

10 February 2015

Manager, Financial System Assessment Unit  
Financial System and Services Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600  
By email: [csef@treasury.gov.au](mailto:csef@treasury.gov.au)

Dear Manager,

## **Crowd-sourced Equity Funding Discussion Paper (December 2014)**

### **Live Performance Australia Submission**

Thank you for providing the opportunity for interested parties to provide comment on the *Crowd-sourced Equity Funding Discussion Paper* ("**Discussion Paper**").

#### **ABOUT LPA**

Live Performance Australia (LPA) is the peak body for Australia's live performance industry. LPA was established in 1917 and is registered as an employers' organisation under the *Fair Work Act 2009*. We have over 400 members who work in the live performance sector across all artistic genres, including contemporary and classical music, musicals, theatre, comedy, dance, opera, circus and physical theatre. We represent producers, venues, promoters, performing arts companies, festivals and service providers such as ticketing companies and technical suppliers.

#### **CAPITAL RAISING IN THE LIVE PERFORMANCE INDUSTRY**

In nearly all cases, LPA Members offer a share of profits in return for capital investment, rather than crowd sourcing equity in shares and debentures. Our Members undertake capital raising for theatrical productions through a combination of small scale personal offers and sophisticated investors. We are particularly sensitive to any regulatory change that may have a negative impact on the way in which our Members are able to raise capital. Capital raising in the live performance industry is already extremely challenging, partly due to the absence of equivalent incentives, rebates and tax breaks to those offered to film investors, and partly due to the high risk nature of theatre producing.

## RESPONSE TO DISCUSSION PAPER QUESTIONS

We provide a response to the questions posed in the Discussion Paper that are relevant to the fundraising efforts of LPA members, as follows.

### ***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?***

LPA (then trading under our registered name of the Australian Entertainment Industry Association) was involved in the Corporate Law Economic Reform Program and proposed the introduction of the “sophisticated investor” exemption. Since that time, it has been LPA’s experience that the small scale personal offer and sophisticated investor exemptions have worked well. They provide a simpler and lower cost fundraising avenue for producers than the Prospectus model, while also protecting the general public from unscrupulous schemes.

LPA do not support removal of or any significant changes to the current model of small scale personal offer and sophisticated investor exemptions, as our Members that engage in capital raising are primarily proprietary companies that depend upon the current exemptions.

We recognise that facilitating easier Crowd-sourced Equity Funding (CSEF) can potentially provide issuers with a more effective means for providing online offers of equity and appeal to an expanded network of potential investors. We support the development of a separate CSEF legislative framework that sits alongside the current exemption scheme for proprietary companies.

### ***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 requirement to become a public company presents a significant barrier for LPA Members. Most LPA Members are proprietary companies that utilise the small scale personal offer and sophisticated investor exemptions to raise capital, primarily through an established network of investors. Our Members that are established within the industry with a strong network of investors are unlikely to burden themselves with the task of becoming a public company for CSEF when they can raise the same amount or potentially more through the current exemptions for proprietary companies, with lower compliance costs.

The CSEF exempt public company model may appeal to newer, smaller, less-established companies within our Industry, or companies that seek to construct a more innovative production. For these Members CSEF may be an attractive platform for raising capital beyond established networks that may only be interested in investing in traditional productions. While this would currently only represent a minority of our Members, the introduction of a CSEF model may assist those that want to take on a more innovative project with a means for appealing to a wider range of investors.

The compliance costs associated with a CSEF model should not exceed the compliance costs of the current exemptions for proprietary companies if CSEF is to be considered an attractive fundraising option for our Members. It would be beneficial if a model was proposed through which proprietary companies could engage CSEF without having to be a public company or exempt public company.

***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?***

Issuer caps and thresholds should be consistent with those offered for the small scale personal offer exemption. Furthermore, the \$2 million cap and \$5 million cap in certain circumstances on funds that can be raised under the small scale offer exemption has not been reviewed since it was introduced in the *Corporations Act 2001*. Therefore, the cap has lowered significantly in real value terms over the past fourteen years. LPA submits that as part of this process the issuer caps for both a CSEF scheme and the small scale personal offer exemption should be reviewed to ensure they are reflective of the real value that was intended when introduced in 2001.

***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?***

LPA submits that the New Zealand CSEF provision for voluntary investor caps, in which the level of disclosure is dependent upon the level of any voluntary caps and the amount of funds the issuer is seeking to raise, would be the ideal model. This method provides flexibility both for the investor and issuer, while simultaneously providing a sliding scale of protection for the investor. The ability for issuers to trade off the level of voluntary investor caps with the level of disclosure will appeal to a wider range of investors, while providing the appropriate level of protection in each case. The application of a blanket rule, as proposed by the CAMAC model, is inappropriately restrictive for a system that will apply to such a wide range of investors and issuers.

*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 network?*

This is unlikely to affect LPA Members, as they are less likely to raise capital in New Zealand considering the stronger Australian market and administrative burden involved in trying to raise capital in both markets through CSEF.

*19. Are there particular elements of the New Zealand model that should be incorporated into the CAMAC model, or vice versa?*

Overall, we believe that the CAMAC model for a CSEF regulatory framework is most appropriate for the Australian market, under the proviso that the small scale personal offer and sophisticated investor exemptions for proprietary companies remain.

The voluntary investor caps in the New Zealand model should be adopted within the CAMAC model as a more effective means for balancing protection and flexibility for issuers and investors.

#### **LPA General Statement**

Development of a new regulatory regime for CSEF may prove confusing and difficult to manoeuvre for would be fundraisers and investors alike. The Treasury should ensure that any CSEF legislation clearly outlines the eligibility, compliance and maximum fundraising requirements for CSEF.

The draft legislative framework for CSEF model should make clear that the current exemptions that exist for proprietary companies will not be removed or significantly altered as a result of introducing legislation for CSEF.



Level 1, 15-17 Queen Street  
Melbourne Victoria 3000  
T 61 3 8614 2000  
F 61 3 9614 1166  
W [www.liveperformance.com.au](http://www.liveperformance.com.au)  
ABN 43 095 907 857

LPA would be pleased to assist the Treasury by providing further information about fundraising within our industry should it be required. If you have any queries regarding our submission please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink that reads "Suzanne Daley". The signature is written in a cursive, flowing style.

**Suzanne Daley**

Director, Policy and Programs

T 61 3 8614 1111

M 0417 584 514

Email [sdaley@liveperformance.com.au](mailto:sdaley@liveperformance.com.au)