

My Angel Investment
website: <http://www.myangelinvestment.com>
email: mark@myangelinvestment.com

Manager
Financial System Assessment Unit
Financial System and Services Division
The treasury
Langton Crescent
Parkes
ACT 2600
Australia

By email to: csef@treasury.gov.au

5th February 2015

Dear Sir / Madam

My Angel Investment's responses to Treasury on Crowd-sourced Equity Funding

My Angel Investment is an equity crowdfunding platform that is currently at the final stages in the application process to obtain a licence from the Financial Markets Authority to operate in New Zealand. Our leadership team and resources are located in both Auckland and Sydney, thereby giving us the ability to operate Trans-Tasman as and when legislation in Australia allows.

We have therefore followed with interest the developments of regulatory policy in this area and are pleased to respond to Treasury's invitation to comment on the consultation paper 'Crowd-sourced Equity Funding' dated December 2014.

Our responses, in bullet point format, following your questions below:

1. *Is the main barrier to the use of CSEF in Australia a lack of a CSEF regulatory structure, or are there other barriers, such as a lack of sustainable investor demand?*
 - Yes, we believe that a lack of CSEF regulatory structure is the main barrier
 - We don't believe there is a lack of investor demand; other jurisdictions have proved that demand for this asset class does indeed exist
2. *Do the existing mechanisms of the managed investment scheme regime and the small scale personal offer exemption sufficiently facilitate online offers of equity in small companies?*
 - No, the lack of CSEF current activity proves that the existing mechanisms are insufficient
3. *Other than the restrictions identified above in relation to limitations on proprietary companies, public company compliance requirements and disclosure, are there any other barriers to the use of CSEF in Australia?*
 - There is significant perceived complexity by most stakeholders regarding the current mechanisms (perhaps with the exception of existing capital market specialists). This in turn stifles the development of this sector

4. *Should any CSEF regime focus on the financing needs of small businesses and start-ups only, or is there a broader fundraising role?*
 - The target for any CSEF regime should primarily be start-ups, but it may also allow established businesses to raise capital (likely capital for growth, rather than for operational needs)
5. *Do you consider that, compared to existing public company compliance costs, the exempt public company structure is necessary to facilitate CSEF in Australia?*
 - No, we consider it to be too complex and essentially is a 'work around' within the current legislation, thereby making it inelegant compared to undertaking a proper and comprehensive legislative redesign
6. *To what extent would the requirement for CSEF issuers to be a public company, including an exempt public company, and the associated compliance costs limit the attractiveness of CSEF for small businesses and start-ups?*
 - The majority of issuers would likely find it to be too complex to become an exempt public company and simply would not do it
 - Therefore the volume of CSEF activity would likely be significantly curtailed
7. *Compared to the status quo, are there risks that companies will use the exempt public company structure for regulatory arbitrage, and do these risks outweigh the benefits of the structure in facilitating CSEF?*
 - Yes
 - Yes
8. *Do you consider that the proposed caps and thresholds related to issuers are set at an appropriate level? Should any of the caps be aligned to be consistent with each other, and if so, which ones and at what level?*
 - The cap system appears unnecessarily complex
 - No comment
9. *Do CAMAC's recommendations in relation to intermediary remuneration and investing in issuers present a significant barrier to intermediaries entering the CSEF market, or to companies seeking to raise relatively small amounts of funds using CSEF?*
 - Yes, they may limit the attractiveness to participate as an intermediary and to create a sufficient return
 - Costs to raise smaller funds will likely be high with fixed dollar fees, thus potentially being prohibitive for the issuer and difficult to price for the intermediary
10. *Do the proposed investor caps adequately balance protecting investors and limiting investor choice, including maintaining investor confidence in CSEF and therefore its sustainability as a fundraising model?*
 - Proposed investor caps appear set low – thus potentially limiting participation by 'serious investors' (including wholesale investors) in this asset class
 - As a result, there may be domination by retail investors with many very small (and insignificant) investments
 - We do not believe that there need for specific investor caps, as per New Zealand regulation

