



SUBMISSION PAPER

Equity Crowdfunding (Crowd-Sourced Equity Funding) **Feedback to Treasury and ASIC on Crowdfunding Regime**

August 2017

This Submission Paper was prepared by FinTech Australia working with and on behalf of its Members; over 120 FinTech Startups, VCs, Accelerators and Incubators across Australia.



Introduction and Background

This document was created by FinTech Australia in consultation with its Equity Crowdfunding (ECF) Working Group co-leads and members:

- Jack Quigley, [CrowdfundUP](#)
- Jonny Wilkinson, [Equitise](#)
- Andrea Gardiner, Jelix

We also particularly acknowledge the support and contribution of the Broader Equity Crowdfunding Community to this document, and to BDO and King & Wood Mallesons to the roadshow and topics explored in this submission.



Response to Treasury's proposed amendments to Proprietary Company Legislation

Takeover Provisions

- *The draft bill provided a conditional exemption from the general takeover provisions. Stakeholders, while agreeing it would be inappropriate for the general takeover provisions to apply, raised a range of issues around the complexity and restrictive nature of the conditional exemption.*
- *In considering feedback on the bill, we have spent quite a bit of time looking at an alternative approach. It has become clear that there is no single option which would not impede reasonable fine-tuning of major shareholdings; provide minimum investor protections that would not be easily circumvented; and, importantly, would be simple for companies to understand and comply with.*
- **Possible change:** *Consequently, we seek your views on a full exemption from the takeover provisions for proprietary companies that are eligible to crowdfund (i.e. under the turnover and asset caps) and that have at least one CSEF shareholder. Companies would be required to disclose any 'drag and tag' rights in the offer document. A regulation making power could be included to allow the Government to respond quickly to any systemic issues that emerge.*
- **FinTech Australia is very supportive of this proposed change.**

Disposal of shares purchased in a CSEF offer – implications for 50 shareholder cap

- *Fintech Australia and other stakeholders raised the issue of a company being required to convert to public company status, if CSEF shareholders on-sell or transfer their shares (as subsequent holders would count towards the cap). In our subsequent discussions, we agreed that there needed to be some ability to transfer shares and retain proprietary status, but that it would be undesirable for a company to retain proprietary status indefinitely, while becoming widely held and being traded on a secondary market.*
- **Possible change:** *We seek your views on an option which excludes, for the purposes of the 50 shareholder cap for proprietary companies:*
 - o *shareholders who purchased a share as part of a CSEF offer (as per current draft bill); and*
 - o *NEW LIMB: subsequent holders of shares originally issued as part of a CSEF offer, as long as shares in that company, at the time of transfer, have not been traded on a financial market. This is intended to provide for off-market transfers in the absence of trading of those shares on a secondary market. Given the breadth of this carve out, a regulation making power would also be included to exclude certain transfers from this, as a failsafe, if the provision is being used for avoidance/other inappropriate activity.*
- **FinTech Australia is also very supportive of this proposed new limb in addition to what is proposed in the current draft bill.**

Audit Threshold

- *Fintech Australia highlighted the costs associated with audit as a potential barrier to companies using CSEF to raise funding.*
- **Possible change:** *We seek your views on an increase in the threshold from \$1 million to \$3 million, both for proprietary companies and also in the governance concessions for newly converted public*



companies (who will be grandfathered and retain access to the concessions if they converted prior to the commencement of the proprietary companies extension).

- **FinTech Australia is very supportive of this proposed change and thanks Treasury for their willingness to adopt our recommendation.**

FinTech Australia Response To ASIC Regulatory Guides

1. Offer Document Requirements

1.1. ASIC's interpretation of the legislation in relation to Offer Document requirements is too prescriptive. The suggested guidelines make it lengthy, onerous and confusing for the company that is compiling the documentation, and creates a level of documentation that, similar to a prospectus, investors will not bother to read which defeats the purpose of having this documentation.

1.2. Having such prescribed formats and order of information display also stifles the ability for intermediaries to continue to evolve best practice and to leverage available technologies to best help investors understand the necessary information. Our recent discussion with ASIC showed that they were aware of other feedback to this point.

1.3. FinTech Australia recommends that the **legislation and regulation should make it clear what minimum disclosure of information is required, what is helpful (but not mandatory), and to use language that supports a good degree of flexibility in the manner in which key information may be presented.** This would give intermediaries and legal advisors scope to best deliver the required information in accordance with evolving best practice. For example, a short-form table summary presenting key information, which then could deep-link to a longer document with all the required detail, or the commonly used form of a table of contents linking through to further information or scroll-throughs.

2. Intermediary obligations for Offer Documents

2.1. We also note the increased oversight and approval requirements for intermediaries to oversee the contents of offer documents, as well as each instance of how that offer document is communicated via any means. This is well above what other jurisdictions impose, and what the legislation implies.

