Mr. David Freyne
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Australian Securities and Investments Commission
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By email only
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Dear Mr. Freyne

Consultation Paper 264: Remaking ASIC class order on nominee and custody services (CP 264) and Proposed Draft Instruments

The Financial Services Council (**FSC**) has over 115 members representing Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, licensed trustee companies and public trustees. The industry is responsible for investing more than $2.6 trillion on behalf of 11.5 million Australians.

The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world. The FSC promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

We refer to CP 264 and the proposed draft Instruments. Thank you for the opportunity to make a submission on same. We have set out our comments in relation to the material below.

General Observations

1. Putting to one side, the dispute resolution proposals, the comments we have received from members broadly are supportive of the policy intent of the material.

2. We do note that part of the proposal is to preserve the effect of the current relief of CO 02/295 beyond the sunset date of April 2017. Another part of the proposed changes deals with removing the Ch 5C relief (certain MIS arrangements not requiring registration) on the basis that custody services will not qualify as managed investment schemes which need to be registered. We have not received any comments objecting to this proposal.

Access to dispute resolution for nominee and custody service clients and platform clients

3. We note that one aspect of CP 264 proposes that requirements be imposed on an AFS licensee operating a nominee and custody service or a platform

(**Operator**) to ensure retail clients have the same rights of complaint as they would have had if they had acquired the financial products directly.

4. Currently, in a practical sense, complaints by platform customers are directed to the issuer and investors are directed to the issuer's complaint service (if it exists).
   According to paragraph 25 of CP 264,
   ... a nominee and custody service or a platform should facilitate clients raising complaints with issuers (e.g. by confirming to the issuer that the client is a person who is eligible to make a complaint because of their holding and by providing details of the circumstances in which the client directed the operator to acquire the investment).

5. We have received comments from members that this proposal is impractical and would add significant cost to both the platform and product issuer for little if any benefit. Members have commented that they are unable to ascertain the benefit of a "look through" complaints system and the policy reasoning or motivation behind the proposal. In this regard, we note that many investors use retail platforms for ease of use and the ability to invest without having to source and maintain individual relationships. The administration and platform costs charged by an Operator are for the services and administration for these investors.
   It also has been noted that Operators necessarily would have to change complaints handling process and PDS disclosures.

6. We note that this proposed process potentially is quite problematic- not just for Operators but also for the product issuers themselves. The benefit of platform and nominee/custody services is an omnibus approach where the units or shares are held in the name of the platform or custody provider and not registered under the beneficial owner's name. When providing information to identify an underlying investor, there is an obligation not to inadvertently identify other investors and to treat all investors/members fairly.

7. The beneficial owner does not complete or attend to administration – this is seen as appropriate for non-sophisticated investors or members. Providing customers access to these dispute resolution processes means that the product issuer would not be in a position to be able to verify the customer's actual holding as they hold units on behalf all of the platforms holders and not individual investors. We are not sure how ASIC is proposing to overcome this issue without an Operator registering holdings individually (which would lead to higher administration and investment fees).

8. Some Operators, of course, do operate their own MISs and therefore are the product issuer, as the MIS invests in the underlying fund or shares directly and can net off the applications/redemptions within the pool. However, the outcome where this is not the case, will more commonly be as mentioned in the previous paragraph.

9. Overall, it has been noted that the proposal is likely to result in a poorer client and adviser experience, given that fund managers may be unable to deliver a consistent dispute resolution process. There also is a risk that complaints will be passed between Operators and ultimate product providers with no real traction of the complaint being gained on a timely basis.

10. This issue also is relevant to advisers facilitating access to dispute resolution. In particular, advice business members have indicated that there may be duplication if this topic is addressed by RG 148 and/or those RGs that relate to IDR and EDR processes.

11. A member has noted that the ultimate product issuer most likely will not recognise the complaining client as the legal owner, or the ultimate issuer's registry will most likely be the Operator's IDPS/IDPS-like vehicle (or in some cases the operator's appointed custodian). We discuss the potential implications of this further below.

12. The member then goes on to note that where a client is a passive investor, for example, the client acquires a model portfolio under which an investment manager makes all buy/sell decisions) ,then any investment related issues, consistently with good governance, should be raised with the Operator first rather than the issuer of the underlying investment.

