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Cc: [REDACTED]; [REDACTED]
Subject: AIMA AUSTRALIA - SUBMISSION TO CP308 - Review of RG97 Disclosing fees and costs in PDSs and periodic statements
Date: Tuesday, 2 April 2019 2:04:04 PM
Attachments: [REDACTED]

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AIMA AUSTRALIA
SUBMISSION TO CP308

Review of RG97 Disclosing fees and costs in PDSs and periodic statements

Background on AIMA members

AIMA, the Alternative Investment Management Association, is the global representative of the alternative investment industry, with more than 1,900 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than \$2 trillion in assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. For further information, please visit AIMA's website, www.aima.org.

Executive summary

We appreciate the opportunity to comment on the draft updated RG97 and proposed amendments to Schedule 10 to the Corporation Regulations. AIMA supports the key policy objectives of RG97 of helping consumers receive transparent and useful information about fees and costs that they can understand and assist in comparing product. However, AIMA is concerned that some of the proposed amendments to RG97 are not practicable for industry and will not provide meaningful information to consumers. We have set out our responses to the Proposals in Annexure 1

Contact points

We would be happy to meet with ASIC to discuss any aspect of our submission or provide further information.

The AIMA contacts in respect of this Submission are:

Michael Gallagher
General Manager
AIMA Australia

Email : [REDACTED]

Nikki Bentley
Chair, Regulatory Committee
AIMA Australia

Partner
Norton Rose Fulbright

Email: [REDACTED]

Yours faithfully

ASIC proposal	Feedback sought	AIMA response
B1 Proposal: Changing the superannuation product 'Fees and Costs template'		N/A to AIMA members
B2 Proposal: Changing the managed investment products 'Fees and costs template'	B2Q1 Do you agree with our approach? If not, please explain why.	No strong views expressed by AIMA members although clarification is requested to confirm that responsible entities can choose to disclose different components of the management fees and costs separately, ie responsible entity fee, management fee, performance fee, expenses and indirect costs. AIMA members are also keen to understand the results of any consumer testing conducted by ASIC to confirm that the proposed changes do in fact enhance consumer understanding.
B3 Proposal 'Cost of Product Information'	<p>B3Q1 Do you agree with our approach? If not, please explain why.</p> <p>B3Q3 Do you believe that incorporating a \$5,000 contribution on the last day of the year in the 'Example of annual fees and costs' and in the 'Cost of product information' for superannuation products will help consumers make investment decisions and compare products, given that:</p>	<p>We request clarification that this requirement only applies if a PDS has more than one investment option.</p> <p>Many hedge funds don't have multiple investment options so the \$50,000 example of fees and costs should suffice where there is only one investment option.</p> <p>For MIS, the \$5,000 contribution has always been confusing. We suggest the example should be based on an initial contribution of \$50,000. If there is no contribution fee, then the cost of product information will be based on \$50,000. If there is a contribution fee, then the cost of product information will be based on \$50,000 (less the initial contribution fee).</p>
	(a) contributions are not taken into account when calculating fees and costs	In addition, a footnote could be included to explain that the \$50,000 example assumes that the

