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Corporations Amendment (Crowd-Sourced Funding) Regulation 2015

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 2015

Peter Cosgrove
Governor-General

By His Excellency's Command

Kelly O'Dwyer [**DRAFT ONLY—NOT FOR SIGNATURE**]
Assistant Treasurer

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1 Name

This is the *Corporations Amendment (Crowd-Sourced Funding) Regulation 2015*.

2 Commencement

This instrument commences on the day after it is registered.

3 Authority

This instrument is made under the *Corporations Act 2001*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1—Amendments

Corporations Regulations 2001

1 After Part 6D.2

Insert:

Part 6D.3A—Crowd-sourced funding

Regulation 6D.3A.01 Offers that are eligible to be made under Part 6D.3A of the Act—class of securities

For paragraph 738G(1)(c) of the Act, this regulation specifies fully-paid ordinary shares as a class of securities.

Note: Paragraph 738G(1)(c) of the Act requires securities to be of a class specified in the regulations for an offer for the issue of the securities to be eligible to be made under Part 6D.3A of the Act.

Regulation 6D.3A.02 Contents of CSF offer document—general

- (1) For subsection 738J(2) of the Act, this regulation, and regulations 6D.3A.03, 6D.3A.04, 6D.3A.05 and 6D.3A.06, specify the information that must be contained in a CSF offer document for a CSF offer of securities (the *securities on offer*) made by a company (the *offering company*).
- (2) Subregulation (1) does not prevent a CSF offer document from containing other information.
- (3) The offer document must contain a table of contents and sections dealing with the following matters:
 - (a) Section 1: Risk warnings;
 - (b) Section 2: Information about the offering company;
 - (c) Section 3: Information about the offer;
 - (d) Section 4: Information about investor rights.

Regulation 6D.3A.03 Contents of CSF offer document—Section 1: Risk warnings

- (1) The following statement must be set out in section 1 of the offer document:

“Equity crowdfunding is risky. Issuers using this facility include new or rapidly growing ventures. Investment in these types of ventures is very speculative and carries high risks.

You may lose your entire investment, and you must be in a position to bear this risk without undue hardship.

Even if the company is successful, the value of your investment and any return on the investment could be reduced if the company issues more shares.

Your investment is unlikely to be liquid. This means you are unlikely to be able to sell your shares quickly or at all if you need the money or decide that this investment is not right for you.

Even though you have remedies for misleading statements in the offer document or misconduct by the company, you may have difficulty recovering your money.

There are rules for handling your money. However, if your money is handled inappropriately or the person operating the platform on which this offer is published becomes insolvent, you may have difficulty recovering your money.

Ask questions, read all information given carefully, and seek independent financial advice before committing yourself to any investment.”

Regulation 6D.3A.04 Contents of CSF offer document—Section 2: Information about the offering company

- (1) The following information must be contained in section 1 of the offer document:
 - (a) the name and ACN of the offering company;
 - (b) the address of the registered office of the offering company;
 - (c) the address of the principal place of business of the offering company;
 - (d) the names of each of the following persons, as well as his or her skills and experience relevant to the management of the offering company:
 - (i) each director of the offering company, and any person proposed by the offering company to be a director of the offering company;
 - (ii) each other officer of the offering company, and any person proposed by the offering company to be an officer of the offering company;
 - (iii) each manager of the offering company, and any person proposed by the offering company to be a manager of the offering company;
 - (e) a description of the offering company’s business and its organisational structure;
 - (f) a description of the capital structure of the offering company (relating to both equity and debt in the offering company), including the classes (if any) of securities in the offering company, and the rights attached to the securities in the offering company.
- (2) Section 1 of the offer document must also contain the most recent consolidated statement of financial position of the offering company in respect of a financial year.
- (3) Section 1 of the offer document must also contain the following information:
 - (a) if the offering company, or any person mentioned in paragraph (1)(b), has been convicted of a criminal offence under the Act—a description of the circumstances giving rise to that offence;
 - (b) if a civil penalty under the Act has been imposed on the offering company, or any person mentioned in paragraph (1)(b)—a description of the circumstances giving rise to that penalty;
 - (c) if a person mentioned in paragraph (1)(b) is or has been disqualified from managing corporations under Part 2D.6 of the Act—a description of the circumstances giving rise to that disqualification;

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- (d) if a person mentioned in paragraph (1)(b) is or has been subject to a banning order under section 920A of the Act—a description of the circumstances giving rise to that order;
- (e) if a person mentioned in paragraph (1)(b) is or has been subject to a court order under paragraph 921A(2)(a) of the Act—a description of the circumstances giving rise to that order;
- (f) if a person mentioned in paragraph (1)(b) is or has been an insolvent under administration—a description of the circumstances giving rise to that administration.

