be accessible by eligible public companies. The Government has also released for public consultation draft legislation to extend the CSF regime to eligible proprietary companies. See Treasury, [Extending crowd-sourced equity funding to proprietary companies](#), webpage, 9 May 2017 for further information.

15 This draft legislation does not propose any major changes to the obligations of companies making offers under the CSF regime, or the disclosure requirements for CSF offers. If the legislation is passed, we will amend our guidance accordingly and may undertake further public consultation.

Note: The Exposure Draft Corporations Amendment (Crowd-sourced Funding for Proprietary Companies) Bill 2017 proposes to limit the availability of the temporary corporate governance concessions to companies that register as or convert to a public company before its commencement, and seeks to introduce enhanced reporting and corporate governance obligations for proprietary companies making CSF offers.

16 Our proposed guidance does not cover the role and obligations of CSF intermediaries, which are the subject of another consultation paper and draft regulatory guide—see Consultation Paper 289 *Crowd-sourced funding: Guide for intermediaries* (CP 289).

B Proposed guidance on making CSF offers

Key points

We propose to give guidance on:

- the eligibility requirements for making offers of shares under the CSF regime (see Proposal B1); and
- the process for making CSF offers and the obligations that apply to CSF offers (see Proposal B2).

The eligibility requirements

Proposal

B1 We propose to give guidance explaining when:

- a company is eligible to make offers of shares under the CSF regime; and
- an offer is an eligible CSF offer that complies with the 'issuer cap' and other requirements under the Corporations Act.

We have provided worked examples in our proposed guidance of how the issuer cap is calculated and how the definition of 'related party' works in different scenarios.

See Section B of the draft regulatory guide at Attachment 1.

Your feedback

- B1Q1** Do you think our proposed guidance will assist companies to determine whether they and their offers meet the eligibility requirements? If not, why not? Is there any additional guidance that may be useful?
- B1Q2** Are the worked examples explaining the meaning of 'related parties' at RG 000.24–RG 000.27 useful? If not, what additional examples or guidance may be useful?
- B1Q3** Is the worked example on the calculation of the issuer cap at RG 000.48 useful? If not, what additional examples or guidance may be useful?

Rationale

17 Unlisted public companies that meet certain requirements will be eligible to make offers of shares under the CSF regime. To be eligible, a company will need to:

- be registered as, or convert to, an unlisted public company limited by shares;

- (b) have less than \$25 million in consolidated assets and annual revenue (including its related parties); and
 - (c) have its principal place of business and a majority of directors ordinarily residing in Australia.
- 18 It is important for companies to ensure that both the company and its offer meet the eligibility requirements under the CSF regime. If a company is not eligible but proceeds to make a public offer without a prospectus or other disclosure document, it may contravene other requirements in Ch 6D of the Corporations Act.
- 19 Eligible companies can make CSF offers of ordinary shares to raise up to \$5 million in any 12-month period (this is known as the issuer cap).
- 20 Our proposed guidance aims to help companies determine whether the company and its offer are eligible under the CSF regime. In addition, we have provided:
- (a) examples of how the definition of ‘related party’ works in different scenarios, given this definition is unique to the CSF regime and is important for determining eligibility; and
- Note: The definition of ‘related party’ in the CSF regime is different to the definition in the related party provisions in Ch 2E of the Corporations Act.
- (b) a worked example of how to calculate the issuer cap, to assist companies to determine the amount of funds they are able to raise within a 12-month period under the CSF regime.

Process, obligations and prohibitions applying to CSF offers

Proposal

- B2** We propose to give guidance explaining:
- (a) the process for making offers of shares under the CSF regime; and
 - (b) the obligations and prohibitions that apply to CSF offers.
- See Section C of the draft regulatory guide at Attachment 1.

Your feedback

- B2Q1 Is our proposed step-by-step guidance on the process for making CSF offers useful? If not, why not? Do you have any suggestions for how it could be improved?
- B2Q2 Is our proposed guidance on the obligations and prohibitions that apply to CSF offers useful? If not, why not?
- B2Q3 Is there any additional guidance on making CSF offers that may be useful? Please provide details.