Annexure 1 | Responses to B Proposals

ASIC proposal	Feedback sought	AIMA response
B1 Proposal: Changing the superannuation product 'Fees and Costs template'		N/A to AIMA members
B2 Proposal: Changing the managed investment products 'Fees and costs template'	B2Q1 Do you agree with our approach? If not, please explain why.	No strong views expressed by AIMA members although clarification is requested to confirm that responsible entities can choose to disclose different components of the management fees and costs separately, ie responsible entity fee, management fee, performance fee, expenses and indirect costs. AIMA members are also keen to understand the results of any consumer testing conducted by ASIC to confirm that the proposed changes do in fact enhance consumer understanding.
B3 Proposal 'Cost of Product Information'	<p>B3Q1 Do you agree with our approach? If not, please explain why.</p> <p>B3Q3 Do you believe that incorporating a \$5,000 contribution on the last day of the year in the 'Example of annual fees and costs' and in the 'Cost of product information' for superannuation products will help consumers make investment decisions and compare products, given that:</p>	<p>We request clarification that this requirement only applies if a PDS has more than one investment option.</p> <p>Many hedge funds don't have multiple investment options so the \$50,000 example of fees and costs should suffice where there is only one investment option.</p> <p>For MIS, the \$5,000 contribution has always been confusing. We suggest the example should be based on an initial contribution of \$50,000. If there is no contribution fee, then the cost of product information will be based on \$50,000. If there is a contribution fee, then the cost of product information will be based on \$50,000 (less the initial contribution fee).</p>
	(a) contributions are not taken into account when calculating fees and costs for disclosure (see cls 218(1) and (3) of Sch 10); and	In addition, a footnote could be included to explain that the \$50,000 example assumes that the value of your investment does not fluctuate over the 12 month period.
B4 Simplifying Periodic	B4Q1 Do you agree with	No strong views expressed by

Statements	our approach? If not, please explain why.	AIMA members
B5 Changing the treatment of transactional and operational costs	B5Q1 Do you agree with our approach? If not, please explain why.	<p>We do not agree with the proposal to disclose counterparty spreads. We query whether this information is really meaningful to consumers. It is confusing to explain and hard to calculate. Please see our further comments in B7 below.</p> <p>We also consider by having net transaction cost and the buy/sell spread appearing in the fee table in separate line items, it suggests that they are counted twice.</p> <p>We also don't see the rationale for requiring the "gross amount" of explicit transaction costs to be disclosed in the "Additional explanation of fees and costs" section for indeed anywhere in the PDS). It is the net figure that may be relevant although we query whether it relevant to a retail investor's decision really.</p>
	B5Q2 What system and process changes would be needed to implement these proposals?	<p>Significant system changes will be required as our members do not currently collect and store the detailed data which is necessary to calculate counterparty spreads. Initial feedback from members is that obtaining this information will likely be time consuming, costly and potentially inaccurate in any event.</p>
	B5Q3 What are the additional costs associated with implementing these proposals? Please provide details of one-off and/or annual costs as applicable.	<p>Costs to implement significant system changes as mentioned above.</p>

	<p>B5Q4 What would be a reasonable timeframe for issuers to implement these proposals, in light of the other changes proposed in this paper?</p>	<p>If counterparty spreads are required to be disclosed, we consider a minimum of 12 months is necessary to make the system changes and then another 12 months of data collection will be required. This will mean a transition period of at least 24 months to tie in with the next annual PDS roll following this.</p>
<p>B6 Exclude Implicit costs</p>	<p>B6Q1 Do you agree with our approach? If not, please explain why.</p>	<p>Our members strongly support this proposal. The calculation of implicit costs has proved very challenging and there is no consistent methodology across the industry which makes comparability of products impossible for investors.</p> <p>We also support not requiring the disclosure of borrowing costs.</p>
	<p>B6Q2 Are cls 103(2)(c)–(d) of the draft amendments to Sch 10 at Attachment 2 to this paper sufficient to exclude all implicit transaction costs? Is a reference to market impact costs or some other type of cost also required?</p>	<p>We consider the proposed drafting of these exclusions to be too narrow and specific. Given the inclusive definition of Transaction Costs, the drafting approach could require issuers to perform a detailed calculation of:</p> <ul style="list-style-type: none"> (a) All implicit costs (using any methodology currently being adopted); and (b) Calculate how much of those costs are specifically excluded under the calculation methodology shown at cls 103(2)(c) – (d) <p>As we have noted above, the calculation of implicit costs has proved very challenging and a two-step process to both calculate these costs and then exclude certain elements of them will add to the inconsistency of approaches adopted by different product issuers.</p> <p>We respectfully recommend 103(2)(c) and (d) are replaced with a broader reference to any market impact costs or any other implicit transaction costs.</p>
	<p>B6Q3 What system and process changes would be needed to implement these proposals?</p>	<p>Significant system changes will be required to calculate which costs are specifically excluded under <i>cls 103(2)(c)-(d)</i>. Obtaining the</p>

