

**FINANCIAL MARKETS CONDUCT BILL  
SUBMISSION ON EXPOSURE DRAFT  
Craigs Investment Partners Limited (CIP)**

Clause Number	Clause heading	Submission
<b>Part 1</b>	<b>Preliminary provisions</b>	
[insert rows]		
<b>Part 2</b>	<b>Misleading or deceptive conduct or false or misleading representations</b>	
[insert rows]		
<b>Part 3 and schedules 1 and 2</b>	<b>Disclosure offers of financial products</b>	
Clause 40	Meaning of material information	Option B better represents material information.
Clause 41	Consent of Person to whom statement attributed	This clause would appear to capture, amongst others, credit rating agencies, in that they provide an opinion of the credit worthiness of certain debt instruments. We are concerned that bringing them within the ambit of the legislation may cause them to withdraw from the retail market as has occurred in the Australian market. We would regard this as an adverse outcome for investors given that the rating agencies do provide an independent, well informed, and from the viewpoint of investors costless, opinion of issuer credit risks.
Clause 46	Waiting period after lodgement before processing applications for financial products	This represents a clear change to the prior arrangements where regulatory sign-off was available prior to public release of the documents. We believe that such sign-offs should be able to be received prior to public disclosure. In effect the proposed waiting period extends the offer period by one week and will typically delay the printing and distribution of the PDS until the requisite implied consent has been achieved. We note that a public amendment of the PDS will create negative reputational effects and we expect all issuers would much prefer from a logistical and reputational perspective to be informed and respond to queries in a private context.
Clause 69 (3) (C)	Prohibition of offers in course of unsolicited meetings or communications in certain circumstances	<p>The 12 month period could prove too restrictive for clients of authorised financial advisers.</p> <p>Whether a client transacts in a prescribed 12 month period will be driven by the nature and structure of their portfolio. There could be instances where no trading activity is required on portfolio, yet a client may have an interest in, or a need for, a new offer. Under this clause the authorised financial adviser would be prohibited in taking the offer to the client.</p> <p>The clause could be improved by removing a prescribed time period and focusing on the client protection afforded to investors under the Financial Advisers Act.</p> <p>Such a change would not impact the integrity of what the Financial Market Conduct Bill is trying to achieve.</p>

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Part 4 and schedule 3	Governance of financial products	
Clause 108	Overview	<p>CIP does not understand why the custodian must be independent of the manager of an MIS, when the manager can perform both manager and custody roles for a DMIS and when this is no formal supervisor in a DMIS structure.</p> <p>Within an MIS structure both the manager and supervisor must be licenced by the FMA and each performs prescribed roles and functions. By involving two parties (supervisor and manager) this structure should provide greater protection to investors than a DMIS. We agree that the manager and supervisor should not be associated persons (as required in clause 111).</p> <p>CIP believes that with the consent of the supervisor, where the manager's licence permit, the manager should be able to perform the role of custodian.</p> <p>Currently CIP operates as a custodian (CSL) and complies with the rules and requirements of the NZX. CSL has independent board members, is subjected to external audits. CSL is also a Registered Financial Service provider.</p> <p>With these additional controls CIP would argue that the custody and manager role should not be independent.</p> <p>The benefits of vertical integration of services such as Custodianship being provided the financial advisers or a entity within the financial advisers group is that the investor receives reduced costs to investing.</p>
Clause 111, 135	Requirement to have supervisor or other independent person as custodian	<p>CIP refers to the new concept of DMIS, where the DMIS licensee can be constructed to enable the DMIS provider to provide custodial services to their DMIS clients.</p> <p>We would suggest that the drafting of clause 426 (2) (b) "(unless the licence permits otherwise)" be added into clause 135 4 (b) and that the same approach be taken when considering "Custodianship of scheme property".</p> <p>CIP believes that the integrity of what the Financial Market Conduct Bill is trying to achieve would remain intact if custodians were required to be licenced. Additionally this would enable financial institutions to provide an integrated service to the client and minimise the cost to the investors.</p>
Clause 117	Contents of governing documents for registered scheme	CIP suggests that contents of the documents should include details of expenses that may be charged to the scheme
Clause 125 (2)	General duties applying in exercising of manager's function	<p>If the registered scheme is established under a trust deed then a Trustee must be involved in the operation of the scheme or have an overview and supervisory role.</p> <p>On this basis CIP would see little value in treating the manager as trustee and giving the manager the same duties and liabilities. The manager's obligations should be prescribed under the terms of the trust deed. If these are insufficient then the scheme should be registered</p>

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Clauses 142 – 145	Statement of investment policy and objectives	<p>Although CIP agrees with the requirement of drafting and maintaining a statement of investment policy and objectives we are concerned that reporting all limit breaks may overwhelm both the manager, supervisor and FMA.</p> <p>Breaches may inadvertently occur where large value clients join a scheme (i.e. distorting cash balances of a fund) or where there are severe movements in currency and markets.</p> <p>The potential need to report these breaches may result in managers drafting statement of investment policy and objectives very generally, rendering them less useful from an investors perspective.</p> <p>To reduce this outcome, CIP suggests either:</p> <ul style="list-style-type: none"> <li>• Stipulate a tolerance quantum outside of which a breach needs to be reported (e.g. have a tolerance factor of 10%); and/or</li> <li>• Stipulate a time frame around the breach (if breached for 5 business days); and/or</li> <li>• Provide a reporting process in relation to breaches whereby a manager summarises all breaches in a monthly or quarterly report to the supervisor.</li> </ul>
<b>Part 5</b>	<b>Dealing in financial products on markets</b>	
Clause 289	Licensing of markets for trading financial products	The way that this clause currently reads suggests that it captures companies that provide a mechanism for that companies employees to buy and sell shares in that company. For the avoidance of doubt shares in their own company are the only shares that would ever be traded.
<b>Part 6</b>	<b>Licensing and other regulation of market services</b>	
Clause 413	Changes to client agreement	<p>The words “materially adverse” could be added to this clause. As it currently reads this clause could cause unnecessary compliance cost which will ultimately need to be absorbed by the client and yet will offer no additional protection to the client.</p> <p>Such a change would not impact the integrity of what the Financial Market Conduct Bill is trying to achieve.</p>
Clause 421 (2)	Action that must be taken on limit breaks	<p>“If this section applies, the DMIS licensee must report the limit break to the FMA in the prescribed .....”</p> <p>CIP believe that such a point could create considerable work for both financial firms and the FMA. A recommendation that would keep the spirit of what is trying to be achieved in respect of this clause would be for all DMIS licensee to maintain a register of all such breaches and only material or systematic breaches should be reported to the FMA. Additionally CIP recommends that DMIS licensee should be able to build into their Investment Policy Statements the ability for such breaches to be remedied within an appropriate timeframe.</p>

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<b>Part 7</b>	<b>Enforcement and liability</b>	
Clause 462 (4) (b) (v)	Terms of compensatory orders	See above comments on clause 41 with reference to credit rating agencies.
Clause 462 (4) (b) (iv)	Terms of compensatory orders	<p>"An underwriter.." CIP questions if it is in fact the underwriter in the traditional New Zealand sense that this clause is trying to capture or if roles of an underwriter have been confused when off shore legislation has been referenced to.</p> <p>CIP strongly believe that an underwriter in the true sense of New Zealand terminology sits equal with an investor of the offer and it would be unfair and add additional costs which will need to be absorbed by the investing public if there were the ability to place compensatory orders against underwriters.</p>
	<b>Regulations and exemptions</b>	
[insert rows]		
<b>Part 9 and schedule 4</b>	<b>Miscellaneous provisions</b>	
[insert rows]		