

3 August 2017

Australian Securities & Investments Commission
Level 5, 100 Market Street
SYDNEY NSW 2000

By email: csf@asic.gov.au

To whom it may concern,

Re: Submission by the Australian Small Scale Offerings Board (ASSOB) to CP 288 and CP 289

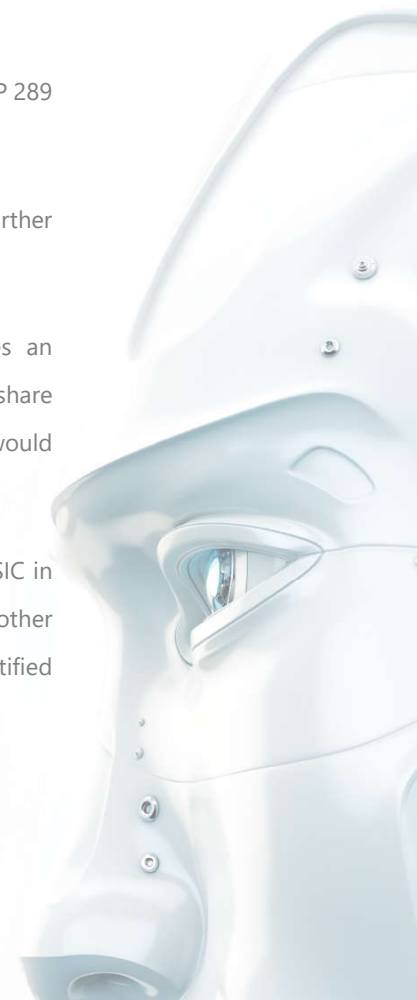
1. Summary

1.1. The Australian Small Scale Offerings Board (**ASSOB**) has reviewed CP 288 and CP 289 and welcomes the opportunity to provide this submission.

1.2. In ASSOB's submission, the parts of CP 288 and CP 289 which we require further consideration and guidance from ASIC are the following:

1.2.1. Outsourcing to authorised representatives – ASSOB currently utilises an independent third party trust account and share registry who handles all share applications and investor AML/KYC identification checks manually. We would like to have the option to continue doing so as a CSF intermediary;

1.2.2. Conflicts of interest - ASSOB would like some further guidance from ASIC in regard to if we take securities in an Issuer (either in lieu of fees or for other reasons), then how we can demonstrate that any conflicts have been identified and have been appropriately managed;



1.2.3. Length of raises and distribution of funds – ASSOB has previously submitted, and continues to submit, that the enforced three-month closing date of each offer is unworkable. Linked to this is the suggestion in CP 289 that funds cannot flow to the raising entity until the offer is closed. ASSOB submits that this requires further consideration from ASIC so that raises can be open for longer and so that funds can flow to Issuers once a minimum subscription has been met, rather than at the end of the raise;

1.2.4. Financial product advice – ASSOB requires further guidance about whether advertising that we filter raises prior to their acceptance onto our platform would be deemed to be ‘financial product advice’ and would therefore require a general advisory AFSL, and whether the conduct of such filtering could constitute advice in that we are working with issuers in relation to issuing securities;

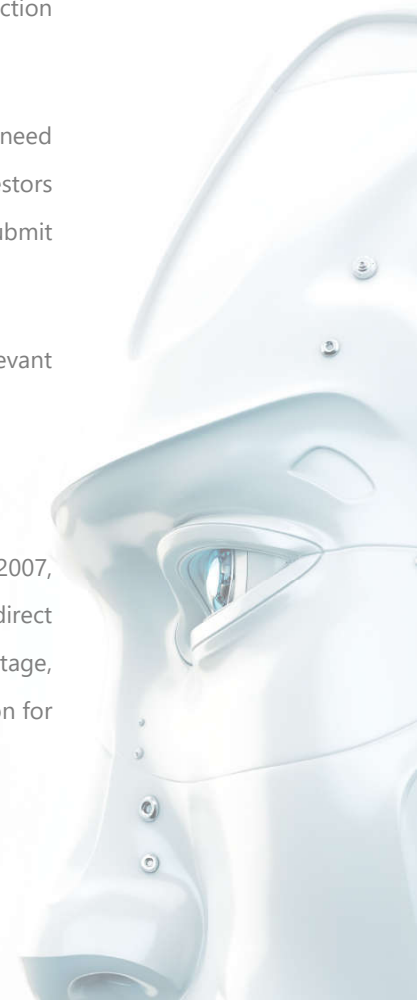
1.2.5. Section 708 and CSEF raises - ASSOB plans to have both 708 offers and CSEF raises on the one website and requires confirmation from ASIC that this is acceptable and invites any guidance about how to make the distinction between the two types of raises clear to investors;

