

PIN:BRI

05th June 2017

The Manager
Financial System Assessment Unit
Financial System and Services Division
The Treasury
Langton Crescent
PARKS ACT 2600

Dear Treasury,

TMEFFECT SUBMISSION – PROPRIETARY COMPANY MODEL

Thank you for the opportunity to provide a submission on the proprietary company draft amendments to the crowd sourced equity funding laws.

TMeffect represents one of the core group of intermediaries keen to see the framework resolved, however as an independent, non-vertically aligned or motivated party, we hope that our views continue to show clarity and alignment with the national interest and indeed the policy objectives behind these important changes.

We take the view that amendment enabling a proprietary based model is vital to the creation of a sustainable and healthy CSEF framework, and as such we welcome the draft and complement many of the subtle and important decisions that have been made in deciding an ultimate direction for these measures, that said, the future health of equity crowdfunding has been largely left to undisclosed regulations, notwithstanding the significant lead times necessary for intermediaries and issuers to prepare for an offer in this regard.

Previously we cautioned against this approach due to regulatory difficulties that any full scale market regulator ought to have when administering micro market offers (sub 2 million). We believe that the lack of direction within the bill in regards to minimum offer requirements may easily trend the model towards niche regulation and create a new bottle neck in capital allocation, rather than the democratisation intended.

The existing bill and its amendments do not sufficiently acknowledge the implicit due diligence applied by a crowd financially exposed investors and as such, much of the opportunity for reform remains untapped.

This is further exacerbated by the combination of proprietary companies and a 5 million dollar funding cap, which will rarely be tested, but omnipresent in decisions regarding regulation.

All the above said, start-ups have tuned back into the proprietary version of equity crowdfunding as a possibility for fundraising so we trust that Treasury will continue to work closely with industry and ASIC in the fulfilment of this longstanding bipartisan policy agenda. Having reviewed the bill and discussions with investors and start-ups across the east coast in recent speaking engagements and ongoing ventures we offer the following areas for further consideration;

TMeffect

Crowd Sourced
Equity Funding

**Suite 11,
330 Wattle Street, Ultimo,
New South Wales,
Sydney 2007**

TMeffect Pty Limited
ABN: 88 076 551 641
ACN: 076 551 641

Telephone:
+61 (2) 9280 2655

Facsimile:
+61 (2) 9280 4899

Web:
www.tmeffect.com

Email:
info@tmeffect.com

Founders:
Matthew Pinter
William Neill



- Constitution amendment re takeover;
 - o Recommendation: Make the takeover period the test time for documentary compliance
 - Why?
 - o That's when it matters.
 - o Reduces lodgement and potentially unnecessary upfront cost
 - o CSF issue will keep ASIC notified of shares in the interim
 - o Avoids the need for new shareholders to confront existing shareholders over a contingent outcome
 - o Provides incentive for CSF shareholder engagement on exit

- Takeover provisions
 - o Recommendation: to add a requirement for CSF shareholder 'drag along' minority CSF shareholders; e.g. 75% of CSF shareholders agree, then all CSF shares are carried.
 - Why?
 - o Alignment with the commercial realities of an acquisition
 - o Improved liquidity and exit clarity for CSF funded companies
 - o Balancing founder and investor requirements

- Takeover provisions
 - o Recommendation to require the CSF offer to include a notice of takeover relief (or lack thereof) as part of the offer.
 - Why?
 - o So shareholders know the applicable rights

- Transfer of CSF Share count towards the 50 shareholder cap ;
 - o Recommendation; limited exemptions CSF transfers (exclude from cap)
 - Why?
 - o Founders want to stay Pty Ltd or change to LTD in view of an exit or subsequent funding round
 - o CSF transfers will cause 'bracket creep' towards +50 shareholders
 - o Companies will reject valid transfers due to the +50 cap implication
 - o Companies will not use CSF knowing that breaching the shareholder cap is inevitable
 - o Recommendations;
 - o Provide for AML and CSF Pty Ltd issuer exemption for shares offered at the same time as a further CSF offer(s) (and exempt transfers from 5 million cap)
 - o Provide for exemption of transfers between CSF shareholders
 - o Convert all existing shareholders of an equivalent class of shares (including founders)

TMeffect

Crowd Sourced
Equity Funding

Suite 11,
330 Wattle Street, Ultimo,
New South Wales,
Sydney 2007

TMeffect Pty Limited
ABN: 88 076 551 641
ACN: 076 551 641

Telephone:
+61 (2) 9280 2655

Facsimile:
+61 (2) 9280 4899

Web:
www.tmeffect.com

Email:
info@tmeffect.com

Founders:
Matthew Pinter
William Neill



- into a 'nominal' CSF share status, further relieving the company of 50 shareholder cap.
- Provide for an exemption for transfers between CSF shareholders and existing shareholder in the company (in respect of those shares only, or by class of shares)
- Auditor appointment
 - Recommendation: to align the reporting date and appointment date for an auditor at 30 days
 - Why?
 - Administrative efficiency for start-ups & the ASIC
 - 30 days is both practical and agreeable to all parties (including the auditor who needs to accept the engagement).
 - Upon the expiry of 30 days, failing to make an appointment will automatically trigger an ASIC response (further enhancing compliance).
- Voting shares
 - Recommendation to remove reference to voting shares across this and any affiliated legislation
 - Why?
 - The policy provides for ministerial discretion to the types of shares.
 - Reference to voting rights may impede application of that discretion
 - Non-voting share offers are common across many equity crowdfunding friendly jurisdictions

These amendments go a long way towards making the Australian regime comparable with New Zealand UK and the US, however those markets have, for good reason, failed to deliver as promised.

We contend that Australia has the prior class order experience and policy settings to do more, particularly in regards to early stage ventures seeking funding of less than 2 million.

We trust that Policymakers and Treasury will over time revisit the assumptions made throughout this process and other reviews and enact detailed relief, including codification of prescribed minimum mandatory reporting in both pre and post offer entities.

Should you have any query in regards to these systematic or specific concerns, please do not hesitate to contact the writer.

Yours Sincerely,
TMeffect

MATTHEW PINTER
DIRECTOR

TMeffect

Crowd Sourced
Equity Funding

**Suite 11,
330 Wattle Street, Ultimo,
New South Wales,
Sydney 2007**

TMeffect Pty Limited
ABN: 88 076 551 641
ACN: 076 551 641

Telephone:
+61 (2) 9280 2655

Facsimile:
+61 (2) 9280 4899

Web:
www.tmeffect.com

Email:
info@tmeffect.com

Founders:
Matthew Pinter
William Neill

