



**ASIC**

Australian Securities & Investments Commission

**REPORT 544**

# **Response to submissions on CP 288 and CP 289 on crowd- sourced funding**

September 2017

## **About this report**

This report highlights the key issues that arose out of the submissions received on [Consultation Paper 288](#) *Crowd-sourced funding: Guide for public companies* (CP 288) and [Consultation Paper 289](#) *Crowd-sourced funding: Guide for intermediaries* (CP 289). This paper details our responses to those issues.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

This report does not contain ASIC policy. Please see [Regulatory Guide 261](#) *Crowd-sourced funding: Guide for public companies* (RG 261) and [Regulatory Guide 262](#) *Crowd-sourced funding: Guide for intermediaries* (RG 262).

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## A Overview/Consultation process

### Consultation

- 1 In [Consultation Paper 288](#) *Crowd-sourced funding: Guide for public companies* (CP 288) we consulted on our proposed guidance and relief for public companies seeking to raise funds under the new crowd-sourced funding (CSF) regime in Pt 6D.3A of the *Corporations Act 2001* (Corporations Act).
- 2 Specifically, we sought feedback on proposals to give guidance explaining:
  - (a) the eligibility requirements and process for making offers of shares under the CSF regime;
  - (b) the prescribed minimum information requirements for CSF offer documents, including when an offer document may be defective; and
  - (c) the temporary concessions available to eligible companies under the CSF regime, for up to five years, from certain audit, reporting and corporate governance obligations that usually apply to public companies.
- 3 In CP 288, we also consulted on proposals to:
  - (a) provide a template CSF offer document, accompanied by instructions and example content, to help companies prepare a CSF offer document that includes the minimum information required by law; and
  - (b) update the existing class relief from consent requirements in [ASIC Corporations \(Consents to Statements\) Instrument 2016/72](#), so that it also applies to CSF offer documents.
- 4 In [Consultation Paper 289](#) *Crowd-sourced funding: Guide for intermediaries* (CP 289) we consulted on our proposed guidance for entities seeking to provide crowd-funding services as CSF intermediaries under the new CSF regime in Pt 6D.3A of the Corporations Act.
- 5 In particular, we sought feedback on proposals to give guidance explaining:
  - (a) how to apply for an Australian financial services (AFS) licence authorisation to provide a crowd-funding service;
  - (b) obligations and responsibilities as an AFS licensee; and
  - (c) specific requirements under the CSF regime.
- 6 The proposals covered areas such as conflicts of interest, financial resource requirements, organisational competencies, dispute resolution procedures and reporting requirements.

- 7 In CP 289, we also consulted on our proposed guidance for CSF intermediaries about the requirements in the Corporations Act and the Corporations Regulations 2001 (Corporations Regulations) to conduct reasonable checks on companies making CSF offers.
- 8 This report highlights the key issues that arose out of the submissions received on CP 288 and CP 289 and our responses to those issues.
- 9 This report is not meant to be a comprehensive summary of all responses received. It is also not meant to be a detailed report on every question from CP 288 and CP 289. We have limited this report to the key issues and some other significant comments.
- 10 For a list of the non-confidential respondents to CP 288 and CP 289, see the appendix. Copies of these submissions are available on the ASIC website at [www.asic.gov.au/cp](http://www.asic.gov.au/cp) under CP 288 and CP 289.

## Responses to CP 288

- 11 We received 13 responses to CP 288 (including five confidential responses) from industry bodies, the legal and accounting communities and other interested parties. We are grateful to respondents for taking the time to send us their comments.
- 12 Most respondents were generally supportive of our proposed guidance and template CSF offer document. Respondents were also supportive of our proposed update to [ASIC Corporations \(Consents to Statements\) Instrument 2016/72](#).
- 13 The matters on which issues were raised, or more detailed comments provided, differed among respondents. The key feedback related to:
- (a) the need for more flexibility in the presentation of CSF offer documents;
  - (b) our proposed guidance on the minimum information requirements for CSF offer documents and other additional information that companies should consider including in CSF offer documents;
  - (c) our proposed guidance on the financial information, particularly information contained in the notes to the financial statements, that should be included in CSF offer documents;
  - (d) our proposed guidance on the use of forward-looking statements and prospective financial information by start-ups and early-stage companies making CSF offers; and
  - (e) our proposed template CSF offer document, particularly the examples provided in the template.