1.2.6. Forward-looking statements - ASSOB submits that financial projections need to be included as part of any Offer Document to allow for potential investors to properly assess the offer, with appropriate risk warnings in place. We submit that this requires further consideration from ASIC.

1.3. In the body of our submission below, we have quoted extracts from the relevant regulatory guide, followed by our comments, for ease of reference.

2. About ASSOB

2.1. ASSOB is the world’s first equity crowd funding platform. Since our inception in 2007, ASSOB has become Australia’s largest and most successful equity-based direct offering platform, showcasing investment opportunities in start-up and early stage, unlisted public companies. ASSOB has to date raised in excess of AU\$147 million for its Issuers.





- 2.2. An example of ASSOB's position and respect globally can be found in the World Bank and infoDev (Information for Development Program is a World Bank Group program that supports entrepreneurs in developing economies) 2013 report titled "Crowdfunding's Potential for the Developing World" which included the following description of ASSOB's crowdfunding operations:

"The Australian Small Scale Offerings Board (ASSOB) was founded in 2007 and is now the largest investment crowdfunding platform in Australia and one of the largest in the world. It is an equity-crowdfunding platform that has successfully served both accredited and unaccredited investors, raising more than US\$130 million for issuers since its inception. Some 176 companies have been funded to date and not a single case of fraud has been reported. ASSOB operates within the current securities structure in Australia."

- 2.3. The report also commented on the relative success of companies funded via ASSOB's platform:

"After seven years of crowdfunding companies, the Australian Small Scale Offerings Board (ASSOB) shows that 86 percent of companies crowdfunded on its platform were still operating in 2012. This contrasts with a figure of 40 percent of non-crowdfunded (non-ASSOB) companies that fail after three years."

- 2.4. ASSOB's goal is to assist the Issuer in attaining the greatest chance of investment success by presenting quality promotional materials coupled with safeguarding the investor as much as possible from Issuer malfeasance. We publish material about individual Issuers (Profile Page) only after our team has completed due diligence on the company and its directors (approving the suitability of the company for promotion) and after having reviewed and approved the investment material for inclusion (approving the suitability of the language and content of the investment opportunity for promotion).

- 2.5. ASSOB currently conducts an online business introduction service at www.assob.com.au (the **ASSOB Platform**) which operates pursuant to the ASIC Class Order 02/273 "Business Introduction or Matching Services" (Class Order), using the exemptive relief of s708 of the Corporations Act (Cth) (the Act).



