



Australian Government

Crowd-sourced Equity Funding

Final Assessment Regulation Impact Statement
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1. WHAT IS THE PROBLEM THAT NEEDS TO BE ADDRESSED?

1.1 REGULATORY BARRIERS TO CSEF

Crowd-sourced equity funding (CSEF) is an innovative type of online fundraising that allows a large number of individuals to make small financial contributions towards a company, in exchange for an equity stake in the company. It has the potential to provide finance for innovative business ideas that may struggle to attract funding under traditional models.

However, there currently exists a range of regulatory impediments to the use of CSEF. These include governance and reporting requirements for companies, equity fundraising rules and requirements for financial intermediaries as set out in the *Corporations Act 2001* ('Corporations Act'). These are described in more detail in Section 1.4.

While these arrangements exist to protect and promote the interests of market participants, including investors, each has the effect of increasing the regulatory burden and cost of fundraising through CSEF. The overall cost of conducting a CSEF offer under current equity fundraising laws is prohibitively expensive, as the amount of funds raised through CSEF is typically smaller than through other equity fundraising activities. Current regulatory settings are therefore constraining development of the CSEF market in Australia.

A number of other jurisdictions including New Zealand, the United States, the United Kingdom and Canada (Ontario) have already, or are in the process of, implementing regulatory regimes for CSEF. The introduction of an appropriate regulatory framework that would facilitate CSEF in Australia would ensure that Australia remains responsive to the funding needs of innovative businesses.

Productivity growth is a core driver of economic growth. Fostering innovation is an important way of unlocking productivity, both through innovative products and ways of doing things, and through generating knowledge spillovers from research and development that add to the general level of knowledge in the economy. New funding models that flexibly support emerging firms – including CSEF – have the potential to facilitate innovation and contribute to productivity growth.

A number of recent reviews have identified the potential of CSEF to provide new and innovative businesses with access to the finance they need to develop their product or service and grow.

- The Government's Industry Innovation and Competitiveness Agenda, released in October 2014, called for consultation on a regulatory framework for CSEF. The Government's Innovation and Science Agenda is putting in place measures to support technology, research and start-ups and ensure that the Australian economy is more innovative and agile. This includes ensuring that finance is available to facilitate innovative activity.
- The Murray Inquiry into Australia's financial system, released by the Government in December 2014, specifically recommended reducing regulatory impediments to crowdfunding by introducing graduated fundraising regulation. In its response to the Inquiry, released in October 2015, the Government accepted this recommendation.
- The Productivity Commission's *Business Set-up, Transfer and Closure* draft report, released in May 2015, also supported the introduction of a CSEF framework.

There are three main stakeholders groups with an interest in the development of a framework to remove the regulatory impediments to CSEF:

- Companies seeking to raise funds stand to benefit from the establishment of a CSEF framework. This is particularly the case for innovative firms and start-ups, which typically have more difficulty obtaining bank debt finance than established firms, but for whom existing equity fundraising is prohibitively expensive. These companies would be *issuers* of CSEF offerings.
- Individuals seeking new opportunities to invest stand to benefit from the increased range of financial products that CSEF would present. These individuals would be able to diversify the range of products they invest in, and would be *investors* in CSEF offerings.
- A number of organisations are seeking to establish and operate a platform that allows issuers to list their CSEF offerings, bringing together issuers and potential investors. These organisations would operate as *intermediaries* in the CSEF market.

1.2 THE NEED TO IMPROVE ACCESS TO FINANCE FOR SMALL AND INNOVATIVE BUSINESSES

Access to finance is crucial for innovative new businesses, particularly those that are creating a new product or service or significantly improving an existing product or service. Innovative developments often require costly research and development in the early stages of a business at a time when there may be little or no revenue flowing in.

Obtaining affordable finance to fund development of innovative new products is difficult in some cases. As part of its 2013 small business election commitments, the Government committed to improving small businesses' access to affordable finance to ensure they have the opportunity to establish and develop.

Difficulties in accessing debt finance can arise as a result of gaps in information between lenders and borrowers. As the provision of debt finance requires an assessment of a business' ability to service the debt, small businesses and start-ups that do not have adequate evidence of past performance or prospects for success can face particular challenges accessing credit. Lenders may not be willing to bear the cost of obtaining detailed credit-related information to assess the level of risk involved in lending to a smaller business. Some businesses may also struggle to obtain finance from lenders due to insufficient collateral being offered in the event of default.

However where a bank loan can be obtained, it may not be well-suited to the business. Bank loans involve regular repayments starting almost immediately, and failure to meet these payments risks default of the loan. In reality the cash flows of small businesses, particularly start-ups, can be volatile, making it difficult to meet such regular repayments.

Equity finance may therefore be a more suitable option than debt for some businesses. Unlike debt finance, equity does not require immediate repayments and equity investors generally accept that returns are contingent on profits.

1.3 THE ROLE OF CSEF

In recent years, a number of innovative financing mechanisms have emerged that draw on the crowd to expand the funding options available to small businesses including peer-to-peer lending, rewards-based crowdfunding and equity and debt crowdfunding. These mechanisms complement more established financing options offered by professional investors focused on start-up businesses such as angel investing and venture capital.

If appropriately regulated, CSEF may improve the ability of small businesses to access equity finance.

For small businesses, CSEF could be more useful than traditional equity markets as the compliance costs involved in traditional equity fundraising can be relatively expensive compared to the amount of funds that a small business would generally seek to raise. These compliance costs could absorb a significant proportion of any funds raised, reducing the utility of the fundraising for the small business or start-up.

Facilitating CSEF in Australia has the potential to provide a competing source of funds for small businesses, reducing their reliance upon bank debt and, potentially, at the margin driving down the cost of finance for small businesses overall. CSEF may be particularly beneficial for the types of businesses that find bank finance more difficult to obtain, such as start-ups and other firms with innovative products.

Facilitating CSEF would also provide additional investment opportunities to retail investors, who are generally unable to be directly involved in early-stage financing activities, such as angel investing, due to the size of investment required. CSEF would allow for retail investors to broaden their range of investments and to become involved in funding products and services that interest them.

However, start-ups generally present higher risks for investors compared to more established companies, particularly those listed on public exchanges, and retail investors would likely face the same information gaps as those faced by lenders. CSEF investments may also be largely illiquid, reducing the ability of investors to exit their investment and may be at greater risk of dilution from later capital raisings than investments in larger companies.

Current disclosure and corporate governance arrangements, outlined in section 1.4, seek to address information asymmetries between investors and managers of companies. However, the compliance costs associated with these obligations can be prohibitive for small businesses and start-ups seeking to raise funds in a way they are not for larger, more established companies that have ready access to public equity offers.

Addressing some of these costs via a CSEF framework may make CSEF a viable fundraising option. However, in order for CSEF to be sustainable, any regulatory framework needs to balance reducing the current barriers to CSEF with ensuring that investors continue to have an adequate level of protection from financial and other risks, including fraud, and sufficient information to allow investors to make informed investment decisions. While establishing a regime that works for issuers and intermediaries will be an important precursor to the success of CSEF, a high failure rate, an illiquid secondary market, or large investor losses in the early stages may result in investors losing confidence in CSEF as an investment mechanism.

Options 1, 2, and 4 outlined below seek to strike such a balance between reducing some of the disclosure and corporate governance obligations and putting in place other protections for retail investors.

1.4 CURRENT REGULATORY ARRANGEMENTS

Governance and reporting requirements for companies, equity fundraising rules and requirements for financial intermediaries are set out in the Corporations Act.

These requirements have over time been implemented to address the inherent conflicts of interest in corporations in which the owners of the company, that is the shareholders ('principal') and managers of the company ('agent') are separate. As the agent typically has better information than the principal about the company, the principal cannot easily be assured of the performance of the agent ('agency costs').

The law provides a number of mechanisms to minimise these agency costs such that companies are directed and controlled in a manner that protects and promotes the interests of participants. These mechanisms differ between the two broad categories of companies provided for in the Corporations Act: public companies and proprietary companies.

Public companies are able to make public equity offers and are not subject to restrictions on the number of shareholders they may have. Public companies are subject to a range of reporting and corporate governance obligations to protect shareholders and address agency costs, including:

- Auditors who assist in the monitoring of managers by attesting to the accuracy of companies' financial statements.
- A board of directors, each of whom has fiduciary duties to act with reasonable care and diligence, in the interests of the company, and for a proper purpose.
- Disclosure of information by companies allows shareholders to properly monitor managers and directors. Obligations such as annual financial reports, prospectus (or offer information statements in some cases) and continuous disclosure obligations seek to address the asymmetry in access to information regarding the operation and prospects of a company that exists between the managers and the owners. This information is used to determine whether a person wishes to become, remain or exit from being a shareholder of a company.
- Annual general meetings, which provide a forum for shareholders to be informed about financial and other matters, ask questions of management and make decisions relating to matters that need to be considered.
- Members' rights to call a meeting, undertake litigation against the company and vote when resolutions are put forward by the company.

There are also a range of requirements in relation to the contents of disclosure documents, the process for making equity offers, liability for misleading statements in offer documents and restrictions on advertising to ensure the disclosure is clear, effective and reliable.¹

Proprietary companies are intended to be closely-held companies where the shareholders have access to the management and consequently information asymmetries and agency costs are likely to be lower than in more widely-held public companies. Proprietary companies are therefore subject to reduced compliance and transparency obligations, relative to public companies. Proprietary

¹ Corporations Act, Chapter 6D.

companies are defined as either small proprietary companies² or large proprietary companies³, with small proprietary companies having lower compliance obligations than large proprietary companies.

To ensure they reflect this closely-held nature, proprietary companies are prohibited from making public offers of equity⁴ and are limited to having no more than 50 non-employee shareholders.

For both public and proprietary companies, there are certain exemptions from the requirement to use a disclosure document in primary capital raisings. These exemptions include wholesale (professional, sophisticated and experienced) investors (who are less likely to suffer from information asymmetries) and 'small scale personal offers' (where a personal offer is made and no more than \$2 million is raised in any 12-month period from no more than 20 Australian investors, to facilitate small capital raisings that may not occur if a disclosure document were required).⁵

As at March 2015, approximately 99 per cent of all registered Australian companies were proprietary companies. There were approximately 2,188,000 proprietary companies (the vast majority likely to meet the definition of small proprietary company) and approximately 22,100 public companies.