Rationale

- 21 The process for making offers of shares under the CSF regime is new and unique—it involves companies making offers via the platform of a licensed CSF intermediary, who plays an important gatekeeper role in relation to the offer.
- 22 To assist companies to understand their role and obligations, our proposed guidance includes a step-by-step explanation of, and a flowchart showing, the process and requirements for making CSF offers.
- 23 There are also a number of rules that the company, the CSF intermediary and other persons involved in a CSF offer must comply with. These include a prohibition on multiple CSF offers and on providing financial assistance to retail investors to acquire a company’s shares, and rules for how companies can advertise their CSF offers.
- 24 In particular, we have provided guidance to assist companies and CSF intermediaries to comply with their obligations when advertising CSF offers, when providing information about the company or CSF offer on the intermediary’s platform, and when communicating with investors on the communication facility for a CSF offer.
- 25 There are consequences for a company if it does not comply with these rules, which may include the company committing an offence.
- 26 Given that many companies using the CSF regime will not have experience raising funds under the Corporations Act, our proposed guidance explains the rules that apply to CSF offers under the law. Although some of these prohibitions are concepts mirrored from existing provisions of the Corporations Act, we consider that our proposed guidance is likely to be useful for companies that may not be familiar with these provisions.

C Proposed guidance on CSF offer documents

Key points

To assist companies preparing a CSF offer document for their CSF offer, we propose to give guidance explaining:

- the prescribed minimum information requirements for CSF offer documents (see Proposal C1); and
- when an offer document may be 'defective' and what a company can do to rectify this (see Proposal C3).

We also propose to provide a template CSF offer document to help companies prepare an offer document for their CSF offer that includes the minimum information required by law (Proposal C2).

The minimum information requirements

Proposal

- c1** We propose to give guidance on the minimum information requirements for CSF offer documents, including:
- (a) the offering company's business—we propose to give guidance that an offer document should explain the nature of the company's business and their business model and strategy (see Table 14 in RG 000);
 - (b) the main risks facing the company's business—we propose to give guidance that a CSF offer document should generally disclose the top three to five risks (being material risks impacting the success of the business) (see RG 000.133–RG 000.139 and Table 17);
 - (c) the capital structure of the company—we propose to give guidance that this includes pre- and post-offer capital structure, shareholder rights, including special rights under shareholder agreements, and majority shareholder interests (see Table 15 in RG 000);
 - (d) the financial information of the company—we propose to give guidance on what financial information should be included in a CSF offer document and when would it be inappropriate to include financial forecasts and targets (see Table 18 and RG 000.140–RG 000.157); and
 - (e) use of funds raised under the CSF offer—we propose to give guidance that a CSF offer document should include a breakdown of how the funds will be used and whether the funds are sufficient to meet the company's objectives (see Table 19 in RG 000).

Our proposed guidance details the information that we consider companies should include in their CSF offer document to meet the minimum information requirements and also highlights some additional

information that may be useful for investors and that may help companies meet other requirements in the Corporations Act.

See Section D, specifically Tables 12–20, of the draft regulatory guide at Attachment 1.

Your feedback

- C1Q1 Is it useful for us to give detailed guidance on the prescribed minimum information requirements? If not, why not?
- C1Q2 Do you agree that the minimum information requirements require disclosure of the information we have given guidance on? If not, please provide details.
- C1Q3 Do you agree with our proposed guidance that information about a company's business model and strategy should be included in a CSF offer document? If not, why not?
- C1Q4 Do you agree with our proposed guidance that the top three to five main risks facing a company's business should be included in a CSF offer document? If not, why not?
- C1Q5 Do you agree with our proposed guidance on the information about a company's capital structure that should be included in a CSF offer document? If not, please provide details.
- C1Q6 Do you agree with our proposed guidance on the financial information that should be included in a CSF offer document? If not, please provide details.
- C1Q7 Do you agree with our proposed guidance on information about the use of funds that should be included in a CSF offer document? If not, please provide details.

Rationale

- 27 The Corporations Act and the accompanying Corporations Regulations (regs 6D.32.02–6D.3A.06) set out the minimum information that must be disclosed in a CSF offer document for an offer of shares under the CSF regime.
- 28 The minimum information requirements are intended to facilitate:
- (a) simple and concise disclosure in CSF offer documents, which contain a reduced level of disclosure compared to a prospectus; and
 - (b) low-cost and efficient preparation of CSF offer documents by companies using the CSF regime.
- 29 However, a CSF offer document for a CSF offer may include additional information if it is relevant or helpful for retail investors in making a decision whether to invest in the company.
- 30 There are consequences for companies if their CSF offer document does not comply with the minimum information requirements, including the CSF intermediary deciding not to publish the CSF offer document or closing the

CSF offer early, or ASIC issuing a stop order to prevent the CSF offer from proceeding.

