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Ref: AMK

7 February 2017

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Sir / Madam

SUBMISSION: CORPORATIONS AMENDMENT (CROWD-SOURCED FUNDING) BILL 2016

We welcome the opportunity to provide comments and a submission to the Senate Standing Committee on Economics on the Corporations Amendment (Crowd-Sourced Funding) Bill 2016 ("**the Bill**").

Pitcher Partners is one of the largest accounting firms outside of the Big 4 and has specialised in advising taxpayers in what is commonly referred to as the middle market for over 25 years. Accordingly, we service many clients that would be potential users of a proposed CSF.

We also specialise in the establishment and administration of P2P and crowdfunding platforms, and have helped a large number of fund administrators establish their platform operations. This has included liaising with the Australian Taxation Office (and receiving rulings) on the treatment of both the platform and the operator for tax purposes.

Positive amendments contained in the Bill

We are very pleased that the Government has listened to submissions from the middle market and that a number of very important changes have been made to the Bill to cater for middle sized businesses seeking to utilise a CSF platform.

In particular, the increase in the threshold requirement for an eligible CSF company that would qualify for funding (to \$25 million turnover and assets) is in line with our previous submission and we therefore strongly support this change. We highlight that this change, in itself, is substantial for mid-sized entities in seeking alternative sources of finance and will greatly increase the number of entities that could otherwise seek to utilise the platform.

Furthermore, we are very pleased that the Bill provides clarification that a private company can convert to an eligible CSF company (under section 738Z1). Again, this is in line with previous submissions and (at the very least) provides an option for existing private companies to access the proposed new regime. It also increases the number of potential entities that may access the regime which (in our view) is essential for the viability of the CSF regime in the market place (which may otherwise have a limited customer base).

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Corporate governance

We believe that some of the corporate governance requirements of the regime are still excessive and could be further relaxed in certain areas.

That is, the regime still contains an audit requirement if \$1 million (life to date) of CSF funding is raised and an audit requirement where the company has been an eligible CSF company for 5 years.

This means that an additional annual cost of (say) \$50,000 or more could be incurred by companies on audit fees where they simply raise an amount of CSF of \$1 million. We highlight that this could amount to an annual additional finance cost of at least 5%, which in itself is quite expensive in comparison to debt. To the extent that only \$200,000 of funding is obtained, this would represent a cost of 25% once the five year term expired.

Furthermore, even where CSF funding has been repaid in full (e.g. bought back) or reduced to below \$1 million, the 5 year limit would seem to require the eligible CSF company to continue to be audited. It would seem that the only option around this would be to convert the eligible CSF company back to a private company. It is not exactly clear that section

In effect, the Corporate Governance requirements of the Bill does not appropriately facilitate small scale funding or short term funding (e.g. 1 to 4 years) that is often required by mid-sized entities. To the extent that the regime is opened up to other securities in the future (e.g. debt or preference shares), these issues will become more forefront and evident.

As a starting point, we recommend that a CSF company be exempt from the audit requirement where it has not raised an amount in excess of \$1 million (life to date) through CSF offers. In our view, this should not be subject to a 5 year limitation rule.

To address the issue raised regarding significant audit costs, we again recommend consideration of whether an eligible CSF company could be subject to a “review process” rather than an “audit process”. This is similar to what is required under section 309 of the Corporations Act 2001 for half year accounts. While this is still a costly exercise, the cost of a review would be substantially less than an audit.

To address the issue raised regarding short term financing, we recommend considering an amendment to section 738ZI(d) that does not impose an audit requirement until the financial year following one where the company has had, on issue, securities issued under a CSF offer for a cumulative period of greater than 5 years.

Types of securities

While we understand that the Corporate Governance requirements of the CSF provisions is required to provide shareholder protection for CSF retail investors, we are unsure why the provision are proposed to be restricted to ordinary shares. We highlight that ordinary shares are a riskier investment as compared to preference shares, which provide a preferential return to investors (i.e. before payments are made to owners and founders of the CSF company).

From our experience in dealing with P2P and crowd funding platforms, we believe that there is a greater need for (and thus a market for) preference share capital as opposed to ordinary share capital, simply due to the lower level of risk and the greater level of flexibility associated with shares that can be redeemed. Accordingly, we again strongly urge the

Government to reconsider opening the initial regime to both ordinary and preference share capital.

Private companies

While we are encouraged by the amendments made to allow private companies to convert to a public company, we note that this process amounts to additional costs, which include the replacement of the company constitution and other administrative costs. We are hopefully that the regime can be expanded to private companies in the future without a need for such companies to convert to public companies. We have previously made submissions on how we believe this could work and support consideration of this additional model.

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We would be happy to discuss the issues raised in this submission with you at any time. Please contact me on _____ or on email at _____ .

Yours sincerely

A M KOKKINOS
Executive Director