TMeffect

TMeffect
Crowd Sourced
Equity Funding

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26th July 2016

Mr John Price
ASIC Commissioner
By email
csf@asic.gov.au.

Dear Sir,

TMEFFECT SUBMISSION – CROWD SOURCED REGULATION

Thank you for the opportunity to provide commentary on the CSF regulatory guide for public companies.

TMeffect is an independent aspiring CSF intermediary with a long engagement in the enactment of the CSF bill. We trust that our submission is taken in the way intended, i.e. as an ongoing commitment to the development of the CSF market, and not in any way as criticism of regulatory process.

B2 Q1 & Q2

CSF Offer Contents Guideline - Forward looking CSF statements are missing leading

Consultation paper 288, RG 000:176 & 177 eco comments made during the ASIC information session regarding the measures, indicating that forward looking statements will be seen as deceptive when included in CSF offers.

We agree that this area is risky due to the size and stage of issuers, however we do not agree that a blanket prohibition should apply for several reasons;

It is the statement itself that may be misleading, not the regime. Simply because an offer is made via a regime that may be attractive for small scale funding does not affirm a blanket assertion, i.e. that only rare and very limited exceptions can only occur. We simply do not know the nature, quality and sophistication of offers that will be made by other platforms, however we would expect correctly supported forward looking statements to feature on offers through our service quite often (in the absence of any prohibition).

Policy makers have enacted a new regime for CSF, including issuer caps, investor caps, risk warning, gateway and licencing. The totality of the package provides a background to the investment offer with due consideration given to the early stage speculative nature of investments. Extension of those protections by administration at this point and to this degree could have substantial impacts on the outcomes sought.

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Those policies require gateway controls for intermediaries that substantially reduce the risk of defective offers (without this added control).

Banning statements simply *because* they are part of a CSF offer, in effect creates a new class of offer, and damages the reputation of this regime before it has begun. Start-up's (advisers and advocates) who previously considered, amongst other things RG 170.49 for funding will have to look down on CSF offers.

The new rule of thumb being;

> A statement that may be acceptable under RG 170 ***is*** unacceptable via CSF.

It follows that an intermediary with a retail AFSL can offer the same statement in one form, and be liable in another (assuming general and CSF AFSL licence conditions).

Clearly the intermediary must apply RG 170 when publishing the statement in any event; however the base assumption for CSF has strong reputational implications at the very least.

An implied ban on forward looking statements seems at odds with the structure of CSF offers due to the Min – Max thresholds. As CSF offers state a minimum and maximum funding target, and are required by law to provide details on the use of funds.

We believe that RG 170 provides sensible guidance to issuers and intermediaries in the CSF context and limitation is problematic. If the guidance in RG 170 is seen as insufficient for early stage issuers then that instrument should be the source of amendment, with applicability to all high risk fundraisers, rather than just those companies adopting CSF.

CSF offers that correctly utilise independent expert reports, independent accountants reports, and contractually supported forward looking forecasts are providing useful information for potential CSF investors and should therefore be included, without penalty, punishment or pillory.

Our NZ counterparts do not incur this limitation, nor do other competing CSF regimes internationally.

Outlook:

Our view is that quality issuers will quickly learn to avoid CSF and potential investor abandonment rates will be substantial, the mid-term risk CSF Market failure is increased significantly.

C2 Q1, Q2, Q3

<u>CSF Offer Template</u>

CSF offers are not documents, they are digital content, designed to meet the needs of investors and regulatory settings. Whist these documents can be printed, a core purpose of the regime is enact digital fundraising for small scale early stage offers.

With this in mind, we appreciate and respect the fine work done in preparing the offer template and guide, however regulations should avoid being overly prescriptive in regards to form. Content and context, yes, but form no, because to do so is to limit a primary driver of the policy.

Our comments concern matters such as 'index', the order of interchangeability of section headings, inclusion of summary - attachments rather than insertion of documents (e.g. full financial statements) and the omission of reference to other media (i.e. offer video).

CSF Offer Template Improvements

We suggest the following are areas of use to issuers and intermediaries that do not feature in the draft offer guidelines.

- that the template and guide include reference to the offer video presentation(s)
- that the template and guide refer to the offer 'status bar', committed funds, and offer closing date
- that the template refer the investor to core issuer documents (e.g. shareholder agreement, company constitution)
- notation of exit strategy (e.g IPO, Trade sale)
- inclusion of the Minimum Offer amount
- reference to the use of funds for minimum and maximum offer subscription
- analysis of the applicable market

Outlook

An expanded offer template with greater flexibility and principals based defect policies.

Ref C3 Q1

CSF defect guidance

Inclusion of a complete set of Financial Statements in the body of the offer is in many cases undesirable, particularly given the option of a summarised information and a direct link to the original certified copy of the same.

Where users of the financial information need to make particular reference to the notes by the company accountants, then the accountant or similar certifier of those documents should provide those extracts as part of the document, but not as a mandatory or defect driven policy.

This substance over form approach will reduce the offer by 20 or more 'pages' of content and improve user outcomes and overall functionality of the detail provided.

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Users who are looking for financial statements will look at financial statements, and users who are looking to assess the offer will do so, with more than adequate access to financial statements.

Either user can make reference to the financial statements or other offer aspects in the communications facility should they desire to share that information with others.

Outlook:

Our view is that inclusion of excessive low relevance information, that may be part of the financial statements, may increase information overload risk to a point where investors entirely disregard the bulk of detail provided.

Equally prospective investors may capitulate in great numbers reducing the viability of the CSF framework.

Conclusion

The guidance provided to date is illuminating and considered, however some aspects could be reformulated and refined in the finalisation of these important structural foundations for a strong and enabled CSF regime.

We look forward to a finalisation of the review process and implementation of the new licence and fundraising regime.

Yours Faithfully,
TMeffect

MATTHEW PINTER
DIRECTOR

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