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Crowdfunding in Australia, the US and UK

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USA Pacific Legal Conference
New York 14-21 December 2015



What is crowdfunding?

- Raising money through online portals (“crowdfunding platforms”)
- Types –
 - Investment (equity crowdfunding) – investor obtains a security of the offeror
 - Debt (a.k.a. peer-to-peer (P2P) or “marketplace” lending)
 - Reward
 - Donation
- Like other “shared economy” developments such as Airbnb and Uber, driven by internet technology
- Uses of crowdfunding –
 - Raising capital
 - Financing projects – including litigation
 - Charitable and causes

\$55k for potato salad



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The screenshot shows a web browser window displaying a Kickstarter campaign page. The browser's address bar shows the URL: <https://www.kickstarter.com/projects/zackdangerbrown/potato-salad>. The page header includes the 'KICKSTARTER' logo, navigation links for 'Discover', 'Start a project', and 'About us', a search bar, and 'Sign up' and 'Log in' buttons. The main content area features the title 'Potato Salad' above a large image of a white bowl filled with potato salad on a red and white checkered tablecloth. To the right of the image, the text reads 'I'm making potato salad.' Below this, it says 'Created by Zack Danger Brown' with a circular profile picture of two men. Further down, it states '6,911 backers pledged \$55,492 to help bring this project to life.' At the bottom of the campaign section, there are tabs for 'Campaign', 'Updates (30)', and 'Comments (1,207)', with 'Updates (30)' being the active tab. A 'Share this project' button is located to the right of these tabs. The Windows taskbar at the bottom shows the date 'July 14' and the time '11:34 AM 8/11/2015'.



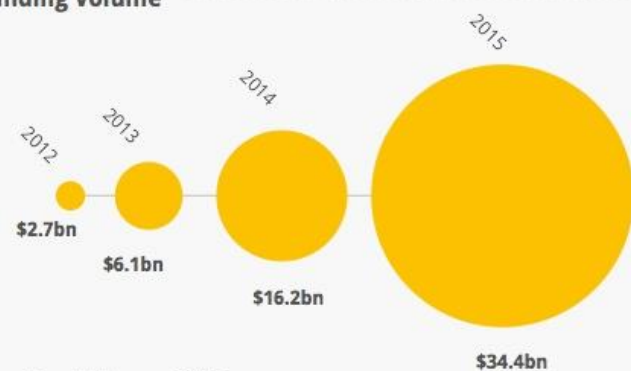
Examples of crowdfunding platforms

Platform	Type	Country
Kickstarter	Reward	USA
Lending Club	Debt	USA
Crowdfunder	Equity	USA
LexShares	Debt	USA
Seedrs	Equity	UK
Zopa	Debt	UK
Society One	Debt	Australia



