



Australian Equity Crowdfunding

CONSULTATION PAPER 289: Crowd-sourced funding: Guide for intermediaries



Questions with answers

<p>B1 We propose to issue new regulatory guidance to assist CSF intermediaries to understand and comply with the requirements for AFS licensees. See Section B in the draft regulatory guide at Attachment 1.</p>	<p>B1Q1 Do you agree with this proposal? If not, why? YES B1Q2 Are there additional matters that you consider appropriate to cover in our guidance? Section B of Attachment 1 covers most items. We feel the applications process could be handled by existing share registry organisations specifically set up to handle applications and have a strong technology base and associated trust account to support the Intermediary. Registries could work closely with the Intermediary in application processing / custodial work with the Intermediary retaining overall responsibility.</p>
<p>B2 We propose to issue CSF intermediaries with a tailored AFS licence authorisation to provide a crowd-funding service through a single CSF platform, specified in the licence by reference to the URL that will be used to access the platform.</p>	<p>B2Q1 Do you agree with this proposal? If not, why? YES B2Q2 Can you suggest a way of identifying the CSF platform for which we have conducted a licensing assessment, without referring to the URL that will be used to access it? In our case we have deliberately established a single purpose stand-alone company and URL to specifically be the Intermediary and conduct the CSF platform operations (only) – the site should be specific to the function i.e. CSF only and NOT have any other non-licensed operations or business activity – i.e. our recommendation is the CSF site should be a specific CSF site / platform with no other activities and then the URL is specific to the ASIC approval. Otherwise you may need to consider public key cryptography to try and separate data which can be problematic.</p>
<p>B3 We propose to apply ASIC’s existing policy on conflicts of interest to CSF intermediaries and to retain the existing guidance in Regulatory Guide 181 Managing conflicts of interest (RG 181).</p>	<p>B3Q1 Do you agree with this proposal? If not, why? YES, we agree – this is another reason why the AFSL for CSF Intermediary should only operate a CSF platform and NOT be involved in any other business that may give rise to a conflict.</p>

	<p>Also, we support a strong disclosure regime by Intermediaries about any fees or remuneration they or any related organisation may receive from the CSF-Offer company on the approved CSF platform</p>
<p>B4 We propose to supplement the guidance in RG 181 with tailored guidance on the types of conflicts that may be faced by a CSF intermediary and how these can be managed. See RG 000.31–RG 000.34 of the draft regulatory guide at Attachment 1.</p>	<p>B4Q1 Do you agree with this proposed guidance? If not, why? YES B4Q2 Do you consider that our guidance for CSF intermediaries on the management of conflicts of interest should cover any matters in particular? If so, provide details. The main issue is the licensed Intermediary should only operate the CSF platform that is what the AFSL is specific to. Any other business should be operated in a separate entity which has an AFSL or any other approval re commissions etc. This underpins the need for full &amp; proper disclosure so CSF-aspirant companies know exactly what the role of the Intermediary is and there is no conflict of interest or confusion about specific roles.</p>
<p>B5 A CSF intermediary that is required to have adequate financial resources—and is not subject to certain other financial requirements—should have at all times cash flow projections, based on a reasonable estimate of what is most likely, that: (a) cover at least 12 months ahead; (b) have been approved by the directors or other governing body of the CSF intermediary (or if the CSF intermediary is a natural person, that person) within the previous three months; and (c) demonstrate that the CSF intermediary would hold, at all times covered by the projection, a cash buffer of at least 5% of projected 12-month cash outflows or, if higher, the cash outflows in a previous full financial year. See the draft legislative instrument at Attachment 3.</p>	<p>B5Q1 Do you agree with the proposed requirement that CSF intermediaries prepare, and have regularly approved, cash flow projections about likely financial outcomes that cover a period of at least 12 months? If not, why? YES B5Q2 Do you consider that the cash flow projections should be required to cover a shorter period of time? If so, what period of time do you consider appropriate, and why? Annual is satisfactory B5Q3 Do you consider that CSF intermediaries should be able to demonstrate that they have adequate cash by following any of Options 2 to 5 set out in RG 166, which certain other kinds of AFS licensee can choose to comply with? If so, which option is likely to be appropriate and why?</p>