- 31 Compliance with the minimum information requirements for CSF offer documents is therefore critical to the success of CSF offers and investor confidence in the CSF regime.
- 32 Many companies seeking to make CSF offers will likely be start-ups or early-stage companies who will not have experience in raising funds from the public and may need assistance preparing a CSF offer document for their CSF offer (particularly where a company does not engage legal or professional advisers).
- 33 Also, while some of the prescribed information requirements are explicit (for example, the general risk warning and information identifying the company), others are more general in nature (for example, the description of the company's business, main risks and use of funds raised under the CSF offer).
- 34 To assist companies to prepare a CSF offer document that complies with the minimum information requirements, our proposed guidance explains what information should be included in a CSF offer document in order to meet the minimum information requirements.
- 35 In our proposed guidance and template, we have included additional information we consider may be useful to investors in deciding whether to invest in a company and that may help companies meet their obligation to ensure the CSF offer document is not misleading or deceptive. Companies should consider including this information in their CSF offer documents. This includes information about:
- (a) majority shareholders' voting power;
 - (b) post-offer capital structure;
 - (c) events that have had a material effect on the company since the balance date of its most recent financial statements; and
 - (d) information contained in the notes to the financial statements.
- 36 We note that information about your company's current and any proposed directors and senior managers must be included in the CSF offer document. The definition of 'senior manager' is contained in s9 of the Corporations Act, as modified by [Class Order \[CO 04/899\] Definition of 'senior manager'—modification](#). We are currently consulting on remaking [CO 04/899] in [Consultation Paper 285 Remaking ASIC class order on disclosure relief for an offer to a director or secretary: \[CO 04/899\]](#) (CP 285), and we welcome feedback on the proposed remake of [CO 04/899] under this consultation paper.

Our template CSF offer document

Proposal

- c2 We propose to provide a template CSF offer document, accompanied by instructions and example content, to help companies prepare a CSF offer document that includes the minimum information required by law.

See the Appendix to the draft regulatory guide at Attachment 1.

Feedback

- C2Q1 Is the template CSF offer document useful? If not, why not? Do you have any suggestions on how can it be improved? Please provide details.
- C2Q2 Do you agree with the instructions in the template CSF offer document? If not, please provide details.
- C2Q3 Is the example content in the template CSF offer document useful and appropriate? If not, please provide details.

Rationale

- 37 Many companies seeking to make CSF offers will not have experience in raising funds from the public and may be preparing a CSF offer document without legal or professional advisers.
- 38 The template CSF offer document attached to our draft regulatory guide is designed to provide these companies with a standard structure, accompanied by clear instructions and example content, to assist them to prepare a CSF offer document that includes the minimum information required by law.
- 39 We have designed the template as a guidance tool. It is not mandatory for companies to use our template document (although they are free to do so) and we encourage companies to analyse how best to word and present their information. We recognise that the style, content, layout and length of a CSF offer document will vary depending on certain matters, including the complexity of a company's business.
- 40 We are seeking feedback on whether the template CSF offer document will be useful for companies preparing a CSF offer document for their CSF offer.

Defective CSF offer documents

Proposal

- c3 We propose to give guidance explaining:
- (a) when a CSF offer document may be 'defective', including that:

- (i) generally the inclusion of forward-looking statements or prospective financial information (including financial forecasts or targets) in CSF offer documents will not be appropriate and may be misleading; and
- (ii) the exclusion of material information contained in the notes to financial statements may cause the financial statements presented in a CSF offer document to be misleading; and
- (b) the obligations of companies, and the steps they can take, if their CSF offer document is defective.

See Section E of the draft regulatory guide at Attachment 1.

Your feedback

- C3Q1 Do you agree with our proposed guidance on when a CSF offer document may be defective? If not, please provide details.
- C3Q2 Is our proposed guidance on the steps that a company can take to rectify a defective offer document useful? If not, why not? Is there any additional guidance that may be useful?

Rationale

- 41 A CSF offer document will be ‘defective’ if it contains a misleading or deceptive statement, if there was an omission of the minimum information required or if new information has arisen since the CSF offer document was published that would have required disclosure.
- 42 Given many companies using the CSF regime will likely be start-ups or early-stage companies without an operating history or track record, we consider that there will be very limited or rare circumstances where forward-looking statements or prospective financial information will be appropriate.
- 43 This is because such information is likely to be speculative, or based on hypothetical assumptions or on mere opinions. In such circumstances, we consider that a forward-looking statement will not be supported by reasonable grounds as the law requires, and will therefore be misleading.
- 44 There are consequences and potential liability for companies and other persons involved in CSF offers if they offer shares under a defective CSF offer document. For example, a company and its directors may be exposed to action by investors or the company may commit an offence.
- 45 Our proposed guidance provides practical step-by-step guidance to assist companies to understand their obligations, and the steps they may take, if they become aware that their CSF offer document is defective.