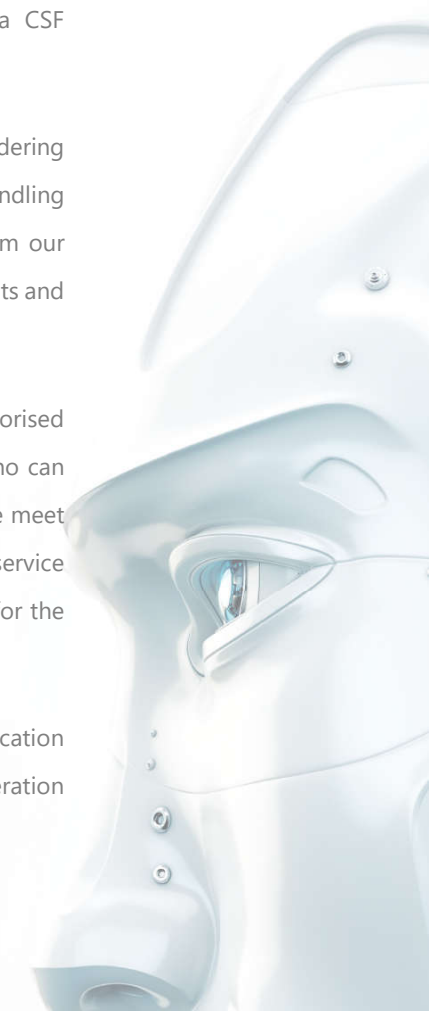
- 2.6. For those companies that successfully raise equity capital using the ASSOB Platform, we can report that the average investment is approximately \$25,000 per investor both retail and wholesale investors / sophisticated / non-sophisticated investors.

3. **ASSOB's submission to CP 289**

Outsourcing to authorised representatives

- 3.1. RG 000.30 (Single CSF Platform): *"A CSF intermediary cannot appoint an authorised representative to operate its platform for dealing with applications under its authorisation to provide crowd-funding services."*
- 3.2. RG 000.47: *The platform must have "people within the business who understand these functions to appropriately monitor and assess the outsourced service provider's performance, to help ensure that you meet your general obligations."*
- 3.3. ASSOB currently utilises an independent third party trust account and share registry who handles all share applications and investor AML/KYC identification checks manually. We would like to have the option to continue doing so as a CSF intermediary.
- 3.4. In the redevelopment of our website (which is almost complete), we are considering engaging the services of a digital registry provider who would be handling applications, AML/KYC, trust monies and share registries through an API from our platform. The Share Application Form would be custom built to our requirements and specifications, and branded ASSOB.
- 3.5. RG 000.47 seems to suggest that we can outsource this function to an authorised representative so long as we have the appropriate people in our business who can monitor and assess the authorised representative's performance to ensure we meet our obligations under our AFSL and we conduct suitable due diligence on the service on an ongoing basis. We acknowledge that ASSOB is ultimately responsible for the conduct of the CSF business and cannot outsource that responsibility or risk.

We submit that CSF intermediaries should be allowed to outsource the application handling (including investor AML/KYC identification checks), trust account operation



and share registry functions to an authorised representative, so long as the CSF intermediary continues to meet its obligations under its AFSL. It is a matter for the outsourced service provider to determine whether they need to hold a CSF AFSL.

Conflicts of interest

- 3.6. RG 000.31 - 000.34 (Conflicts of interest): we understand that unlike the current regime under Section 708, the new legislation does not restrict platform providers from taking a financial interest in an issue, so long as we are able to demonstrate that any conflicts have been identified and are appropriately managed.
- 3.7. ASSOB fully supports there being no prohibitions on an intermediary's fees being calculated based on funds raised or an intermediary being remunerated in the form of securities in an issuer company in lieu of cash, so long as it is disclosed and prominently displayed on the platform.
- 3.8. ASSOB would like some further guidance from ASIC in regard to:
 - 3.8.1. If ASSOB takes securities in an Issuer (either in lieu of fees or for other reasons); then
 - 3.8.2. how can we demonstrate that any conflicts have been identified and have been appropriately managed. We understand from our discussions with ASIC that mere disclosure of the fact that ASSOB may or does hold such interests is unlikely to satisfy our obligations under RG181, and that more active management will be required. Guidance on the nature and degree of such active management of conflicts should be of assistance to all providers of CSF services.