Entities that meet the definition of carrying on a financial services business, including CSEF intermediaries, must hold an Australian Financial Services Licence (AFSL) and comply with AFSL licensing obligations.⁶ AFSL holders are subject to a range of obligations, including ensuring the financial services are provided efficiently, honestly and fairly, having in place adequate arrangements to manage conflicts of interest, having adequate financial, technological and human resources, and membership of an external dispute resolution scheme where the licensee provides services to retail clients.⁷ Licensees may also be subject to additional specific conditions on their licence. Licensees or their authorised representatives are generally also required to give retail clients a Financial Services Guide, which must meet certain content requirements.⁸

Entities that fall within the definition of conducting a financial market⁹, possibly including some CSEF intermediaries, must also hold an Australian Market Licence (AML) and comply with the AML licensing obligations. The AML regime is designed to address the risks associated with large public exchanges (such as the ASX) and imposes considerable obligations on holders, including cost recovery requirements, market integrity rules and ongoing ASIC supervision.

Investors are not generally subject to legislated limits on the amount they can invest in public equity raisings, although issuers conducting initial public offers may decide of their own accord to limit the size of investment parcels or scale back applications where the target raising has been exceeded.

2 Corporations Act, s45A(2) defines a small proprietary company as a proprietary company with at least two of: consolidated financial revenue of less than \$25 million; consolidated gross assets of less than \$12.5 million; and fewer than 50 employees.

3 Corporations Act, s45A(3) defines a large proprietary company as a proprietary company with at least two of: consolidated financial revenue of \$25 million or greater; consolidated gross assets of \$12.5 million or greater; and 50 or more employees.

4 Corporations Act, s113(3), subject to exceptions for offers to existing shareholders and employees of the company or subsidiary. Proprietary companies may make offers where that offer would not require disclosure under Chapter 6D.

5 Corporations Act, s708.

6 Under s761A of the Corporations Act, carrying on a financial services business is defined as providing a financial service. Provision of a financial service is defined in s766A.

7 Corporations Act, s912A.

8 Corporations Act, Division 2, Part 7.7.

9 As defined in the Corporations Act, s767A. Under s911A(2)(d), an intermediary that is a holder of an AML is not required to also hold an AFSL.

Investors have certain rights to withdraw their application before the closing of an equity offer where a condition included in the disclosure document has not been met, the disclosure document included a misleading or deceptive statement, or there has been a material adverse change in the circumstances of the issuer.¹⁰

1.5 REVIEW OF CSEF

Consideration of CSEF and whether it could be facilitated in Australia was referred to the Corporations and Markets Advisory Committee (CAMAC) in June 2013. CAMAC considered the potential of CSEF in Australia and the limitations preventing development of a CSEF regime under current conditions, and reported back in June 2014.

While CSEF has potentially large benefits to fundraisers and, potentially, investors, CAMAC identified significant regulatory barriers to the development of CSEF platforms in Australia. CAMAC also noted that CSEF platforms may be required to hold an AML.

CAMAC identified prohibitions on proprietary companies making public offers of equity as a factor preventing CSEF. This prohibition means that, even with the wholesale and small scale personal offer exemptions, proprietary companies are not able to access the large number of small-scale investors that would typically be targeted under a CSEF campaign. The 50 non-employee shareholder cap for proprietary companies also limits the scope for small companies to raise funds from a large number of investors.

While operating under a public company structure may avoid these issues, this would come with increased costs and reporting and corporate governance obligations that may be too expensive to be an option for small businesses. Public companies making equity offers must use a prospectus (or an information statement in some cases) where they are not eligible for an exemption. Disclosure documents can be costly and time consuming to prepare, and small businesses may not be able to use equity for fundraising as a result.

Overall, CAMAC formed the view that CSEF should be facilitated in Australia for public companies, but that existing legislation created a barrier. CAMAC recommended that a regulatory regime for CSEF be developed, as has been done in several overseas jurisdictions, so that equity fundraising may become available to a wider range of public companies.

2. WHY IS GOVERNMENT ACTION NEEDED?

The main barriers to widespread use of CSEF in Australia that CAMAC identified are regulatory in nature. These barriers are not easily able to be addressed by potential CSEF participants.

There are currently a small number of operators of online platforms offering investment in Australian start-ups. Under current legislation, none of the platforms are able to make their services available to all investors. Instead, they offer their services either only to wholesale investors via a managed investment scheme, or utilise the small scale personal offer exemption and an Australian Securities

¹⁰ Corporations Act, s724.

and Investments Commission (ASIC) class order that provides relief from certain regulatory requirements¹¹. The platforms also do not offer secondary trading.

While this environment may be suitable for some companies and investors, it does not comprehensively address the barriers to CSEF in Australia and in particular, does not allow offers to be made to, or traded by, the 'crowd'.

3. POLICY OPTIONS ORIGINALLY CONSIDERED

Following CAMAC's recommendation and the Industry Innovation and Competitiveness Agenda's recommendation, the Government consulted with the public, industry stakeholders and other Australian Government departments on potential regulatory frameworks to facilitate CSEF in Australia for public companies.

Due to the existing restrictions on proprietary companies making public equity offerings and the cap of 50 non-employee shareholders for these companies, the Government consulted only on options to facilitate CSEF for public companies.

On 8 December 2014, the Government released a public discussion paper on potential models to facilitate CSEF. Three options were included in the discussion paper to elicit stakeholder feedback and draw out the key elements of any potential model that may continue to present a barrier to effective facilitation of CSEF.

- Option 1: a regulatory framework based on the CAMAC model;
- Option 2: a regulatory framework based on the New Zealand model; and
- Option 3: the status quo.

The discussion paper noted that the Government had not made a final decision on its preferred CSEF framework, and was not limiting itself to implementing either the CAMAC or New Zealand models in full. Instead, feedback from the consultation process was to assist the Government in developing its preferred approach to CSEF.

The three options were chosen for consultation as they represent a spectrum of approaches to CSEF. The model recommended by CAMAC draws on an extensive review of approaches implemented or proposed to be implemented by foreign jurisdictions, with a focus on reducing public company compliance costs and minimising risks to investors. As outlined in section 3.2, the model implemented by New Zealand takes a different approach to that of CAMAC in a number of key areas, including public company compliance costs, companies eligible to use CSEF, investor limits and certain intermediary requirements. The status quo option was included as a baseline against which to compare regulatory options, consistent with the Government's requirements for regulation impact statements.

The terminology used to refer to the various participants in CSEF reflects that used in CAMAC's report:

11 ASIC Class Order 02/273: Business Introduction or Matching Services.

- Issuer: a business registered as a company under the Corporations Act that wishes to offer its equity through an online intermediary;
- Intermediary: an online platform that allows businesses to offer their equity to crowd investors, subject to the requirements of the Corporations Act; and
- Investor: a member of the crowd seeking to invest in a CSEF issuer.

3.1 OPTION 1: CAMAC MODEL

Option 1 involves the implementation of a CSEF regime based on CAMAC's recommendations. CAMAC recommended the development of a separate legislative framework for CSEF to make it easier for CSEF to be used in Australia.

CAMAC recommended that CSEF issuers be required to be public companies. A new category of public company — the 'exempt public company' — would be created and would be relieved of some of the compliance requirements for public companies for a period of up to three to five years. Such companies would be exempt from requirements for continuous disclosure, holding an annual general meeting, executive remuneration reporting, half-yearly reporting, and appointing an independent auditor and having a financial report audited (unless they have raised up to \$1 million via CSEF or any other prospectus exemption and cumulative expenses of \$500,000). On expiry of the audit exemption, the issuer would be required to have the financial accounts for all previous years it was subject to the exemption audited. CAMAC's recommendations focused on the Corporations Act, and it did not propose any changes to any other legislation, including to the tax treatment of exempt public companies.

CAMAC's proposed framework for CSEF fundraising includes:

- for issuers: limitation of the regime to certain small enterprises that have not already raised funds under the existing public offer arrangements, limitation of the regime to one class of fully paid ordinary shares, reduced disclosure requirements, a cap of \$2 million on the amount that can be raised through CSEF in any 12-month period (excluding funds raised under existing exemptions from the need to provide a prospectus to certain wholesale investors), restrictions on advertising of the equity offer and prohibitions on conflicts of interest;
- for intermediaries: requirements for intermediaries to have an AFSL including membership of an external dispute resolution scheme, requirements to undertake limited due diligence and provide risk warnings to investors, provisions to prevent certain conflicts of interest, prohibitions on offering investment advice and on lending to CSEF investors, provision of communications facilities on its website for each issuer; and
- for investors: investment caps of \$2,500 per investor per 12-month period for any particular CSEF issuer and \$10,000 per investor per 12-month period in total CSEF investment, signature of risk acknowledgement statements prior to investment and cooling off and other withdrawal rights.

Further details on CAMAC's recommendations are included at Appendix, Section 9.1.

3.2 OPTION 2: NEW ZEALAND MODEL

Option 2 involves the implementation of the CSEF model that came into force in New Zealand in April 2014. New Zealand's Financial Markets Authority issued the first financial licence to a CSEF platform in July 2014, with the first CSEF raising completed in mid-September 2014.

New Zealand's model has some broad similarities to CAMAC's proposed scheme, including:

- limitation of the regime to one class of fully paid ordinary shares;
- a cap of \$2 million on the amount that can be raised through CSEF disclosure relief in any 12-month period inclusive of any fundraising via the New Zealand equivalent of the small scale personal offer exemption but excluding investments by wholesale investors;
- requirements for intermediaries to be licensed and belong to an external dispute resolution scheme, undertake limited due diligence checks and provide disclosure statements and risk warnings to investors; and
- investors must sign a risk acknowledgement statement.

Differences in the New Zealand model compared to CAMAC's recommended framework include:

- no CSEF-specific exemptions from public company compliance costs such as financial reporting and audit;
- the regime is not specifically limited to small enterprises;
- there are minimum disclosure requirements and investment caps are voluntary, with issuers and intermediaries to have in place arrangements to provide greater disclosure where there are no or high voluntary investor caps or the issuer is seeking to raise a significant amount of funds;
- there are no restrictions on intermediaries' fee structures, although fees paid by the issuer must be disclosed; and
- intermediaries are able to invest in issuers using their platform, although details of any investments must be disclosed.