D Proposed guidance on the temporary concessions

Key points

We propose to give guidance on the temporary concessions available to eligible companies under the CSF regime, for up to five years, from certain audit, reporting and AGM requirements that usually apply to public companies (Proposal D1).

How the temporary concessions work

Proposal

- D1 To assist companies, we propose to give guidance explaining:
- (a) when a company is eligible to rely on the temporary concessions;
 - (b) what temporary concessions are available for eligible companies; and
 - (c) when the temporary concessions cease to apply, including what audit, reporting and AGM obligations companies will need to comply with under the Corporations Act.

See Section F of the draft regulatory guide at Attachment 1.

Your feedback

- D1Q1 Is our proposed guidance on the temporary concessions useful? If not, why not? Is there any additional guidance that may be useful?
- D1Q2 Is the example illustrating when the concessions may cease to apply useful? If not, why not?

Rationale

- 46 To make CSF offers, companies will need to register as, or convert to, a public company. To help reduce the regulatory burden associated with adopting a public company structure, temporary concessions from certain public company corporate governance and reporting requirements are available to eligible companies.
- 47 These concessions—available to eligible companies for up to five years from registration as, or conversion to, a public company—mean that companies do not have to hold an AGM, have their financial reports audited or distribute hard copies or electronic copies of their annual reports to shareholders.

- 48 It is important that only companies eligible to access the temporary concessions do so (companies that are already public companies before the CSF regime commences will not be eligible for the concessions). If a company is not eligible or the concessions cease to apply, then the usual public company reporting and governance obligations will apply.
- 49 To assist companies to understand how the temporary concessions work, our proposed guidance explains the requirements for companies to be eligible for the concessions and when the concessions cease to apply. We have also included an example illustrating the different circumstances when the concessions may cease to apply.
- 50 Given many companies likely to be using the CSF regime will be proprietary companies converting to public company status, or newly registered public companies, they may be unfamiliar with the obligations of public companies. Our proposed guidance includes an overview of the audit, reporting and AGM obligations that public companies must comply with once the temporary concessions are no longer available.

E Proposed update to class relief from the consent requirements

Key points

We propose to update the existing relief in [ASIC Corporations \(Consents to Statements\) Instrument 2016/72](#) so that it applies to statements in CSF offer documents (Proposal E1).

Consent requirements for statements in CSF offer documents

Proposal

E1 We propose to update the existing relief in [ASIC Corporations \(Consents to Statements\) Instrument 2016/72](#) so that it applies to statements in CSF offer documents.

See the draft instrument at Attachment 2 to this consultation paper.

Your feedback

E1Q1 Do you agree with our proposal to update ASIC Corporations (Consents to Statements) Instrument 2016/72? Is all of the proposed relief (for example, the relief for trading data and geological reports) necessary? If not, why not?

Rationale

51 Consistent with the consent requirements applying to disclosure documents for other offers of securities, companies making CSF offers must not arrange for publication of the CSF offer document until they obtain the necessary consents required by law.

52 This includes a requirement that where the CSF offer document includes a statement by a person, or based on a statement by a person, the company must not arrange for publication of the CSF offer document unless:

- (a) that person has consented in writing to the statement being included in the CSF offer document in the form and context in which it is included;
- (b) the CSF offer document states the person has given their consent; and
- (c) the person has not withdrawn their consent prior to publication.

Note: See s738M, which will be inserted into the Corporations Act by the *Corporations Amendment (Crowd-sourced Funding) Act 2017* on commencement of the CSF regime. The requirement in s738M mirrors the requirement in s716(2), which applies to prospectuses and other disclosure documents for offers of securities under Ch 6D.

