

Submission by Paul Niederer

Questions

1. Is the main barrier to the use of CSEF in Australia a lack of a CSEF regulatory structure, or are there other barriers, such as a lack of sustainable investor demand?

Of all countries in the world Australia has the best starting regulatory structure for unaccredited equity Crowdfunding as no other country, until recently, easily allowed unaccredited investors to invest in equity raises that didn't use a disclosure document. Despite many submissions pointing this out (not just ASSOBS) CAMAC chose to totally ignore this and preferred to progress without the promised roundtables and produce an academic document based on what they read on the web.

The main short term barrier holding platforms back at present is only 20 mum and dad investors are allowed per annum.

Worldwide, equity raises seldom go over 200 investors in this space so just altering the 20 to 200 would put us ahead of other countries in the world because unlike Australia they have no experience nor legal precedents in this space. That is why the SEC, FINRA and many regulators around the world have sought advice from me.

The small scale offering legislation was designed by small business and regional authorities exactly for small business seeking capital inviting in friends, fans, family and followers (Their Crowd). This Australian legislation was 20 years before its time. With social media etc the source of investors under the definition in the legislation is much larger now and my experience is that to raise say \$600,000 a company would need to attract 600 "viewers" of the offering and allow up to 200 to invest.

There is no evidence worldwide that unlisted companies (Issuers) that are not at a professional investors level are discovered by serendipity. While this may happen with rewards Crowdfunding it does not happen with equity invested in unlisted companies that are not attractive to professional investors.

So the answer to the second part of your question is that the issuer needs to create the demand and cant expect it from lists, websites, or other external rewarded peddlers including the platform they choose. The danger here is that if legislation is built on the belief that putting an offering on a platform will bring thousands of investors as in the CAMAC report it will fail and be a waste of time and money. Already in New Zealand after nearly a year we have 4 platforms that cost say \$100,000 each, 5 raisings with around 200 investors in total. A totally uneconomical solution with no traction at all.

Traction is quantitative evidence of customer demand.

Check the evidence from the New Zealand "licensed" approach. Having better licensing will not create acceptable quantitative evidence of customer demand.

2. Do the existing mechanisms of the managed investment scheme regime and the small scale

personal offer exemption sufficiently facilitate online offers of equity in small companies?

No. At the early stage level it is passion, community, familiarity, hope and love that are the drivers. As Bruce Billson said it is another part of Maslow's "Hierarchy of Needs" at play here. People want to invest directly into the unaccredited investor Crowdfunding offering ... Title III ... (not via an MIS) and there are usually more than 2 that have thousand or two to do so. (20/12 limit) However MIS's can work in Accredited Investor Equity Crowdfunding (Title II) where the matter is ripe for advising people to invest.

3. Other than the restrictions identified above in relation to limitations on proprietary companies, public company compliance requirements and disclosure, are there any other barriers to the use of CSEF in Australia?

The main barrier/restriction is that those involved in determining CSEF's future are primarily people operating within the financial services regime and not in the Small Business Area (Other than the Minister 😊). Thus they see every raise as a pre-IPO raise. This is not the case. Most of these raises have few figures to back them up but a lot of hope, passion and belief and a lot of people that believe in them. For a more detailed discussion of this subject please go here ...

<http://www.paulniederer.com/2015/01/the-seduction-of-a-new-asset-class-is-killing-unaccredited-investor-equity-crowdfunding/>

4. Should any CSEF regime focus on the financing needs of small businesses and start-ups only, or is there a broader fundraising role?

Education of both issuers and investors is essential plus gamified ways of ensuring that they acknowledge and certify that they truly understand that they are agreeing that these investments are high risk that they could lose all their money.

Questions

5. Do you consider that, compared to existing public company compliance costs, the exempt public company structure is necessary to facilitate CSEF in Australia?

Its not just about costs. The exempt public company may lower some costs and delay others but it is the inappropriateness of the form for early stage financing relative to the existing ecosystem that is the problem

6. To what extent would the requirement for CSEF issuers to be a public company, including an exempt public company, and the associated compliance costs limit the attractiveness of CSEF for small businesses and start-ups?

