



Geraldine Lamont
Retail Investors Policy Officer, Financial Advisers
Australian Securities and Investments Commission
Level 5, 100 Market Street
Sydney NSW 2000

3 May 2013

Dear Ms Lamont

Re. Managed Discretionary Accounts: update to RG 179

ASIC's proposed changes place MDAs squarely in the mainstream of tools available to advisers, aligned with FoFA and regulated consistently with managed investment schemes. IMAP fully supports the review to ensure the best levels of service to investors using MDAs.

The changes which these proposals bring to MDAs brings our sector into line with the wider changes which FoFA has brought to the advisory industry with greater focus on best interests tests, disclosure and opt in.

The effect on adviser's business models of the proposed changes is likely to be to reinforce the position of MDAs as a core service allowing the cost effective delivery of advice and portfolio management to the middle market and above. Like all sectors of the advice industry, IMAP is concerned about limiting/reducing conflicts of interest which is an issue given the vertical integration by institutions.

Yours faithfully

Toby Potter

Chair, IMAP

Preamble

Since the initial development of the MDA Class Order [CO 04/194] and RG179 10 years ago, MDA services have developed into a significant part of the financial services environment, albeit a small proportion of the overall industry. Technology development, regulatory change – particularly FoFA – and the increasing sophistication of investors mean that MDA services are increasingly being used to provide financial services which meet retail investors' needs more effectively than the more traditional vehicles such as unitised trusts and retail superannuation funds.

IMAP considers that ASIC's goals in amending the MDA regulations should be to achieve the following:

- Confident and informed investors;
- Clarity of regulation of the obligations for MDA Operators, external MDA Advisers and other associated financial services providers;
- Protection for retail investors which is commensurate with the risk inherent in each element of the MDA service provided to them
- Reduction in cost of service.

Unlike other financial services, MDA services are delivered in a variety of ways with more diversity than is the case in managed investment schemes or super funds. In developing a regulatory regime to manage this class of financial service, ASIC should create a regulatory regime which has regard to this diversity.

IMAP notes that despite the extremely difficult market conditions over last five years, there do not appear not to have been any significant investor losses resulting from systemic failure in the operation of an MDA service. IMAP believes that this is primarily a result of a regulatory regime which requires personal advice to be provided as part of the provision of MDA services and discrete asset holding requirements. Further, IMAP is unaware of any enforceable undertakings imposed on an MDA operator. This is in stark contrast to problems with major vertically-integrated organisations.

The members of IMAP believe that the fact that MDAs have operated without incident for over a decade and the growth in MDA services can be attributed in large part to:

- Investor's desire to have portfolios which more closely reflect their personal circumstances;
- Lower total costs compared to the more common advice / platform / managed fund approach;
- Preference for directly held securities;
- Asset holding by recognised custodians or in client own name;
- Transparency of;
 - Holdings - in contract to unitised vehicles;
 - Investment outcome; and
 - cost.

IMAP is concerned to ensure these benefits are supported by the regulatory regime.

In our response to the proposed regulations, IMAP has sought to highlight the fact that there are four key components to an MDA service. These are;

- Personal Advice
- Investment Management
- Administration (including reporting)
- Asset Holding Arrangements

We propose that the AFSL authorisation structure and regulatory framework for MDA Operators recognises these four components and the diversity in the manner in which they are provided to clients. IMAP is concerned that the current regime and the proposed changes may not adequately recognise this market reality, leading to over regulation of many MDA service models. We explore this in more detail below.

The proposed regulatory changes substantially close the gap between the managed investment schemes and MDAs. IMAP notes that in Paragraph 19 of the Consultation Paper, ASIC states that its goals include consistency with other financial products and services. IMAP is of the view that the approach taken in several areas fails to recognise the substantially lower risk inherent in MDA operating models due to the fact that there is no pooling of assets and in many case the fact that these are operated through Regulated Platforms, affording investors a substantial degree of protection, independent of the MDA Operator.

A principal feature of the proposed changes to the regulations is a substantial NTA requirement. The requirement and the proposed calculation methodology will substantially advantage large vertically - integrated organisations at the expense of many of the current independent MDA operators . This will have the effect of reducing investor choice and favouring those organisations where conflicts of interest are endemic. It will have a further effect of increasing costs to investors without necessarily resulting in an improvement in investor protection.