- 53 [ASIC Corporations \(Consents to Statements\) Instrument 2016/72](#) currently provides relief, where certain criteria are satisfied, from the requirement to obtain consent in relation to the following statements included in prospectuses (and other regulated documents):
- (a) statements made by government officials;
 - (b) statements already published in books, journals and comparable publications;
 - (c) statements taken from certain geological reports; and
 - (d) trading data from prescribed financial markets or approved foreign exchanges.
- 54 The policy underlying the relief is well established and covered at length in [Regulatory Guide 55](#) *Statements in disclosure documents and PDSs: Consent to quote* (RG 55). In addition, ASIC Corporations (Consents to Statements) Instrument 2016/72 was recently updated and those updates were publicly consulted on: see [Consultation Paper 239](#) *Disclosure documents: Update to ASIC instruments and guidance* (CP 239).
- 55 Without the relief afforded by ASIC Corporations (Consents to Statements) Instrument 2016/72, companies making CSF offers would be required to obtain the consent of relevant persons (e.g. government officials, authors of books and preparers of historical geological reports) in order to include statements of the type described in paragraph 53 in their CSF offer documents. Such a requirement would impose considerable commercial burdens (both in time and cost) on companies seeking to make CSF offers.
- 56 Accordingly, we propose to extend the relief in ASIC Corporations (Consents to Statements) Instrument 2016/72 so that it applies to statements made in CSF offer documents.
- 57 We are seeking feedback on whether all aspects of the relief are necessary. Specifically, whether companies making CSF offers will seek to include statements of the type described in paragraph 53 (in particular, geological reports and trading data) in their CSF offer documents.

F Regulatory and financial impact

- 58 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:
- (a) facilitating fundraising by eligible companies under the CSF regime and the operation of crowd-funding services; and
 - (b) promoting confidence in crowd-sourced funding through implementing protections for offering companies and investors; and
 - (c) promoting confidence in the operation of platforms by CSF intermediaries.
- 59 Before settling on a final policy, the Australian Government’s regulatory impact analysis (RIA) requirements require us to:
- (a) consider all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
 - (b) if regulatory options are under consideration, notify the Office of Best Practice Regulation (OBPR); and
 - (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, prepare a Regulation Impact Statement (RIS) for the OBPR’s approval.
- 60 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation. ASIC’s proposed regulation of companies making CSF offers and CSF intermediaries was covered by the RIS published with the *Corporations Amendment (Crowd-sourced Funding) Act 2017* and a copy can be accessed via the OBPR’s [Regulation Impact Statement updates](#) portal.
- 61 Please give us as much information as you can about our proposals or any alternative approaches, including:
- (a) the likely compliance costs;
 - (b) the likely effect on competition; and
 - (c) other impacts, costs and benefits.

See ‘The consultation process’, p. 4.

List of proposals and questions

Proposal	Your feedback
<p>B1 We propose to give guidance explaining when:</p> <ul style="list-style-type: none"> (a) a company is eligible to make offers of shares under the CSF regime; and (b) an offer is an eligible CSF offer that complies with the 'issuer cap' and other requirements under the Corporations Act. <p>We have provided worked examples in our proposed guidance of how the issuer cap is calculated and how the definition of 'related party' works in different scenarios.</p> <p>See Section B of the draft regulatory guide at Attachment 1.</p>	<p>B1Q1 Do you think our proposed guidance will assist companies to determine whether they and their offers meet the eligibility requirements? If not, why not? Is there any additional guidance that may be useful?</p> <p>B1Q2 Are the worked examples explaining the meaning of 'related parties' at RG 000.24–RG 000.27 useful? If not, what additional examples or guidance may be useful?</p> <p>B1Q3 Is the worked example on the calculation of the issuer cap at RG 000.48 useful? If not, what additional examples or guidance may be useful?</p>
<p>B2 We propose to give guidance explaining:</p> <ul style="list-style-type: none"> (a) the process for making offers of shares under the CSF regime; and (b) the obligations and prohibitions that apply to CSF offers. <p>See Section C of the draft regulatory guide at Attachment 1.</p>	<p>B2Q1 Is our proposed step-by-step guidance on the process for making CSF offers useful? If not, why not? Do you have any suggestions for how it could be improved?</p> <p>B2Q2 Is our proposed guidance on the obligations and prohibitions that apply to CSF offers useful? If not, why not?</p> <p>B2Q3 Is there any additional guidance on making CSF offers that may be useful? Please provide details.</p>