- 14 Some respondents also suggested that it would be useful to companies if additional guidance was provided:
- (a) to facilitate flexibility in the calculation of the assets and revenue caps for determining the eligibility of a company to make CSF offers;
  - (b) to facilitate the sharing of CSF offer documents, for example on social media; and
  - (c) on the general obligations of public companies under the Corporations Act (given companies making CSF offers will likely be unfamiliar with these obligations).
- 15 Sections B and C of this report discuss the above issues and our responses to those issues.

## Responses to CP 289

- 16 We received 12 responses to CP 289 (including three confidential responses) from industry bodies, the legal and accounting communities and other interested parties. We appreciate the time and effort taken by respondents to provide us with their comments and views.
- 17 Overall, most respondents were generally supportive of our proposed guidance for CSF intermediaries.
- 18 The matters on which issues were raised, or more detailed comments provided, differed among respondents. The key feedback related to:
- (a) licence obligations (other than financial resource requirements);
  - (b) financial resource requirements;
  - (c) tailored licences referring to a URL; and
  - (d) data reporting requirements.
- 19 Sections D and E of this report discuss the above issues and our responses to those issues.

## B Key issues arising from CP 288

### Key points

This section outlines the key issues raised by respondents in relation to our proposed guidance on CSF offer documents and our proposed template CSF offer document, and our responses to those issues.

Respondents generally supported our proposal to give guidance explaining:

- information that should be included in the CSF offer document to meet the minimum information requirements under the law; and
- additional information that may be material and relevant for investors, which companies should consider including in the CSF offer document.

Respondents were very supportive of our proposal to provide a template CSF offer document, to help companies prepare a CSF offer document that includes the minimum information required by law.

### Facilitating flexibility for CSF offer documents

- 20 In CP 288 we noted that the law prescribes the minimum information that must be included in a CSF offer document and the exact order of the key sections of information in a CSF offer document.

Note: See s738J of the Corporations Act and regs 6D.32.02–6D.3A.06 of the Corporations Regulations.

- 21 We proposed (Proposal C1) to give guidance explaining that, while the law prescribes the *minimum* information, companies may include additional information that is material and relevant for investors in making a decision whether to participate in a CSF offer. We also proposed to give guidance explaining the minimum information and additional information that companies should include in their CSF offer documents.
- 22 Some respondents to CP 288 expressed concerns that the prescriptive requirements of the law, together with our proposed guidance, may result in CSF offer documents becoming excessively lengthy or in key information not being prominent or upfront in the CSF offer document.
- 23 Some respondents suggested that we provide guidance facilitating more flexibility in the presentation of CSF offer documents, including permitting the use of cross-references to information both within the offer document and to documents external to the offer document (e.g. a company's constitution) and the use of annexures containing additional information.

- 24 In addition, some respondents had differing views on whether the law prescribes the ordering of information within each section of the CSF offer document and sought clarification on this.

*ASIC's response*

We seek to facilitate flexibility in the presentation of CSF offer documents (to the extent possible within the requirements of the law) and encourage concise disclosure in offer documents, to help enhance the readability and accessibility of offer documents for retail investors.

Following feedback from respondents to CP 288, we have clarified in [Regulatory Guide 261](#) *Crowd-sourced funding: Guide for public companies* (RG 261) that our guidance is not intended to be a prescriptive 'checklist' for CSF offer documents and that we recognise that the content and length of a CSF offer document will vary depending on a company's circumstances, including the complexity of its business (see RG 261.130).

