

# CrowdfundUP

## **Submissions to the Australian Government The Treasury**

### **Treasury Exposure Draft (22 December 2015): Corporations Amendment (Crowd-sourced Funding) Regulation 2015**

These submissions are made by CrowdfundUP Pty Limited (CFUP) in response to Treasury's Exposure Draft (22 December 2015) Corporations Amendment (Crowd-sourced Funding) Regulation 2015. It is with great pleasure that CrowdfundUP makes the following submissions with the acknowledgment that Equity Crowdfunding looks to become a reality in Australia in 2016.

CrowdfundUP is a crowdfunding provider which was launched in 2014. CrowdfundUP provides a facility enabling real estate crowdfunding but intends to launch a separate platform to help facilitate small business raise capital from the crowd.

The author of these submissions is the Founder and Chief Executive Officer of CrowdfundUP, Mr. Jack Quigley.

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## INTRODUCTION

CrowdfundUP have previously made submissions regarding issues such as enabling Debt Crowdfunding in Australia, as was recommended in the Murray Enquiry, and facilitating Equity Crowdfunding for Priority Limited Companies. Therefore, these submissions will deal only with what CrowdfundUP believes to be high priority areas required for the facilitation of Equity Crowdfunding in Australia as provided for by the Corporations Amendment (Crowd-sourced Funding) Regulation 2015.

## SUBMISSIONS

### **Submission 1 The issues with a Australian Market Licence issues have not been appropriately resolved**

The *Corporations Amendment (Crowd-sourced Funding) Bill 2015* (Bill) establishes a new type of financial service: a crowd-funding service. Appropriate authority under this legislation will need to be obtained by any person who intends to provide a crowd-funding service. This authority will require a crowdfunding service provider to hold an Australian Financial Service Licence (AFSL) (or have obtained a corporate authorisation) that expressly authorises the provision of a crowd-funding service [*Schedule 1, Part 1, items 14 and 25, section 738C and paragraph 766A(1)(ea)*]. The explanatory memorandum of the Bill states that a holder of an AFSL authorised to provide a crowdfunding service will not be required to obtain a dealing or issuing authorisation.

In CrowdfundUP's view, these provisions should be expanded upon to carve out the requirement of a crowdfunding service provider to obtain a market licence authority, be granted a corporate authorisation from a Market Licence Holder or obtain a ministerial market licence exemption. Such requirements would add undue cost and time burdens on an already stringent AFSL application process, and requiring a crowdfunding service provider to obtain an AML exemption would add cost and complexity to the application



process. At present there are only 25 AML exemptions in Australia. This means that a platform operator would need to outlay high costs in their initial application then once successfully obtained, would need to then apply for a Ministerial Exemption.

## Submission 2: Section 738Q and the 'Reasonable Standard Test' are unclear in wording and application

Section 738Q of the *Corporations Amendment (Crowd-sourced Funding) Bill 2015* provides that before an intermediary publishes a CSF offer document, checks prescribed by the regulations must be conducted to a 'reasonable standard'. In particular, regulation 6D.3A.11 of the *Corporations Amendment (Crowd-sourced Funding) Regulation 2015* (Regulations) prescribes the checks that a CSF intermediary must conduct for the purposes of Section 738Q(1) of the Bill, including the Assets Check, Purpose Check and Offer Document Check.

CrowdfundUP submit that the 'reasonable standard' test should be clarified as to the application to the Assets Check, Purpose Check and Offer Document Check. The Asset Test requires a CSF intermediary to check that at the time of an offering, they comply with the asset and turnover test in Section 738H(2) of the Bill. CrowdfundUP are of the view that more detail needs to be provided about the kind of financial information that will be deemed to be 'reliable and independent', as this information will differ greatly between companies.

CrowdfundUP also submit that the wording of the Purpose Test, which requires the CSF intermediary to check that neither the offering company, or any related parties, have a substantial purpose of investing in other entities, be changed to clarify what is required when conducting the Test. The current wording doesn't expressly state what information is to be relied on, or what extent of information searching is required outside information provided by the party itself.

CrowdfundUP additionally submit that the wording of the Offer Document Check be changed so that it expressly states that a CSF intermediary be able to form its own view as to whether an offer document is "clear, concise and effective". Currently, the Offer Document Check states that the check should be based on "reliable and independent documentation" relevant to the check, which seems burdensome and illogical in forming a view of the documents.

## Submission 3 The Equity Crowdfunding Regulations should include further provisions to facilitate Debt Crowdfunding

The proposed Regulations do not include Debt Crowdfunding and as such, CrowdfundUP submit that it is important additional provisions be included in the proposed legislation that allow for the sale of Units in Unit Trusts to be sold by an online Crowdfunding Service provider.

Excluding unit trusts from the Equity Crowdfunding regime would unfairly disadvantage businesses or investments that rely on trust structures and sourcing of debt investments. Unit trusts are a common and familiar business structure, are functionally similar to shares in companies, and are necessary to facilitate efficient investments in certain asset classes that require Debt investments (eg: some property investments).

CrowdfundUP submit that Debt Crowdfunding should be provided for in the proposed legislation, as in most cases, issuer's who offer an investment in a unit trust are adequately regulated under the MIS Provisions of the Corporations Act, and this should not prevent the issuers from utilising a crowdfunding service provider to facilitate debt fundraising.