Operating Models

As stated above, one of the defining aspects of the way that MDA services are currently provided is that MDA Operators provide one, some or all of the four components through internal provision or outsourcing. This has led to the development of a number of operating models.

As illustrated in the table below, IMAP believes that the main MDA operating models are:

- **Full service MDA Operators** who provide and are responsible for all aspects of the MDA service;
- **Administration Specialist MDA Operators** who undertake Administration and Reporting, but outsource Advice, Investment Management and Custody, while remaining responsible for this through their contracts with investors;
- **Investment Manager MDA Operators** who outsource administration , custody and personal advice; and
- **Regulated Platform MDA Operators** who may provide investment management and advice but rely on a regulated platform for administration and custody.

For Administration Specialist and Investment Manager MDA Operators, External MDA Advisers advise clients to utilise the MDA service.

	Components Provided by MDA Operator				
Type of MDA Operator	Personal Advice	Investment Management	Admin / Reporting	Asset Holding	Comments
Full Service	✓	✓	✓	✓	Custody may be outsourced to an external custodian or the assets may be held client name
Administration Specialist		(✓)	✓	-	Investment Management generally and Custody always outsourced
Investment Manager		✓	-	-	Administration and Custody are always outsourced
Regulated Platform	✓	✓			MDA operator arranges for investor to use a regulated platform

- ✓ means the service is provided directly by the MDA Operator
- means the service is provided through the MDA Operator by an outsource provider.

It should be noted that further variations of these models also exist.

These models create substantially different levels of risk for investors. The table below shows which of the elements of risk associated with MDA services arises from each MDA service component.

	Components of MDA Service			
Types of Risk	Personal Advice	Investment Management	Admin / Reporting	Asset Holding
Inappropriate advice	✓			
Investment risk		✓		
Operating risk			✓	✓
Asset custody risk				✓
Inadequate financial resources	✓	✓	✓	✓
Inadequate management of conflicts	✓	✓		

IMAP believes that the MDA regulatory regime should be designed that appropriate levels of requirements for disclosure, expertise, NTA and professional indemnity insurance apply to each model, commensurate with the risk associated with that model. Clarity is also required regarding the AFS licensing authorisations required for different models. The table overleaf sets out IMAP's views regarding these matters.

A regulatory regime which fails to recognise the distinctive models that exist in today's marketplace and that might emerge in the future will result in the loss of access and excessive cost to investors.

Clarity in Authorisation

AFS License authorisations are currently issued as either “interests in managed investment schemes limited to MDA services” or “financial products limited to miscellaneous financial services limited to MDA services”. There has been conflicting advice from ASIC about the type of authorisation which an MDA Operator ought to be applying for.

ASIC should make it clear in its explanatory material which authorisation it expects to apply to which type of service. This would appear logically to be :

interests in managed investment schemes limited to MDA services” – only where the service is run as an MIS with a PDS and RE – and

“financial products limited to miscellaneous financial services limited to MDA services”. – for all other MDA services i.e. most current MDA services

IMAP's Proposed Authorisations and Regulatory Requirements

Type of MDA Operator	Proposed Authorisations	NTA	Professional Indemnity	Experience
Full Service MDA Operator	<p>Provide financial product advice for the following classes of financial products [Among others as authorised] interests in managed investment schemes [financial products limited to miscellaneous financial services] limited to: MDA services</p> <p>deal in a financial product by:</p> <p>(i) issuing, applying for, acquiring, varying or of a financial product in respect of following classes of financial products: interests in managed investment schemes limited to:</p> <p>(1) MDA services</p> <p>applying for, acquiring, varying or disposing of a financial product on behalf of another person in respect of the following classes of products:[As Appropriate for the MDA Service]</p> <p>(A) deposit and payment products limited to:</p> <p>(1) basic deposit products;</p> <p>(B) derivatives;</p> <p>(C) foreign exchange contracts;</p> <p>(D) debentures, stocks or bonds issued or proposed to be issued by a government;</p> <p>(E) securities; and</p> <p>(F) interests in managed investment schemes [financial products limited to miscellaneous financial services] limited to: MDA services;</p> <p>provide the following custodial or depository services: MDA Custodian to retail and wholesale clients.</p> <p>Conditions: As currently for an MDA Operator and Custodian</p>	\$10m / 0.5% of assets / 10% revenue	\$5m	Financial advice Dealing Investment management Operations of a service Custody