		information necessary to perform this calculation will likely be time consuming, costly and potentially inaccurate in any event.
	B6Q4 What are the additional costs associated with implementing these proposals? Please provide details of one-off and/or annual costs as applicable. Would these proposals result in any cost savings? Please give details.	Costs to implement significant system changes as mentioned above.
	B6Q5 What would be a reasonable timeframe for issuers to implement these proposals, in light of the other changes proposed in this paper?	We consider it is important that the transition period is long enough to ensure that issuers do not have to do an additional PDS roll just to comply with the revised RG97 amendments. This would be an additional cost generally borne by unitholders which is not justified. Therefore we would suggest at least 15 months from finalisation of ASIC policy and longer if system changes will be required as a result of the changes (see our comments under B7 proposal).
B7 Inclusion of counterparty spreads in transaction costs	B7Q1 Do you agree with our approach? If not, please explain why.	<p>We strongly disagree with the proposal to disclose include counterparty spreads in the transaction costs in both PDSs and periodic statements. We query whether this information is really meaningful to consumers. It is confusing to explain and very difficult to calculate.</p> <p>We also query whether has ASIC has really seen evidence of the perceived 'mischief' . We consider the perceived mischief seems to be premised on a flawed assumption at RG308.98 that if you trade through a facilitation desk you are paying a spread instead of paying a brokerage cost. This is incorrect as you will still pay brokerage costs, and the spread also represents the liquidity that the market maker is providing. In our view, the counterparty spread is more akin to a performance metric. We note that managers will</p>

	<p>have a best execution policy which aims to achieve the best available price as this impacts on a manager's performance.</p> <p>For those reasons, we do not share ASIC's concerns regarding inappropriate trading to avoid cost disclosures.</p>
<p>B7Q2 Do you have any suggestions on how the concept of counterparty spreads could be defined in cl 101 of Sch 10? Please provide details.</p>	<p>We consider it is important to include a definition as there is currently uncertainty amongst our members as what is captured by counterparty spread including further clarity on what is meant by 'regulated markets'</p>
<p>B7Q3 REP 581 (at page 133) notes that counterparty spreads are readily and relatively objectively ascertainable. Do you agree? Please provide details</p>	<p>Our members do not currently collect and store the 'tick by tick' intra day data which is necessary to make these calculations.</p> <p>As discussed above, counterparty spreads are representative of the liquidity being provided.</p>
<p>B7Q4 What types of financial products and markets do you think the concept of counterparty spreads would apply to? Would it be applicable to Australian markets or only to overseas markets? Please provide details.</p>	<p>We don't consider it should apply to any markets for the reasons stated above.</p>
<p>B7Q5 What are the additional costs associated with implementing this proposal? Please provide details of one-off and/or annual costs as applicable.</p>	<p>Our members do not currently collect and store the 'tick by tick' intra day data which is necessary to make these calculations. This will be complex to calculate and require significant IT system builds.</p>
<p>B7Q6 What would be a reasonable timeframe for issuers to implement this proposal, in light of the other changes proposed in this paper?</p>	<p>If counterparty spread data is to be collected, we consider that it will take at least 12 months to undertake the system builds and then issuers will require another 12 months to capture the data before they will be ready to implement the proposal. Accordingly if this proposal is included, we consider a transition period of at least 24 months from ASIC's finalisation of RG97 will be reasonable.</p>

