The Director, Skills and Innovation Policy Section,

Migration Planning and Visa Policy Branch,

Department of Home Affairs

Submission on Discussion Paper on the Complying Investment Framework (CIF) for the Business Innovation and Investment Program (BIIP)

1. Should the ratios currently applied by the CIF to the Significant Investor Visa remain?

We have been consistent in our views that an increase in the allocation to VCPE from 10% of the CIF to 20% will deliver the greatest economic benefit for Australia under the programme, without materially impacting demand for the visa. The new argument that fits your goal of improving program integrity, is that the venture capital sector is the most heavily regulated of all CIF categories. Every individual investment must fit Ausindustry requirements and be reported quarterly and annually. So increasing the venture capital ratio will increase the amount in more closely regulated sectors, without increasing the cost of compliance for funds managers.

2. How should the CIF be applied to the Investor Visa?

We support the allocation of investments in accordance with Option 2. Our rationale is:-

a) A key requirement for all ESVCLP and VCLP funds is that any Limited Partner making an investment is a sophisticated investor. Given that they will not have a history of having an income greater than $250,000 in Australia under that test, a minimum investment of $500,000 would be required to satisfy the regulatory requirement.
b) Investment into VCPE funds will be of substantially more economic benefit to Australia in job and industry creation, than investment into the Emerging Companies component under Option 3.
c) Note that we have previously proposed that the Investor Visa be used as a method for allocating investment into Regional economies in Australia, without requiring the applicant to reside regionally, in return for a lower overall investment amount. This is modelled on the US EB5 visa which encourages investment into non-metropolitan markets through a reduced total investment against a metropolitan visa. Our suggestion would be to ensure that a significant percentage of the overall investment be allocated to regional investment, either through the VCPE or Balancing investment categories, thereby creating the maximum job creation and economic benefit for regional Australia.

Level 19, 1 Macquarie Place, Sydney ● Level 6, 15-17 Queen Street, Melbourne
www.atlasadvisors.com.au ● admin@atlasadvisors.com.au ● ABN: 24164576569 AFSLNo.443264

3. Changes to the types of funds eligible to offer complying investments

a. Should all eligible funds be limited to ASIC registered funds only?

We do not support the restriction of managed funds to being ASIC registered (Retail) funds as this simply creates an unnecessary level of cost and compliance for the investor and manager that is not consistent with the nature of the investor or investment. All investors in the SIV CIF are sophisticated investors under the Corporations Act.

When we provided advice to the then Department of Immigration and Citizenship back at the formation of the Complying Investment framework in mid-2012, the proposal was to use retail ASIC managed funds as a way to ensure appropriate regulatory compliance. After consultation with the Department it was agreed that ASIC unregistered (wholesale) managed funds issued by a Australian Financial Services licenced funds manager was a more appropriate structure. By doing so reduced the cost to the investor and reduced the cost and complexity for the issuer, while affording an appropriate level of regulatory oversight at the issuer level. Note that the VCPE CIF is already regulated by AusIndustry.

Assuming that the intent is to ensure integrity of products issued as appropriate, we strongly believe that the current arrangements are appropriate. You may wish to consider removing the ability for a Corporate Authorised Representative (CAR) of an Australian Financial Services licence holder to issue products under the SIV CIF where they are not as associate of the licence holder. This would we believe increase the integrity of the product issuance as the appointment of a non-associated CAR tends not to attract the same level of compliance oversight on product issuance.

b. Should the threshold of funds under management be increased to further improve the integrity and function of the CIF?

We believe that the current level of $100m in Funds Under Management for an issuer of products is an appropriate level and do not support the lifting of this minimum. In the pre-2015 CIF there were by our account over 200 product providers participating in the programme and by contrast in the post-2015 CIF there are only a handful of product manufacturers in the programme. We do not believe restricting the number of participants further or creating more barriers for new entrants fits with the need to increase product choice for investors. Equally, we do not believe that increasing the current level of FUM would improve the quality or integrity of investments and note that breaches of the CIF have tended to be with larger providers.