3.3 OPTION 3: STATUS QUO

Under option 3, there would be no change to the current requirements under the Corporations Act for proprietary companies, public companies and for public fundraisings. These include:

- the limit of 50 non-employee shareholders for proprietary companies, and prohibitions on making public offers of equity, subject to certain exemptions, including the small scale personal offer exemption;
- financial reporting and corporate governance requirements for public companies that are more onerous than those that apply to proprietary companies; and
- the requirement to provide a disclosure statement when making public offers of equity.

Intermediaries would remain subject to a number of existing requirements, including:

- the need to hold an AFSL and comply with AFSL licensing obligations if they meet the definition of carrying on a financial services business, or to hold an AML and comply with AML licensing obligations if they fall within the definition of conducting a financial market; and
- if a managed investment scheme (MIS) structure is used to facilitate online equity offers, the intermediary would need to comply with MIS requirements, including having a responsible entity that is a public company with an AFSL, disclosure and compliance obligations.¹²

Under this option, CSEF would not be regulated as a specific form of investment. Small businesses and start-ups seeking to raise early stage capital would need to comply with the above existing requirements.

4. GOVERNMENT CONSULTATION ON CSEF MODELS

Stakeholder feedback was sought on the Government's discussion paper via the Treasury website.¹³ This invitation was communicated to individual stakeholders who requested to be kept up to date as part of the Industry Innovation and Competitiveness Agenda consultation process. In addition, the then Minister for Small Business wrote to 26 known stakeholders across the start-up, venture capital, crowdfunding and legal sectors. Written submissions were sought by 6 February 2015.

Supplementing this process, targeted consultation was conducted by the then Minister for Small Business, who hosted industry roundtables on 2 February and 16 February 2015 in Sydney and Melbourne, respectively.

The purpose of these consultations was to seek stakeholder feedback that would help to inform the Government's decision to develop a CSEF framework and its design. These decisions required the Government to balance facilitating CSEF with maintaining appropriate investor protection and minimising the compliance burden. Roundtable meetings with stakeholders provided forums for the Minister to discuss the detailed elements of a desirable legislative model and better understand the views and concerns of parties directly affected.

Forty-one written submissions were received in response to the discussion paper. Submissions were received from a broad range of stakeholders including crowdfunding platform operators, advisory and legal firms, industry bodies and public organisations, universities, individuals, a financial service provider and ASIC. Twenty-eight stakeholders participated in the industry roundtables. Treasury also held eight bilateral meetings, predominantly with stakeholders who attended the roundtables or have an interest or experience in crowdfunding. Treasury also held teleconference bilateral meetings with financial conduct regulators in New Zealand and the United Kingdom to gain insight into how crowdfunding has developed in those markets following implementation of their regulatory frameworks.

Stakeholder feedback from these processes expressed support for a regulatory crowdfunding model, with consensus amongst the above stakeholder groups that the legislative and regulatory barriers identified by CAMAC make it costly and impractical for small businesses to access CSEF. Stakeholders

¹² Corporations Act, Chapter 5C sets out specific requirements in relation to managed investment schemes.

¹³ See: <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2014/Crowd-sourced-Equity-Funding>

agreed that a framework should be light-touch, giving investors the ability to invest and diversify their investments. The view that the Government should ensure issuers and all investors have access to a minimum standard of information to make informed decisions was also shared.

There was limited consensus on a range of design elements, including the appropriateness of the investor cap thresholds, the role of issuers regarding disclosure and the role and associated remuneration structure of intermediaries under the CAMAC model. Targeted consultation meetings and bilateral discussions raised alternative design elements.

While a diverse range of views were received on CAMAC's 'exempt public company' proposal, stakeholders generally considered this to be unnecessary for facilitating CSEF in Australia. While this structure would relieve the regulatory and compliance requirements associated with being a public company, stakeholders noted it would also increase the complexity of the Australian regulatory regime, particularly for smaller businesses, and it would still be too burdensome to become a public company given the amount of finance that is typically raised. Stakeholders expressed a preference to allow both public and proprietary companies to access CSEF.

Stakeholders also expressed a lack of clarity as to whether CSEF intermediaries would fall within the definition of operating a financial market and therefore require an AML. Stakeholders noted that the costs associated with AML obligations could be a barrier to the establishment and development of platforms, particularly those that seek to offer secondary trading. The feedback from these consultation processes led to a fourth option for facilitating CSEF to be developed. This option is discussed in more detail in Section 5. This option was adjusted further following introduction of the Corporations Amendment (Crowd-sourced Funding) Bill 2015 into Parliament in December 2015, an inquiry by the Senate Economics Committee into the Bill, and Government consultations with its FinTech Advisory Group. The Government increased the eligibility cap for using CSEF from \$5 million annual turnover and gross assets and reduced the cooling off period from five working days to 48 hours.

5. OPTION 4: POST-CONSULTATION MODEL

Following the feedback received from the consultation processes outlined above, a fourth option for facilitating CSEF for public companies, drawing on elements of the CAMAC and New Zealand models, was developed. This regulation impact statement therefore considers four options:

- Option 1: a regulatory framework based on the CAMAC model;
- Option 2: a regulatory framework based on the New Zealand model;
- Option 3: the status quo; and
- Option 4: a post-consultation model.

Key features of the post-consultation model include:

- for issuers:

- access to CSEF would be limited to unlisted Australian public companies with less than \$25 million in turnover per annum and \$25 million in gross assets, including those that have previously undertaken fundraising through CSEF¹⁴;
- on public company compliance requirements: exemptions from certain public company obligations, as recommended by CAMAC, would be available to certain eligible companies;
 - : on expiry of the compliance exemptions, a company would only be required to obtain a full audit for the previous financial year's accounts, rather than for any period for which the company's accounts were not audited;
 - : companies wishing to access the compliance exemptions would have one year to conduct a CSEF raising before losing access to the relief. Companies that conduct a CSEF raising would remain eligible for the exemptions until they reach certain financial thresholds;
- a cap of \$5 million on the amount that can be raised through CSEF disclosure relief in any 12-month period inclusive of any fundraising via the small scale personal offer exemption but excluding wholesale investors;
- limitation of the regime to one class of fully paid ordinary shares;
- use of a template disclosure document;
- restrictions on advertising of the equity offer; and
- requirements relating to material adverse changes during the offer period;
- for intermediaries:
 - requirements for intermediaries to have an AFSL including membership of an external dispute resolution scheme;
 - exemption from AML obligations where an intermediary is facilitating only primary issuance, and access to a reduced AML regime where they facilitate secondary trading;
 - requirements to undertake limited due diligence and provide generic risk warnings to investors;
 - no restrictions on fee structures or having an interest in an issuer using its platform, but fees and interests must be disclosed;
 - a prohibition on lending to investors; and
 - provision of a communication facility on its website for each issuer; and

¹⁴ The Corporations Amendment (Crowd-sourced Funding) Bill 2015, introduced into Parliament in December 2015, specified eligibility caps of \$5 million turnover per annum and \$5 million in gross assets.

- for investors:
 - an investment cap of \$10,000 per offer;
 - signature of risk acknowledgement statements prior to investment; and
 - cooling off and other withdrawal rights.

The post-consultation model draws on elements of both the CAMAC and New Zealand models. Other elements, such as expiry of compliance requirement exemptions, diverge from the approach recommended by CAMAC in areas that are not incorporated into the New Zealand model. The approach to other elements, such as investor caps, seek to balance the approaches taken under the CAMAC and New Zealand models.

Table 1 compares the key elements of the CAMAC, New Zealand and post-consultation models.

In response to stakeholder feedback, the Government also began consulting on whether CSEF should be extended to proprietary companies. The Government released a public discussion paper on whether CSEF could be extended to proprietary companies on 4 August 2015.¹⁵ The feedback from this consultation is being considered, and any policy options to facilitate CSEF for proprietary companies will be developed after the introduction of legislation to facilitate CSEF for public companies.

¹⁵ <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2015/Facilitating-crowd-sourced-equity-funding>

Table 1: Key elements of the CAMAC, New Zealand and post-consultation models

Issue	CAMAC model	New Zealand model	Post-consultation model
Issuers			
Eligible issuers	Australian-incorporated issuers that must be either a public company or an exempt public company. Limited to certain small enterprises that have not raised funds under the existing public offer arrangements. Cap in size of \$10 million in capital.	New Zealand-incorporated companies.	Unlisted Australian-registered issuers that must be a public company (including with exemptions from certain compliance requirements). Cap in size of \$25 million in turnover per annum and \$25 million in gross assets. ¹⁶
Relief from public company compliance costs	Available to exempt public companies, with a cap of \$5 million in turnover per annum and \$5 million in capital. Relief from a range of compliance requirements, including annual general meetings, and audit requirements (up to a certain threshold). Exempt status available for a period of up to three to five years, subject to turnover and capital thresholds.	No CSEF-specific exemptions.	Relief from a range of compliance requirements, including annual general meetings, and audit requirements (up to \$1 million raised from CSEF and other offers requiring disclosure), for companies on incorporation or conversion to a public company. Companies on incorporation or conversion to a public company must conduct a CSEF raising within one year or lose eligibility for relief.
Maximum funds an issuer may raise	Cap of \$2 million in any 12-month period, excluding funds raised under existing prospectus exemptions for wholesale investors.	Cap of \$2 million in any 12-month period, excluding funds raised under existing prospectus exemptions for wholesale investors.	Cap of \$5 million in any 12-month period, inclusive of any fundraising via the small scale personal offer exemption but excluding wholesale investors.
Permitted securities	One class of fully paid ordinary shares.	One class of fully paid ordinary shares.	One class of fully paid ordinary shares.
Disclosure requirements	Reduced disclosure requirements, including a template disclosure document.	Minimum disclosure requirements, with issuers and intermediaries to have in place arrangements to provide greater disclosure where there are no or high voluntary investor caps or the issuer is seeking to raise significant funds.	Reduced disclosure requirements, including a template disclosure document.
Advertising	Restrictions on advertising and publicity of offers, with exemptions for dissemination of the disclosure document and advertising and publicity that are accompanied by certain mandatory statements.	Not specified in legislation.	Restrictions on advertising and publicity of offers, with exemptions for dissemination of the disclosure document and advertising and publicity that are accompanied by certain mandatory statements.
Material adverse change during the offer period	Issuer to amend disclosure document and provide to intermediary for publication. Investors to have the ability to opt-out of their acceptance of the offer.	Not specified in legislation.	Issuer to amend disclosure document and provide to intermediary for publication. Investors to have the ability to opt-out of their acceptance of the offer.