Proposal	Your feedback
<p>C1 We propose to give guidance on the minimum information requirements for CSF offer documents, including:</p> <ul style="list-style-type: none"> (a) the offering company's business—we propose to give guidance that an offer document should explain the nature of the company's business and their business model and strategy (see Table 14 in RG 000); (b) the main risks facing the company's business—we propose to give guidance that a CSF offer document should generally disclose the top three to five risks (being material risks impacting the success of the business) (see RG 000.133–RG 000.139 and Table 17); (c) the capital structure of the company—we propose to give guidance that this includes pre- and post-offer capital structure, shareholder rights, including special rights under shareholder agreements, and majority shareholder interests (see Table 15 in RG 000); (d) the financial information of the company—we propose to give guidance on what financial information should be included in a CSF offer document and when would it be inappropriate to include financial forecasts and targets (see Table 18 and RG 000.140–RG 000.157); and (e) use of funds raised under the CSF offer—we propose to give guidance that a CSF offer document should include a breakdown of how the funds will be used and whether the funds are sufficient to meet the company's objectives (see Table 19 in RG 000). 	<p>C1Q1 Is it useful for us to give detailed guidance on the prescribed minimum information requirements? If not, why not?</p> <p>C1Q2 Do you agree that the minimum information requirements require disclosure of the information we have given guidance on? If not, please provide details.</p> <p>C1Q3 Do you agree with our proposed guidance that information about a company's business model and strategy should be included in a CSF offer document? If not, why not?</p> <p>C1Q4 Do you agree with our proposed guidance that the top three to five main risks facing a company's business should be included in a CSF offer document? If not, why not?</p> <p>C1Q5 Do you agree with our proposed guidance on the information about a company's capital structure that should be included in a CSF offer document? If not, please provide details.</p> <p>C1Q6 Do you agree with our proposed guidance on the financial information that should be included in a CSF offer document? If not, please provide details.</p> <p>C1Q7 Do you agree with our proposed guidance on information about the use of funds that should be included in a CSF offer document? If not, please provide details.</p>
<p>Our proposed guidance details the information that we consider companies should include in their CSF offer document to meet the minimum information requirements and also highlights some additional information that may be useful for investors and that may help companies meet other requirements in the Corporations Act.</p>	
<p>See Section D, specifically Tables 12–20, of the draft regulatory guide at Attachment 1.</p>	

Proposal	Your feedback
<p>C2 We propose to provide a template CSF offer document, accompanied by instructions and example content, to help companies prepare a CSF offer document that includes the minimum information required by law.</p> <p>See the Appendix to the draft regulatory guide at Attachment 1.</p>	<p>C2Q1 Is the template CSF offer document useful? If not, why not? Do you have any suggestions on how can it be improved? Please provide details.</p> <p>C2Q2 Do you agree with the instructions in the template CSF offer document? If not, please provide details.</p> <p>C2Q3 Is the example content in the template CSF offer document useful and appropriate? If not, please provide details.</p>
<p>C3 We propose to give guidance explaining:</p> <p>(a) when a CSF offer document may be 'defective', including that:</p> <p>(i) generally the inclusion of forward-looking statements or prospective financial information (including financial forecasts or targets) in CSF offer documents will not be appropriate and may be misleading; and</p> <p>(ii) the exclusion of material information contained in the notes to financial statements may cause the financial statements presented in a CSF offer document to be misleading; and</p> <p>(b) the obligations of companies, and the steps they can take, if their CSF offer document is defective.</p> <p>See Section E of the draft regulatory guide at Attachment 1.</p>	<p>C3Q1 Do you agree with our proposed guidance on when a CSF offer document may be defective? If not, please provide details.</p> <p>C3Q2 Is our proposed guidance on the steps that a company can take to rectify a defective offer document useful? If not, why not? Is there any additional guidance that may be useful?</p>
<p>D1 To assist companies, we propose to give guidance explaining:</p> <p>(a) when a company is eligible to rely on the temporary concessions;</p> <p>(b) what temporary concessions are available for eligible companies; and</p> <p>(c) when the temporary concessions cease to apply, including what audit, reporting and AGM obligations companies will need to comply with under the Corporations Act.</p> <p>See Section F of the draft regulatory guide at Attachment 1.</p>	<p>D1Q1 Is our proposed guidance on the temporary concessions useful? If not, why not? Is there any additional guidance that may be useful?</p> <p>D1Q2 Is the example illustrating when the concessions may cease to apply useful? If not, why not?</p>

Proposal	Your feedback
<p>E1 We propose to update the existing relief in ASIC Corporations (Consents to Statements) Instrument 2016/72 so that it applies to statements in CSF offer documents.</p> <p>See the draft instrument at Attachment 2 to this consultation paper.</p>	<p>E1Q1 Do you agree with our proposal to update ASIC Corporations (Consents to Statements) Instrument 2016/72? Is all of the proposed relief (for example, the relief for trading data and geological reports) necessary? If not, why not?</p>