Level 19, 1 Macquarie Place, Sydney ● Level 6, 15-17 Queen Street, Melbourne
www.atlasadvisors.com.au ● admin@atlasadvisors.com.au ● ABN: 24164576569 AFSLNo.443264

4. What are your views on the following options to address potential integrity concerns, provide greater clarity in the CIF and to ensure the benefits to the Australian economy are realised?

a. *Provide a clear definition of Fund of Funds (FoF). Currently FoFs is referred to in the general requirements of the instrument but is not defined. This is open to interpretation and potential misuse.*

- *Fund of funds could be defined as:*

i. A 'fund of funds' is generally a managed investment fund that invests in other funds.
ii. an investor is permitted to invest in managed investment funds through a fund of funds or investor directed portfolio service provided the managed investment fund(s) in which the fund of funds or investor directed portfolio service invests comply with the other requirements of the complying investment framework.
iii. the fund of fund structure cannot be solely vertically integrated.

- *Would this definition be clearer and mitigate potential risks?*

We believe that the concept of a FoF should be limited solely to the VCPE CIF category and only to AusIndustry registered AFOF structures. The use FoF structures in the other CIF categories is not required as directly managed schemes are widely available and elimination of potential abuses under a FoF exemption will always be problematic. We support the use of an investor directed portfolio service, which is simply a device to allow intermediaries to select directly managed schemes.

b. *Can the 12 month option for Venture Capital funds investments be removed or reduced as the market is now more mature? (section 8(2) of IMMI 15/100)*

Yes the 12 month option can be removed as there are AusIndustry registered AFOF structures widely available for investors that are perpetually open and do not require any wait period for entry.

c. *Under the Balancing Investment component should investments be limited to bonds or notes issued by a company that is quoted on the Australian securities exchange?*

- *This could include removing items (ii) and (iii) from the following (section 10(3)(b) of IMMI 15/100):*

i. a company that is quoted on an Australian securities exchange
ii. a wholly-owned subsidiary of a company mentioned in subparagraph (i), if the subsidiary is incorporated in Australia; or
iii. a company incorporated in Australia, or a registered foreign company, if the bonds or notes are rated as investment grade by a credit rating agency that holds an Australian financial services licence;

Level 19, 1 Macquarie Place, Sydney ● Level 6, 15-17 Queen Street, Melbourne
www.atlasadvisors.com.au ● admin@atlasadvisors.com.au ● ABN: 24164576569 AFSLNo.443264

We do not believe that changes to this definition are warranted given that all companies currently eligible for investment under the CIF would be Australian registered hence the economic benefit would flow to Australia. We believe the use of an AFS licenced rating agency as a pre-condition to meeting the CIF criteria is an appropriate integrity tool. In respect of any change to limit eligible companies to ASX listed companies at the exclusion of other Australian exchanges this would be anti-competitive.

d. *Ensure the emerging companies investment is made into securities that properly meet the market capitalisation requirements for the emerging companies component of the CIF.*

This could include adding item (iii) to the following (section 9(5) of IMMI 15/100):

The investment must not be made in:

i. securities issued or proposed to be issued by a government; or

ii. debentures; or

iii. securities that otherwise meet the requirements under this section but where the issuer of those securities invests the proceeds of the issue of those securities in securities that do not meet the market capitalisation requirements under subsection six.

We do not support the further restriction of this CIF as the market capitalisation test already restricts the investment into securities that have a market capitalisation of <$500m. Any securities that are >$500m in market capitalisation are already non-complying. Further we do not believe that restricting the nature of investment simply to the equity component of a company balance sheet would deliver the maximum economic benefit to those entities. Many smaller listed companies seeking to raise capital will look to both listed debt and equity issuance to grow their business.

The development of a listed retail bond/debenture market is critical for smaller companies to facilitate raising capital for expansion given the lack of alternatives to bank funding in Australia. In the majority of cases this will be primary issuance of debt securities in contrast to listed equity securities which in almost all cases will be secondary market trading. The CIF settings should allow for investments to be made into listed emerging company equity and debt securities. The fundamental difference is that in primary issuance the security issuer (company) receives the proceeds but in secondary market trading the market seller receives the proceeds.

Given that the original objective of the Emerging Companies was to support expansion capital for smaller companies we do not support any change to the existing CIF.

Level 19, 1 Macquarie Place, Sydney ● Level 6, 15-17 Queen Street, Melbourne
www.atlasadvisors.com.au ● admin@atlasadvisors.com.au ● ABN: 24164576569 AFSLNo.443264

e. *Clarify the use of derivatives for risk management and ensure hedging is only used to manage currency and interest rate movements and not used to guarantee investment value.*
Specify that complying investments may only be made in a derivative if the investment is not designed to substantially reduce or completely eliminate the exposure of an investor to the risk of loss from changes in the market price of an investment. Furthermore, allow hedging of currency and interest rate risks, however capital guarantee products should no longer be considered as complying investments.