Type of MDA Operator	Proposed Authorisations	NTA	Professional Indemnity	Experience
Administration Specialist MDA Operator	<p>Provide general financial product advice for the following classes of financial products: [Among others as authorised] financial products limited to: Managed investment schemes limited to MDA services; deal in a financial product by: (i) issuing, applying for, acquiring, varying or of a financial product in respect of following classes of financial products: interests in managed investment schemes [financial products limited to miscellaneous financial services] limited to MDA Services</p> <p>applying for, acquiring, varying or disposing of a financial product on behalf of another person in respect of the following classes of products:[As Appropriate for the MDA Service] (A) deposit and payment products limited to: (1) basic deposit products; (B) derivatives; (C) foreign exchange contracts; (D) debentures, stocks or bonds issued or proposed to be issued by a government; (E) securities; and interests in managed investment schemes [financial products limited to miscellaneous financial services] limited to: MDA services;</p> <p>provide the following custodial or depository services: MDA Custodian to retail and wholesale clients.</p> <p>Conditions: MDA Operator must enter into an outsourcing arrangement with an appropriately authorised custodian</p>	\$150,000 / 0.5% of assets / 10% of MDA Revenue	\$5m	Dealing Investment management Operations of a service Custody

Type of MDA Operator	Proposed Authorisations	NTA	Professional Indemnity	Experience
Investment Specialist MDA Operator	<p>Provide general financial product advice for the following classes of financial products [Among others as appropriate] interests in managed investment schemes [financial products limited to miscellaneous financial services] limited to MDA services</p> <p>deal in a financial product by:</p> <p>(i) issuing, applying for, acquiring, varying or of a financial product in respect of following classes of financial products: interests in managed investment schemes [financial products limited to miscellaneous financial services] limited to MDA Services</p> <p>applying for, acquiring, varying or disposing of a financial product on behalf of another person in respect of the following classes of products:[As Appropriate for the MDA Service]</p> <p>(A) deposit and payment products limited to:</p> <p>(1) basic deposit products;</p> <p>(B) derivatives;</p> <p>(C) foreign exchange contracts;</p> <p>(D) debentures, stocks or bonds issued or proposed to be issued by a government;</p> <p>(E) securities; and</p> <p>(F) interests in managed investment schemes [financial products limited to miscellaneous financial services] limited to</p> <p>MDA Services</p>	\$150,000 / 5% of MDA Revenue	\$2m	General advice Dealing Investment management
Regulated Platform MDA Operator	<p>Provide financial product advice for the following classes of financial products: [Among others as authorised]</p> <p>financial products limited to:</p>	\$50,000 / 5% of MDA Revenue	\$5m	Financial advice Dealing

Type of MDA Operator	Proposed Authorisations	NTA	Professional Indemnity	Experience
	<p>interests in managed investment schemes [financial products limited to miscellaneous financial services] limited to;</p> <p>deal in a financial product by:</p> <p>(i) issuing, applying for, acquiring, varying or of a financial product in respect of following classes of financial products: interests in managed investment schemes [financial products limited to miscellaneous financial services] limited to</p> <p>applying for, acquiring, varying or disposing of a financial product on behalf of another person in respect of the following classes of products:[As Appropriate for the MDA Service]</p> <p>(A) deposit and payment products limited to:</p> <p>(1) basic deposit products;</p> <p>(B) debentures, stocks or bonds issued or proposed to be issued by a government;</p> <p>(C) securities; and</p> <p>(D) interests in managed investment schemes [financial products limited to miscellaneous financial services] limited to;</p> <p>Conditions:</p> <ul style="list-style-type: none"> • MDA services may only be provided in respect of interests held in a Regulated Platform or a Managed Investment Scheme that has agreed to accept instructions from the MDA Operator; • MDA Operator cannot deposit or withdraw funds from the Regulated Platform or a Managed Investment Scheme using the discretion. • The discretion cannot be used to acquire or dispose of non-limited recourse products or derivatives 			Investment management
External MDA Adviser	provide financial product advice for the following classes of financial products: financial products limited to:	As currently required for an AFSL	\$2m	Advice