B8 Changing the treatment of performance fees	B8Q1 Do you agree with our approach? If not, please explain why.	Our members are generally supportive of this proposal.
B9 Changing the treatment of performance fee disclosure	B9Q1 Do you agree with our approach? If not, please explain why	Our members are generally supportive of this approach given disclosure based on one financial year can result in a performance fee disclosure being significantly more or less than the average performance fee charge over a longer period. However, this proposal could also have the effect of smoothing performance fees which may concern issuers that the 5 year average is misleading. Therefore we support the proposal below that that Issuers may also include a table in the additional information section which discloses the performance fee charged on a per annum basis over the last five years to address this concern.
	B9Q2 Are any transitional arrangements required to accommodate data availability, particularly for interposed vehicles? Please give details.	It may be difficult to capture the five year history for all interposed vehicles and therefore a longer transitional period time might be required.
	B9Q3 Should we provide any further guidance on how to calculate performance fees? Please give details.	Our members really struggle with providing an estimate of performance fee for the first year that a fund is offered. We suggest some additional guidance is provided on the basis on which the estimate should be calculated (ie an assumption that the Fund meets its performance objective).
	B9Q4 Should carried interest charged by general partners in private equity funds be included in the definition of performance fee in cl 101C of Sch 10? Please give details	For comparison purposes, we consider the carried interest charged by general partners in private equity funds should be included in the performance fee disclosure.
	B9Q5 What system and process changes would be needed to implement these proposals?	
	B9Q6 What are the additional costs associated with implementing these	

	proposals? Please provide details of one-off and/or annual costs as applicable.	
	B9Q7 What would be a reasonable timeframe for issuers to implement these proposals, in light of the other changes proposed in this paper?	
B10 Disclosing performance fees	B10Q1 Do you agree with our approach? If not, please explain why	
	B10Q2 Given that cl 209A of Sch 10 requires performance fees to be included in investment fees (to be renamed investment fees and costs) for superannuation products rather than in administration fees (to be renamed administration fees and costs), should the reference to administration fees and costs in cl 209(b)(i) of Sch 10 be retained? If you believe the reference to administration fees should be retained, please explain why.	N/A to AIMA members
	B10Q3 We have drafted cl 209(b)(iii) of Sch 10 so	We don't support this proposal of disclosure of the performance fees

<p>B10 Disclosing performance fees</p>	<p>B10Q1 Do you agree with our approach? If not, please explain why</p>	<p>If Issuers are permitted to “unbundle” the different components of the management fees and costs (eg, separately disclose a responsible entity fee, management fee, performance fee, expenses and indirect costs) as suggested at B2Q1, then footnote 1 should be optional. If Issuers do not unbundle, then we don’t object to the inclusion of footnote 1.</p> <p>We don’t agree with the approach required by cl 209(b)(iii) requiring disclosure of each individual interposed vehicle and performance fee contributing to the overall performance fee. This could be commercially sensitive information resulting from negotiating fee arrangements and subject to confidentiality arrangements.</p>
	<p>B10Q2 Given that cl 209A of Sch 10 requires performance fees to be included in investment fees (to be renamed investment fees and costs) for superannuation products rather than in administration fees (to be renamed administration fees and costs), should the reference to administration fees and costs in cl 209(b)(i) of Sch 10 be retained? If you believe the reference to administration fees should be retained, please explain why.</p>	<p>N/A to AIMA members</p>
	<p>B10Q3 We have drafted cl 209(b)(iii) of Sch 10 so that it requires disclosure of the five year average for each performance fee for each product, option, interposed vehicle or part that makes up the total performance fees. Do you believe this provides consumers with sufficient information? Should it also require disclosure of</p>	<p>We don’t support this proposal of disclosure of the performance fees for each underlying product and interposed vehicle for the reasons identified above. We don’t consider that this is useful information for consumers.</p> <p>As discussed above, we support the proposal that that Issuers may also include a table in the additional information section which discloses the performance fee charged on a per annum basis</p>

	the performance fee for each year that is included in the five-year average? Please explain why or why not.	over the last five years to address this concern. .
	B10Q4 What system and process changes would be needed to implement these proposals?	It may be difficult to capture the five year history for all interposed vehicles and therefore a longer transitional period time might be required.
	B10Q5 What are the additional costs associated with implementing these proposals? Please provide details of one-off and/or annual costs as applicable.	If disclosure of individual performance fees for underlying interposed vehicles is required, issuers will need to consider their documentation in relation to these investments to ascertain whether they can in fact make disclosure and seek to renegotiate confidentiality arrangements which may not be possible.
	B10Q6 What would be a reasonable timeframe for issuers to implement these proposals, in light of the other changes proposed in this paper?	We consider at least 12 months and preferably 24 months.
B11 Reserves	B11Q1 Do you agree with our approach? If not, please explain why.	Not applicable to our members
B12 Drafting clarification in cl 301(2) of Sch 10	B12Q1 Do you agree with our approach? If not, please explain why.	No strong views expressed by members.