To facilitate flexibility in CSF offer documents, we have included guidance in RG 261 permitting:

- cross-references to other information within the CSF offer document, where information would otherwise be duplicated;
- annexures to the CSF offer document for additional information (not prescribed under the law) that is not key information or is less important to investors; and
- annexures to attach copies of other key documents, such as shareholder agreements or a company constitution, to the CSF offer document (see RG 261.132).

Our guidance in RG 261 also encourages companies to present and format their CSF offer documents in a way that enhances readability, accessibility and digital compatibility of the document for retail investors (see RG 261.134).

We have also clarified in RG 261 that while the law prescribes the order of the four key sections of the CSF offer document and the information that must be included in each section, the presentation and ordering of information *within* each of the four key sections is flexible (see RG 261.131).

## Minimum and additional information in CSF offer documents

- 25 In CP 288 (Proposal C1), we proposed to give guidance explaining:
- (a) information that should be included in the CSF offer document to meet the minimum information requirements under the law; and
  - (b) additional information that may be material and relevant for investors, which companies should consider including in the CSF offer document to help ensure the offer document is not misleading or deceptive.

- 26 Most respondents to CP 288 generally supported our proposed guidance on the information that should be disclosed in CSF offer documents, including the additional information that companies should consider disclosing. Some respondents considered that our proposed guidance will be useful to companies as an educative and compliance tool and may help reduce compliance costs (for example, by minimising the need for legal advice).
- 27 Some respondents suggested that we include in our guidance some other additional information that is important for investors to know when deciding whether to participate in a CSF offer, such as information about exit options for investors, remuneration and incentives for management and where investors can access ongoing information about the company.
- 28 Some respondents considered that certain aspects of our guidance are too prescriptive and that some of the additional information in our guidance will not be applicable to start-ups or early-stage companies.

#### *ASIC's response*

Many companies seeking to make CSF offers will likely not have experience making public offers of shares and may need assistance preparing a CSF offer document.

The responses to CP 288 indicate that our guidance on the minimum and additional information that should be included in CSF offer documents will be useful for companies seeking to make CSF offers and may help reduce compliance costs, for example, by minimising the need for legal advice or by minimising the risk of the offer document being defective.

We also consider that our guidance is likely to assist companies to prepare CSF offer documents that comply with the minimum information requirements under the law and that are not misleading or deceptive.

Accordingly, in Section D of RG 261, we have retained our guidance on the minimum and additional information that companies should generally include in CSF offer documents. To address some of the feedback received, we have also:

- amended some aspects of our guidance (for example, the common risks in Table 17) to be more applicable to start-up and early-stage companies; and
- included some additional relevant or useful information that companies might also wish to consider including in their CSF offer documents—for example, exit options for investors and remuneration and incentives for directors and senior management (see RG 261.142 and RG 261.175).

## Information in the notes to the financial statements

- 29 In CP 288 (Proposal C1), we proposed to give guidance explaining the circumstances where information associated with a company's financial statements—such as material information contained in the notes to the financial statements, or the directors' report or an expert or auditor's report—may also need to be included in the CSF offer document.
- 30 Specifically, our proposed guidance explained that, where material information is contained in the notes to the financial statements, not including that information in the CSF offer document may mislead investors about your company's financial position or performance and may mean the offer document is misleading.
- 31 Most respondents supported our proposed guidance and one respondent considered that the notes to the financial statements (and any auditor's modified opinion, qualification or emphasis of matter) should be mandatory disclosure in the CSF offer document.
- 32 However, some respondents were concerned that the inclusion of the notes to the financial statements in CSF offer documents is excessive and may increase information overload for investors. In addition, some respondents appeared to interpret our proposed guidance as requiring the full financial report (including the full notes to the financial statements and the directors' report) to be included in the CSF offer document.

### *ASIC's response*

We consider that the notes may contain important information about the items presented in the financial statements which, if excluded from the CSF offer document, may mislead investors about the company's financial position or performance.

