



ASIC

Australian Securities &
Investments Commission

REPORT 723

Response to submissions on CP 357 Remaking relief for business introduction services

March 2022

About this report

This report highlights the key issues that arose out of the submissions received on Consultation Paper 357 *Remaking relief for business introduction services: ASIC Instrument 2017/186* and details our responses to those issues.

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.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

This report does not contain ASIC policy. Please see [Regulatory Guide 129 Business introduction or matching services](#) (RG 129).

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A Overview

1 In [Consultation Paper 357 Remaking relief for business introduction services: ASIC Instrument 2017/186](#) (CP 357), we consulted on proposals to amend our relief for business introduction services under [ASIC Corporations \(Repeal and Transitional\) Instrument 2017/186](#) (ASIC Instrument 2017/186).

Note: A business introduction service is intended to facilitate fundraising for small and medium sized enterprises (SMEs) (defined as businesses with up to 250 employees).

2 ASIC [Class Order \[CO 02/273\] Business introduction and matching services](#) gave conditional relief from the fundraising, financial product disclosure, anti-hawking and advertising requirements in the *Corporations Act 2001* (Corporations Act) that would apply to a person making or calling attention to offers of securities or scheme interests through a business introduction service.

Note: A scheme interest is an interest in a managed investment scheme.

3 ASIC Instrument 2017/186 repealed the original [CO 02/273] but preserved its effect for two years until 23 March 2019.

4 *ASIC Corporations (Amendment) Instrument 2019/216* preserved the relief provided by [CO 02/273] until 1 April 2022.

5 ASIC provided conditional relief in ASIC Instrument 2017/186 from certain requirements in the Corporations Act that would otherwise apply to those involved in business introduction services.

Note: In this report, ‘relief’ means the relief provided by [CO 02/273] as preserved by ASIC Instrument 2017/186, unless otherwise specified.

6 Relief was provided separately for each of the following categories:

- (a) operators of business matching services (operators);
- (b) persons who propose to issue or sell securities or interests in a managed investment scheme through the use of business introduction services;
- (c) persons who endorse, verify or provide an assessment of any information about the securities or scheme interests provided by an issuer or seller; and
- (d) persons who publish any document relating to business introduction services.

7 In CP 357 we proposed to continue the relief for scheme interests for three years, with some changes to the policy settings.

- 8 We sought feedback from all interested stakeholders, including operators, on our proposals to:
- (a) allow the relief for Ch 6D securities (including Ch 2L debentures) to expire;
 - (b) extend the relief for scheme interests to 1 April 2025;
 - (c) require persons who rely or cease to rely on the relief from 1 April 2022 to provide notice to ASIC; and
 - (d) amend the relief to clarify that the design and distribution obligations apply to persons who rely on the relief where they would need to presently comply with the obligations under Pt 7.8A of the Corporations Act.
- 9 This report highlights the key issues that arose out of the submissions received on CP 357 and our responses to those issues.
- 10 This report is not meant to be a comprehensive summary of all responses received. It is also not meant to be a detailed report on every question from CP 357. We have limited this report to the key issues.

Responses to consultation

- 11 We received six non-confidential submissions and one confidential submission to [CP 357](#). Respondents included existing industry participants, the Law Council of Australia and a crowd-sourced funding intermediary. We are grateful to respondents for taking the time to send us their comments.
- 12 For a list of the non-confidential respondents to CP 357, see the appendix. Copies of these submissions are currently on the ASIC website at www.asic.gov.au/cp under CP 357.

B Remaking the relief

Key points

This section outlines the submissions on our proposals to:

- extend the relief for scheme interests to 1 April 2025;
- allow the relief for Ch 6D securities (including Ch 2L debentures) to expire;
- require persons who rely or cease to rely on the relief from 1 April 2022 to provide notice to ASIC; and
- amend the relief to clarify that the design and distribution obligations apply to persons who rely on the relief where they would need to presently comply with the obligations under Pt 7.8A of the Corporations Act.

Extending the relief for scheme interests

13 In [CP 357](#) we proposed to extend the relief for scheme interests to 1 April 2025: see proposal C2(a).

14 We also proposed to require all persons who rely on the relief from 1 April 2022 to provide usage information to ASIC: see proposal C2(b). Specifically, persons who rely or cease to rely on the relief from 1 April should provide notice to ASIC.

Feedback received

15 Three submissions responded to our proposal to extend the relief and agreed that the relief should be rolled over. Two of these did not agree that the relief should expire in three years and considered that a longer timeframe was appropriate.

16 Three submissions addressed the proposed notification requirement and supported it to the extent it will provide data about reliance on the relief and its value.

17 One respondent was concerned that the requirement to notify ASIC of reliance on the relief would create a duplication, given that a notification requirement already exists for operators on publication, and that this would create a regulatory and cost burden.

