Law Council
OF AUSTRALIA

Business Law Section

14 February 2022

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

By email: policy.submissions@asic.gov.au

Dear Sir/Madam,

Response to Consultation on ASIC CP357 – Remaking Relief for Business Introduction Services

1. This submission in response to CP357 issued by ASIC (**CP357**) is made by the Corporations Committee of the Business Law Section of the Law Council of Australia (**Committee**).

Key Points

2. For the reasons set out below, the Committee:
   - Supports the relief being continued, but without allowing the relief for Chapter 6D (or 2L) to sunset in April 2022 unless there is sufficient evidence that aspect of the relief is not being relied on in any substantial manner.
   - Supports the terms of the relief being continued for scheme interests and for the terms of the relief to cover the proposed design and distribution obligations.

Relief for Chapters 6D and 2L should continue

3. In CP357, ASIC submits that the CSF regime replaces the business-matching services relief for ordinary securities. The Committee acknowledges that the CSF regime is now an accepted and effective lower cost fundraising regime and that there is a degree of overlap between the aims of the relief and of the CSF regime.
4. However, the concept of the Introduction Service as set out in CO[02/273][1] is different to what is permitted by the CSF regime. In the Committee's view, the conduct that can be facilitated by the relief is different to CSF services in relation to ordinary shares. By way of example:

[1] ASIC CO [02/273] Introduction section 1 - "Introduction Service" is a business that has as one of its objects the promotion or encouragement of investment in Small and Medium sized enterprises. An Introduction Service achieves this object by identifying potential investors to invest in these enterprises or potential investments for ascertained investors.

(a) The CSF regime was brought in to facilitate raising small amounts of money from a large number of investors[2]. Aspects of the relief cannot support fundraising from such a large number of investors in that manner due to the 20-investor ceiling[3].
(b) The relief applies to certain subscription services[4] which would not ordinarily form part of a CSF equity raise.

5. The CSF regime was considered to be an emerging form of funding at the time it was adopted in Australia and the regime was introduced to facilitate crowd sourced equity fundraising[5], not to replace other forms of fundraising or facilitation of investment.
6. The basis for ASIC's relief for business-matching services first appears to have been comprehensively set out by ASIC in ASIC RG129[6], which recognised the excessive regulatory burden and cost for such services in the fundraising process (without the relief). The need for the class order relief arose from the granting of individual relief for a number of business-matching service operators[7].
7. In CP357, ASIC acknowledges that the primary aim of the relief is to facilitate low-cost fundraising by companies[8]. While the CSF regime can do this, there is no clear evidence set out or referred to in CP357 that the relief is no longer achieving that aim, and no policy reason why the relief should be abandoned, particularly given the aim of assisting SMEs to fundraise efficiently[9].
8. The Committee notes that ASIC has sought evidence of reliance on the relief via responses to CP357.

Continuing relief for Scheme Interests

9. The Committee supports the relief continuing for scheme interests. As ASIC notes, the CSF regime does not extend to scheme interests in any manner. ASIC also states that the relief works effectively and efficiently, that it is necessary and useful, and that the policy rationale remains relevant[10].
10. In light of those matters, the Committee does not understand the basis on which ASIC currently considers that the relief for scheme interests should sunset in a further 3 years.

Relief covering DDO

11. The Committee supports the relief covering design and distribution obligations for the reasons given by ASIC.

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[2] ASIC RG261.1.
[3] CO[02/273] Second Exemption, clause 2.
[4] CO[02/273] First Exemption, clause 3(d).
[5] Explanatory Memorandum, Corporations Amendment (Crowd-Sourced Funding) Bill 2016, overview and regulatory impact sections.
[6] In particular ASIC RG129.20-24. ASIC CO[02/273] contains the terms of the relief which have been effectively carried through to ASIC legislative instrument 2017/186. ASIC CO[02/273] appears to replace the initial class order relief for business-matching services, granted by ASIC CO[97/2329].
[7] ASIC RG129.1.
[8] ASIC CP357.34.
[9] The Committee notes that the relief has never extended to any financial services licensing in this regard.
[10] ASIC CP357.35, 357.40.

Notification to ASIC

12. The Committee notes the general lack of required reporting to ASIC as to who is currently relying on the relief and supports ASIC's proposed compulsory notification obligations in that regard.
13. The continuation of the relief in full with compulsory notification should enable ASIC to have more detailed evidence of the reliance on the relief and the consequences of it being withdrawn.

[redacted]

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