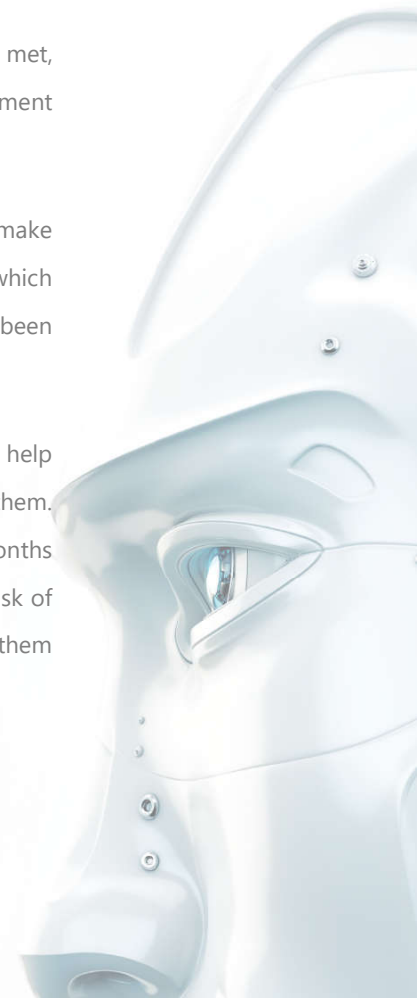
Distribution of funds - timing

- 3.9. RG 000.157 (Supplementary or replacement offer documents): *"An offering company may decide to prepare a supplementary or replacement CSF offer document to correct a defect in a CSF offer document. Where you publish a supplementary or replacement CSF offer document on your platform you must, as soon as practicable, give each person who has already applied to the CSF offer a written notice, accompanied by that*



document, advising that they may, within one month after the date of the notice, withdraw their application and have their application money refunded."

- 3.10. Currently under section 708 raises, once the minimum subscription for the raise has been met, then the funds are distributed to the Issuer as soon as each investment has been made and the shares have been allotted. This allows for the Issuer to have access to some funds during the raise to start implementing their strategy in accordance with their Use of Funds table in their Offer Document.
- 3.11. RG 000.157 seems to suggest that funds cannot flow to the raising entity until the offer is closed – otherwise an investor could have invested in the raise, received a share certificate and then have the option to have their equity purchase nullified due to a supplementary or replacement offer document being posted.
- 3.12. ASSOB would like some further guidance from ASIC in regard to when the funds will flow to the Issuer, in particular whether it is envisaged by ASIC that:
- 3.12.1. The funds will be held in trust until the raise has closed; or
- 3.12.2. The funds will be held in trust until a minimum subscription amount is met, and then distributed as and when the cooling off period for each investment has expired.
- 3.13. We submit that having to hold monies in trust until the close of the offer will make this type of funding unattractive to Issuers, compared with a s 708 raise in which Issuers can start receiving their funds as soon as the minimum subscription has been met.
- 3.14. We further submit that early stage capital raising requires regular cash flows to help expand and fund their business to meet the opportunities that are in front of them. To close a raise period for three months (when it may have taken the raise months previously to get their business raise ready) is far too long and increases the risk of companies experiencing undue financial stress and increases the likelihood of them trading insolvently.



- 3.15. ASSOB submits that if you want platforms to help to drive a minimisation of risk approach then developing a closed period will encourage raising entities and platforms to rush due diligence and will not enable the time to be taken to make sure that the raise is as de-risked as possible. ASSOB submits as above a minimum subscription approach with a longer raise opening time provides greater certainty to both investors and issuing companies alike and will lead to better behaviours in the market place.

Financial product advice

- 3.16. RG 000.114 (Financial Product Advice): *"It is not financial product advice to filter or screen CSF offers when deciding whether to publish the offers on your platform. Disclosing that you undertake filtering, if it is based on matters of opinion about things that could affect a decision whether to offer or apply for shares, could be financial product advice."*
- 3.17. To screen all deals that come on to our platform, we have purchased what we believe to be the world's best early stage business model screening and evaluation technique that is based on academic research.
- 3.18. The raising company works with the screening consultant to undertake a complete review of their business model and so they are able to adequately explain their offering and also so we as a platform provider can determine if the raise is a worthwhile raise.
- 3.19. ASSOB requires further guidance about:
- 3.19.1. whether advertising that we filter raises would be deemed to be 'financial product advice' to investors, and would therefore require a general advisory AFSL; and
- 3.19.2. whether the conduct of such filtering could constitute 'financial product advice' to issuers, in that we are working with those issuers in relation to issuing securities.