We also consider that CSF investors may not readily have access to a company's full financial reports (which may be confidential or unavailable if the company has not been required to prepare and lodge financial reports in the past).

Accordingly, in RG 261, we have retained our guidance that companies should consider including material and relevant information contained in the notes to the financial statements (or other parts of the financial report) in the CSF offer document (see RG 261.159–261.164).

To address any confusion, we have clarified in RG 261 that companies are not required to reproduce their full financial report, or the full notes or other documents that accompany the financial statements (which can be large), in the CSF offer document (see Table 18 in RG 261).

RG 261 also recommends that the CSF offer document include details of where investors can access the full financial report, if available (see RG 261.165).

## Forecast information and forward-looking statements

- 33 In CP 288 (Proposal C3), we proposed to give guidance explaining that, because many companies making CSF offers will likely be start-ups or early-stage companies without an operating history or a track record, we expect that there will be very limited or rare circumstances where forward-looking statements or prospective financial information (including forecasts) will be appropriate.
- 34 We also indicated that where forecasts or other forward-looking statements are speculative, or based only on hypothetical assumptions or mere opinions, they will not be supported by reasonable grounds as the law requires, and will therefore be misleading.
- 35 Some respondents disagreed with our proposed guidance and expressed the view that companies making CSF offers will include existing or growing businesses where forward-looking statements may be supported by contracts or expert opinions, and that some start-ups or early-stage companies may have a reasonable basis for short-term forecast information.
- 36 These respondents also suggested that, where reasonable grounds exist and underlying assumptions are adequately disclosed, forward-looking statements and forecasts are useful information for investors in deciding whether to participate in a CSF offer.
- 37 Some of these respondents also suggested that our guidance should be less prohibitive and expressed in the same terms as our existing guidance in [Regulatory Guide 170](#) *Prospective financial information* (RG 170), which also applies to start-ups and early-stage companies.

### *ASIC's response*

While some companies making CSF offers will be start-ups with limited or no operating history, we recognise that some companies will have established or growing businesses with an operating history and current activities.

After considering the responses to CP 288, we have amended our guidance on forecast information and forward-looking statements to be expressed in the same terms as RG 170, which applies to start-ups and early-stage companies.

Our guidance in RG 261 clarifies that CSF offer documents should only include financial forecasts, targets or other forward-looking statements if they are based on reasonable grounds. For example, information that relates to forward-sales contracts or leases, or that is supported by independent industry experts' reports or independent accountants' reports may indicate reasonable grounds (see RG 261.166–RG 261.168 and RG 261.186–261.191).

## Template CSF offer document

- 38 In CP 288 (Proposal C2), we consulted on our proposal to provide a template CSF offer document, accompanied by instructions and example content, to help companies prepare a CSF offer document that complies with the minimum information requirements under the law. We asked the market whether this template would be useful to companies, whether the examples and instructions were helpful and how it could be improved.
- 39 All respondents to CP 288 supported us providing a template CSF offer document and many respondents agreed that the template may assist companies in preparing their CSF offer documents. Some respondents considered that the template may help to reduce compliance costs and encourage standardisation in the quality of disclosure across the market.
- 40 Some respondents made suggestions for improving the template CSF offer document, which included making the example content more comprehensive or tailored to start-ups and early-stage companies (including an example of how to deal with multiple classes of shares, a convertible note or debt facility and tailoring the existing example about the use of funds).

### *ASIC's response*

After considering the responses to CP 288, we have made amendments to the template CSF offer document to improve the relevance and usefulness of the example content (for example, in the capital structure example we have included different classes of shares, as this may be common for early-stage companies).

We have also included some additional clarification in our instructions to assist companies (for example, where additional information may be included in an annexure to the CSF offer document).

In addition, we have clarified in RG 261 that use of the template is optional (it is not a prescribed form) and that we encourage companies and intermediaries to present and format their CSF offer documents in a way that enhances readability, accessibility and digital compatibility of the offer document for retail investors.