To achieve traction Pty Ltd's needs to be included. Incubators, Accelerators and most Startup's raising under \$500k use this structure for a number of reasons.

7. Compared to the status quo, are there risks that companies will use the exempt public company structure for regulatory arbitrage, and do these risks outweigh the benefits

of the structure in facilitating CSEF?

No risk as I doubt it will fly. One other point is that any corporate form that denies shareholders the full disclosure they deserve is counter to good practice.

8. Do you consider that the proposed caps and thresholds related to issuers are set at an appropriate level? Should any of the caps be aligned to be consistent with each other, and if so, which ones and at what level?

Self-responsibility, transparency and full disclosure are the best restrictions. The government's job is to safeguard the investing public from criminals not from companies that don't reach the potential their investors believed they would after they made the decision to invest.

9. Do CAMAC's recommendations in relation to intermediary remuneration and investing in issuers present a significant barrier to intermediaries entering the CSEF market, or to companies seeking to raise relatively small amounts of funds using CSEF?

Companies raising money seldom have money to spend up front. Therefore sweat for equity is often a solution. Provided pecuniary investment is disclosed in the offering document or is clearly communicated in subsequent announcements and that they are held in escrow (intermediaries shares) for a year from the capital raising opening date all should be OK.

10. Do the proposed investor caps adequately balance protecting investors and limiting investor choice, including maintaining investor confidence in CSEF and therefore its sustainability as a fundraising model?

There is no way, in a 600,000 raise you are going to get say 300 investors investing \$2,000. Even Neil Young only got 100 investors for a \$6 million raise compared with 16,000 purchasers for his Pono music player Kickstarter raise. Investor caps are counter productive and the risk that it is a bad investment is still there even with a cap in place. Better to have Self responsibility, transparency and full disclosure.

11. Are there any other elements of CAMAC's proposed model that result in an imbalance between facilitating the use of CSEF by issuers and maintaining an appropriate level of investor protection, or any other elements that should be included?

Yes. In the USA the split is Title II and Title III. CAMAC treated Accredited Crowdfunding and Unaccredited Crowdfunding the same. Mistake. They are totally different animal and implementing one without the other will result in an imbalance of supply and demand. Unaccredited Crowdfunding platforms are like eBay. They are publishers. They do not create content. They educate but do not give advice. It is the issuer's raise. It is the issuers words. For two reasons unaccredited Crowdfunding platforms should follow a code of conduct but should not be licensed financial services providers.

1) They do not give advice they are publishers. They are just responsible for structure form and layout plus some basic due diligence checking.

2) Licensing where the platform is deemed to be a financial advisors incurs more costs including insurance costs. This puts the costs and expectations up for platforms, they become choosey, they curate (choose / recommend) raises and traction slows. Witness New Zealand.

Licensed industries are seldom innovative and only have organic traction.

- The licensed taxi industry didn't create Uber
- The licensed telephone industry didn't create Viber or Skype
- The licensed banking industry didn't create peer to peer lending or PayPal
- The licensed postal industry didn't create DHL or FEDEX

If CSEF is to be "widespread" and gain traction, licensing won't do it for unaccredited Crowdfunding raises. However Accredited Crowdfunding like OurCrowd, VentureCrowd where MIS and other structures are used can operate under the existing licensing regime as they do now. There is no regulatory change required other than allowing them to more easily accept members of the public directly into their raises.

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Questions

12. Do you consider it is important that the Australian and New Zealand CSEF models are aligned? If so, is it necessary for this to be achieved through the implementation of similar CSEF frameworks, or would it be more appropriate for CSEF to be considered under the Trans-Tasman mutual recognition framework?

At the Accredited Crowdfunding level yes. Unaccredited level no.

13. Do you consider that voluntary investor caps and requiring increased disclosure where investors contribute larger amounts of funds appropriately balances investor protection against investor choice and flexibility for issuers?