2.2. It also increases the liability imposed on intermediaries, such that in combination with the additional review process and audit obligations, it would make it very difficult to see why CSEF intermediaries would choose to operate in Australia.

2.3. FinTech Australia recommends that, in accordance with 1.3 above, **the intermediary be responsible for checking that the company appears to have met the minimum disclosure requirements only, as well as approval of information that is being distributed via the intermediary and within their control.** However, it should be made clear that intermediaries are not responsible for verifying or ensuring factual accuracy of disclosure - and that this is solely a responsibility of the companies.

3. Intermediary Reporting requirements

3.1. The breadth and granularity of reporting required appears unreasonable – the time and cost of tracking and reporting this information is significant, and more than is required for any other license type.

3.2 In recent discussions, ASIC has acknowledged that it may be useful to propose materiality thresholds on certain reporting criteria, and to also discuss this in further detail with some of the technical team members from the intermediaries. They also clarified that this reporting would occur only once at the end of each financial year. .



3.3. FinTech Australia recommends these reporting requirements be **reduced to top-line and/or material metrics, reported annually** – and only what is absolutely necessary to report back to Federal Treasury and in order to measure and optimise the regime’s overall progress and policy settings. For example, if information on system outages is required, it should set a sensible materiality threshold - eg more than [a day].

4. Intermediary Financial Reporting obligations

4.1. The requirement of having a forward 12 month budget and cash flow forecast is far too long. It is almost impossible for intermediaries to have that level of forward view into the market given the speed at which the market operates and so such information is likely to be meaningless at best and risks being misleading at worst.

4.2. Likewise, the requirement to have this budgeting/forecasting process reviewed and signed-off by directors every 3 months will add cost, time and distraction from operating making it almost impossible for directors and intermediaries to operate.

4.3. FinTech Australia recommends that the 12 month budget and cash flow forecasts be **reduced to 3 months**, which is a more practical and achievable outcome and would reduce the time and effort required for each review.

5. AFSL authorisations

5.1. We note that a CSEF License can only be utilised by a single operator. Every other license type grants license holders the ability to have multiple operators utilize this license, so long as checks and requirements for organizational competency are met.

5.2. FinTech Australia recommends that this restriction be removed, so that **a CSEF Licence may be used by multiple operators** if, as is the regime for other AFSL holders, the CSEF Licensee takes reasonable steps to ensure that operators using their licence comply with all CSF laws.

6. Intermediaries Conflict Management

6.1. We note that ASIC is requiring intermediaries to demonstrate the arrangements they have in place to deal with gatekeeper issues / conflicts of interest. The requirements proposed are above and beyond what is required in other license applications, in particular for investment banks and other similar situations such as for the ASX.

6.2. FinTech Australia recommends that any requirement be kept to a similar level to what is required of investment banks, which, given the relatively small client bases they operate within, have far more opportunity and scope to create conflicts of interest than CSEF intermediaries with retail investors and startups.

7. Licensing Process as of 29 September

7.1. We note that ASIC will not open its online licensing application process until 29 September, and will not make a streamlined pathway available via the Innovation Hub to existing operators or otherwise.

7.2. Given the online form is likely to be highly prescriptive and time consuming to complete, and that there are currently long wait times for processing AFSL applications, it is likely to take several weeks (potentially months) for intermediaries to obtain their AFSL’s. We also note that companies looking to convert to public companies will also require approx. 4-6 weeks (and cannot make conditional applications i.e. they can only start once the regime is in place, and can only begin raising once the intermediaries have their AFSL).

7.3. Given the above, it is likely that no companies will be able to raise capital via the new regime until mid-November, delaying the start of the regime beyond the expectations of both the market and Treasury. Particularly for businesses that already have relevant established operations - whether as CSEF platforms in wholesale markets or foreign markets, or electronic platforms already marketing



securities to retail investors under existing licences - a streamlined process for those businesses should be considered.

7.4. FinTech Australia recommends that **ASIC allow some existing operators to undertake a streamlined license arrangement via the Innovation Hub to ensure that they are ready to start as close as possible to September 29**. At the very least, the intended questions and format of responses required in the online portal should be made available ideally 2-3 weeks prior to the regime start date (even if only in design or prototype form).

7.5. Flexibility to submit hard-copy applications outside the online portal should also be considered as a transitional measure for the first rounds of applications - particularly as the draft forms are not already available.



About FinTech Australia

FinTech Australia is the peak industry body for the Australian fintech Industry, representing over 120 fintech Startups, Hubs, Accelerators and Venture Capital Funds across the nation.

Our vision is to make Australia one of the world's leading markets for fintech innovation and investment. This submission has been compiled by FinTech Australia and its members in an effort to drive cultural, policy and regulatory change toward realising this vision.

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