

EXPOSURE DRAFT



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Corporations Amendment (Crowd-sourced Funding) Regulations 2018

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 regulations.

Dated 2018

Peter Cosgrove
Governor-General

By His Excellency's Command

Scott Morrison [**DRAFT ONLY—NOT FOR SIGNATURE**]
Treasurer

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1 Name

This instrument is the *Corporations Amendment (Crowd-sourced Funding) Regulations 2018*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the day after this instrument is registered; and (b) the day Part 1 of Schedule 1 to the <i>Corporations Amendment (Crowd-sourced Funding for Proprietary Companies) Act 2017</i> commences.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 Before regulation 6.2.01

Insert:

6.2.01A Prescribed requirements

For the purposes of paragraph (b) of item 19A of the table in section 611 of the Act, the requirement that the company is an eligible CSF company at the time of the acquisition of the relevant interest is prescribed.

2 At the end of subregulation 6D.3A.02(2)

Add:

Note 1: The other information may be contained in a section identified in subregulation (3), in another section of the offer document or in an appendix to the offer document.

Note 2: An appendix to the offer document is part of the offer document.

3 At the end of regulation 6D.3A.02

Add:

(4) Information required to be contained in a section of the offer document may be presented in any order within the section.

Note: The contents of the CSF offer document may be published in a commonly accessible digital format.

4 Paragraph 6D.3A.04(1)(f)

Omit “description”, substitute “description, or a summary,”.

5 After paragraph 6D.3A.04(1)(g)

Insert:

; (h) a description, or a summary, of the key provisions of the offering company’s constitution that deal with any rights and liabilities that attach to the securities in the issuing company;

(i) if the offering company is a proprietary company, a description or summary of the following:

(i) the key provisions of any agreement or proposed agreement between shareholders that deal with any rights and liabilities that attach to, or may affect, the securities in the issuing company;

(ii) any right of the directors of the company to refuse to register a transfer of shares in the company.

6 After subregulation 6D.3A.04(1)

Insert:

(1A) If a summary of the information in paragraph (1)(f) is contained in section 2 of the offer document, then:

- (a) the information in full must be contained in another section of, or in an appendix to, the offer document; and
- (b) section 2 of the offer document must include a cross reference to the location of that information.

7 Subregulation 6D.3A.04(2)

Omit “copy”, substitute “copy, or a summary,”.

8 After subregulation 6D.3A.04(2)

Insert:

- (2A) If a summary of the financial statements mentioned in subregulation (2) is contained in section 2 of the offer document, then:
 - (a) a copy of the statements must be contained in another section of, or in an appendix to, the offer document; and
 - (b) section 2 of the offer document must include a cross reference to the location of the statements.

9 Paragraph 6D.3A.05(1)(a)

Repeal the paragraph, substitute:

- (a) a description, or a summary, of the securities on offer, including information on the rights associated with those securities;

10 After subregulation 6D.3A.05(1)

Insert:

- (1A) If a summary of the information mentioned in paragraph (1)(a) is contained in section 3 of the offer document, then:
 - (a) the information in full must be contained in another section of, or in an appendix to, the offer document; and
 - (b) section 3 of the offer document must include a cross reference to the location of that information.

11 Before paragraph 6D.3A.06(2)(a)

Insert:

- (aa) subsection 301(2) of the Act (about when financial reports have to be audited);

12 Paragraph 6D.3A.06(2)(c)

Repeal the paragraph, substitute:

- (c) subsections 314(1AF) and (2A) of the Act (about annual financial reporting to members and making the reports accessible online);
- (d) item 19A of the table in section 611 of the Act (about the exception to the prohibition on acquiring relevant interests in voting shares);
- (e) section 738ZK of the Act (about Chapter 2E of the Act applying to proprietary companies that have one or more CSF shareholders).

Note: The provisions mentioned in paragraph (2)(a) or (b) only apply to an offering company covered under section 738ZI of the Act.

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Schedule 1 Amendments

13 At the end of subregulation 6D.3A.09(2)

Add:

- ; and (c) if the information is the name and address of a person referred to in paragraph 6D.3A.04(1)(d)—whether the name and address is consistent with the name and address used by that person on an original, a certified copy or an authenticated electronic copy of:
- (i) a primary photographic identification document; or
 - (ii) both a primary non-photographic identification document and a secondary identification document.

14 At the end of regulation 6D.3A.09

Add:

- (5) In this regulation:

certified copy has the same meaning as in the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

primary non-photographic identification document has the same meaning as in the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

primary photographic identification document has the same meaning as in the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

secondary identification document has the same meaning as in the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

15 Before regulation 7.9.96

Insert:

Subdivision A—Modifying provisions of Part 7.9 of the Act: offers to purchase securities in certain proprietary companies

7.9.95A Offers to which this Subdivision applies

For the purposes of paragraph 1020G(1)(c) of the Act, this Subdivision applies in relation to an offer for the purchase of securities of a proprietary company if:

- (a) at the time the offer is made, the company:
 - (i) has one or more CSF shareholders; and
 - (ii) is an eligible CSF company; and
- (b) Division 5A of Part 7.9 of the Act applies to the offer.

7.9.95B Duration and withdrawal of the offer

Part 7.9 of the Act applies in relation to the offer as if subsections 1019G(1) and (2) of the Act were modified by omitting “1 month” and inserting “14 days”.

7.9.95C Varying the terms of the offer

Part 7.9 of the Act applies in relation to the offer as if section 1019H of the Act were modified by replacing that section with the following:

1019H Varying terms of offer

- (1) An offeror may vary the terms of an offer to which this Division applies for the purchase of securities in a proprietary company if:
 - (a) the variation is:
 - (i) to improve the consideration offered under the offer; or
 - (ii) to extend the period that the offer remains open at any time before the end of that period; and
 - (b) the variation will apply to each offeree that has not accepted the offer before the variation is made.
- (2) The variation may only be made by sending a supplementary offer document in printed or electronic form to:
 - (a) if the variation is to improve the consideration offered under the offer—each offeree in accordance with paragraphs 1019E(1)(a) and (b); or
 - (b) if the variation is to extend the period that the offer remains open—each offeree that has not accepted the offer in accordance with paragraphs 1019E(1)(a) and (b).
- (3) The supplementary offer document must:
 - (a) identify the offer to which it relates; and
 - (b) describe the variation; and
 - (c) be worded and presented in a clear, concise and effective manner.
- (4) The terms of the offer cannot be varied otherwise than under this section.
- (5) This section does not:
 - (a) affect the offeror's obligation under section 1019J to update the market value of the financial product to which the offer relates; or
 - (b) prevent the offeror from withdrawing the offer in accordance with section 1019G or paragraph 1019J(2)(a) and making another offer on different terms; or
 - (c) prevent the offeree from making a counter-offer on different terms.

7.9.95D Rights if requirements not complied with

Part 7.9 of the Act applies in relation to the offer as if subsection 1019K(1) of the Act were modified by inserting after paragraph 1019K(1)(b) of the Act:

- (ba) in a situation where section 1019H applies:
 - (i) subsection 1019H(2) was not complied with; or
 - (ii) the supplementary offer document did not comply with subsection 1019H(3); or
 - (iii) there was a misleading or deceptive statement in the supplementary offer document;

Subdivision B—Other matters