Type of MDA Operator	Proposed Authorisations	NTA	Professional Indemnity	Experience
	<p>(A) Managed Investment Schemes limited to MDA services; and</p> <p>deal in a financial product by: applying for, acquiring, varying or disposing a financial product on behalf of another person in respect of the following classes of products:</p> <p>interests in managed investment schemes [financial products limited to miscellaneous financial services] limited to MDA services;</p> <p>to retail and wholesale clients.</p>			Dealing

Summary of IMAP's Recommendations:

1. **MDA Authorisations:** IMAP believes that the MDA authorisations recognise functions actually performed by the MDA Operator including the creation of an AFSL condition for MDA operators which permits them to operate the MDA service only for retail clients who have concurrently become clients of a regulated platform.
2. **NTA Requirements:** The NTA requirements that ASIC imposes should reflect the services that the MDA operator is authorised to provide.
3. **MDA Experience requirements:** The expertise requirements should be more closely aligned to the services which an MDA Operator provides including
 - Advice
 - Operational management
 - Investment management
 - Custody
4. **Professional Indemnity Insurance Requirements:** PI requirements should be adjusted to match the risk of the service operated by the MDA Operator
5. **FSG:** Removal of the requirement to list MDA Fees in the FSG, retaining full fee disclosure in the SOA and MDA Contract.
6. **Fee Disclosure:** Clarification that the Fee Disclosure Statement should apply only to those elements of MDA fees which relate to advice fees, where these can be identified discretely
7. **Annual Reviews:** IMAP maintains that the requirement for an annual review is excessive and would be better expressed as a two-year requirement. The requirement for annual reviews imposes a cost on the advising organisation which may be inappropriate given the nature of client relationship or size of funds under management.
8. **Record of Advice:** IMAP requests that ASIC makes it clear that a review can be undertaken through an ROA, if appropriate, rather than requiring a full SOA.
9. **ASX Participants' Exemption:** IMAP notes that in RG166 the financial requirements proposed to be imposed on MDA Operators may not apply to ASX Participant Members. We invite ASIC to consider whether this is appropriate where the other financial services provided include MDA services. A market Participant minimum NTA requirement is \$1m and is a broader definition of NTA than that proposed under the MDA regulations. A successful MDA service operated under the arrangements currently proposed by ASIC might easily require substantially more than the ASX requirements and that it be held in cash or near cash instruments.

IMAP's Specific Responses to Consultation Paper Proposals

Proposal	IMAP Response
B1Q1 – B1Q1	IMAP has no view on these questions
B2Q1	IMAP has no view on this question
B3Q1 – B3Q18	IMAP has no view on these questions
B4Q1	<p>IMAP agrees but considers that the authorisations required and the regulatory requirements imposed should be commensurate with the risks associated with this model. Please see the table in the Preamble for details of the requirements which IMAP considers appropriate.</p> <p>IMAP also requests that ASIC provide guidance regarding what services can be provided by financial advisers without the need for an MDA authorisation. For example, can they do the following if these are pre-authorised by the client following the provision of an SoA containing the recommendation and an explanation for the recommendation :</p> <ul style="list-style-type: none"> • Rebalance to the portfolio described in the SOA including switching investment options within a managed investment scheme; • Buy a stock when the price falls to a particular level or when cash becomes available to fund the purchase; or • Substitute one security for another in order to take advantage of pricing opportunities where both securities are described in the SoA.
B4Q2	Yes, the imposition of an MDA license requirement will impose significant additional compliance and monitoring costs on AFS Licensee currently operating under the No Action Letter.
B5Q1	IMAP believes that December 2015 will provide an adequate transition period
B6Q1	<p>IMAP agrees with the proposition to exempt MDA operators using a regulated platform from providing duplicate reports</p> <p>IMAP notes that the reporting requirements on superannuation fund platforms are less than those of IDPS Operators. The exemption should apply where the client receives reports from the platform provider that meet the standard in the IDPS Class Order</p> <p>IMAP does not agree that the MDA Operator must review the platform reports as this duplicates the compliance obligation to which the platform provider is already subject and would add materially to costs without any resultant client benefit.</p> <p>IMAP proposes that the MDA Operator need only have “no reason to believe that the</p>

