14 June 2017

Manager
Financial Innovation and Payments Unit
Financial System
The Treasury
Langton Crescent
PARKES ACT 2600

By email: csef@treasury.gov.au

Dear Sir/ Madam

# Subject: Extending crowd-sourced equity funding to proprietary companies

CPA Australia represents the diverse interests of more than 160,000 members in 118 countries. Our vision is to make CPA Australia the global accountancy designation for strategic business leaders. Against this background and in the public interest, we provide this submission in response to the draft legislation that proposes extending crowd-sourced equity funding (CSEF) to proprietary companies.

# General comments

The introduction of laws to make CSEF easier is an important initiative – one that will support the development of a more innovative and entrepreneurial business culture in Australia by expanding the sources from which such businesses can access funding.

Allowing easier access to funding from the crowd may assist some innovative companies and younger business owners’ access to funding that they may otherwise find difficult to source.

This type of funding however is potentially high risk, therefore it is important that the design and implementation of the regulatory regime supporting CSEF strike an appropriate balance between the funding needs of business, the conduct of corporate regulation and appropriate shareholder/ investor protection.

Whether the draft legislation achieves that balance is an open question, however we note that the draft legislation proposes to provide the government with the power to apply additional requirements on CSEF companies by regulations. This safeguard should not only help to address issues as they emerge but also give the government the power to intervene before problems emerge.

# Specific comments

## Should proprietary companies be allowed to raise equity funding from the crowd?

The introduction of CSEF invariably requires a large departure from the existing corporate law framework. This is particularly so if proprietary companies are permitted to raise funds from the public via the crowd.

For example, as pointed out in Ford’s Principles of Corporation Law “*A proprietary company is a private company designed for a relatively small group of persons who do not wish the company to be able to invite the public to subscribe for its share capital or to lend money to it.*”

Therefore, to allow proprietary companies to raise funds from the crowd is contrary to the stream of existing statutory development and strikes at the reasons for Australia’s corporate law distinction between public and proprietary companies. Further, it risks creating classes of shareholders with uncertain and potentially conflicting rights.

Another possible option to allowing public and proprietary companies to raise funds via CSEF would be to restrict raising equity finance from the crowd to a new type of corporate entity that is neither a public nor a proprietary company under the current law.

The introduction of a new type of entity would have a number of benefits – for example a totally new type of corporate structure would give Australia a clean slate and the relevant sections of the law could be made applicable or modified to the new company type as seen fit.

CPA Australia is of the view that if proprietary companies are permitted to access CSEF,it is necessary that they be subject to additional transparency obligations that are comparable to public companies accessing CSEF. This is needed to provide some balance between the financing needs of business and investor protections. We note that such an approach would inevitably increase the regulatory burden faced by such companies.

## The power to prescribe other eligibility requirements through CSEF

Given the high-risk nature of CSEF and that it is a relatively new innovation, we support the inclusion of sub-paragraph 738H(1)(a)(ii) in the Corporations Act 2001, which proposes to give the government the power to prescribe further eligibility requirements on CSEF companies through regulations. This should enable the Government to intervene quickly to manage emerging issues that may undermine investor protections, and therefore the integrity of the regime.

## Proposed definition of ‘CSF shareholder’

An important component in building a successful regime is encouraging the development of a secondary market where CSEF investors can dispose of their investments - therefore the proposal to limit the definition of ‘CSF shareholder’ in section 9 of the Corporations Act 2001 to an entity ‘issued with the securities pursuant to a CSF offer’ should be revisited. Not only may this discourage the development of a secondary market, it is unclear how this definition will impact the transfer of interests due to death or as a result of a settlement on a marriage breakdown.

## The need for a post-implementation review

We encourage the Government to conduct a post-implementation review of the CSEF law within its first three years of operation. Such a review should consider:

* whether the regime strikes the right balance between the funding needs of business and investor protections
* the learnings from other CSEF regimes that are more mature than the Australian regime, such as New Zealand
* whether a new type of corporate entity that is neither a public nor a proprietary company would be a better approach to encouraging the further evolution of CSEF.

The post-implementation review should also consider whether the changes to disclosure, governance and audit requirements for eligible companies are effective in protecting and informing investors and have supported the creation of secondary markets where investors can dispose of their investment.

## ASICs investor protection role

ASIC must play an active role in educating the public on CSEF and the significant risks associated with such an investment. For example, it needs to ensure that the public is well informed that CSEF investments may be largely illiquid, and as such, investors may have significant difficulty disposing of their investment.

If you have any questions regarding the above, please contact Gavan Ord, Manager, Business and Investment Policy on (03) 9606 9695 or via email at gavan.ord@cpaaustralia.com.au.

Yours faithfully

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