## C Other issues arising from CP 288

### Key points

This section outlines some of the other issues raised by respondents to CP 288 in relation to our proposed guidance for public companies making CSF offers, and our responses to those issues.

### Flexibility in calculating the assets and revenue caps

- 41 One respondent was concerned that it may be impractical and costly for companies to calculate the assets and revenue caps (for determining eligibility to make CSF offers) by reference to the 12-month period immediately prior to making a CSF offer. This respondent suggested that companies will have to conduct additional accounting processes, which may not align with their usual month-end processes and will therefore increase compliance costs for companies seeking to make CSF offers.

#### *ASIC's response*

In RG 261 we have provided guidance allowing companies to have regard to their most recent 'month-end', which should generally be no more than six weeks before their CSF offer, when calculating the assets and revenue caps (see RG 261.19–RG 261.20). This will give companies more flexibility and reduce any associated compliance costs.

### Sharing CSF offer documents on social media

- 42 One respondent was concerned that our proposed guidance restricted the distribution and sharing of CSF offer documents other than on the CSF intermediary's platform. This respondent also sought clarification on whether the sharing of CSF offer documents on social media or via email is permitted.

#### *ASIC's response*

In RG 261, we have amended our guidance to clarify that CSF offers can only be *made* via the CSF intermediary's platform and that where CSF offer documents are distributed by the company or CSF intermediary (e.g. on social media or via email), the company or intermediary (as applicable) should direct investors to the intermediary's platform (given that is where the application must be made) and must comply with the rules for advertising CSF offers (see RG 261.73 and RG 261.111).

## Public company obligations

- 43 Some respondents suggested that additional guidance explaining what it means to be a public company (in addition to our proposed guidance on the audit, reporting and corporate governance concessions for eligible public companies) would be useful for companies making CSF offers.

### *ASIC's response*

We consider that guidance highlighting the key public company obligations under the Corporations Act may be useful, given that many companies seeking to raise funds under the CSF regime will be unfamiliar with these obligations (as they will likely be proprietary companies converting to public company status). In addition, many of these companies will be raising funds from the retail public for the first time.

Accordingly, we have included guidance in RG 261 highlighting some of the key public company obligations that are different to the obligations of proprietary companies. These include obligations relating to financial reporting, annual general meetings, related party transactions and voting at directors' meetings (see RG 261.223–RG 261.226).

Our guidance in RG 261 also encourages companies to consider having processes in place to facilitate ongoing communication with their shareholders (including investors in CSF offers), even if the company is relying on the reporting and corporate governance concessions available to eligible public companies (RG 261.235).

## D Key issues arising from CP 289

### Key points

This section outlines the key issues raised by respondents in relation to our proposed guidance on licence obligations, tailored licence obligations and data reporting requirements for CSF intermediaries, and our responses to those issues.

Respondents generally supported our proposal to give guidance explaining:

- how to apply for an AFS licence authorisation to provide a crowd-funding service;
- obligations and responsibilities as a AFS licensee; and
- specific requirements under the CSF regime.

Specifically, respondents were supportive of guidance around conflicts of interest, organisational competence and dispute resolution procedures.

### Licence obligations other than financial resource requirements

- 44 In CP 289 (Section B), we proposed to issue specific guidance and clarification to assist intermediaries to understand and comply with their AFS licence requirements, specifically relating to:
- (a) conflicts of interest—identifying the relevance of the existing guidance in [Regulatory Guide 181](#) *Managing conflicts of interest* (RG 181);
  - (b) organisational competence—generally applying and providing flexibility under existing guidance in [Regulatory Guide 105](#) *Licensing: Organisational competence* (RG 105) in relation to Option 5, for CSF intermediaries to demonstrate relevant experience when applying for an AFS licence authorisation to provide a crowd-funding service; and
  - (c) dispute resolution—applying existing guidance on dispute resolution procedures in [Regulatory Guide 165](#) *Licensing: Internal and external dispute resolution* (RG 165).
- 45 Most respondents supported our proposed guidance, and some respondents provided further comments and suggestions to refine [Regulatory Guide 262](#) *Crowd-sourced funding: Guide for intermediaries* (RG 262).
- 46 A few respondents sought more guidance around conflicts of interest that were specific to CSF intermediaries and how these conflicts should be managed. One respondent provided suggestions to improve the proposed guidance with further examples and references to RG 181.