Regulation 6D.3A.05 Contents of CSF offer document—Section 3: Information about the offer

- (1) The following information must be contained in section 3 of the offer document:
 - (a) a description of the securities on offer, including a description of the rights attached to those securities;
 - (b) the minimum subscription amount for the offer (see subsection 738L(8) of the Act);
 - (c) the maximum subscription amount for the offer (see subsection 738L(7) of the Act);
 - (d) the period that the offering company expects the offer to remain open;
 - (e) a description of how the offering company intends to use the proceeds from the offer (including a description of how the company intends to use any proceeds of the offer in excess of the minimum subscription amount for the offer).
- (2) If any of the proceeds of the offer will be paid, directly or indirectly, to any of the following persons, section 3 of the offer document must also contain a description of the payment:
 - (a) a person mentioned in paragraph 6D.3A.04(1)(d);
 - (b) the CSF intermediary that will publish the offer;
 - (c) a person promoting or marketing the offer;
 - (d) a person that holds securities entitling the person to exercise more than 20% of the rights to vote at a general meeting of the offering company;
 - (e) a person that controls the offering company;
 - (f) any other person that is a related party (within the meaning of subsection 738G(3) of the Act) of the offering company.
- (3) By way of clarification, for the purposes of subregulation (2), proceeds of the offer will be paid indirectly to a person if those proceeds will be paid to the person through an intermediary entity such as a nominee, trust or partnership.
- (4) Section 3 of the offer document must also contain a description of each previous CSF offer (if any) of securities by the following entities:
 - (a) the offering company;
 - (b) each person mentioned in paragraph 6D.3A.04(1)(d);
 - (c) each person that controls the offering company;
 - (d) each other person that is a related party of the offering company.
- (5) The description of a previous CSF offer mentioned in subregulation (4) must include a description of the outcome of the offer.

Regulation 6D.3A.06 Contents of CSF offer document—Section 4: Information about investor rights

The following information must be contained in section 3 of the offer document:

- (a) a description of the cooling off rights contained in section 738ZD of the Act;
- (b) a description of the effect of subsection 301(5) of the Act (financial accounts not required to be audited for up to 5 years);
- (c) a description of the effect of subsections 250N(5) and (6) of the Act (company not required to hold an AGM for up to 5 years);
- (d) a description of the effect of subsections 314(1AF) and (2A) of the Act (reduced requirements for publication of annual financial report, directors' report and auditor's report for up to 5 years);
- (e) a description of the effect of subsection 738ZA(5) of the Act (responsible intermediary for CSF offer to provide communication facility).

Regulation 6D.3A.10 Obligation of CSF intermediary relating to their platforms—applicant risk acknowledgement

- (1) For paragraph 738ZA(3)(b) of the Act, this regulation sets out the requirements for an acknowledgement by a person making an application pursuant to a CSF offer.
- (2) The following statement must be set out in the acknowledgement:

“I have read the CSF offer document. I understand this document is not a prospectus and contains less information than a prospectus.

I have read the risk warning and I understand that it contains some of the important information for making a decision about investing. However:

- (a) I understand that equity crowd funding is risky and that I may lose my entire investment; and
- (b) I confirm that I could bear that loss without suffering undue hardship; and
- (c) I understand that I may never be able to sell my shares and the value of my investment may be diluted over time.

I am aware that I can use the communication facility to ask questions and that there is a 5 business day cooling off period in relation to this investment.”

Regulation 6D.3A.11 Gatekeeper obligation of CSF intermediary—checks

- (1) For subsection 738Q(1) of the Act, this regulation prescribes the checks that a CSF intermediary needs to conduct before starting to publish on a platform of the intermediary a CSF offer document (or a document purporting to be a CSF offer document) for a CSF offer of securities made by a company (the *offering company*).

Identity of offering company

- (2) The CSF intermediary must check the following information:
 - (a) the name and ACN of the offering company;
 - (b) the address of the registered office of the offering company;
 - (c) the address of the principal place of business of the offering company.