Growth of crowdfunding

Total Funding Volume



Total Funding Volume: 2015

\$34.44bn

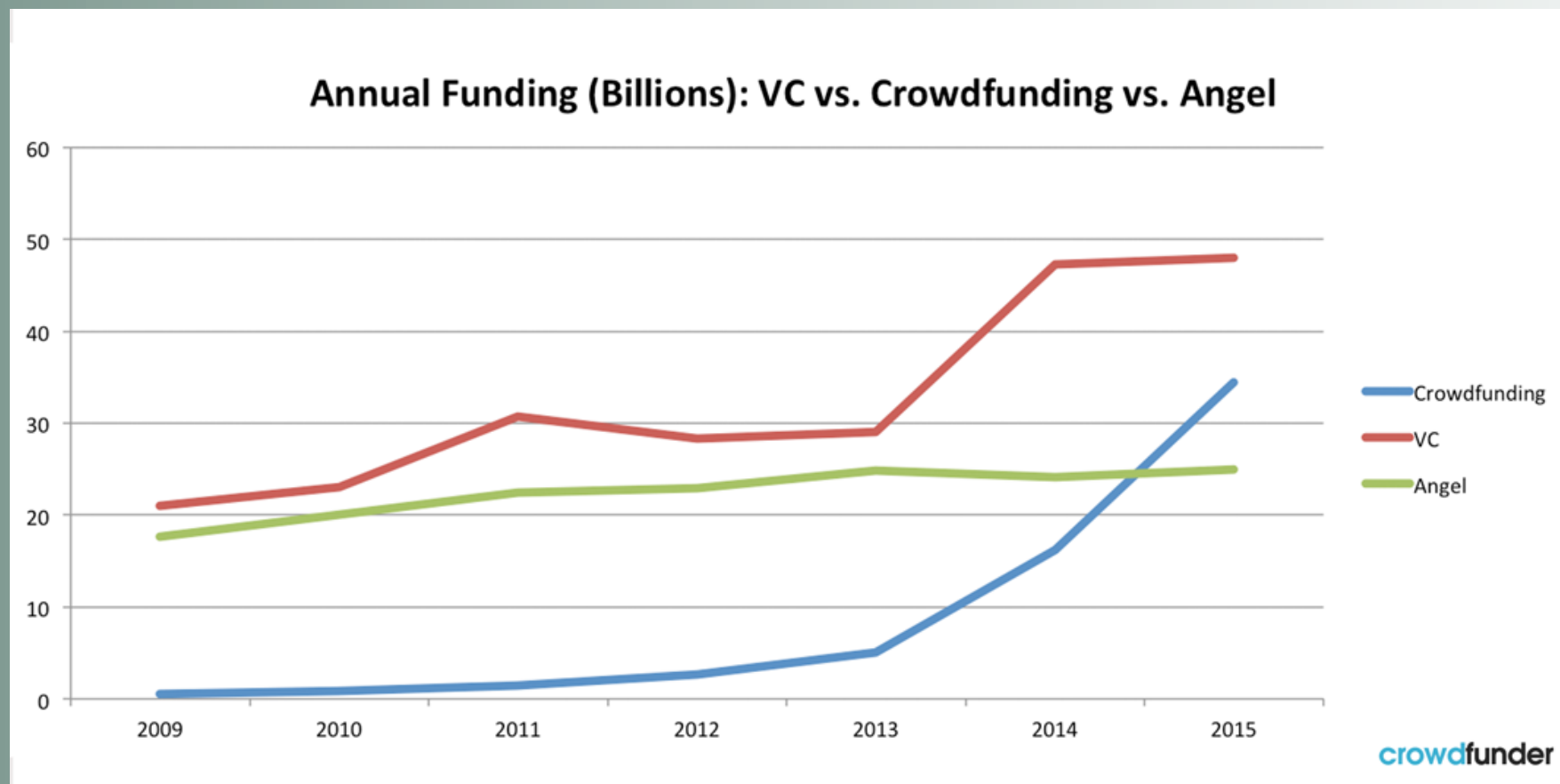


Source: Massolution 2015CF

Growth by crowdfunding model prediction for 2015 in millions of USD (research based estimate).



Likely to overtake venture capital soon





Australia – investment crowdfunding - current

- Chapter 6D Corporations Act disclosure obligations
- Exemption –
 - sophisticated investor - minimum amount payable \$500,000, or investor has net assets of >\$2.5m or gross income >\$250,000 for last 2 years; or
 - investor has AFSL or is another type of professional investor under Australian law
- Exemption (20-12 rule) Corporations Act s 708(1) –
 - issue to no more than 20 investors in 12 month period
 - raises no more than \$2m
 - offers must be “personal”
 - can’t be advertised
- ASIC class order CO 02/273 – “Business introduction or matching service” –
 - exemptions from disclosure requirements etc. in relation to offers of securities
 - up to \$5m per fundraiser; offers to up to 20 retail investors p.a.
 - investment opportunity can be advertised



Australia – investment crowdfunding - proposed

- *Corporations Amendment (Crowd-Sourced Funding) Bill 2015 (Cth)*
- Eligible CSF company –
 - Unlisted public company, limited by shares, majority of directors in Australia, principal place of business in Australia
 - Gross assets and annual revenue <\$5m
 - No substantial purpose of investing in other entities/schemes
- Type of securities – to be prescribed in regulations
- Issuer cap - \$5m in 12 months
- CSF offer document – content to be prescribed in regulations



Australia – investment crowdfunding - proposed

- CSF intermediary –
 - must hold AFSL
 - gatekeeper obligations –
 - conduct prescribed checks to a reasonable standard
 - not publish offer document if not satisfied of certain matters – including if has reason to believe company has knowingly engaged in misleading or deceptive conduct
 - other obligations
 - display risk warning on platform
 - application facility – including a risk acknowledgment
 - communication facility
 - cooling off rights prominently displayed
 - fees and interests prominently displayed
 - dealing with client money
- Minister can exempt from financial market licence and clearing and settlement facility licence requirements