11. *Are there any other elements of CAMAC's proposed model that result in an imbalance between facilitating the use of CSEF by issuers and maintaining an appropriate level of investor protection, or any other elements that should be included?*
- No comment
12. *Do you consider it is important that the Australian and New Zealand CSEF models are aligned? If so, is it necessary for this to be achieved through the implementation of similar CSEF frameworks, or would it be more appropriate for CSEF to be considered under the Trans-Tasman mutual recognition framework?*
- Yes
 - Through a similar CSEF framework, not a Trans-Tasman mutual recognition framework
13. *Do you consider that voluntary investor caps and requiring increased disclosure where investors contribute larger amounts of funds appropriately balances investor protection against investor choice and flexibility for issuers?*
- Yes
14. *What level of direction should there be on the amount of disclosure required for different voluntary investor caps?*
- Similar disclosure requirements to those required under the New Zealand model
15. *How likely is it that the obstacles to CSEF that exist under the status quo would drive potential issuers, intermediaries and investors to move to jurisdictions that have implemented CSEF regimes?*
- It is highly likely and indeed is already happening
16. *What are the costs and benefits of each of the three options discussed in this consultation paper?*
- No comment
17. *Are the estimated compliance costs for the CAMAC and New Zealand models presented in the appendix accurate?*
- The New Zealand model compliance costs for intermediaries are significantly higher than those estimated. We have no comment on the CAMAC costs
18. *How many issuers, intermediaries and investors would be the expected take up online equity fundraising in Australia under the status quo, the CAMAC model and the New Zealand model?*
- Not many under Status Quo
 - Some under CAMAC model
 - Many under the New Zealand model
19. *Are there particular elements of the New Zealand model that should be incorporated into the CAMAC model, or vice versa?*
- No comment

20. *Are there particular elements of models implemented in other jurisdictions that would be desirable to incorporate into any final CSEF framework?*
- A model that includes tax concessions (as per the UK legislation) would beneficially stimulate the sector, particularly by providing clear financial incentives to investors
21. *Do the issues outlined in this consultation paper also apply to crowd-sourced debt funding? Is there value in extending a CSEF regime to debt products?*
- Yes
 - We believe there would be value in additionally including Peer-to-Peer Lending, as per New Zealand regulation
22. *To what extent would the frameworks for equity proposed in this discussion paper be consistent with debt products?*
- They could be quite similar, as per New Zealand regulation.
23. *Would any of the options discussed in this paper, or any other issues, impede the development of a secondary market for CSEF securities?*
- Secondary market legislation would need to be an extension of these regulations, including consideration of all follow-on impacts. As such, it needs much more detailed consideration

Additionally to the comments made above within the questions, we also make the following observations:

- Aim to use a proprietary company structure with an exemption for larger numbers of shareholders, perhaps up to say 200 or 250, where the company has raised equity on a recognised ESCF platform
- Avoid unit trust structures where possible because this may attract financial engineers rather than 'company and value builders' as the stated aim is to support start-ups and SMEs. Such structures would also lose the beneficial sense of direct ownership
- Consider carefully how minority investors will exit 'going concern' businesses where there is not trade sale or IPO (as in the majority of cases). Perhaps redeemable shares with, say, a 5-year trigger could be considered? It should be reinforced that there is no liquidity available, even via a secondary market
- Require issuers and their directors to disclose previous financing, debt and equity to prevent 'serial crowd companies'

We thank you for the opportunity to respond to the consultation paper and look forward to Treasury's next steps in the creation of appropriate policy in this important area.

Please do not hesitate to contact us for further engagement in the consultation process, or to explore any of the items raised above in greater detail.

Yours faithfully,



Mark Malcolm (Co-founder and Director)

For and on behalf of **My Angel Investment**

 **my angel investment**