¹⁶ The Corporations Amendment (Crowd-sourced Funding) Bill 2015, introduced into Parliament in December 2015, specified caps of \$5 million annual turnover and gross assets.

Table 1: Key elements of the CAMAC, New Zealand and post-consultation models (continued)

Issue	CAMAC model	New Zealand model	Post-consultation model
Intermediaries			
Licensing	Hold an AFSL and comply with licensing requirements, including membership of an external dispute resolution scheme.	Be licensed and comply with licensing requirements, including membership of an external dispute resolution scheme.	Hold an AFSL and comply with licensing requirements, including membership of an external dispute resolution scheme. Exemption from AML obligations when facilitating only primary issuances, and access to a reduced AML regime for facilitating secondary trading.
Due diligence	Undertake limited due diligence checks on the issuer.	Undertake limited due diligence checks on the issuer.	Undertake limited due diligence checks on the issuer.
Risk warnings	Provide generic risk warnings to investors.	Provide disclosure statements and generic risk warnings to investors.	Provide generic risk warnings to investors.
Fee structures	Prohibited from being remunerated according to the amount of funds raised by the issuer, or in the securities or other interest of the issuer.	No restrictions on fee structures, although fees paid by an issuer must be disclosed.	No restrictions on fee structures, although fees paid by an issuer must be disclosed.
Interests in issuers	Prohibited from having a financial interest in an issuer using its website.	Permitted to invest in issuers using their platform, although details of any investments must be disclosed.	Permitted to invest in issuers using their platform, although details of any investments must be disclosed.
Provision of investment advice to investors	Prohibited.	Not specified in legislation.	Not specified in legislation. Existing rules relating to the provision of investment advice will apply to intermediaries.
Lending to CSEF investors	Prohibited.	Not specified in legislation.	Prohibited.
Communications facilities	Provide a communication facility on its website for each issuer.	Intermediary must have adequate disclosure arrangements to enable investors to readily obtain timely and understandable information, which can include question and answer forums.	Provide a communication facility on its website for each issuer.
Investors			
Investment caps	\$2,500 per issuer per 12-month period and \$10,000 in total CSEF investment per 12-month period.	Voluntary investor caps, with the level of disclosure dependent upon the level of any voluntary caps and the amount of funds the issuer is seeking to raise.	\$10,000 per offer, with no maximum aggregate investment, for retail investors.
Risk acknowledgement	Signature of risk acknowledgement statements prior to investment.	Signature of risk acknowledgement statements prior to investment.	Signature of risk acknowledgement statements prior to investment.
Cooling off and withdrawal rights	Unconditional right to withdraw for 5 days after accepting offer. Additional rights in relation to material adverse changes during the offer period.	Not specified in legislation.	Unconditional right to withdraw for 48 hours after accepting offer. ¹⁷ Additional rights in relation to material adverse changes during the offer period.

¹⁷ The Corporations Amendment (Crowd-sourced Funding) Bill 2015, introduced into Parliament in December 2015, specified a cooling off period of 5 business days.

6. IMPACT ANALYSIS OF THE CSEF MODELS

6.1 OPTION 1: CAMAC MODEL

Current disclosure and corporate governance arrangements are intended to minimise information asymmetries and agency costs between investors and managers of companies to protect and promote the interests of shareholders. However, the compliance costs associated with obligations can be burdensome for small companies.

A benefit of CAMAC's model is that it seeks to address the key elements of the current corporate and fundraising regimes that act as a hindrance to CSEF, such as requirements for public companies to appoint an auditor, have their financial statements audited and hold annual general meetings, and prepare extensive disclosure documents. This would make it easier for issuers to use CSEF, and consequently make it more attractive for intermediaries to establish CSEF platforms.

However, compared to the status quo, investors would have less access to information on which to make an investment decision and assess ongoing performance. This represents a divergence from the current approach for public companies. The CAMAC model seeks to balance the proposed reductions in transparency and disclosure obligations and address the higher risks that generally arise from investing in start-ups and small businesses by putting in place some additional protections for investors, including:

- situating the intermediary at the centre of the model, and in addition to being licensed, places a number of obligations on intermediaries and prohibits them from certain activities that may give rise to conflicts with the interests of investors;
- limiting the size of the companies able to use CSEF and prohibiting previous public equity raisings, to ensure that CSEF is targeted to small, simple companies and minimise the risk of regulatory arbitrage with existing public offer arrangements that require more substantive disclosure;
- requiring investors to acknowledge and sign a statement outlining the risks of CSEF investments, such as the risk of business failure, losing the funds invested and that investments may be illiquid for an extended period, to ensure that investors are aware of the risks prior to investing; and
- limiting the amount of funds retail investors may invest via CSEF in any 12-month period, to compensate for reduced disclosure by issuers and the higher risks associated with investing in small businesses and start-ups that may not have an extensive history or customer base. CSEF disclosure documents may be less informative for investors compared to the status quo because:
 - the amount of information required would be reduced;
 - with a shorter history or rapidly developing product, service or market, the ongoing applicability of descriptions of the business and potential future developments or opportunities on which an investor makes their investment decision may be lower than for a more established company with a less variable business plan; and
 - CAMAC did not specify whether issuers would need to lodge their disclosure document with ASIC. Were disclosure documents not required to be lodged, there

would be a reduced level of external review compared to ASIC's existing approach to reviewing prospectuses, and consequently reduced assurance that the disclosure document provides all the required information.

In an environment of higher-risk businesses and reduced protections through the initial disclosure document, investor caps would limit retail investors' exposure, and consequently potential losses. Limiting the amount of potential losses may assist in maintaining investor confidence in CSEF as an investment mechanism. Investor caps also send a signal to CSEF investors that CSEF investments may be riskier than other potential investments, and that CSEF should only form a limited portion of a diversified investment portfolio. Such a signal may improve investor education and assist in better informed investment decisions.

A further benefit of implementing the approach recommended by CAMAC, relative to retaining the status quo, is that Australia would keep pace with developments in overseas jurisdictions, reducing the incentive for Australian businesses and investors to leave Australia to access CSEF.

Compared to the status quo, issuers would continue to incur costs ensuring their compliance with issuer and shareholder caps, with an additional cost associated with assessing their continued eligibility to raise funds via CSEF and maintain exempt public company status (if applicable). Issuers would be required to operate as public companies (or exempt public companies), rather than use the proprietary company structure. This would result in issuers incurring additional compliance costs, particularly where they would otherwise meet the definition of a 'small proprietary company'.¹⁸

Intermediaries would incur costs associated with performing limited due diligence on companies seeking to raise funds via their platforms, providing the template disclosure documents and risk disclosure documents to investors, receiving and recording acknowledgements of risk disclosure statements, monitoring investor compliance with issuer caps and providing facilities for investors to communicate with issuer companies.

Investors would be limited in the amount they can invest in businesses, unless they were eligible for one of the existing wholesale investor exemptions. Investors would also be required to monitor compliance with investor caps and acknowledge a risk disclosure statement that intermediaries would be required to provide.

Issues Arising from CAMAC's Recommendations

There are specific elements of CAMAC's proposed framework that may result in an overly complex or restrictive system or otherwise continue to present a barrier to effective facilitation of CSEF in Australia.

The creation of a new category of public company would add complexity to the corporate governance framework and may increase risks of regulatory arbitrage compared to the status quo.

18 Small proprietary companies and large proprietary companies are defined in s45A of the Corporations Act. Key differences in compliance requirements for small proprietary companies compared to large proprietary companies include annual financial reports and directors' reports and audit. Differences in compliance requirements for small proprietary, large proprietary and public companies under current arrangements are discussed further in section 4.4.

- Increasing complexity may mean that start-ups and small companies may have difficulty understanding their obligations.
- There may be an incentive for firms to structure themselves as exempt public companies to avoid costs associated with compliance requirements such as audited financial reporting and annual general meetings, without any genuine intention to raise funds via CSEF. This would result in a reduction in transparency without any offsetting increase in the ability for targeted firms to raise capital.

CAMAC proposed that a number of different caps and thresholds be implemented for different elements of its CSEF framework related to issuers (see table 2). These caps are intended to ensure that CSEF is targeted at small businesses and start-ups and reduce the potential for regulatory arbitrage. They are also intended to balance a reduction in compliance costs, such as preparation of a full disclosure document or audit processes, with maintaining investor protections.

Table 2: Caps and thresholds recommended by CAMAC

Category	Cap or threshold	Policy objective of cap or threshold
Eligibility to conduct a CSEF issue	Limited to certain companies with simple structures, with a cap of \$10 million in capital	Minimise distortions and the potential for regulatory arbitrage in the fundraising regime while targeting CSEF to small issuers less likely to be able to absorb the compliance costs of a public equity offer under existing requirements.
Eligibility to become or remain an exempt public company	Limit of \$5 million in turnover per annum and \$5 million in capital	Minimise distortions and the potential for regulatory arbitrage in the corporate governance and reporting regime while addressing identified barriers to enterprises incorporating as public companies and conducting public equity offers.
Exempt public companies eligible for exemption from auditing requirements	Limited to companies that have raised up to \$1 million in funds via CSEF or any other prospectus exemption and cumulative expenses of \$500,000	Address a key compliance burden related to incorporation as a public company for issuers in the early stages of fundraising, and avoid issuers raising small amounts needing to spend a significant proportion of those funds on audit obligations rather than developing the business. Balance this objective with maintaining transparency and investor assurance once an issuer has raised a significant amount of capital and spent a significant proportion of that capital.
Cap on the amount of funds that can be raised via CSEF or other exemptions from disclosure requirements	Limit of \$2 million per 12-month period for any individual or related group of companies	Balance addressing a barrier to fundraising with ensuring investors have access to full disclosure documentation for larger raisings. Align the CSEF cap with the existing small scale personal offer exemption.

This compares to an existing ASIC class order that increases the cap on funds that may be raised under the small scale personal offer exemption from \$2 million to \$5 million per 12-month period under certain circumstances.¹⁹

However, there are potential issues with the proposed caps:

19 ASIC Class Order 02/273: Business Introduction or Matching Services.

- the interaction of the various caps and thresholds may be complex for issuers, intermediaries and investors to understand and monitor; and
- the level of the caps and thresholds is necessarily a matter of judgement. The caps proposed by CAMAC may not appropriately balance the funding needs of small businesses and investor protection.