Class Order / CSEF raises

- 3.20. RG 000.20 *"This guide does not apply to entities operating a business introduction service. In light of the CSF regime, these entities must take care in referring to their services as a form of crowd-funding, and make clear to investors that they do not hold an AFS licence to provide a crowd-funding service under the CSF regime and are not subject to the gatekeeping obligations that apply to CSF intermediaries. Retail clients in particular may be misled, or confuse business introduction services with a crowd-funding service provided by a SF intermediary holding an AFS licence."*
- 3.21. The Class Order (under which ASSOB has been operating) has been extended until 1 April 2019 and then we understand that ASIC will consult with stakeholders before sunseting it permanently. We will still have 708 offers on our OfferBoard while we transition and apply for our AFSL, and we anticipate that there will still be 708 raises on our platform when CSEF raises start.
- 3.22. ASSOB plans to have both 708 offers and CSEF raises on the one website, but plan to have them clearly separated so that potential investors know the difference between the two types of raises, the risks inherent in each and can make an informed decision as to which raise to invest in.
- 3.23. ASSOB intends to run both class of raises in the one entity and on the same platform, ASSOB requires confirmation from ASIC that this is acceptable and invites any guidance about how to make the two types of raises clear to investors.

4. ASSOB's submission to CP 288

- 4.1. RG 000.155 *"The CSF offer document should only include financial forecasts, targets or other forward-looking statements if there are reasonable grounds for their inclusion—otherwise, the information will be misleading."*
- 4.2. RG 000.156 and RG 000.176 *"Because many companies using the CSF regime will likely be start-ups or early-stage companies without an operating history or a track record of revenue or profit, we expect that there will be very limited or rare circumstances where prospective financial information will be appropriate."*



4.3. RG 000.177 *"Forward-looking statements are 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, and will therefore be misleading."*

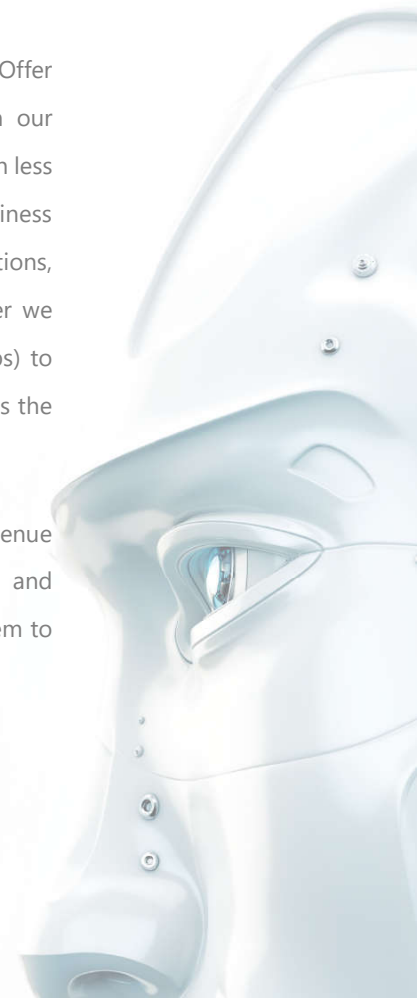
4.4. We have reviewed RG 170 and note the following relevant passages:

RG 170.9 *"A decision whether or not to include prospective financial information in a disclosure document or PDS requires balancing the information value (relevance) of what is disclosed against the likelihood that the information may be misleading (reliability). The two elements are interrelated. The less reliable information is, the less relevant it becomes to investors, and the less likely it is that it should be included in the disclosure document or PDS."*