To achieve this, section 11(9) in the current instrument (IMMI 15/100) could be amended to the following:
Derivatives
i. An investment may be made in a derivative, other than an option mentioned in paragraph (e) of the definition of securities in section 4, only if:
a. the investment is made for risk management purposes; and
b. the investment is not a speculative investment; and
the investment is not designed to materially reduce or completely eliminate the exposure of an investor to the risk of loss from changes in the market price of an emerging companies investment.

We support the amendment of the instrument as set out above to ensure the integrity of CIF products.

f. *Clarify that venture capital investments (in addition to emerging and balancing investments) may be made through a fund of fund structure.*

"Venture capital fund" could be added to the following (section 11(11) of IMMI 15/100):

Managed investment fund and venture capital fund investment —fund of funds or investor directed portfolio services

An investment in a managed investment fund or venture capital fund may be:

a. made through a fund of funds or an investor directed portfolio service, if the investment is otherwise in accordance with the requirements of this Part; and

b. held in cash in the fund of funds, or investor directed portfolio service:

(i) *for a period of up to 30 days after the time the funds are first made available for investment; and*

(ii) during any switching period mentioned in subregulation 5.19C(7) of the Regulations.

Level 19, 1 Macquarie Place, Sydney ● Level 6, 15-17 Queen Street, Melbourne
www.atlasadvisors.com.au ● admin@atlasadvisors.com.au ● ABN: 24164576569 AFSLNo.443264

We believe that they instrument should be amended to only allow AusIndustry registered Australian Fund of Funds either directly or through an investor directed portfolio service (IDPS) to ensure the integrity of the VCPE CIF. We do not support the use of managed investment funds using a fund of fund structure to invest into ESVCLP or VCLP partnerships, as these entities provide an unnecessary layer of complexion and opaqueness to the CIF.

5. Should fund managers be required to provide annual independent audit reports to show their compliance with the CIF legislative instrument?

   We do not support the proposal to require independent audit reports to demonstrate compliance with the CIF legislative instrument. This would incur an unreasonable cost on fund managers and ultimately investors without significantly improving the compliance to CIF, as funds managers would still be required to sign management audit representation letters that ultimately retain the audit responsibility back with the manager.

   All fund managers are already subject to an annual audit as a requirement of the Australian Financial Services Licence. While the audit does not warrant the CIF status of their funds, it does provide an appropriate integrity check on the issuers. It also strengthens our proposal to remove non-associated Corporate Authorised Representatives as issuers of CIF as they are not subject to the same AFS audit requirements.

Guy Hedley

Executive Chairman

Geoff Waring

Geoff Waring

General Partner, Stoic Venture Capital ILP

17th February 2021

Level 19, 1 Macquarie Place, Sydney ● Level 6, 15-17 Queen Street, Melbourne
www.atlasadvisors.com.au ● admin@atlasadvisors.com.au ● ABN: 24164576569 AFSLNo.443264

"The CIF should allow for the inclusion of Social Impact Investments in the Emerging Companies category. There are an estimated 20,000 social impact enterprises in Australia, employing an estimated 1.3m people and generating 8.5% of GDP**. These enterprises need funding like any other and increasingly are turning to the investment community via "social impact investing". The Australian Government has proactively supported the development of social impact investing in Australia, particularly since the 2017-18 budget delivered by then Treasurer Scott Morrison. These initiatives have created a strong groundswell of industry and public sector collaboration. What is universally acknowledged as being the next logical and required step in this development is access to private capital. While renewable energy and green building projects are well funded already, social impact projects tend to be smaller and therefore more difficult for institutional investors to economically assess and invest in. This is the same set of conditions that led to the CIF focussing SIV capital toward the VC and Emerging Companies sectors of the Australian economy.*

Social Impact Investments will include social impact bonds and social impact equity investments. Many organisations cannot issue equity, eg not-for-profits, so to access private capital they need to issue bonds, debentures or other debt-like securities. For this reason, we suggest that the Emerging Markets category include social impact investments and that all debt-like securities remain allowable, subject to the existing $500 million capitalisation restrictions."