To reduce the risk of conflicts of interest arising between intermediaries and investors that could compromise intermediaries' neutral service provider role, CAMAC recommended that intermediaries be restricted from having an interest in an issuer and from being paid in the shares of the issuer or according to the amount of funds raised. However, costs of this approach include:

- a potential reduction in the pool of potential intermediaries and/or investors;
- a restriction on paying intermediaries in shares may be a barrier for start-ups that are likely to have poor cash flow in the establishment phase; and
- the requirement for an issuer to pay a fee to the intermediary that is fixed at a set dollar amount, rather than a fee based on a percentage of the funds raised, may act as a disincentive for issuers raising relatively small amounts of funds.

While noting that CSEF platforms may require an AML, CAMAC did not make any recommendation regarding this. Without change in the current regulatory framework, intermediaries may continue to have a lack of certainty as to their requirement to hold an AML, and it may limit the establishment of CSEF platforms, particularly those facilitating secondary trading.

CAMAC recommended caps on the amount investors could invest per issue and in CSEF overall per 12-month period. While having an important investor protection role, implementing investor caps could make it difficult for issuers to raise funds via CSEF. Investor caps may also result in a large number of micro-investors, who may consequently have limited ability to exert discipline and control over the issuer. Furthermore, intermediaries would have difficulty in monitoring investors' compliance with aggregate investor caps for investments through their own platform as well as those of other intermediaries, increasing intermediaries' compliance costs and potentially reducing the effectiveness of the aggregate cap.

6.2 OPTION 2: NEW ZEALAND MODEL

Similar to the CAMAC model, the New Zealand model has the benefits of placing the intermediary at the centre of the model as a gatekeeper and keeping pace with international developments. Additional benefits associated with the New Zealand model compared to the CAMAC model include:

- reduced complexity by removing exemptions from certain company compliance costs and fewer caps and thresholds for issuers;
- intermediaries are not restricted in fees they can charge or the interests they can acquire in issuers using their platforms, potentially increasing the pool of CSEF investors and intermediaries;
- the ability for intermediaries to charge a fee proportional to the funds raised would be consistent with existing market practice for equity capital raisings and provide an incentive for intermediaries to only list issuers they consider will successfully raise funds;

- greater flexibility for issuers to trade off the level of voluntary investor caps with the level of disclosure, compared to mandatory caps and template disclosure requirements;
- consistency between the Australian and New Zealand CSEF frameworks would reduce the barriers to CSEF participants operating in both markets, although this may also be achieved via the Trans-Tasman mutual recognition framework.

A number of the costs associated with the New Zealand model are similar to the CAMAC model, including issuers needing to comply with fundraising caps and requirements for intermediaries to be licensed, undertake limited due diligence on issuers and provide disclosure statements and risk warnings to investors. Disadvantages of the New Zealand model include:

- as the regime is not limited to small companies, there is a potential for larger companies that have previously made public equity offers using CSEF to raise additional funds, circumventing the standard disclosure requirements for public equity offers;
- intermediary investment in CSEF issuers may raise investor expectations about the likelihood of success for companies the intermediary invests in, and may provide an incentive for intermediaries to present these issuers in a more favourable light than other issuers, including via less effective risk disclosure;
- issuers and intermediaries having less certainty on the level of disclosure necessary above minimum requirements, compared with the CAMAC approach of a template disclosure document applicable to all CSEF issues; and
- greater risk of investors losing larger amounts of funds in the absence of investor caps in an environment of a reduced level, and potentially, quality of information (as outlined in section 4.1), on which investors made their initial investment decision.

6.3 OPTION 3: STATUS QUO

For the intermediaries that currently provide online platforms for investing in start-up companies under the existing legislation, maintaining existing regulatory requirements would result in no additional costs.

Under the models operated by the existing intermediaries, some issuers are structured as proprietary companies and others are structured as public companies. These companies would continue to incur existing governance and compliance costs, with additional costs for large proprietary companies and public companies, compared to small proprietary companies, associated with requirements such as preparing annual financial reports and directors' reports²⁰, appointing an

²⁰ Corporations Act, Part 2M.3, Division 1 outlines financial reporting requirements. Large proprietary companies and public companies must prepare annual financial reports and directors' reports. Under s292, small proprietary companies are only required to prepare an annual financial report in certain circumstances, including in response to a direction by shareholders with at least 5 per cent of votes in the company or by the Australian Securities and Investments Commission. Small and large proprietary companies are defined under s45 according to certain revenue, asset and employee thresholds.

auditor and conducting an annual audit of the financial reports²¹, and holding an annual general meeting.

Issuers would continue to have access to existing mechanisms to raise funds, including via the wholesale and small scale offer exemptions from the need to prepare a prospectus. These exemptions allow issuers to raise funds from angel investors and families and friends without incurring the costs of preparing a disclosure document. Where public companies wish to raise funds outside the exemptions, they would also continue to have access to the use of an offer information statement in certain circumstances. These mechanisms may continue to remain adequate for some issuers. Issuers would also continue to incur costs associated with monitoring their compliance with the wholesale and small scale personal offer exemptions, as well as monitoring the issuer shareholder caps, including the 50 non-employee shareholder cap for proprietary companies.

Under the status quo, investors would continue to benefit from existing investor protections, including the receipt of disclosure documents for public issues of equity, subject to the limited exemptions, and access to audited financial reports, directors' reports and annual general meetings when they invest in large proprietary or public companies. These protections assist investors to assess the risks associated with particular investments and to monitor ongoing performance.

However, relying on existing requirements would not address the funding challenges for start-ups and the barriers to CSEF in Australia. Start-ups and small businesses seeking to raise funds would not be able to make offers to the crowd, limiting potential sources of funds. Online intermediaries would remain limited in the business models they could adopt. Investors would have access to a limited number of start-ups and small businesses they could invest in via online platforms.

Regulatory regimes to facilitate CSEF are in the process of being implemented in a number of other jurisdictions. Relying on the status quo would also mean that Australia's position on CSEF would be markedly different from a number of other jurisdictions and could be perceived to be less supportive of innovative funding mechanisms. Innovative businesses and platform providers may also have an incentive to shift their operations to these jurisdictions to more easily access start-up and growth capital. This could also hinder the growth of the Australian entrepreneurial sector.

6.4 OPTION 4: POST-CONSULTATION MODEL

The post-consultation model seeks to address key themes from the consultation process while balancing reducing barriers to and compliance costs associated with CSEF, while maintaining adequate investor protection.

Similar to the CAMAC and New Zealand models, the intermediary would perform an important gatekeeping role. The post-consultation model would also allow Australia to keep pace with international developments.

Key elements of the corporate governance compliance regime that present a barrier for enterprises to convert to public company status would be addressed, as they are under the CAMAC model. Similar to the CAMAC model, the reduction of disclosure and corporate governance obligations on

21 Corporations Act, s301 provides that the annual financial reports must be audited in accordance with Part 2M.3, Division 3. Small proprietary companies that prepare a financial report in response to a shareholder direction under s293 do not need to obtain an audit if that direction did not ask for the financial report to be audited.

CSEF issuers diverge from the current approach under the Corporations Act. These reduced obligations for issuers are balanced by additional protections for investors, such as limits on the size of issuer companies, limits on the amounts issuers can raise, caps on the amount investors can invest and signature of risk acknowledgement statement. However, as outlined below, the issuer and investor limits are higher under the post-consultation model compared to the CAMAC model.

A benefit compared to the CAMAC model is the reduced period for which issuers must obtain a full audit of their financial accounts after losing their exempt status. Under this model, only the most recent financial statements would be required to be audited, reducing compliance costs for issuers. This approach reflects stakeholder concern that obtaining an audit for financial accounts up to five years old may be impractical and overly burdensome, as the responsible auditor would not have been appointed at the time and had access to the company to facilitate the audit process.

While investors would have reduced assurance about the accuracy of the financial statements for the entirety of the exemption period, the marginal benefit of this higher assurance for financial statements from several years prior is likely to be outweighed by the cost to the issuer of obtaining a multi-year audit.

The proposed approach to the eligibility period for exemptions from the compliance requirements would be expected to reduce the risk of regulatory arbitrage present in the CAMAC model, where a company could gain access to the exemptions for a period of up to three to five years without needing to conduct a CSEF raising. A one-year grace period for a newly incorporated or converted public company would provide a potential issuer with time to develop a CSEF proposal and conduct a raising while not being subject to potentially onerous public company compliance requirements.

Other benefits of the post-consultation model compared to the CAMAC model include:

- an increased cap on the amount of funds that can be raised via CSEF in a 12-month period, increasing flexibility for issuers who may prefer to conduct a single large CSEF raising rather than a series of smaller ones and aligning the cap with the existing ASIC class order that facilitates a limited form of CSEF²²;
- increased caps on eligibility to use CSEF, from \$10 million in capital to annual turnover and gross assets of \$25 million will increase the range of small and early-stage companies able to use the lower-cost fundraising option available through CSEF and increase CSEF investment options for investors;
- alignment of the eligibility caps for access to the corporate governance compliance exemptions and use of CSEF would reduce regulatory complexity;
- permitting companies that have previously undertaken a public offer to use CSEF would reduce the fundraising costs of these businesses and provide an alternative to traditional public offers;
- more certainty, and lower compliance costs, for intermediaries regarding their market licencing obligations would better facilitate secondary trading;

22 ASIC Class Order 02/273: Business Introduction or Matching Services, which allows issuers to raise up to \$5 million per 12-month period from up to 20 investors without the use of a disclosure document, rather than the \$2 million limit under the small scale personal offer exemption.

- not including restrictions on intermediary fees or interests in issuers using their platforms addresses feedback from stakeholders that such restrictions would reduce the attractiveness of the CSEF market to potential intermediaries, reducing competition;
- higher investor caps would increase the amount of funds issuers could raise from the same number of investors (subject to the fundraising caps) and increase flexibility for investors who wish to invest larger amounts but who are not eligible for one of the existing prospectus exemptions;
- a reduced cooling off period of 48 hours will provide issuers and intermediaries with greater certainty about the amount raised via a CSEF offer while retaining a reasonable period for investors to withdraw after making an investment.