	reports are not accurate and complete”
B6Q2	IMAP considers that MDA Operators who operate only through a regulated platform should be subject to regulatory requirements which are commensurate with the risks associated with the service they provide. Please see the table in the Preamble for details of the requirements which IMAP considers appropriate.
B6Q3	<p>IMAP believes that the Class Order and RG105 needs to be more explicit in the experience requirements which are applicable to Responsible Managers of MDA services. For example an MDA service operated solely through a regulated platform should require an RM to have 3 out of the last five years experience in advising retail clients and investment management but would not need to have the operational experience which would be required if the MDA Operator also provided full Administration and Custody services</p> <p>IMAP does not believe the NTA requirements are necessary if an MDA is operated through a platform. See below for more details</p>
B7Q1	IMAP agrees with this proposal. IMAP notes that the requirements – particularly in reporting – differ between IDPS / IDPS like and Superannuation platforms. Where the MDA is operated as an MIS, the Responsible Entity of the MIS should have similar reporting requirements
C1Q1	<p>No. IMAP does not agree that all MDA Operators should be subject to similar financial requirements to other institutions which act as Responsible Entities</p> <p>ASIC’s policy should:</p> <ul style="list-style-type: none"> • Reflect the substantial differences in risk and consequently NTA requirements between the operating model used by the MDA Operator; • Recognise that ownership and operational risk are lower where several elements of the MDA service are provided via other regulated parties and • Not duplicate the financial requirements applying to a single investor’s assets. <p>IMAP proposes that the financial requirements for MDA operators who only operate through a Regulated Platform or Managed Investment Scheme are a minimum of \$50,000 or 5% of MDA revenue</p> <p>A regulated structure would include:</p> <ul style="list-style-type: none"> • Where the MDA is operated solely through a regulated platform as defined; or • The MDA is using a regulated custodian and using another AFS Licensed entity for administration • Where all of the MDA assets are held in the client name and the MDA administration is outsourced to another AFS Licensed entity <p>IMAP proposes that the NTA requirements should be tailored to match the services provided by other MDA Operators.</p>
C1Q2	No. IMAP does not agree that this proposal is appropriate given the level of risk inherent in each operating model – see example in the attached appendix

	<p>IMAP identifies the following principal risks in operating MDA services:</p> <ul style="list-style-type: none"> • Inappropriate advice • Investment risk • Operating risk • Asset custody risk • Inadequate financial resources • Inadequate management of conflicts <p>The NTA requirements primarily address operating risks since other aspects of ASIC regulation address other risks, in particular, advice expertise (inappropriate advice risk), custody requirements (asset holding risks)</p> <p>The ASIC NTA proposals are based on an assumption that all MDA operators take on substantially similar risks. However, MDA operators who operate solely through a regulated platform or through other regulated structures incur substantially reduced operating risk and no asset custody risk</p> <p>It is also worth noting that unlike MIS where assets are comingled, some MDA operators hold assets in individual client names and in the event that an MDA operator service is unable to continue, assets can be simply transferred to clients. This should have the effect of reducing NTA requirements to cover the costs of failed schemes</p> <p>The definition of client portfolio assets needs to be made clear that it is only applying to assets which are subject to discretion. Many MDAs work where clients have a part of a portfolio that is subject to discretion and the other part of a portfolio is not</p> <p>Similarly the definition of MDA operator revenue needs to make it clear that it only relates to revenue derived from MDA services as, again, there are services where fees are bundled together for a range of items, one of which is MDA. For example, where MDA services are provided to SMSFs it is not uncommon for SMSF compliance costs to be bundled into a whole client fee.</p>
C1Q3	<p>IMAP believes that the proposed timing is too short. Obtaining required NTA will be a major imposition for some organisations and a two-year phase-in period is more appropriate. This would align with the phase-in period for those advisers currently relying on the No Action Letter</p> <p>IMAP notes that when the ASX introduced a similar requirement for brokers, it was completed as a stepped process over some time.</p>
C1Q4	<p>As noted above IMAP proposes a reduced NTA requirement for MDA operators relying solely on regulated platforms</p>
C2Q1	<p>The definition of client portfolio assets needs to be made clear that it is only applying to assets which are subject to discretion. Many MDAs work where clients have a part of a portfolio that is subject to discretion and another part of a portfolio is not.</p>