- 47 Some respondents provided suggestions for expanding the list of relevant organisational competencies under Option 5 of RG 105, to include experience outside financial services that may be relevant to CSF intermediaries and their operations.

*ASIC's response*

Some CSF intermediaries will not have previously encountered the AFS licensing obligations and are likely to find additional tailored guidance on some of these obligations useful.

The responses to CP 289 indicate that there may be specific types of conflicts that are unique to CSF intermediaries, and that tailored guidance on how those conflicts can be managed would help CSF intermediaries to comply with their licensing obligations.

We also consider it appropriate and helpful to provide additional tailored guidance for CSF intermediaries that includes a non-exhaustive list of qualifications and experience that may be relevant to demonstrating organisational competence when applying for an AFS licence.

Accordingly, to address some of the feedback received, we have amended Section B of RG 262, adding:

- some examples of conflicts of interest that may be particularly relevant to CSF intermediaries; and
- further examples of qualifications and experience that we may consider relevant to demonstrate a CSF intermediary's organisational competency.

## Financial resource requirements

- 48 In CP 289 (Section B), we proposed to issue specific guidance and clarification to assist CSF intermediaries to understand and comply with their AFS licence requirements, including the requirements to:
- (a) prepare, and have regularly approved by directors, cash flow projections that cover a period for at least 12 months ahead;
  - (b) lodge an audit report with the annual financial statements, including an auditor's opinion that the CSF intermediary has met the financial resource requirements (other than in respect of the cash flow projections) and certain negative assurance about the cash flow projections (on the basis of a review); and
  - (c) apply our existing guidance in [Regulatory Guide 166 Licensing: Financial requirements](#) (RG 166) on the basis that Option 1 would apply, meaning that a CSF intermediary must hold a cash buffer of at least 5% of the projected 12-month cash outflows.
- 49 Most of the respondents supported the requirement around cash flow projections. A few respondents were of the view that a 12-month projection

period was not appropriate for CSF intermediaries. One respondent outlined that CSF intermediaries were likely to be unprofitable during their initial years due to the establishment costs of the platform.

50 Other respondents considered the financial resource requirements proposed for CSF intermediaries excessive, with one respondent commenting that the \$50,000 surplus liquid funds requirement should not be required given the requirement to hold a 5% cash buffer. Most submissions supported maintaining the surplus liquid funds requirements.

51 Another respondent noted that the requirement for 12-month cash flow projections to be updated regularly and signed off by directors was too onerous and that the related audits would be costly, especially given the uncertainty of CSF intermediary businesses as a new form of financial service in Australia.

#### *ASIC's response*

We consider that having adequate financial resources and undertaking cash flow projections are important risk management requirements that reflect good business practice, and that standards around financial resource requirements will enable appropriate verification by auditors and reduce the risk of disorderly failures of CSF intermediaries.

In particular, we think it is appropriate that the surplus liquid funds requirement that applies to AFS licensees who hold client moneys generally applies to CSF intermediaries, to help ensure client moneys are protected. We note that this test can be met with the same assets that are used for the cash buffer requirement.

ASIC generally considers that AFS licensees that hold client moneys, such as responsible entities of registered managed investment schemes, investment platform operators and providers of custodial or depository services, should have projections to demonstrate they will have adequate cash for at least 12 months.