	<p>Options 1 or 2 are reasonable. It will be very difficult initially to forecast accurately and we would recommend Intermediaries be conservative in the forecasts given the competitive nature of the CSF landscape. If one looks at the early days of CSF in the UK some operators were making losses for the first year or more and thus one does not want to burden Intermediaries with too much capital adequacy when they are investing large amounts of money in the platform build, operational aspects, profiling, internal procedures, insurance, technology, communications etc – the platforms will not be profitable initially in our opinion and Intermediaries should be encouraged to invest in this space without having the financial bar set too high.</p>
<p>B6 We propose that a CSF intermediary that is required to have adequate financial resources under the Corporations Act—and is not subject to net tangible assets (NTA) requirements under other ASIC legislative instruments—must ensure that the audit report required to be lodged with its annual financial statements includes statements by a registered company auditor, addressed to the CSF intermediary and ASIC, that for the relevant period:</p> <p>(a) in the auditor’s opinion, the CSF intermediary:</p> <p>(i) complied with the requirements to have the cash flow projection approved as required at least quarterly, the requirement to hold the required 5% cash buffer and any other financial requirements applying under its licence conditions;</p> <p>(ii) had, at all times, cash flow projections (covering at least the following 12 months) that purport to, and on their face appear to, be a projection of the licensee’s cash flow, as required; and</p> <p>(iii) correctly calculated the cash flow projections based on the assumptions used for the projection; and</p> <p>(b) following an examination of the calculations, assumptions and description used in preparing the cash flow projections, including the documents prepared to demonstrate that the CSF intermediary meets the requirements for cash, the auditor has no reason to believe that the CSF intermediary:</p> <p>(i) did not have adequate systems for managing the risk of having insufficient financial</p>	<p>B6Q1 Do you agree with the proposal to require a CSF intermediary to arrange for an audit report on the proposed basis? If not, why?</p> <p>NO – as noted above, it is likely the Intermediaries will be making a substantial investment in setting up the CSF platform and operations and may be loss making for the initial period (ie a year or two or three). We believe it is better for the Intermediary’s financial statement to be audited and the auditor make any comment about going concern or financial adequacy generally and not specifically having to attest to the basis of forecasts and systems etc.</p> <p>The very fact that most CSF Offers will be without forecasts is the same situation for Intermediaries. It will be a very competitive sector with a number of Intermediaries being licensed. We would suggest the 5% of annual outflows is workable but any audit conclusion re financial adequacy be deferred until the Intermediary is properly established and profitable and there is a more reasonable basis to forecasts being prepared for third party audit review.</p>

<p>resources to meet any applicable financial requirements;</p> <p>(ii) failed to document the calculations and assumptions used in preparing the cash flow projections and describe why they are appropriate;</p> <p>(iii) will not have access, when needed, to enough financial resources to meet its liabilities over the projected term of at least 12 months, or that the it will not hold at all times during the period to which the projection relates, in cash, an amount equal to or greater than the current amount it is required to hold in cash; or</p> <p>(iv) adopted assumptions for the cash flow projections that were unreasonable.</p> <p>See RG 000.42 of the draft regulatory guide at Attachment 1.</p>	
--	--

<p>B7 We propose that our other financial requirements under RG 166, applying to AFS licensees generally, other than those relating to adequacy of cash, will apply to CSF intermediaries— including the requirement for surplus liquid funds under Section C of RG 166.</p>	<p>B7Q1 Do you consider that any of the requirements that apply to AFS licensees generally will not apply appropriately to CSF intermediaries? If so, why?</p> <p>Two matters may be relevant:</p> <ul style="list-style-type: none"> <li>a) ASLF definition – given it is likely the CSF Intermediary will require substantial funding initially to fund the platform build, licensing, insurance, staffing, profiling costs etc and such funds are likely to be in the form of loans of C Notes from the founders, then such liabilities should be excluded from the definition of ASLF</li> <li>b) 166.175 (Trust Account) &amp; App 4 Custodian role it would seem prudent for the Intermediary to seek the services of an established independent share registry skilled in handling applications and associated trust account services on behalf of the Intermediary, with the Intermediary still being responsible for the overall custodial regime, retail caps etc</li> </ul> <p>The above likely dimensions should be recognised / allowed for in the application of RG166.</p>
--	---