C2Q2	<p>Many operators provide MDA services as one element of their total services. This is particularly the case for organisations that are primarily involved in providing investment advice. This is unlike the situation with Responsible Entities where MIS scheme revenues tend to comprise the majority of an RE's revenue</p> <p>IMAP believes that it is inappropriate to adopt a definition of revenue which includes all revenue sources for reasons noted above</p> <p>IMAP proposes that the revenue test applies to income derived in respect of an MDA contract, including revenue associated with those aspects of the MDA service which the MDA Operator outsources but for which it remains responsible. This should be relatively simple for any organisations to identify and could be supported by an audit requirement.</p> <p>The definition of MDA operator revenue needs to make it clear that it only relates to revenue derived from MDA assets as again there are services where fees are bundled together for a range of items, one of which is MDA. For example, where MDA services are provided to SMSFs it is not uncommon for SMSF compliance costs to be bundled into a holistic client fee. Similarly, portfolio assets which are administered only may be combined with MDA assets into a bundled fee.</p>
C3Q1	<p>Yes. IMAP agrees with the need for consistency in the way MDA custodians are regulated</p> <p>IMAP notes that ASIC has recently provided clarification of the NTA requirements in various custodial structures (E. Hristoforidis email to IMAP on 24 April 2013 and G Lamont email 29 April 2013)</p>
C4Q1	<p>IMAP notes that if ASIC intends to remove the incidental custody authorisation, the conditions set out in the emails referred to above should be reflected in the final version of the regulations</p> <p>IMAP notes that where investors' assets are held by a custodian under a Managed Investment Scheme, the assets are pooled and the investors rely on record keeping undertaken by or outsourced by the Responsible Entity to determine their individual entitlements. In this case, the Responsible Entity is relieved of the obligation of a minimum NTA of \$10m</p> <p>This is equivalent to the case where an MDA Operator outsources custody of assets to a custodian on an omnibus basis and undertakes or outsources record keeping of investor entitlements</p>
D1Q1	<p>IMAP supports the proposal for the investment program to contain an explicit investment strategy and proposes that the Regulatory Guide provides guidance about the minimum requirements for the program itself. The following minimum requirements should apply:</p> <ul style="list-style-type: none"> • Details of the structure of how the program is delivered • Why it is suitable for the client if this is not provided in the accompanying SOA • Description of the specific risks of the Investment Program • The asset allocation ranges and targets

	<ul style="list-style-type: none"> • Details of the likely universe of assets to be used • Details of how client’s cash flow needs are to be met (where applicable) if this is not covered in the accompanying SOA • Specific risks of this MDA service beyond the investment program risks, if this is not covered in the accompanying SOA <p>The MDA contract should be able to reference the MDA investment program rather than include it</p>
D1Q2	<p>Yes. IMAP supports this approach and proposes that the regulations require explicit statements that:</p> <ul style="list-style-type: none"> - an MDA service is suitable for the client and the basis for the recommendation - the specific contract is suitable for the client and the basis for the recommendation - the investment program is suitable for the client and the basis for the recommendation
D1Q3	<p>IMAP maintains that the requirement for an annual review is excessive and should be better expressed as two-year requirement. The requirement for annual reviews imposes a cost on the advising organisation which will ultimately be met by the client. The annual review may be inappropriate given the nature of client relationship or size of funds under management</p> <p>This is the only area in which ASIC imposes a service standard of this nature and ‘competitive neutrality’ ought to require an annual review obligation in respect of all personal advice if this requirement is retained</p> <p>MDA operator has a continuing obligation to manage the client’s assets in accordance with the MDA contract</p> <p>A two-year review gives the client the opportunity to align with the provision of the fee renewal notices.</p> <p>IMAP proposes that ASIC makes it explicit that the review obligation can be met by an ROA if this is appropriate</p>
D2Q1	<p>IMAP does not agree that is appropriate to include details of fees and costs in the FSG as this is provided prior to provision of any service and at a time when specific fees may not be known</p> <p>This leads to sweeping generalisations about fees in this document</p> <p>IMAP agrees that full disclosure of fees is appropriate in the MDA contract in so far as they relate to the MDA Service</p>
D2Q2	<p>Because MDAs may only be provided under personal advice, a proposal to include fees in FSGs will not lead to easier comparison of MDA alternatives. Fee comparison is essential where a client is able to invest without receiving personal advice. A requirement to include a fee in an FSG is likely to lead to sweeping statements of fee ranges rather than meaningful descriptions.</p> <p>The type of fee comparison for self-directed investors is not possible for MDA services;</p>