A minimum and maximum parcel size can be chosen for each raise by the issuer on a voluntary basis. It will either work or not. The market will decide. Directors can also decide if they accept an investment or not under the Corporations Act.

14. What level of direction should there be on the amount of disclosure required for different voluntary investor caps?

Issuer education can cover this.

Questions

15. How likely is it that the obstacles to CSEF that exist under the status quo would drive potential issuers, intermediaries and investors to move to jurisdictions that have implemented CSEF regimes?

Unlikely. Unless a raise is super attractive (few are) it will need local investors to get traction. Stats I have show that 63% of raises are locally funded.

16. What are the costs and benefits of each of the three options discussed in this consultation paper?

Firstly CAMAC's model is totally unworkable so it is not worth considering. Secondly the New Zealand model is clearly evidenced as unworkable.

Traction is quantitative evidence of customer demand. The lack of traction proves there is no demand for the platforms in the context they operate in.

Four N.Z. Companies have invested around \$100k each to get their platforms up and running under the licensing regime and there have been 5 raises in total. In nearly a year. So lots of costs and little benefit. Status Quo missed the fact that the "final solution" does not have to be presented in its entirety straight up. Why develop as Lean Startup does. Allow platforms to develop under existing legislation but keep adjusting it with learning's. Like the U.K. Monetary authority did. Lift the 20/12 to 49 or 100 or 200. Create a code of conduct for unaccredited platforms. Allow Accredited investor platforms like OurCrowd and VentureCrowd to more easily include Mum and Dad investors as direct investors rather than via a MIS. Small changes tested monitored and eventually the best system will emerge.

The chances of theorists (regulators) creating a widespread well functioning unaccredited equity Crowdfunding system in one take are very remote.

17. Are the estimated compliance costs for the CAMAC and New Zealand models presented in the appendix accurate?

1) Share registry and escrow are too steep at \$10,000 should be under \$2,000

2) The intermediary figures are totally out of whack. If this is the expectation (AFSL licensing) you will have more platforms than raises like New Zealand. Light touch is needed here with investor responsibility not policing. The government's job is to safeguard the investing public from criminals not from companies that don't reach the potential their investors believed they would after they made the decision to invest and certified it was high risk. Intermediaries are publishers like eBay not Police. The moment you make them have responsibility for more than basic due-diligence is the day you begin the journey towards another Storm Financial. Companies operating in protected environments don't have the transparency of eBay, Kickstarter, Realestate.com.au etc etc Self responsibility, transparency and full disclosure plus the interaction from the crowd will keep transactions cleaner than it being the responsibility of licensed intermediaries.

18. How many issuers, intermediaries and investors would be the expected take up online equity fundraising in Australia under the status quo, the CAMAC model and the New Zealand model?

Status Quo Zero. New Zealand max platforms. CAMAC 20 platforms.

19. Are there particular elements of the New Zealand model that should be incorporated into the CAMAC model, or vice versa?

Prescribed / suggested offering information structure and content. (in reality it looks like a standard ASSOBS Offer Document template)

New Zealand should have made the 20/12 they included from Australia at least 50/12 to get larger investments to close out larger offerings

20. Are there particular elements of models implemented in other jurisdictions that would be desirable to incorporate into any final CSEF framework?

The determination as to whether a person is qualified as an accredited investor to invest or not should happen before they invest and not before they find out about the offering. The U.S. system here is a lot more efficient. Anybody should be able to look at an opportunity but before they invest they must meet the requirements or be turned away.

Questions

21. Do the issues outlined in this consultation paper also apply to crowd-sourced debt funding? Is there value in extending a CSEF regime to debt products?

This is totally different type and should be separate.

22. To what extent would the frameworks for equity proposed in this discussion paper be consistent with debt products?

Little consistency.

23. Would any of the options discussed in this paper, or any other issues, impede the development of a secondary market for CSEF securities?

There is plenty of proof that a secondary market for unlisted securities is fools gold. "Market" is the wrong word. "Matching" as in small scale offerings legislation is the right context.