To address the concerns raised about the difficulty of obtaining auditor negative assurance and director sign off for 12-month projections given the uncertainty in new CSF intermediary businesses, we have amended our guidance in RG 262 to provide transitional arrangements. We will accept three-month (rather than 12-month) cash flow projections with a corresponding adjustment to the cash buffer calculation until 30 June 2020, when there may be more clarity about the operation of CSF intermediary businesses in Australia. We will be open to consider an extension of this period if there is insufficient clarity by 2020.

We do not consider it is likely to be appropriate for CSF intermediaries generally to rely on Options 2 to 5 to demonstrate they have adequate arrangements for their cash needs. Option 2 requires a more significant level of sophistication and confidence in assessing potential business risks to the cash position, and Options 3 to 5 are generally only relevant to members of substantial financial groups. We will consider applications for relief if a CSF intermediary can demonstrate an alternative way to manage the risk of not maintaining adequate cash. Any relief application will be considered at the time in accordance with our policy—see [Regulatory Guide 51 Applications for relief](#) (RG 51).

## Tailored licence authorisation

- 52 In CP 289 (Section B), we proposed to issue CSF intermediaries with a tailored AFS licence authorisation to provide a crowd-funding service through a single CSF platform, specified in the licence by reference to the website address that will be used to access the platform.
- 53 Many of the respondents supported this proposal, but there were some respondents that expressed some concerns over whether this may restrict future changes to the website or branding of the CSF platform. In addition, some respondents wanted clarification around the ability to provide other financial services or products on the same website address as that of the CSF platform.

### *ASIC's response*

Some of the responses to CP 289 indicate that there is a specific concern about restricting an AFS licensee's authorisation to operate its CSF platform through a named website, as this makes it difficult for the CSF intermediary to change the website address.

In our view, it is not appropriate to authorise CSF intermediaries to operate multiple CSF platforms without sufficiently demonstrating an ability to operate a single platform in a compliant manner. This is consistent with our approach to licensing for other financial services (for example, the operation of registered managed investment schemes by new licensees).

The reference to a website address on a CSF intermediary's AFS licence will limit the intermediary to providing crowd-funding services through the platform that it indicates it will operate when applying for the tailored AFS licence authorisation. This will allow clients to check on the AFS licence itself which website platform is covered by the authorisation. It will also reduce the risk of intermediaries rebranding their CSF platform inappropriately (for example, if this history is unfavourable).

Including a website address on the AFS licence is consistent with our approach for licensing responsible entities of registered managed investment schemes and operators of managed investment schemes that involve marketplace lending platforms.

So far, no marketplace lending providers have requested to change the website address linked to their tailored AFS licence. We expect that changes to the website address for a CSF intermediary's platform will be uncommon and able to be efficiently addressed by an application to vary the licence authorisation. We envisage that an application to amend an AFS licence only to replace a website address might not require extensive assessment or time to process, unless other relevant information comes to our attention.

If experience reveals that such applications are common and lead to an unreasonable burden, we may review the form of our authorisation.

We accept that some CSF intermediaries may intend to facilitate other forms of investment-based funding, as well as equity-based crowd-sourced funding, on the same website. To address this concern, we have amended RG 262 with further guidance around clearly segregating the investment options and providing sufficient information on the intermediary's website to allow consumers to make an informed decision about where to invest their money.

## Data reporting requirements

- 54 In CP 289 (Section D), we proposed that CSF intermediaries should provide annual information about their business—in particular, important data points around:
- (a) the total amount raised by all eligible CSF companies through their platform;
  - (b) successful CSF offers made through their platform;
  - (c) unsuccessful CSF offers;
  - (d) investors in CSF offers; and
  - (e) operation of the platform, including use of outsourcing.
- 55 This information will assist ASIC to understand and analyse how the CSF regime is being used and whether CSF intermediaries and companies making CSF offers are complying with their obligations. We also intend analyse and evaluate the development and level of activity in the CSF market.
- 56 The submissions to CP 289 regarding data reporting requirements differed among respondents. Some respondents commented that they saw a potential negative impact on offering companies and CSF intermediaries if it was disclosed to ASIC that CSF offers were not being accepted by CSF

intermediaries. On the contrary, one respondent suggested to further expand the data reporting parameters.