	IMAP supports full fee disclosure as a part of any recommendations
D2Q3	IMAP supports the objective of providing personal advice as part of the provision of an MDA service and maintains that personal advice is the cornerstone of informed decision making.
D3Q1	IMAP agrees that the FSG should contain general description of the outsourcing, entities, functions and monitoring. IMAP believes that obligations relating to outsourcing should be contained in the MDA contract
D4Q1	IMAP agrees that general information be provided within the FSG but that specific requirements be included in the MDA contract. The termination provisions may differ per client depending on the complexity of the client's situation and portfolio
D4Q2	MDA contracts would normally have termination details already but IMAP agrees with this proposal
D4Q3	IMAP believes that the contract must contain a provision that the MDA Operator will comply with client termination instructions in a timely manner consistent with protecting the client's interests
D5Q1	IMAP agrees with this proposal. See D4Q3 above
D6Q1	<p>IMAP supports a requirement that an MDA Operator have a documented policy to deal with the situation where the MDA service cannot be provided – for example because a client opts out of receiving personal advice or the annual review is not completed</p> <p>While the generalised policy might be described in an FSG, the specific obligations should be captured in the MDA contract</p>
D6Q2	<p>IMAP does not support this proposal for a number of practical reasons:</p> <ul style="list-style-type: none"> • The situations which may give rise to no longer being able to provide the MDA service are varied. Listing all would be difficult • MDA Operators may operate a number of types of MDA, each of which has different policy requirements in regards to termination • A policy which could be included in an FSG would be likely to be so general as to be relatively meaningless to retail investors • A policy would be subject to periodic review requiring a re-issue of the FSG • Termination arrangements may differ between clients
E1Q1	IMAP agrees with the proposal to modify the relief when non-limited recourse assets are involved
E1Q2	IMAP finds (b) or (c) are preferable. We believe (a) should be required in addition to (b) if (b) is selected
E1Q3	IMAP believes (a) is required to support informed decision making
E1Q4	Operators should be able to tailor the wording to reflect the risks inherent in the scheme they operate. Responsible Managers should be responsible for this being the case

E1Q5	Express consent should be included within the SOA
E1Q6	The current regulation of best interest and conflicts of interest means that higher risk investments are regulated properly now. Any restrictions on the use of derivatives should not extend to the use of covered calls
E1Q7	IMAP does not have a response to this question
E2Q1	IMAP agrees
E2Q2	As noted in E1Q6, any restrictions should not extend to the use of covered calls
E3Q1	IMAP agrees
E3Q2	IMAP agrees
E3Q3	Not that IMAP is aware of
E3Q4	IMAP has no comment
E3Q5	IMAP has no comment
E3Q6	IMAP agrees
E3Q7	IMAP does not have an opinion on this question
E3Q8	General guidance in respect to all retail investors, not limited to MDA investors would be welcomed by IMAP
E4Q1	IMAP would welcome that
E5Q1	IMAP agrees
E6Q1	IMAP agrees
F1Q1	IMAP agrees
F1Q2	IMAP requests that ASIC makes it clear that the review requirements can be met by an ROA in appropriate circumstances
F1Q3	<p>IMAP notes elsewhere that it believes there are several discrete elements to providing an MDA Service beyond the three areas – MDA Operator, External MDA Custodian and External MDA Adviser – which ASIC currently regulates. As a result we propose that a class of MDA Operator which outsources administration and custody to a regulated platform should be specifically recognised. This class of MDA Operator should be recognised in the conditions applied in granting an AFSL.</p> <p>In other regards IMAP supports the proposals</p>