Australia – investment crowdfunding - proposed

- Investor protections –
 - \$10,000 cap per investor, per issuer in any 12 month period, via the same intermediary
 - cooling off rights – unconditional, 5 business days
 - no financial assistance
 - risk acknowledgement
- Corporate governance concessions for up to 5 years –
 - no AGM
 - provide financials online only
 - no auditor until \$1m raised



Australia – debt crowdfunding

- Consumer credit – need an Australian credit licence
- Funding –
 - Example – Society One –
 - managed investment scheme - AFSL
 - wholesale investors only
 - average 40 investors per loan
 - each investor has a fractional interest in the loan



United States – investment crowdfunding

- Regulated Federally by the Securities and Exchange Commission (SEC)
- Jumpstart Our Business Startups (JOBS) Act 2013 – Title III - Crowdfunding
- SEC's Regulation Crowdfunding 2015 – released October 2015, effective May 2016.
 - Raise up to \$1m in crowdfunding offerings in 12 month period
 - Investment limits for individual investors –
 - annual income or net worth <\$100,000 - greater of \$2000 or 5% of lesser of annual income or net worth
 - annual income and net worth >\$100,000 – 10% of lesser of annual income or net worth
 - Securities cannot be resold for one year



United States – investment crowdfunding

- SEC's Regulation Crowdfunding 2015 – effective May 2016.
 - Disclosure – information to be filed with SEC – offer price, discussion of financial condition of company, financial statements, description of business and use of proceeds, information about officers and directors and holders of 20% or more of the company, and certain related party transactions
 - Crowdfunding platforms to be registered with SEC and be a member of FINRA, and to be subject to certain conduct rules – transparency and anti-fraud
 - Offers to be exclusively through one platform at a time



United States – investment crowdfunding

- Other exemptions, currently in force –
 - Rule 506 “safe harbour” –
 - Offer to “accredited investors” — net worth of at least \$1m, excluding primary residence, or have income at least \$200k each year for the last 2 years (or \$300k combined income if married) and have the expectation to make the same amount this year
 - Restricted securities
 - JOBS Act now permits offers through general advertising or solicitation
 - Broker dealer exemption for platforms
 - Regulation A+ - March 2015 – allows for offerings up to \$50m in any 12 month period - anyone can invest; can advertise.
 - Tier 1 – raise up to \$20m – no limit on investments
 - Tier 2 – raise up to \$50m – non-accredited investors limited to 10% of income/net worth per year and must have audited financials



United States – debt crowdfunding

- Consumer lending – subject to numerous consumer credit regulations – Truth in Lending Act and others
- Funding side –
 - Notes issued by platforms are securities – SEC issued cease and desist order against Prosper Marketplace, Inc. in November 2008
 - Lenders must register their notes with the SEC – administrative burden or operate within an exemption
 - Also state securities laws (“Blue Sky Laws”)
 - Can use Rule 506 or Reg A+ but these have limitations



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United Kingdom

- Regulated by Financial Conduct Authority (FCA)
- FCA does not regulate rewards based or donations based crowdfunding
- Self-regulation too – UK Crowdfunding Association code of conduct



United Kingdom – investment crowdfunding

- “Non-readily realisable securities”
- Direct offer promotions to retail investors only if they –
 - take regulated advice; or
 - qualify as high net worth or sophisticated investors; or
 - confirm they will invest <10% of net assets in security
- If not taking regulated advice, “appropriateness test” – gather information about client’s investment knowledge, warn client when investment not appropriate to profile (does not apply to debt securities)
- (These rules apply to any offers of such securities, not only those through crowdfunding platforms)



United Kingdom – debt crowdfunding

- Consumer loans subject to UK consumer credit regulation
- Funding side obligations –
 - Platform operators must be licensed
 - Minimum capital requirements
 - Protections in case of platform failure
 - Client money rules
 - Disclosure rules – “financial promotions” – sufficient information to make informed decisions; fair, clear and not misleading
 - Subject to FCA dispute resolution rules



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