57 In addition, one other respondent commented on the technological and time restrictions on CSF intermediaries, should ASIC seek to increase the data reporting parameters in the future, and suggested sufficient advance notice of any reporting changes.

*ASIC's response*

We consider that the approach to collecting data is consistent with our approach in other areas, including marketplace lending. It is also consistent with the approach to crowd-sourced funding taken by some overseas regulators.

Data reporting obligations were explicitly contemplated by Parliament in introducing the CSF regime and we recognise the value in this data reporting, including to assist in any future review of the CSF regime.

After the CSF regime commences, as we gain experience in regulating CSF intermediaries, we may find our data requirements need to be adjusted. If a material change appears appropriate, including where it becomes possible to reduce the data sought, then we will consult with industry on making adjustments.

We note that the data collected will not be made available to the public in a way that identifies individual CSF intermediaries or offering companies. We will observe our duties of confidentiality.

Accordingly, we have retained the data reporting requirement, and expanded the non-exhaustive list of the data parameters noted in RG 262 in line with those outlined in CP 289.

## E Other issues arising from CP 289

### Key points

This section outlines some of the other issues raised by respondents to CP 289 in relation to our proposed guidance for CSF intermediaries, including our responses to those issues.

### Outsourcing

- 58 A number of respondents commented on the ability of CSF intermediaries to outsource some business functions such as money handling, trust accounts, information technology, and investor identification checks. They queried how outsourcing these functions would impact on an intermediary's AFS licensing requirements and obligations.

#### *ASIC's response*

These responses to CP 289 indicate that there are specific concerns in relation to maintaining a CSF platform, and we understand many CSF intermediaries have limited resources.

CSF intermediaries have to provide information relevant to demonstrating organisational competence to ASIC when applying for an AFS licence.

A CSF intermediary must itself provide the CSF platform, and this includes holding the trust account in which application moneys are placed.

However, we consider that further guidance is appropriate to address the concerns raised, and we have amended the relevant sections of RG 262.

### Reasonable checks

- 59 A number of respondents raised concerns over the proposed guidance about the requirement for CSF intermediaries to conduct reasonable checks on companies providing CSF offers. Some respondents commented that such checks were burdensome on resources and exposed CSF intermediaries to increased legal risk.
- 60 However, other respondents were supportive of the proposed guidance about the checks, with one respondent suggesting additional information in RG 262 to assist CSF intermediaries in conducting such checks.

*ASIC's response*

Under the CSF regime, in addition to complying with the general AFS licensing obligations, CSF intermediaries are specifically required to carry out prescribed checks. The concerns raised relate to particular aspects of the requirements in the Corporations Regulations about the standard of the checks. Our guidance is consistent with the Corporations Regulations.

However, we note that CSF intermediaries may need additional guidance in carrying out such checks. We have therefore amended RG 262 to include ASIC registers that may be relied on to undertake such checks.

## Appendix 1: List of non-confidential respondents

### Respondents for CP 288

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- Australian Equity Crowdfunding Pty Ltd and Fat Hen Ventures Pty Ltd
  - Australian Small Scale Offerings Board
  - Chartered Accountants Australia and New Zealand
  - Financial Ombudsman Service Australia
  - King & Wood Mallesons
  - PledgeMe
  - TMeffect
  - FinTech Australia
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### Respondents for CP 289

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- Australian Equity Crowdfunding Pty Ltd and Fat Hen Ventures Pty Ltd
  - Australian Small Scale Offerings Board
  - Birchal Pty Ltd and Pozible Pty Ltd
  - Computershare Limited
  - Dr Marina Nehme, The University of New South Wales
  - Financial Ombudsman Service Australia
  - King & Wood Mallesons
  - PledgeMe
  - FinTech Australia
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