Drawbacks compared to the CAMAC model include:

- permitting companies that have previously undertaken public offers to use CSEF would reduce the amount of disclosure these companies would need to provide to potential investors, which may result in investors being less informed than would otherwise be the case;
- similar to the New Zealand model, intermediary investment in CSEF issuers may raise investor expectations about the likelihood for success of those companies; and
- greater risk of investors losing larger amounts of funds in the absence of aggregate annual investor caps.

Compared to the New Zealand model, benefits of the post-consultation model include:

- similar to the CAMAC model, limitation of the regime to certain small companies reduces the risk of larger companies circumventing the standard disclosure requirements for public equity offers;
- limits on the amount of funds investors may lose via CSEF while having access to reduced disclosure, which may also help maintain investor confidence in CSEF; and
- greater certainty on the level and type of disclosure required by issuers.

Drawbacks compared to the New Zealand model include:

- similar to the CAMAC model, increased complexity by removing exemptions from certain company compliance costs;
- limitations on the size of companies that may use CSEF, requiring issuers to monitor their compliance with the caps;
- inability to trade off the level of voluntary investor caps with the level of disclosure; and
- intermediaries would still need to monitor investors' compliance with investor caps for investments made through its platform.

7. REGULATORY BURDEN AND COST OFFSET ESTIMATES OF THE CSEF MODELS

7.1 OPTION 1: CAMAC MODEL

Table 3 includes estimates of compliance costs associated with implementing the model recommended by CAMAC.

The compliance costs are estimated by modelling the cost for issuers, intermediaries and investors of key relevant elements of the current regulatory framework for small businesses that currently use online platforms to raise equity, and comparing these status quo costs to the expected costs under CAMAC's framework. This approach makes assumptions about the number of CSEF issuers, intermediaries and investors over the next 10 years under both the status quo and CAMAC options.

CAMAC's proposal is expected to reduce the overall 'per business' compliance costs for issuers that participate. However, given the likely growth in the number of businesses raising funds via online intermediaries under the CSEF arrangements, the aggregate compliance burden across the economy over the next 10 years is expected to increase.

- Costs per issuer are expected to fall in net terms by \$7,950 per year, driven largely by temporary exemptions from audit and annual general meeting requirements and reductions in disclosure costs.
- Compliance costs for intermediaries are expected to increase in line with the expected increase in businesses raising funds via CSEF. Intermediary costs that vary with the number of issuers raising funds are expected to increase by \$1,550 per fundraising campaign.
- Costs per investor are expected to increase by \$75 per year as a result of investors monitoring their compliance with investment caps and acknowledging risk disclosure statements prior to each investment.

Table 3: Regulatory burden and cost offset estimate table

Average annual regulatory costs (from business as usual)				
Change in costs (\$million)	Business	Community Organisations	Individuals	Total change in cost
Total, by sector	\$45.4 million	\$0	\$1.3 million	\$46.8 million
Cost offset (\$ million)	Business	Community organisations	Individuals	Total, by source
Agency	\$46.8 million	\$0	\$0	\$46.8 million
Are all new costs offset?				
<input checked="" type="checkbox"/> Yes, costs are offset <input type="checkbox"/> No, costs are not offset <input type="checkbox"/> Deregulatory – no offsets required				
Total (Change in costs — Cost offset) (\$million) = \$0				

A regulatory offset has been identified from within the Treasury portfolio. This offset relates to a proposal to align the legal frameworks for personal and corporate insolvency practitioners.

The key assumptions that underlie this compliance cost estimate are outlined at the Appendix, Section 9.2.1.

7.2 OPTION 2: NEW ZEALAND MODEL

Table 4 includes estimates of compliance costs associated with implementing a model similar to that implemented by New Zealand, using the same costing approach as used for estimating the CAMAC model compliance costs.

A model similar to that implemented in New Zealand is expected to reduce the overall ‘per business’ compliance costs for issuers that participate. However, given the likely growth in the number of businesses raising funds via online intermediaries under the CSEF arrangements, the aggregate compliance burden across the economy over the next 10 years is expected to increase.

- Costs per issuer are expected to fall in net terms by \$1,750 per year. The key difference in issuer costs between the CAMAC and New Zealand model is the absence of CSEF specific exemptions from public company compliance costs.
- Compliance costs for intermediaries are expected to increase in line with the expected increase in businesses raising funds via CSEF. Intermediary costs that vary with the number of issuers raising funds are expected to increase by \$1,680 per fundraising campaign.
- Costs per investor are expected to increase by \$17 per year as a result of investors being required to acknowledge risk disclosure statements prior to each investment.

Table 4: Regulatory burden and cost offset estimate table

Average annual regulatory costs (from business as usual)				
Change in costs (\$million)	Business	Community Organisations	Individuals	Total change in cost
Total, by sector	\$58.8 million	\$0	\$0.3 million	\$59.2 million
Cost offset (\$ million)				
Agency	Business	Community organisations	Individuals	Total, by source
\$59.2 million	\$0	\$0	\$0	\$59.2 million
Are all new costs offset?				
<input checked="" type="checkbox"/> Yes, costs are offset <input type="checkbox"/> No, costs are not offset <input type="checkbox"/> Deregulatory – no offsets required				
Total (Change in costs – Cost offset) (\$million) = \$0				

A regulatory offset has been identified from within the Treasury portfolio. This offset relates to a proposal to align the legal frameworks for personal and corporate insolvency practitioners.

The key differences between the estimated compliance costs of the CAMAC model and the New Zealand model are the absence in the New Zealand model of the ‘exempt public company’ structure, the disclosure of intermediary fees and interests in issuers, and intermediaries’ disclosure arrangements for investors.

In Australia, the lack of the exempt public company structure for newly registered or converted public companies using CSEF would mean that these companies would need to comply with the full range of public company obligations, such as holding AGMs, audit of financial statements and providing the option of sending shareholders copies of the annual report, which would increase compliance costs. While New Zealand does not have CSEF-specific reporting and governance exemptions, any company that falls within the required size thresholds may be exempt from certain financial reporting and audit obligations.

Key assumptions underlying the compliance cost estimate for this option that differ from those used for the CAMAC model are outlined at the Appendix, Section 9.2.2.

7.3 OPTION 4: POST-CONSULTATION MODEL

The regulatory costs of the post-consultation model have been estimated in two parts.

- The compliance costs associated with the post-consultation model (except for the AML changes), have been estimated in Table 5 using the same costing approach as used for estimating the CAMAC model compliance costs.
- The compliance costs associated with changes to the AML regime have been estimated in Table 6 to reflect that the changes will apply more broadly than just to the CSEF market (outlined below in Section 8.1).

Table 5: Regulatory burden and cost offset estimate table (excluding AML changes)

Average annual regulatory costs (from business as usual)				
Change in costs (\$million)	Business	Community Organisations	Individuals	Total change in cost
Total, by sector	\$48.8 million	\$0	\$1.5 million	\$50.3 million
Cost offset (\$ million)	Business	Community organisations	Individuals	Total, by source
Agency	\$50.3 million	\$0	\$0	\$50.3 million
Are all new costs offset?				
<input checked="" type="checkbox"/> Yes, costs are offset <input type="checkbox"/> No, costs are not offset <input type="checkbox"/> Deregulatory – no offsets required				
Total (Change in costs — Cost offset) (\$million) = \$0				

Table 6: Regulatory burden and cost offset estimate table (AML changes)

Average annual regulatory costs (from business as usual)				
Change in costs (\$million)	Business	Community Organisations	Individuals	Total change in cost
Total, by sector	\$0.6 million	\$0	\$0	\$0.6 million
Cost offset (\$ million)	Business	Community organisations	Individuals	Total, by source
Agency	\$0.6 million	\$0	\$0	\$0.6 million
Are all new costs offset?				
<input checked="" type="checkbox"/> Yes, costs are offset <input type="checkbox"/> No, costs are not offset <input type="checkbox"/> Deregulatory – no offsets required				
Total (Change in costs — Cost offset) (\$million) = \$0				

The post-consultation model is expected to reduce the overall ‘per business’ compliance costs for issuers that participate in CSEF. However, given the likely growth in the number of businesses raising funds via online intermediaries under the CSEF arrangements, the aggregate compliance burden across the economy over the next 10 years is expected to increase.

- Costs per issuer are expected to fall in net terms by \$9,950 per year, driven largely by temporary exemptions from audit and annual general meeting requirements and reductions in disclosure costs.

- Costs per investor are expected to increase by \$75 per year as a result of investors monitoring their compliance with investment caps and acknowledging risk disclosure statements prior to each investment.

Compliance costs for intermediaries would be impacted by the CSEF framework (excluding AML changes), and by the changes to the AML framework.

- Under the CSEF framework excluding AML changes, compliance costs for intermediaries are expected to increase in line with the expected increase in businesses raising funds via CSEF. Intermediary costs that vary with the number of issuers raising funds are expected to increase by \$1,550 per fundraising campaign.
- Under the revised AML framework, compliance costs for existing platforms (across both CSEF and non-CSEF markets) will reduce by an average of \$20,542 per year. Compliance costs for new platforms that enter the market (again, across both CSEF and non-CSEF markets) will increase by an average of \$115,202 per year, although this is mainly driven by the costs incurred by new platforms that would not otherwise have been established.

A regulatory offset has been identified from within the Treasury portfolio. This offset relates to a proposal to align the legal frameworks for personal and corporate insolvency practitioners.

The key difference between the estimated compliance costs of the CAMAC model and the post-consultation model is the removal of the requirement for financial statements covering the period the issuer is eligible for an audit exemption to be audited once that exemption expires, and the changes to the AML framework.

Other key assumptions underlying the compliance cost estimate for this option are consistent with those outlined for the CAMAC option, and the New Zealand option for intermediary fee disclosures and disclosure arrangements for investors.

Key assumptions underlying the compliance cost estimate for the revised AML framework are outlined at the Appendix, Section 9.2.3.

8. GOVERNMENT POLICY

8.1 OPTION 4: POST-CONSULTATION MODEL IS THE PREFERRED OPTION

Following consideration of the four options, the Government has elected to implement Option 4: the post-consultation model. This model draws on elements of both the CAMAC and New Zealand models, as well as incorporating suggestions from stakeholder feedback. It is considered to provide the most appropriate balance between reducing the barriers to and compliance costs of CSEF for public companies, while maintaining adequate investor protection.

