

FINANCIAL MARKETS CONDUCT BILL
SUBMISSION ON EXPOSURE DRAFT
Institute of Financial Advisers

Clause Number	Clause heading	Submission
Part 3 and schedules 1 and 2	Disclosure offers of financial products	
clause 69	Unsolicited offers	<p>We think this draft clause is far too broad and unnecessarily restrictive.</p> <p>Firstly, what is “because of?” (in the first paragraph) As we read it, it could capture an adviser who approaches a prospective client, reviews their situation, then recommends products. That, surely, is a direct consequence. It’s also the way advisers gain most of their clients – they will ask for referrals and then contact the client. It doesn’t work the other way round – clients do not in general contact an adviser. As it is now proposed, no adviser would be able to approach any prospective client because it will almost certainly result in a sale further down the line. So an adviser could review a client’s situation, but would be unable to implement any recommendations.</p> <p>As we read it, this clause stops any adviser talking to his or her clients about products unless they have acquired or sold a product in the past 12 months. There could be many occasions where a longstanding client relationship exists , where the adviser has not had to do this, but then becomes aware of a new product which better meets the client’s need. This is particularly true of products such as life insurance, but could also relate to investment products. What is the adviser to do? If they contact the client, it’s an unsolicited offer, and they’ve breached the law. We think there should be a blanket exemption where an established and existing client relationship occurs. In particular, if the adviser has a regular review process, the restriction should not apply.</p> <p>We also think there should be an exemption for AFAs. These people have had to meet high tests to become authorised and have two levels of disclosure to provide to consumers before the consumer can do anything.</p> <p>On the other side, we don’t think there should be any exemptions for “quoted financial products”. Why should an adviser offering shares be exempted, whereas the same adviser offering the same shares via a managed fund be caught?</p>