



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

Level 5, 100 Market Street
Sydney NSW 2000
GPO Box 9827
Sydney NSW 2001

Tel: +61 1300 935 075
Fax: +61 1300 729 000

www.asic.gov.au

Mr Jason Lange
Executive Director
Office of Best Practice Regulation
Department of the Prime Minister and Cabinet
1 National Circuit
BARTON ACT 2600

By email: Helpdesk-OBPR@pmc.gov.au

19 March 2019

Dear Mr Lange

ASIC Corporations (Repeal and Transitional) Instrument 2017/186

I am writing to the Office of Best Practice Regulation (**OBPR**) regarding the ASIC Corporations (Repeal and Transitional) Instrument 2017/186 (**Instrument**) which extended the relief provided by Australian Securities and Investments Commission (**ASIC**) Class Order: [CO 02/273] *Business introduction or matching services* for a period of two years. The extension was to enable ASIC to review and consult on the policy settings of the relief in CO 02/273. Instrument 2017/186 will expire on 23 March 2019. ASIC proposes to roll-over the relief currently provided by Instrument 2017/186 for a period of just over three years to end on 1 April 2022.

Effect and purpose of the Instrument

The Instrument provides conditional exemptions from the requirements in the *Corporations Act 2001 (Act)* that would otherwise apply to a person involved in a business introduction service in relation to:

- a) the offer or issue of debentures;
- b) fundraising;
- c) the issue, sale and purchase of financial products; and
- d) advertising and hawking.

Separate exemptions are provided for each of the following categories of persons involved in a business introduction service:

- a) operators of business introduction services;
- b) those who propose to issue or sell securities or interests in a registered managed investment scheme through the use of introduction services;

- c) those who endorse or verify information which appears in introduction services; and
- d) those who sponsor or publish introduction services.

The original policy rationale of the Instrument was to facilitate the growth of small and medium enterprises (*SMEs*) by reducing the regulatory and cost burden of small-scale fundraising and assist SME's to locate potential investors. It was also intended to help facilitate investment by opening up the pool of investors that can invest in an SME.

The Instrument and Crowd-sourced funding

The *Corporations Amendment (Crowd-sourced Funding) Act 2017* amended the Act to provide a legislative framework for crowd-sourced funding (*CSF regime*). The *Corporations Amendment (Crowd-sourced Funding for Proprietary Companies) Act 2018* made further changes to the law, extending the CSF regime to eligible proprietary companies. ASIC is of the view that the CFS regime may have an impact on the operation of Instrument 2017/186 in that those that rely on Instrument 2017/186 may consider utilising the CSF regime instead.

Since March 2017 when the Instrument came into effect ASIC's review of the policy settings of the relief has been limited due to the infancy of the CSF regime (which came into effect in September 2017 for public companies and in October 2018 for eligible proprietary companies).

ASIC considers this has not afforded sufficient time to gather qualitative and quantitative information for ASIC to make an informed assessment of how and to what extent the CSF regime interacts with the relief provided by the Instrument and whether there is an ongoing need for ASIC to provide the relief in the Instrument.

ASIC's proposal to extend the relief in the Instrument for a 3-year period

ASIC's approach to the regulation of business introduction services may be better informed once the CSF regime has operated for a reasonable period of time. Accordingly, ASIC is of the view that it is reasonable to extend the relief afforded by Instrument for a further 3 years to enable:

- sufficient time to gather qualitative and quantitative information to make an informed assessment of how and to what extent the CSF regime interacts with the relief provided by the Instrument. Including information on whether those that rely on the Instrument are instead utilising the CSF regime or not.
- ASIC to undertake a full review of the policy settings of the Instrument to determine whether the current scope of relief in the Instrument continues to be appropriate in light of the CSF regime and whether there is an ongoing need for ASIC to provide the relief in the Instrument.

- ASIC to publicly consult on whether the policy settings of the Instrument remain appropriate or not.

Certification of the Instrument

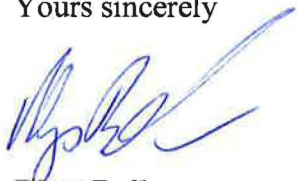
ASIC certifies that the Instrument is operating efficiently and effectively, and therefore a Regulation Impact Statement is not required for the Instrument to be remade for a further 36 months. This certification has been informed by:

- a review of ASIC's records concerning notifications of reliance on the Instrument.
- a review of enquiries, applications for relief and reports of misconduct; all of which did not indicate any issues concerning the operation or effectiveness of the Instrument.
- some industry feedback that the Instrument is still relied upon by wholesale investors.

I acknowledge that OBPR will publish this letter for transparency purposes.

If you have any queries about this advice, please contact Elizabeth Korpi on (02) 9911 2481, or Elizabeth.Korpi@asic.gov.au.

Yours sincerely



Rhys Bollen
Senior Executive Leader
Investment Managers