



27 November 2017

UK Crowdfunding Association - Response to Initial Impact Assessment

The UKCFA welcomes the opportunity to respond to the Initial Impact Assessment and supports the views expressed in the European Crowdfunding Network's response.

The UK is recognised as the European, and a global leader, in investment based crowdfunding and peer 2 peer lending. Both sectors are achieving growth in the UK facilitated by the regulatory framework put in place by the Financial Conduct Authority. The FCA introduced its Crowdfunding Regulations¹ in March 2014. This regulatory framework has sought to support the emergence of crowdfunding, recognising its role in filling gaps left by more traditional types of finance such as banks.

Some key features of the UK regime which we believe should be adopted at an EU level in any policy proposal are:

- Recognised the differences between investment based crowdfunding and peer 2 peer lending.
- Allows flexibility of business models. For example, equity investments can be made via a nominee or direct;
- Has adopted a principles based approach, applying MiFID in a proportionate and workable manner and placing the emphasis on transparency to investors while giving investors trust to make their own decisions. Regulated platforms determine how best to follow these principles for example:
 - Marketing of investments. Investments must be fair, clear and not misleading as determined by the platform, following guidance from the FCA;
 - Investor appropriateness is achieved through an online test and investor go through a self-declaratory process to determine what category of investor they are. Non-sophisticated or high net worth investors categorise themselves as 'Restricted' investors and declare that they will not invest more than 10% of their investable assets in a 12 month period. There is no fixed investment cap for each investor which has worked well;
- The Prospectus Directive does not apply to fundraises below €5m and we expect this to rise to €8m with the implementation of the Prospectus Regulation;
- There are no prescribed banking or other payment requirements but platforms are required to comply with the FCA's existing client assets and/or client money rules if the platform wishes to hold assets or funds on behalf of investors.
- Collective Investment Schemes and investment funds are considered separately and do not fall under the UK Crowdfunding regulations.

We ask the Commission to ensure that the the EU level policy agenda recognises that a framework such as the UK framework is required to ensure a sustainable industry.

While there may be an opportunity to improve and harmonise EU rules applicable to crowdfunding and peer 2 peer lending, UK platforms are concerned that despite good intentions of the Commission, the divergent rules and mindsets towards crowdfunding and peer 2 peer lending across Europe mean that it will not be possible to achieve a legislative outcome that facilitates rather than holds back the sector and cross-border investment. Given the importance of alternative finance to Europe's funding escalator, as outlined in the ECN's response to this consultation, we urge the Commission to be cautious before starting an EU

¹ <http://www.fca.org.uk/static/documents/policy-statements/ps14-04.pdf>

legislative process that may hinder the industry due to the divergent rules and mindsets across the EU at this time.

If the Commission determines that such a legislative process can be recommended, without negatively impacting the industry and available finance in the EU, we urge the Commission to ensure that the agenda is defined by the frameworks of Member States where crowdfunding is working, such as in the UK. This means that any pan-EU rules would apply to fundraises up to €8m and no prospectus would be required across the EU up to this level and there will be no individual investor caps. If the Commission is not able to recommend a legislative proposal on this basis, then the UKCFA does not feel policy options 3 or 4 would be appropriate at this time. Instead, the UKCFA would welcome alternative support from the Commission, under policy options 1 or 2, including raising awareness and supporting institutional co-investment via crowdfunding and peer 2 peer platforms.