For issuers, this model introduces less complexity into the regulatory framework than the CAMAC model by not creating a new 'exempt public company' category. It also allows businesses to raise more funding through CSEF in any 12-month period than under both the CAMAC and New Zealand models, but limits the size of companies that may use CSEF compared to the New Zealand model. A further benefit to issuers is the reduced costs associated with obtaining an audit on their past financial accounts, when compared to the CAMAC model.

For intermediaries, this model provides more certainty and lower costs for market licencing, and more flexibility to operate under a preferred fee structure and to invest in small businesses through CSEF, than under the CAMAC model. These fees and investments must still be disclosed.

For investors, this model introduces larger investor caps than the CAMAC model. This will allow for more money to be invested in small businesses through CSEF, while still limiting the amount of funds that investors could lose. The introduction of such caps could though be more restrictive on the amount of funds an investor can invest, compared to the voluntary caps of the New Zealand model.

This model also reduces the possibility for abuse of the CSEF regime. By limiting access to CSEF to those businesses below a turnover and asset threshold it will reduce the risk of larger companies seeking to circumvent the standard disclosure requirements for public equity offers, as could occur under the New Zealand model. By requiring businesses to raise funding through CSEF within the first 12 months of joining the simplified disclosure CSEF regime, it will also reduce the risk of businesses joining the regime to gain relief from normal compliance requirements without actually using CSEF, as could occur under the CAMAC model.

As outlined above, the changes to the AML framework will apply more broadly than just the CSEF market. They will also provide additional flexibility to facilitate an efficient, effective, and appropriate licencing regime for other markets. For example, professional markets could access the modified AML regime to create a consistent approach across markets and help facilitate mutual recognition of Australian operators with cross-border activities. New and emerging market types that would otherwise need to obtain a full AML could also access the modified AML regime, as appropriate, which would encourage innovation and competition in these markets.

The post-consultation model is likely to have the highest net benefit of the options considered, and has a lower estimated aggregate regulatory costs than either the CAMAC or New Zealand models.

8.2 GOVERNMENT CONSULTATION ON THE PREFERRED MODEL

As discussed in Section 5, the development of this model was heavily influenced by the stakeholder consultations undertaken in the first half of 2015.

A subsequent discussion paper was released in August 2015 that outlined the key features of this post-consultation model. Feedback provided at this stage informed the design of the final model.

In the process of drafting the legislative amendments, the Government continued to consult with industry participants, ASIC and relevant government agencies.

The draft Bill was shared with key industry stakeholders, including a number of firms seeking to set up as intermediaries in Australia, and corporate law experts for comment in early November 2015. Stakeholders were overall supportive of the draft legislation, and of the need to introduce a regulatory framework to facilitate CSEF.

However, stakeholder views were more varied on some of the details of the legislation. A number of concerns and queries around how the gatekeeper role of intermediaries will operate were raised. Stakeholders also considered that some of the eligibility criteria to use CSEF, particularly the requirement that issuers not have the purpose of investing in other entities, may be too restrictive and may hinder the normal growth process of a start-up, which may include integrating subsidiaries as it grows. In response to this feedback, the legislation has been amended to only capture entities that have a substantial purpose of investing in other companies.

Stakeholders also considered that commencement of the framework nine months following Royal Assent was too long a delay. In response to this feedback, the period was shortened to six months. However, given ASIC will be required to make technical changes to their systems and to issue guidance to support the legislation, it would be impractical to shorten this any further.

In accordance with the *Corporations Agreement 2002*, the Government also consulted with, and received the approval of, the states and territories for the proposed legislative amendments.

The Government released the draft regulations for consultation in December 2015, outlining, among other matters, minimum disclosure requirements for CSEF issuers, prescribed checks that intermediaries must undertake on issuers and the wording of the risk warning and risk acknowledgement. Stakeholders were generally supportive of the disclosure requirements, with some suggesting more information be included. Stakeholders were also generally supportive of the requirements for the prescribed checks, but some sought further clarification on the conduct of the checks. Several stakeholders also made suggestions on the wording on the risk warning and acknowledgement. The Government is considering this feedback and will finalise the regulations once the Parliament passes the Bill.

The Corporations Amendment (Crowd-sourced Funding) Bill 2015 was introduced into Parliament on 3 December 2015. The Bill was referred to the Senate Economics Legislation Committee, which received submissions and held public hearings before tabling its report on 1 March 2016. The Committee considered matters including eligible CSEF issuers, the issuer fundraising cap, disclosures and consents, intermediary obligations, investor caps and the cooling-off period. The Committee recommended that the Bill be passed, with the Government to carefully monitor the implementation of the CSEF framework and review it two years after enactment. The Bill lapsed with the calling of the 2016 election.

In March 2016 as part of its *FinTech Statement*, the Government indicated that it was considering two potential amendments to the CSEF framework: increasing the eligibility cap from \$5 million to \$25 million and reducing the cooling-off period from five working days to 48 hours. Following further consultation, including with its FinTech Advisory Group, the Government decided to proceed with these amendments.

8.3 IMPLEMENTATION AND EVALUATION

The preferred model will be implemented through legislative amendments and regulations to the Corporations Act, regulatory guidance published by ASIC and ministerial exemptions in relation to AML obligations. It is proposed that the Bill will be reintroduced into the Parliament in the Spring 2016 parliamentary sitting period. The regulations will be considered by the Federal Executive Council following the Bill's passage through the Parliament.

The new laws will commence six months after the Bill receives Royal Assent. This will allow time for industry to consider the new laws and adjust their business models, including obtaining the necessary AFSL or AML licences if required.

In the 2015-16 Budget, ASIC received \$7.8 million over four years to implement, monitor and enforce the new framework. During the transition period ASIC will produce regulatory guidance to help industry transition to the new laws. ASIC will also develop a new CSEF authorisation category within the AFSL and will assess and consider applications for AFSL and AML licences as required, including data reporting obligations for licensees to assist in ongoing evaluation of the CSEF market.

The Government and ASIC will continue to monitor the CSEF market to ensure that the changes to the law are operating as intended. By making it easier and less costly for small public companies to raise equity financing through CSEF, the Government would expect that the number of businesses exploring this funding avenue will increase.

As outlined in Section 5, the Government is also considering extending CSEF to proprietary companies.

9. APPENDIX

9.1 SUMMARY OF CAMAC REPORT

CAMAC released its report on CSEF in June 2014. CAMAC found that the current law makes it difficult for CSEF to be used in Australia, and that change to the Corporations Act would be required if CSEF were to be facilitated in Australia.

CAMAC considered four options for facilitating CSEF in Australia.

1. Adjusting the regulatory structure for proprietary companies

This option would involve increasing or uncapping the number of permitted offers under the small scale personal offers exemption for public offers by proprietary companies and substantially increasing the number of permitted shareholders of a proprietary company.

There was support for both elements of this option from a number of stakeholders that made submissions to CAMAC's discussion paper.

However, CAMAC did not support this option, as it would involve a shift away from the purpose of proprietary companies as closely held entities, with consequently lower compliance requirements.

2. Confine CSEF to limited classes of investors

This option would involve limiting the classes of investors that could invest in CSEF, for example, to sophisticated, experienced and professional investors, as currently defined in the Corporations Act.²³ The definition of sophisticated investors could also be changed to a self-certification system, similar to that used in the United Kingdom.

Stakeholders did not support this option. CAMAC also noted that this option would 'deliver crowd funding without the crowd', and may not allow many businesses to raise a meaningful level of capital.

3. Amend the fundraising provisions for public companies

This option would involve amending the fundraising requirements for public companies contained in Chapter 6D of the Corporations Act, including the required level of disclosure.

Many stakeholders were of the view that this option would leave in place substantial governance and compliance requirements for public companies that would be overly burdensome for start-ups and small enterprises likely to use CSEF. CAMAC concurred with this view.

4. Introduce a new legislative regime for CSEF

CAMAC recommended the creation of a specific regulatory structure for CSEF, as outlined below.

²³ *Corporations Act 2001*, s708.

Recommendations

Corporate form

CAMAC recommended the creation of a new category of public company, to be known as an 'exempt public company'. Exempt public companies would be relieved of some of the compliance requirements of public companies for a period of up to three to five years. Such companies would be exempt from the following requirements:

- continuous disclosure;
- holding an annual general meeting;
- executive remuneration reporting;
- half-yearly reporting; and
- appointing an independent auditor and having their financial report audited, until the company has raised more than \$1 million through CSEF or any other prospectus exemption and expended \$500,000. On expiry of its exempt status, the company would be required to have a full audit, covering any period where its financial affairs were not audited.

CAMAC recommended that eligibility to become, and to remain, an exempt public company be limited to companies with turnover below \$5 million per annum and capital of less than \$5 million. Exempt status would also expire automatically after three years, subject to a limited exception that may extend the exempt status for up to two further 12-month periods. Shareholders would be required to agree to the proposal via a special resolution. CAMAC's rationale for limiting the period a company could retain exempt status was to balance the benefits of reducing compliance costs with the costs to investors of reduced transparency.

Existing companies seeking to become an exempt public company would also need to be eligible to conduct a CSEF offer. CAMAC proposed that companies that are complex or listed, have already conducted a regulated offer under Chapter 6D, blind pools and companies with substantial capital (with a suggested cap of \$10 million), should not be eligible to conduct a CSEF offer.

Fundraising

CAMAC proposed a framework for CSEF fundraising that included a number of specific requirements for issuers, online intermediaries and investors.

Issuers

Issuers would be required to be a public company or exempt public company offering new, fully paid shares, with the following requirements:

- eligible issuers could not be complex or listed companies, have already conducted a regulated offer under Chapter 6D, a blind pool or a company with substantial capital (with a suggested cap of \$10 million);
- comply with template disclosure requirements that would be less onerous than existing requirements;

- comply with a cap of \$2 million on the amount that could be raised via CSEF or the small scale personal offer exemption in any 12-month period;
- issuers and intermediaries, and their respective directors and officers would not be able to lend to investors to acquire the issuer's shares via CSEF;
- issuers would be prohibited from paying any fees in connection with the offer, except to the intermediary and professional service providers;
- investor funds would not be able to be transferred to the issuer until the offer is completed, including reaching the subscription threshold outlined in the disclosure document, and the expiration of a cooling off period for investors and opt out rights where there is a material adverse change in the issuer's circumstances while the offer is open²⁴; and
- comply with existing material adverse change provisions for regulated public offers²⁵, including the ability for investors to opt-out of previously accepted offers, and advise the intermediary of the corrected information.

