

One year on - the wisdom of crowds

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On 1 April 2014, New Zealand became one of the first jurisdictions to legalise equity crowd funding from retail investors, through the introduction of the Financial Markets Conduct Act 2013 (FMCA). On the first anniversary of the new law, we are starting to see some early indications of crowd funding's role in the capital raising landscape.

The first phase of the FMCA designated equity crowd funding and peer-to-peer lending as "prescribed intermediary services", meaning that platforms offering those services could apply for licences, and once granted, exclusions come into force for financial products offered through licensed providers.

The effect of these changes is to enable licensed crowd funding platforms to offer shares without the standard disclosure requirements. In effect, the protection for investors comes from the licensing process and supervisory regime, rather than through standard disclosure. Companies raising capital are subject to a NZ\$2 million cap aggregating funds raised through these licensed intermediaries and through the "small offer exclusion" (which permits raising funds from 20 investors or fewer in any 12 month period).

To date, four crowd funding platforms have obtained licences: PledgeMe (who had already operated in the crowd funded pledge space for some time); Snowball Effect; Crowdcube (a UK-based crowd funding platform for eligible investors); and Equitise (an Australian platform that has launched in New Zealand in advance of regulatory change across the Tasman).

Of these, Snowball Effect, PledgeMe and Equitise have all launched equity campaigns in the last six months. There have been some remarkable success stories, even in such a short space of time. Craft brewery Renaissance Brewing was first out of the blocks, raising NZ\$700,000 in just 13 days on Snowball Effect. Showing that beer is a popular choice with New Zealand investors, another craft beer company, Yeastie Boys, raised NZ\$500,000 on PledgeMe in just 30 minutes. Other investments have found it harder to capture the crowd's imagination, with a hovercraft tourism venture and plans for a computer museum both falling short of targeted raises. Kiwi film The Patriarch sought between NZ\$300,000 - NZ\$500,000 and raised just short of the maximum only after extending its deadline. These early results bear out PledgeMe CEO Anna Guenther's view that crowd funding itself is just a tool, and that the successful companies will be the ones who "know their crowd", building an engaged community around a campaign.

One of the initial criticisms levelled at crowd funding as a capital raising strategy for young companies was the ongoing compliance costs involved with having a large number of small shareholders. Licensed platforms are trying to make this easier, offering online shareholder communication tools. A residual issue, however, is the application of the New Zealand Takeovers Code, which covers all companies with 50 or more shareholders holding voting shares. Several companies have structured campaigns to offer non-voting shares to small investors, and Snowball Effect also offers a nominee option to companies (meaning only one new shareholder is added to the register as a consequence of the offer).

In tandem with this, the Takeovers Panel is undertaking a consultation process on the impact of compliance with the Code on "small" companies. Submissions received at the end of last year were broadly in agreement that the cost of compliance for small companies is currently prohibitive. The Panel's most recent consultation paper proposes that "small" companies will be those that have total assets of NZ\$20 million or less at the balance date of the company's most recent accounting period. The Panel is proposing to grant a class exemption for a limited range of transactions where the board determines it is in the best interests of a small company to opt out of Code compliance, and where not more than 5% of shareholders vote to opt back in.

The flexibility that the crowd funding platforms offer continues to provide space for further innovation. PledgeMe has crowd funded itself, using its own platform to raise NZ\$100,000 last year for its further growth. Snowball Effect has launched a "private offer" option for companies that want to take advantage of the platform and accompanying exemptions, but only for investors known to the company and without attracting further publicity. Last month saw the launch of the first co-investment opportunity by Breathe Easy, a company developing an inhaled medicine for cystic fibrosis. Angel group ICE Angels, Pacific Channel and the government's Venture Investment Fund have already committed funds as part of a round that is now being "topped up" by crowd funding from the public.

The long-term impact for the companies and the investors is yet to be seen, but the initial signs of life for a new platform for capital-raising show a promising start.

This article was written by Sacha Judd for the Australasian Lawyer magazine (Issue 2.2, April 2015).

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