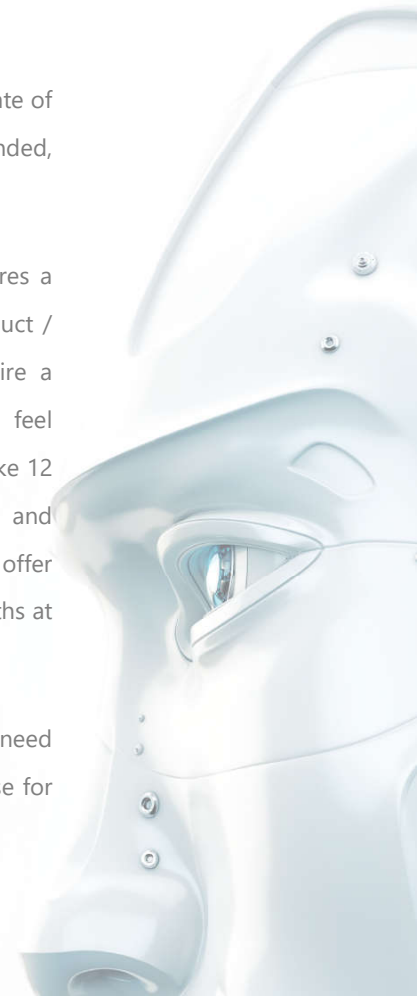
RG 170.39 *"Short-term estimates (not exceeding two years) relating to an existing business and based on events that management reasonably expects to take place or actions management reasonably expects to occur may establish reasonable grounds for disclosing prospective financial information in a disclosure document or PDS."*

4.5. ASSOB submits that financial projections need to be included as part of any Offer Document to allow for potential investors to properly assess the offer. In our experience, if investors cannot see forward financial forecasts then they are much less likely to invest due to increased uncertainty about potential future business performance. ASSOB understands the uncertainty in forward financial projections, and includes relevant risk warnings in Offer Documents accordingly, however we believe that there are reasonable grounds for any business (including startups) to make short-term estimates of up to 3 years if the information provided justifies the projections.

4.6. ASSOB submits that from experience making raises clearly define their revenue drivers, capital and operating expense to develop a forecasted (minimum and maximum of three years) Profit Loss and Cash Flow is a good discipline for them to undertake:



- 4.6.1. as a company to realistically and clearly communicate the financial opportunity of their business; and
- 4.6.2. provides investors the opportunity to clearly assess what the basis of assumptions are that underpin the raising business and financial model.
- 4.7. Furthermore, ASSOB believes that the construction of a forecasted balance sheet and cash flow enables the investor to understand the forecasted liability profile attached to the raising entity and once again is a good discipline for the raising entity to take to make sure they are clear on the obligations they face towards investors.
- 4.8. If forward projections for startups are (in general) not allowed, ASSOB submits that it will encourage CSF intermediaries to only list companies on their platforms that are more established businesses who can provide forward financial projections. As such, one of the primary intentions of the CSF legislation to assist with providing additional capital to startups will not be achieved.
- 4.9. RG 000.152 *"You must close a CSF offer at the earliest of the following times: (a) three months after the offer is made..."*
- 4.10. ASSOB has previously submitted that that the enforced three-month closing date of each offer is unworkable, particularly as this time limit is not able to be extended, even by issuing a Supplementary or Replacement Offer Document.
- 4.11. In our experience, raising within the start-up and earlier stage market requires a considerable amount of work to explain to investors the new concept / product / service that is to be commercialized. In our experience, new Issuers require a sustained education campaign (often up to 20 weeks) until investors will feel comfortable enough to invest. As such, some raises on the ASSOB Platform take 12 months, particularly when explaining a new and complex business model, and sometimes the raises are extended via a supplementary or replacement offer document. ASSOB submits that offers ought to be able to be open for 12 months at least.
- 4.12. ASSOB also submits that if the extension to the offer period is granted then the need for a minimum subscription (this could be defined as a percentage of the raise for





example) and capacity for funds to flow to the raising entity once the minimum subscription is hit must be included in the legislation.

We thank you for taking the time to consider our submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Will Leitch', is written over a light blue rectangular background.

Will Leitch

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