



5 February 2016

Committee Secretary  
Senate Economics Legislation Committee  
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Parliament House  
Canberra ACT 2600

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#### **INQUIRY INTO CORPORATIONS AMENDMENT (CROWD-SOURCED FUNDING) BILL 2015**

Thank you for the opportunity to provide our views to the Committee on the Corporations Amendment (Crowd-Sourced Funding) Bill 2015.

ASX supports the Government's proposals to establish a regulatory regime that facilitates the growth of crowd-sourced equity funding (CSEF). This supports dates back to initial discussion paper issued by the Corporations and Markets Advisory Committee (CAMAC) in 2013 and the subsequent recommendations by CAMAC and the Financial System Inquiry supporting the introduction of a new regulatory regime to facilitate CSEF.

The final regulatory settings in the Bill strike a reasonable balance between providing a regime that makes CSEF an attractive option for small companies seeking to fund their operations while maintaining appropriate protections for investors given the risky nature of these investments.

The Australian Government approach is also consistent with the range of approaches adopted in other jurisdictions identified in the recent survey published by IOSCO on crowd-funding<sup>1</sup>. The IOSCO report did not propose a common international approach, noting that crowdfunding regimes are still in their infancy and more time is needed to assess the effectiveness of different approaches.

Within this context, the proposed regulatory framework appears solid being based on a mix of policies including:

- licensing of platform providers and imposing certain 'gatekeeper' obligations on them to oversight the fundraising activities undertaken through the platform and provide basic education in investment information;

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<sup>1</sup> International Organization of Securities Commissions (2015), Crowdfunding 2015 Survey Responses Report.



- limiting eligibility to CSEF arrangements to small companies (with annual revenue or assets less than \$5 million) and requiring those companies to commit to certain minimum disclosure requirements; and
- restricting investments by retail investors to no more than \$10,000 per individual investment to limit to risk exposure to any one company.

ASX notes that the Bill also includes provisions that would allow the Minister to provide exemptions from all, or part, of the financial market and clearing and settlement (CS) facility licensing regimes. This compares to the current powers which only provide for a full exemption. The amendments also introduce a power for the Minister to provide exemptions from all or part of the market supervision and market compensation arrangements.

As the bill is drafted these extended exemption powers apply beyond crowd-sourced funding platforms to other markets and CS facilities. Given the potentially broad application of this exemption power it is important that its use is subject to a set of guiding principles, including:

- Similar products and services should be subject to similar licensing and regulatory requirements, to reduce the risk of regulatory arbitrage and maintain appropriate standards of supervision and investor protection. It is also necessary to ensure a level playing field for different facilities offering the same products and services, and to avoid a situation where licensed markets and CS facilities need to lower their regulatory standards to be able to compete with unlicensed operators.
- Where markets or CS facilities are subject to lower regulatory standards and/or compensation arrangements this should be clearly disclosed to clients. It is important that end-users understand any differences if they are to make informed choices. Such transparency should extend to any differences in clearing and settlement arrangements and include highlighting differing legal and clearing risks and whether key risk management activities are located offshore.

Consideration could also be given to whether the extended exemption power provides an opportunity to streamline the rule amendment process for licensed markets and CS facilities. This could facilitate innovation and allow operators to respond quickly to changes in the commercial and regulatory environment while still maintaining regulatory standards and protections.

If you have any questions on this submission please contact: Gary Hobourn

Yours sincerely,

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