

**FINANCIAL MARKETS CONDUCT BILL**  
**SUBMISSION ON EXPOSURE DRAFT**  
**Efficient Market Services Limited (Unlisted)**

Clause Number	Clause heading	Submission
<b>Part 1</b>	<b>Preliminary provisions</b>	
<b>Part 2</b>	<b>Misleading or deceptive conduct or false or misleading representations</b>	
Clause 21	Limited application of Part in relation to newspapers, magazines, broadcasting etc	As drafted a market operator that allows its issuers to post announcements on its market is liable for any misleading statements by the issuer – it is unrealistic for a market operator to accept this risk and it would be uneconomic for the market operator to manage this risk.
<b>Part 3 and schedules 1 and 2</b>	<b>Disclosure offers of financial products</b>	
<b>Part 4 and schedule 3</b>	<b>Governance of financial products</b>	
<b>Part 5</b>	<b>Dealing in financial products on markets</b>	
Clause 213	Meaning of information insider, inside information, and adviser	<p>This clause as drafted effectively places all deemed insiders in a position of being unable to trade as they will always be in possession of Material Information. There needs to be some safe harbour provisions.</p> <p>The defences available through clauses 234-238 are too limited in the absence of safe harbour provisions.</p> <p>We also note that an insider might have numerous pieces of information any one of which meets a materiality test but collectively does not, however a complainant is able to pick any one piece of such information in the prosecution.</p>
Clause 297	When licence may be issued	There is no reference in the drafting to the duration of an issued licence therefore we assume it is perpetual
Clause 295	General Obligations in respect of licensed markets	There needs to be clarity as to what are “adequate arrangements” to undertake the requirements of sub-clauses b & c – this clause could be used to drive a market operator out of business
Clause 296	Application for Licence	Unless a financial product market is exempted it will require a licence under this part. It is not clear however whether that financial product market also requires a market services licence under Part 6.
Clause 299	Conditions of licence	Who will determine what clearing and settlement arrangements are adequate – we are concerned that the regulator could attempt to enforce a Rolls Royce system when a Mini has worked for many years and will continue to suffice.

**[Insert name of submitter]**

<b>Clause Number</b>	<b>Clause heading</b>	<b>Submission</b>
Clause 301	Licence may cover more than one financial product market	We believe that for an operator to be allowed to operate more than one financial product market there needs to be a public interest test
Clause 319 & 320	Licensed market operator must give report on compliance with licensed market obligations to FMA  FMA to carry out licensed market obligations reviews	Whilst EMS accepts the requirement for reporting and review we are concerned that these clauses could create an unbounded compliance expense impost on a market operator and therefore risk the operator's commercial viability. Such uncertain risk parameters will impede the development of capital markets in NZ.
Clause 338	Licensed market operator must give FMA material information given to market participants	We believe there needs to be a definition of what is material
<b>Part 6</b>	<b>Licensing and other regulation of market services</b>	
<b>Part 7</b>	<b>Enforcement and liability</b>	
<b>Part 8</b>	<b>Regulations and exemptions</b>	
<b>Part 9 and schedule 4</b>	<b>Miscellaneous provisions</b>	