	<p>B7Q2 Do you consider that other requirements should apply to protect clients and promote confidence in CSF intermediaries? If so, what requirements should apply and why would that be appropriate?</p> <p>No</p>
<p>B8 We propose to generally apply our existing policy about organisational competence when assessing applications for an AFS licence authorisation to provide a crowd funding service. As this is a new AFS authorisation, the relevant experience that may be demonstrated under Option 5 in Regulatory Guide 105 Licensing: Organisational competence (RG 105) will be relevant and provide flexibility.</p>	<p>B8Q1 Do you agree with the proposal? If no, why?</p> <p>We believe the board and RM for the AFS license for a crowd funding service needs a broadly-based skills / experience set and not only focused on financial services. Option 5 is probably the best position to adopt with ASIC having wide discretion / tolerance given that the companies coming onto the CSF platform will for the most part be start-ups / emerging companies and most likely in technology / innovation areas. It is likely the CSF-aspirants companies will need quite a deal of handholding and chaperoning in the process of uploading their CSF Offers to the platform especially given such a tight Offer window of 90 days.</p> <p>RM's with solid experience in financial products, wholesale / retail audiences / compliance / business / training / appropriate qualifications / technology / innovation / advisory etc should be well considered and there could be anywhere between one and three RM's depending on the depth of skills at the board and management level. Keep in mind our suggestion that the crowd funding service and AFSL should be a specific entity dedicated ONLY to operating the platform and NOT providing advice, dealing or promotion. Therefore, the RM and board skill sets should be supportive of that of a platform operator / learning reference point rather than a financial services organisation dealing in retail &amp; wholesale products / advice.</p> <p>ASIC need to be sympathetic to the start-up nature of dedicated crowd funding platforms and work with applicants in a positive way to assist them achieving an AFS license to operate a crowd funding platform.</p>

<p>B9 We propose to consider the following experience in assessing the organisational competence obligation for CSF intermediary licensees:</p> <p>(a) experience as an IDPS platform operator, managed discretionary accounts operator or conducting due diligence on investments to be offered to retail clients as part of admission to an approved product list for advisers;</p> <p>(b) experience dealing in securities, for example as a stockbroker;</p> <p>(c) corporate advisers in mergers and acquisitions, takeovers, rights offers, initial public offers, corporate actions, underwriters, placements, or listings;</p> <p>(d) fund management experience (including registered and unregistered managed investment schemes);</p> <p>(e) experience operating a crowd-sourced funding platform, including non-investment or investment based, using a wholesale or registered scheme arrangement, or small-offers exemption under s708 of the Corporations Act;</p> <p>(f) experience as an operator of an investment-based crowd-sourced funding platform, including overseas (such as in New Zealand or other countries);</p> <p>(g) experience as a financial market operator in Australia or overseas; and</p> <p>(h) experience operating a platform-based financial services business.</p>	<p>B9Q1 Do you agree with the proposal? If not, why?</p> <p>Yes, broadly but ASIC should have wide discretion here consistent with the blend of skills of the management and RM</p> <p>B9Q2 Provide details of any other qualifications or experience that should be considered relevant by ASIC when assessing applications for a crowd-funding service authorisation.</p> <p>We feel a person who has “been there done that” with SME’s and start-ups could be helpful.</p> <p>Involvement with an industry organisation [redacted] would be highly desirable</p> <p>International experience is business advisory + networks highly valued.</p> <p>B9Q3 Do you think there should a specific requirement for qualifications and experience in running the technology solutions for the platform?</p> <p>Not mandatory as normally the technology provider / builder will be involved as a “technology adviser / consultant / CTO” and not be conflicted by being a director or RM</p>
<p>B10 We propose to apply ASIC’s existing policy on dispute resolution procedures to CSF intermediaries for their retail client investors and offering companies, and to retain the existing guidance on these requirements in Regulatory Guide 165 Licensing: Internal and external dispute resolution (RG 165).</p>	<p>B10Q1 Do you agree with this proposal? If not, why?</p> <p>It could be argued that a CSF platform operator (Intermediary) is simply providing a platform and conducting the required checks and diligence on the CSF offer company and CSF Offer and therefore is not providing financial services to a person who is a retail client as the “client” is actually an applicant under a CSF offer by a company not related to the CSF platform operator. Nevertheless, we agree there should be IDR procedures that meets certain requirements along with the platform operator belonging to an EDR scheme.</p>