Note: A condition of the relief is that an operator must give ASIC a notice setting out the operator's name and contact details and details of the publication published by the operator.

ASIC's response

We consider that the original policy rationale of the relief remains relevant for entities who cannot rely on the crowd-sourced funding (CSF) regime as they seek to recover from the impact of the COVID-19 pandemic for the three years to 2025.

We consider that the notification requirement will provide ASIC with important usage data, giving us a clearer picture than we currently have of reliance on the relief and its value.

We have introduced the requirement that all those relying on the relief notify ASIC that they are relying on it. This requirement applies to both:

- persons who were relying on the relief on 31 March; and
- persons who start relying on the relief from 1 April 2022.

We require those who are notifying us of reliance on the relief to advise us of each exemption in the relief that the person relies on.

We do not require all those who have relied on the relief to notify ASIC when they cease to rely on it.

We have clarified that a person relying on the relief does not need to notify ASIC on each occasion they rely on the relief.

Allowing the relief for Ch 6 securities to expire

- 18 In [CP 357](#) we outlined our proposal to allow our relief for Ch 6D securities (including Ch 2L debentures) to expire because the CSF regime allows companies to raise funds with appropriate investor protection features introduced by Parliament: see proposal C1.

Feedback received

- 19 Five respondents disagreed with our proposal and one gave qualified support. Only two respondents had helped any companies raise funds in reliance on the relief.
- 20 Most objections to the sunseting of the Ch 6D relief were based on the perception that the CSF regime:
- (a) is restrictive and does not provide the same scope for small-scale fundraising, given it does not cover securities other than ordinary shares;
 - (b) is too expensive; and
 - (c) is not available to companies that exceed the assets and annual revenue caps of \$25 million.
- 21 There was no support for the Ch 6D relief being extended for companies that are ineligible to rely on the CSF regime.

ASIC's response

Our policy position is that the CSF regime provides a robust alternative for smaller companies to raise up to \$5 million in 12 months with appropriate investor protection features.

Note: By smaller companies we mean companies with less than \$25 million in consolidated gross assets and annual revenue in the previous 12 months.

The restrictions referred to in the submissions are investor protection features implemented by Parliament. However, the CSF regime could be expanded to more complex Ch 6D securities by a change to reg 6D.3A.01 of the *Corporations Regulations 2001*—if the increased risk to investors is considered justified.

Although there are more costs associated with the CSF regime, this partly reflects the gatekeeper role played by the licensed CSF intermediary under the Corporations Act. Most of the costs of making a successful CSF offer are deducted from the fundraising itself, which should reduce any perceived barrier to fundraising under the CSF regime.

We note that relief from Ch 6D is not required for persons to circulate offers to sophisticated investors, as the obligation to provide disclosure in relation to an offer of sale or issue of securities under s706 and 707 of the Corporations Act is subject to the exemption in s708 (in particular 708(8)). Further, the hawking prohibition in s992A is not applicable to sophisticated investors.

We will extend the Ch 6D relief for six months between 1 April 2022 and 1 October 2022, given that:

- the responses to CP 357 may not reflect the full extent of reliance on the relief; and
- extending the relief for this period will avoid disrupting current offers to retail investors that remain open beyond 1 April 2022 when the relief is due to expire.

Clarifying that the design and distribution obligations apply

- 22 In [CP 357](#) we proposed to amend the relief to clarify that the design and distribution obligations apply to persons who rely on the relief where they would need to presently comply with the obligations under Pt 7.8A of the Corporations Act, consistent with the policy settings introduced by Parliament: see proposal C3.

Feedback received

- 23 Of the four submissions that responded to the proposal, three were supportive of it, while one considered that it would impose an unreasonable regulatory and cost burden on participants.

ASIC's response

When the relief was originally drafted, the design and distribution obligations did not exist. The obligations were introduced in 2019 and now form an important part of the legislative framework for financial services. We believe that applying the design and distribution obligations to the conduct covered by the relief is consistent with policy settings introduced by Parliament.

Our amendments to the relief clarify that from 1 October 2022 the design and distribution obligations apply to persons who rely on the relief where they would otherwise need to comply with the obligations under Pt 7.8A of the Corporations Act.

The revised policy settings will continue to facilitate the growth of SMEs by reducing the regulatory and cost burden of small-scale fundraising while requiring firms to adhere to product governance requirements under Pt 7.8A. The design and distribution obligations will help to ensure that high-risk investment opportunities are directed to appropriate consumers.

We have provided a six-month transition period, acknowledging that, although the feedback did not raise any practical problems with complying with the design and distribution obligations, the responses may not reflect the full extent of reliance and this transition period will allow time for compliance.

Appendix: List of non-confidential respondents

- Birchal Financial Services Pty Ltd
- Copperstone Capital Pty Ltd
- Investment Markets (Aust) Pty Ltd
- Law Council of Australia, Business Law Section
- Private individual
- Wholesale Investor Pty Ltd