13. Following on the comments we have made above, it seems to be an assumption under the proposals, that each IDPS investment option is "linked" to a **registered** managed investment scheme. This may not always be the case- thus, not all issuers would have established complaints handling procedures **for underlying retail investors**. Accordingly, wholesale schemes which are on a platform menu, in their dealings concerning complaints and dispute resolution, would, be unlikely to recognise anyone other than the **registered unit holder** as being entitled to complain. That unit holder of course is the Operator.

14. In the result, it seems to us that there is potential for major disruption for Operators and clients, whether wholesale or retail of relevant products. If the

draft CO requirements were implemented as proposed, Operators would have to cease offering further access to schemes that did not have the necessary retail dispute resolution arrangements (effectively, all wholesale schemes). This would be the case even if clients previously had invested in the Operator's product. The Operator also may well be in breach of its agreement with such a member by failing to provide such access. We suggest that this aspect be given further and detailed consideration.

Please contact Paul Callaghan on (02) 8235 2526 if you have any questions on our submission.

Yours Faithfully

Paul Callaghan

General Counsel

APPENDIX TO SUBMISSION 1 SEPTEMBER 2016
SUBJECT: Consultation Paper 264: Remaking ASIC class order on nominee and custody services (CP 264) and Proposed Draft Instruments

Question	Our Feedback
Do you agree with this proposal? If not, why not?	**Member's Position – Not agree** The member uses a single internal dispute process across all products irrespective of whether its entities are the IDPS Operator or RE of the fund. This process is compliant with regulatory obligations. In relation to IPDS complaints, the member's preference is for the platform operator to manage the dispute on behalf of the product issuer as the product issuer does not have a direct relationship with the customer nor does the issuer hold any customer details. **Also** • The member necessarily is compliant with RG165 regulations relating to complaint handling. Its aim is to resolve the majority of customer complaints during the first point of contact. • The member, when acting as an Operator, is the client vis-à-vis the fund manager so it is very rare that the Operator would pass a customer directly to an underlying fund manager to resolve a complaint • As a platform Operator, the Member does everything in its power to resolve the complaint for the customer
What benefits and disadvantages do you think will result from the implementation of this proposal? Please explain	**Benefits** • Clearer process for the IDPS member if they want to make a complaint with underlying manager **Disadvantages** • May lead to confusion and some poor customer experience as the fund manager will not know that the client holds their investment as the investment will be in the name of the underlying scheme. Consistent

	with our previous submission, managers may not recognise or deal with the client. In the case of a wholesale, non-registered MIS, there will be no dispute resolution scheme to enable dealing with retail clients.
Are there practical problems with implementing the proposal? Please give details	**Yes** –as noted above.
Should we consider alternative options and if so, what are they and why? Please give details.	The member's view is that the current requirements are adequate for IDPS operators and they should retain responsibility for addressing customer complaints.
Do you see any impacts to specific classes of product issuer that should be considered? For example, what are the detailed cost estimates that might apply to issuers or sellers of financial products that make issues after 30 June 2017 and that are not currently required to implement and maintain internal dispute resolution processes or to obtain membership of an external dispute resolution scheme?	Product issuers are likely to be required to update disclosure documents. If the changes proceed, the member proposes to contact fund managers to confirm the revised complaint process and to seek confirmation on their compliance.
Should ASIC also require issuers of financial products through a nominee and custody service or a platform, that have an AFS licence, to have an AFS licence that authorises the issue of financial products to retail clients? Please give details.	n/a

Specific Comments on Questions raised:

- The member seeks clarification as to the "look through" process – the RE/manager sees the IDPS as the investor. The member has questioned whether it needs to provide the RE/manager with visibility to its customers?

  The member believes, consistently with CP 264 item 25, that the expectation is that the member would confirm that a client is a client of our IDPS on a case by case basis. It seems to us that it is not intended that Operators provide the underlying RE blanket access to customer details.

- However, the client also questioned how its privacy obligations are to be met in these circumstances. A further issue is how this would impact the terms, consents and privacy obligations in relation to the member's disclosure documents.

  The member has noted that it assumes that the member consents by participation in the platform to provision of information to the underlying RE.

- The member proposes, if the suggestions are adopted, to request that fund managers confirm they have a process in place to manage complaints by IDPS clients. However, as we have commented in our initial submission managers may not recognise that they have any obligation to deal with underlying clients or in the case of wholesale schemes, will not have dispute resolution arrangements appropriate for ultimate, underlying investors.

DATE: 07.09.16