	<p>The only nexus between the retail investor / applicant and the Intermediary would be in relation to a dispute over claimed negligence of the Intermediary in relation to failing to detect a deficiency in a CSF Offer that should have been detected.</p> <p>B10Q2 Do you consider that our guidance for CSF intermediaries on dispute resolution procedures should cover any other matters in particular? If so, provide details.</p> <p>No – there needs to be good disclosure to the retail market about the responsibilities of the Intermediary vis-à-vis the CSF Offer company and the retail investor risk acknowledgment about the CSF Offer</p>
<p>C1 We propose to issue new regulatory guidance to assist CSF intermediaries to understand and comply with their specific obligations under the CSF regime. See Section C in the draft regulatory guide at Attachment 1.</p>	<p>C1Q1 Do you agree with this proposal? If not, why? YES</p> <p>C1Q2 Are there additional matters that you consider appropriate to cover in our guidance? NO</p>
<p>C2 We propose to issue guidance to assist CSF intermediaries to understand and comply with the specific obligations under the CSF regime to conduct checks to a reasonable standard. See Section C in the draft regulatory guide at Attachment 1.</p>	<p>C2Q1 Do you agree with this proposal? If not, why? YES</p> <p>C2Q2 Are there additional matters that you consider appropriate to cover in our guidance? NO</p> <p>C2Q3 Do you agree with the proposed guidance about what will be needed for a CSF intermediary's documented process for requiring the provision of information by offering companies to be reasonable, as required by the Corporations Regulations? If not, why not? YES</p>
<p>D1 We propose that CSF intermediaries should provide annual information in relation to:</p> <ul style="list-style-type: none"> <li>(a) the total amount raised by all eligible CSF companies through their platform;</li> <li>(b) successful CSF offers made through their platform;</li> <li>(c) unsuccessful CSF offers;</li> <li>(d) investors in CSF offers; and</li> <li>(e) operation of the platform, including use of outsourcing.</li> </ul>	<p>D1Q1 Do you agree with our proposal to require CSF intermediaries to provide information to ASIC on an annual basis about their operations? YES – it may be more relevant initially if the information required was reported on a quarterly or half yearly basis to provide ASIC with faster feedback.</p>

	<p>D1Q2 What specific information do you consider should be provided to ASIC? Please provide reasons.</p> <p>The information at Section D 59 is comprehensive and we are happy with the information requirements other than 59 (c) (iv) where the names of companies approaching an Intermediary and not proceeding with an uploaded CSF Offer as it may be that the CSF-aspirant company needs to complete an aspect such as a patent application and they have decided not to progress to a CSF Offer at that stage until the patent application is lodged etc – there may be a feeling that such deferral and naming of such company could taint their offering when they are CSF-ready. Something to be mindful of.</p> <p>Also, we believe Intermediaries should make immediate notification to ASIC where there is a defective Offer, stop order, suspension etc with details to ASIC when all refunds have been made.</p> <p>Also, any complaints by a retail investor to an Intermediary should be notified to ASIC within 30 days of such complaint.</p>
<p>E1 We propose to require that, where a platform operator or nominee and custody services operator acquires shares under a CSF offer on instructions of a retail client, they ensure the client:</p> <ul style="list-style-type: none"> <li>(a) has access to the CSF offer document;</li> <li>(b) can access the communication facility;</li> <li>(c) has acknowledged the general risk warning;</li> <li>(d) is provided with the cooling-off rights;</li> <li>(e) is not financially assisted by the CSF intermediary or its related party, or the offering company or its related party; and</li> <li>(f) only holds investments, made through and outside the platform or service, that are within the investor cap for offers by the offering company through the relevant CSF intermediary.</li> </ul>	<p>E1Q1 Do you agree with the proposal? If not, why?</p> <p>YES – we understand that IDPSs, registered managed investment schemes that are IDPS-like schemes, and nominee and custody services, may have authorities or POA for clients and give instructions to accept a CSF offer – we believe it is incumbent on the Intermediary to ensure CSF-Offer applications are correctly completed and where a 3<sup>rd</sup> party agent or POA has completed the application on behalf of a client that the client (retail) MUST complete the general risk warning, know the cooling off rights, within the investor cap etc. If an applicant claims they are a Sophisticated Investor they must provide it by the normal verification documents etc – Intermediaries should not rely on any agent, attorney or applicant re investor status. This will involve more work by the Intermediary but that is the reality of a platform operator with no inhouse clients re KYC.</p>



Lodged this 2<sup>nd</sup> day of August 2017 by:



Jeffrey Broun FCA MAICD  
Director  
**Australian Equity Crowdfunding Pty Ltd**  
**Fat Hen Ventures Pty Ltd**  
Level 4, 130 Stirling Street, Perth WA 6000



*find - follow - fund*

*get a crowd together*

*get ready for the crowd*

**M: 041 993 4623**

**E: [jeff@austecf.com.au](mailto:jeff@austecf.com.au)**

**[www.austecf.com.au](http://www.austecf.com.au)**

**E: [jeff@fathen.vc](mailto:jeff@fathen.vc)**

**[www.fathen.vc](http://www.fathen.vc)**