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- (3) The CSF intermediary must check whether:
 - (a) the company satisfies the requirements in paragraphs 738H(1)(a), (b), (c), (d), (e) and (f) of the Act; and
 - (b) the offer document satisfies the requirements in subsection 738J(2) and section 738K of the Act.

Information on directors etc.

- (4) The CSF intermediary must check the following information:
 - (a) the names and addresses of each person mentioned in paragraph 6D.3A.04(1)(d);
 - (b) whether the offer document contains the information required by subregulation 6D.3A.04(3).

Regulation 6D.3A.12 Gatekeeper obligation of CSF intermediary—reasonable standard of checks

- (1) For subsection 738Q(2) of the Act, this regulation prescribes what constitutes a reasonable standard in relation to all the checks mentioned in Regulation 6D.3A.11.
- (2) In order to constitute a reasonable standard in relation to a check, a check must be based on:
 - (a) reliable and independent documentation that is relevant to the check;
 - (b) if the check cannot be based on reliable and independent documentation—information provided to the CSF intermediary by the offering company in relation to the offer that is relevant to the check.
- (3) The documentation mentioned in subsection (2) includes electronic data.
- (4) For the purposes of this section, treat documentation as not being independent if it is under the control of any of the following:
 - (a) the offering company;
 - (b) each person mentioned in paragraph 6D.3A.04(1)(d);
 - (c) each person that controls the offering company;
 - (d) each other person that is a related party of the offering company.
- (5) For the purposes of this section, in determining whether documentation is reliable and independent, take into account the following factors:
 - (a) the accuracy of the documentation;
 - (b) the degree to which the documentation is secure from unauthorised modification;
 - (c) the method by which the documentation is kept up-to-date;
 - (d) the degree of comprehensiveness of the documentation;
 - (e) whether the documentation is maintained by:
 - (i) the Commonwealth, a State or a Territory; or
 - (ii) an authority of the Commonwealth or of a State or a Territory;
 - (f) whether there is an obligation under an Australian law to maintain the documentation.

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- (6) For the purposes of this section, treat a database (whether or not in electronic form) maintained by ASIC as reliable and independent documentation.
 - (7) Subsection (5) does not limit the scope of paragraph (2)(a).
 - (8) Subregulation (9) applies for the purposes of a check under paragraph 6D.3A.11(4)(a) of the matter mentioned in paragraph 6D.3A.04(3)(a) (criminal convictions).
 - (9) Despite subregulations (2) to (6), in order to constitute a reasonable standard in relation to the check, the check must be based on information provided by the Australian Federal Police or of the police force of a State a Territory.

Regulation 6D.3A.13 Obligation of CSF intermediary relating to their platforms—general CSF risk warning

- (1) For subsection 738ZA(2) of the Act, this regulation specifies the terms of a general CSF risk warning.
- (2) Those terms are as follows:

“Equity crowdfunding is risky. Issuers using this facility include new or rapidly growing ventures. Investment in these types of ventures is very speculative and carries high risks.

You may lose your entire investment, and you must be in a position to bear this risk without undue hardship.

Even if the company is successful, the value of your investment and any return on the investment could be reduced if the company issues more shares.

Your investment is unlikely to be liquid. This means you are unlikely to be able to sell your shares quickly or at all if you need the money or decide that this investment is not right for you.

Even though you have remedies for misleading statements in the offer document or misconduct by the company, you may have difficulty recovering your money.

There are rules for handling your money. However, if your money is handled inappropriately or the person operating this platform becomes insolvent, you may have difficulty recovering your money.

Ask questions, read all information given carefully, and seek independent financial advice before committing yourself to any investment.”

2 After subregulation 7.1.08(3)

Insert:

- (3A) For paragraph (b) of the definition of *exempt document or statement* in subsection 766B(9) of the Act, the following documents and statements are prescribed (and so included in the definition):
 - (a) a CSF offer document for a CSF offer of securities that does not contain personal advice;
 - (b) information relating to a CSF offer document for a CSF offer of securities, if:

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- (i) the information is published on the platform on which the CSF offer document is published, and does not contain personal advice; or
- (ii) the information is a statement made on the communication facility for the CSF offer, and does not contain personal advice;
- (c) an advertisement or publication in relation to a CSF offer, or an intended CSF offer, if it
 - (i) does not contravene subsection 738ZG(1) of the Act; and
 - (ii) does not contain personal advice.

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