Intermediaries

CAMAC proposed that intermediaries would be required to:

- hold an AFSL and meet licensing obligations, including membership of an external dispute resolution scheme and insurance requirements;
- undertake limited due diligence on issuers who use the intermediary's platform;
- provide generic risk warnings to investors;
- check compliance with the proposed investor cap per issuer;
- provide facilities for communication between issuers and investors;
- where they have been notified by an issuer of a material adverse change, notify that change to all investors who have previously accepted the offer, and publish the corrected information on its website; and
- would be required to hold investor funds until the issuer's offer has been completed, and hold the funds in accordance with existing client monies requirements.²⁶

Intermediaries would be prohibited from:

- having a financial interest in any issuer that is undertaking a CSEF raising on its website;
- being remunerated according to the funds raised by an issuer conducting a CSEF raising on its website, or in securities or other interests in the issuer;
- offering investment advice or lending to CSEF investors; and

²⁴ *Corporations Act 2001*, s724.

²⁵ *Corporations Act 2001*, s724.

²⁶ *Corporations Act 2001*, s981B.

- soliciting crowd investors, with the exception of the intermediary advertising its existence and displaying key details relating to each capital raising, but including ‘showcasing’ particular offers on its website.

Investors

CAMAC also made the following recommendations in relation to investors:

- investor caps of \$2,500 per investor per 12-month period for any one CSEF issuer and \$10,000 per investor per 12-month period in total CSEF investments;
- CSEF issuers could raise funds under the small-scale personal offers exemption, with any funds raised to count towards the proposed \$2 million per 12-month period issuer cap;
- no investor caps for investors meeting the definition of a sophisticated investor, and any funds raised from such investors would not count towards the proposed \$2 million per 12-month period issuer cap²⁷;
- acknowledgement of a risk disclosure statement;
- access to cooling off rights for a period of 5 working days; and
- bans on directors and other associates of the issuer selling a significant proportion of their holdings within 12 months of any CSEF offer by that issuer.

9.2 REGULATORY BURDEN ESTIMATE ASSUMPTIONS

CAMAC Model

Compliance cost	Query	Estimate
Costs for public companies		
Preparation and lodgement of annual report	Cost of preparing annual report for a start-up or small business.	\$4,000
Audit	Cost of having the financial statements of a start-up or small business audited on an annual basis.	\$20,000
	Cost of having financial statements of the exempt period audited once eligibility for exemption expires	\$20,000
Annual general meeting	Cost of a start-up or small business holding an annual general meeting.	\$7,500
Issuers		
Labour cost associated with an issuer monitoring compliance with fundraising limits for disclosure exemptions under the status quo or the issuer cap under the CAMAC model.	Hours per year spent on monitoring.	4 hours
	Hourly rate of the staff member that would undertake the monitoring.	\$65.45 per hour. ²⁸
Legal advice on eligibility to issue under CSEF	Hours required.	20 hours
	Hourly rate.	\$107.68 ²⁹

27 Corporations Act 2001, s708.

28 Based on ABS labour rates in the RIS guidelines, including employer costs.

29 In the absence of reliable data on charge-out rates for small legal firms, estimate obtained from Hays data on salaries for legal staff, assuming a senior associate at a small private practice with a \$120,000 annual salary corresponding to an hourly rate of \$61.53. A 1.75x multiplier is applied to approximate charge-out costs, based on the approach for labour rates in the RIS guidelines.

Development of databases and systems to monitor amounts issuers have raised	Cost involved in an issuer establishing any systems and processes to monitor the funds it has raised under various disclosure exemptions.	\$10,000
Costs of preparing an information statement for investors	Total cost of preparing an information statement for issuers using current online equity fundraising platforms.	\$7,500
	Total cost of preparing a template disclosure document under CSEF regime.	\$5,000
Intermediaries		
Applying for and obtaining an AFSL	Cost of applying for and obtaining an AFSL.	\$100,000 ³⁰
Annual labour costs to comply with an AFSL	Staff hours per year.	104 hours
	Hourly rate of staff members responsible for compliance.	\$112.82 ³¹
Other annual costs:	Annual costs associated with ongoing compliance with licensing requirements. - professional indemnity insurance; - annual return audit; - annual licensee review; - client file reviews; - ongoing training for responsible managers; - maintaining compliance plans, procedures and systems; and - various memberships and lodgements.	\$15,000 \$4,000 \$3,000 \$5,000 \$2,000 \$16,500 \$1,000 ³²
Provision of application form and disclosure statements	Average time to complete per issuer.	0.5 hours
	Hourly rate of the staff member undertaking the process.	\$65.45 ³³
	Putting in place systems and processes.	\$10,000
Monitoring of issuer and investor caps	Hours per year spent on monitoring per issuer using the platform.	4 hours
	Hourly rate of the staff member that would undertake the monitoring.	\$65.45 ³⁴
	Cost of establishing systems and processes.	\$10,000
Due diligence on issuers and management	Average time to complete per issuer.	5 hours
	Hourly rate of the staff member that would complete the due diligence.	\$65.45 ³⁵
	Number of associates of the issuer on whom due diligence would need to be completed.	4 people

³⁰ Sourced from previous Treasury analysis of costs associated with applying for an AFSL.

³¹ Sourced from previous Treasury analysis of costs associated with AFSL compliance.

³² Estimates obtained from AFSL Compliance,

<http://www.afslcompliance.com.au/index.php/popular-information11/item/48-what-does-it-cost>.

³³ Based on ABS labour rates in the RIS guidelines, including employer costs.

³⁴ Ibid.

³⁵ Ibid.

Provision of facilities for issuers and investors to communicate	Average time to monitor communications facility per issuer.	4 hours
	Hourly rate of the staff member that would undertake the monitoring.	\$65.45 ³⁶
	Cost of establishing the facility and associated monitoring processes, per issuer.	\$1,000
Investors		
Monitoring compliance with investor caps	Average time to complete prior to each investment.	0.5 hours
Consideration and signature of risk acknowledgement statement	Average time to complete prior to each investment.	0.15 hours

New Zealand Model

Compliance cost	Query	Estimate
Intermediaries		
Disclosure of fee structures and interests in issuers	Average time to complete per issuer.	2 hours
	Labour cost.	\$65.45 ³⁷
	Cost of establishing systems and processes.	\$10,000
Putting in place mechanisms to ensure appropriate disclosures depending on the level of any voluntary investor caps	Average time to complete per issuer.	8 hours
	Labour cost.	\$65.45 ³⁸
	Cost of establishing systems and processes.	\$20,000

AML changes

Compliance cost	Query	Estimate
Costs for intermediaries		
Costs of applying for an Australian Market Licence, including preparation to meet substantive requirements	Hours of legal services required for new operator under current requirements.	2925 hours (1.5 years) ³⁹
	Hours of legal services required for new operator under proposed reduced requirements.	1950 hours (1 year)
	Hours of legal services for existing exempt operator under proposed reduced requirements.	975 hours (0.5 years)
	Hourly rate for legal consultant.	\$128.21 per hour ⁴⁰
Proving eligibility for reduced AML obligations	Hours of legal services required	75 hours (2 weeks)
	Hourly rate for legal consultant.	\$128.21 per hour ⁴¹

³⁶ Ibid.

³⁷ Based on ABS labour rates in the RIS guidelines, including employer costs.

³⁸ Based on ABS labour rates in the RIS guidelines, including employer costs.

³⁹ Sourced from previous Treasury analysis on Australian Market Licence modification and exemption power (OBPR ref: 16839).

⁴⁰ Estimates of wage rate are for a legal partner at top tier firm \$250,000 (per annum) salary. Hourly wage rate is based on an assumed average work week of 37.5 hours. Source: 'The 2015 Hays Salary Guide: salary and recruiting trends', https://www1.hays.com.au/salary/output/pdf2015/HaysSalaryGuide_2015-AU_legal.pdf

⁴¹ Ibid.

Ongoing obligations for domestic markets – complying with supervision and monitoring requirements	Hours of work per year required by finance analysts. (under existing requirements –reduced requirements assumed to result in a 15 per cent reduction). Hourly rate.	4072.5 hours ⁴² \$80.00 per hour ⁴³
Ongoing obligations for domestic markets – recordkeeping and disclosure of transactions and financial reports, plus maintaining written procedures regarding recordkeeping	Hours of work per year required by finance analyst. Hourly rate. Hours of work per year required for Director review Hourly rate. Hours of work required for Committee/Board approval Hourly rate.	150 hours (4 weeks) \$80.00 per hour 37.5 hours (1 week) \$128.21 per hour 15 hours \$128.21
Ongoing obligations for domestic markets – providing information to market participants	Cost per document Number of documents (one per participant)	\$100 30
Ongoing obligations for domestic markets – provision of annual compliance report to ASIC	Hours of work per year required by finance analyst (under existing requirements –reduced requirements assumed to result in a 15 per cent reduction). Hourly rate. Hours of work per year required for Director review (under existing requirements –reduced requirements assumed to result in a 15 per cent reduction). Hourly rate. Hours of work required for Committee/Board approval (under existing requirements –reduced requirements assumed to result in a 15 per cent reduction). Hourly rate.	150 hours (4 weeks) \$80.00 per hour 37.5 hours (1 week) \$128.21 per hour 15 hours \$128.21
Ongoing obligations for domestic markets – providing information to regulator, including notification requirements.	Hours of work per year required by Compliance Board directors (under existing requirements – reduced requirements assumed to result in a 15 per cent reduction). Hourly rate.	400 hours \$128.21 per hour
Ongoing obligations for domestic markets – maintaining technological resources to operate market at required standards.	Yearly (additional) technology maintenance costs.	\$5,000
Ongoing obligations for foreign markets	Proportion of costs relative to domestic licensed market.	50 per cent

42 Sourced from previous Treasury analysis on Australian Market Licence modification and exemption power (OBPR ref: 16839).

43 Estimates of wage rate are for a finance manager based in Sydney \$156,000 (per annum) salary. Hourly wage rate is based on an assumed average work week of 37.5 hours. Source: 'Hudson: Salary Guides 2015: Accounting & Finance, Australia', <http://au.hudson.com/portals/au/documents/Salary%20Guides/SalaryTables2015-Aus-AF.pdf>