F2Q1	<p>Yes, examples would be helpful. IMAP notes that guidance from ASIC on best interests should be consistent with regulation in place for a FOFA. These include disclosure of a conflict of interest and of the risks associated with it</p> <p>In particular, IMAP requests that examples refer to the use of products issued by the MDA Operator or related entities</p>
F2Q2	IMA agrees
F2Q3	As mentioned above, specific guidance in respect of products issued by the MDA operator or related entities
F2Q4	<p>No. IMAP does not support a requirement to obtain specific consent to each transaction involving a conflict of interest. Where a conflict of interest might reasonably be foreseen by an External MDA adviser in the recommendation to enter into an MDA contract, the External MDA adviser should make this clear in the SOA, explain the conflict and obtain explicit consent to this</p> <p>Incidentally, we note our earlier reference to advice received from PI insurers that claims often arise where an MDA Operator allows an investor regularly or on an ad hoc basis to intervene in approving transactions. This leads to confusion about responsibility and whether discretion applied in the case of particular transactions. Adverse investment outcomes lead to claims by investors that particular transactions were unauthorised.</p>
F3Q1	<p>(a) If ASIC is proposing specific guidance in respect of Advice on MDA services in relation to best interest, IMAP proposes that this guidance be included in the FoFA regulations. Guidance to the best interest obligations of MDA Operators should be in the amended RG179</p> <p>(b) IMAP proposes that ASIC guidance confirms that only the advice fee component of MDA service fees is required to be disclosed in the FDS. This would be consistent with FoFA regulation relating to FDS's</p> <p>(c) We propose that the opt-in requirement remains specific to the advice component of an MDA service. This is consistent with the current regulation of MDA services and advice generally. In the event that an investor opts out or does not renew their advice relationship, an MDA operator which does not provide MDA advice should not be automatically in breach unless they ought reasonably to have known that the investor has discontinued the advice relationship</p>
F3Q2	IMAP disagrees
F4Q1	IMAP agrees
F4Q2	IMAP agrees
F5Q1	If an MDA operator is also providing advice, they should be required to identify, actually or using a reasonable allocation, which proportion of revenue covers advice and only this portion of the MDA fees should be subject to the FDS requirement

	<p>If no advice is given by the MDA operator , then no fee disclosure through an FDS is required</p> <p>Where an MDA operator provides personal advice but does not specifically identify an element of their fees relating to advice then all MDA service fees should be disclosed in the FDS</p>
F5Q2	<p>IMAP disagrees with the statement in Para 129 “We would consider that most fee arrangements for MDA’s would be ‘ongoing fee arrangements’ for the purposes of the fee disclosure statement...”</p> <p>Only those fees which specifically relate to personal financial advice are ‘ongoing fee arrangements’</p> <p>IMAP has described above in F5Q1 the proposals it believes are appropriate and consistent with the FoFA regulations</p>
F5Q3	As above
F6Q1	<p>Yes. IMAP agrees with ASICs proposal to provide specific guidance. MDA operators which do not provide personal financial advice require protection in the event of an investor opting out of personal advice. In particular, the MDA operator is not liable when:</p> <p>(1) the investor opts out and MDA Operator, on being informed, ceases exercising its discretion over the investor’s assets i.e. not trading further</p> <p>(2) the MDA operator is not aware of the investor opting out and continues to transact</p> <p>(3) despite, being aware of the investor opting out, the MDA Operator acts to protect the investor’s interests or its own</p> <p>The MDA Operator should provide notice within a reasonable time to the investor that they are no longer acting under the MDA service</p>
F6Q2	As above
F6Q3	As above
F7Q1	IMAP has no comment
G1Q1	IMAP supports the retention of the key elements with the exception of (i), the requirement to provide an annual statement which restates the material available online or in quarterly statements, where these continue to be available to investors.
G1Q2	IMAP is not aware of any
G2Q1	IMAP agrees
G3Q1	IMAP agrees
G3Q2	IMAP is not aware of any

H1Q1	IMAP agrees
H1Q2	IMAP agrees
H2Q1	<p>IMAP strongly supports an extended transition period of at least two years on the introduction of the increased NTA requirements for MDA operators</p> <p>This would be consistent with the approach taken in respect of the withdrawal of the No Action letter and of the ASX in its introduction of increased capital requirements for Market Participants</p>

Conclusion

IMAP is pleased to have this opportunity to participate in ASIC's review of the fast growing MDA area .

ASIC has chosen the right time to review this sector as larger players are now involved in what was a much smaller industry. IMAP members are generally the boutique and largely non-aligned providers in this sector, who have to date provided compliant and well managed MDA services, largely devoid of the conflict of interest issues which are endemic in vertically integrated organisations.

The basis of IMAP's comments and recommendations is to further the growth of MDA services which are proving popular with investors who want to closely control their retirement destiny and demand transparency / lack of conflict in the advice they receive.