ASIC proposal	Feedback sought	Our response
C1 Consumer testing some proposals	<p>C1Q1 Is it helpful for consumers to see administration fees and costs and investment fees and costs disclosed separately? If so, why?</p> <p>C1Q2 Do you believe the names 'Fees and costs summary' and 'Fees and costs details' (instead of 'Fees and costs template' and 'Additional explanation of fees and costs') will better help consumers</p>	<p>No strong views expressed by AIMA members. AIMA members are keen to understand the results of any consumer testing conducted by ASIC to confirm that the proposed changes do in fact enhance consumer understanding.</p> <p>No strong views expressed by AIMA members. AIMA members are keen to understand the results of any consumer testing conducted by ASIC to confirm that the proposed changes do in fact enhance consumer understanding</p>

Annexure 2 | Responses to C Proposals

ASIC proposal	Feedback sought	Our response
C1 Consumer testing some proposals	C1Q1 Is it helpful for consumers to see administration fees and costs and investment fees and costs disclosed separately? If so, why?	No strong views expressed by AIMA members. AIMA members are keen to understand the results of any consumer testing conducted by ASIC to confirm that the proposed changes do in fact enhance consumer understanding.
	C1Q2 Do you believe the names 'Fees and costs summary' and 'Fees and costs details' (instead of 'Fees and costs template' and 'Additional explanation of fees and costs') will better help consumers understand information relating to fees and costs?	No strong views expressed by AIMA members. AIMA members are keen to understand the results of any consumer testing conducted by ASIC to confirm that the proposed changes do in fact enhance consumer understanding
C2 Developing additional resources and information for consumers	C2Q1 Do you have any suggestions about how the importance and relevance of fees and costs can best be explained to consumers? Please provide details.	No strong views expressed by AIMA members. However, AIMA members are keen to see that any information developed for consumers is balanced and reminds consumers to also consider any returns generated in respect of a product. One product may be more expensive than another, but perhaps higher returns may outweigh the higher fees.
	C2Q2 Do you have any suggestions about the types of tools that may help explain the relevance of fees and costs to consumers? Please provide details.	
C3 Working with industry bodies on choice of product	C3Q1 Are you aware of any particular topics within fees and costs disclosure that advisers need guidance on? Please provide details.	As above, AIMA members are keen to see that all stakeholders focus not just on fees but also consider any returns generated in respect of a product or enhanced services. One product may be more expensive than another, but perhaps higher returns or better services may outweigh the higher fees.
	C3Q2 Do you have any suggestions on what resources about fees and	

	costs disclosure may be useful to advisers?	
C4 Explaining why fees and costs must be disclosed	C4Q1 Do you agree with our approach? If not, please explain why	We support the statements made in draft RG 97.6 – RG 97.12.
	C4Q2 Are there any other purposes of fees and costs disclosure that you believe should be included in our guidance?	
C5 Guidance on including a prominent statement in the 'Fees and costs template' for platforms	C5Q1 Do you agree with our approach? If not, please explain why	Generally not applicable to AIMA members.
	C5Q2 What system and process changes would be needed to implement this guidance?	
	C5Q3 What are the additional costs associated with implementing this guidance? Please provide details of one-off and/or annual costs as applicable.	
	C5Q4 What would be a reasonable timeframe for issuers to implement this guidance, in light of the other changes proposed in this paper?	
C6 Clarifying in RG 97 the treatment of amounts paid by third parties or offset against other amounts	C6Q1 Do you agree with our approach? If not, please explain why.	We query the value of disclosing any portion of revenue generated by a custodian who might engage in securities lending on behalf of an Issuer as a fee and cost. These costs are included in the transactional and operational costs and should not require separate disclosure.
	C6Q2 Is there any further guidance we should provide? Please give details.	
	C6Q3 What system and process changes would be needed to implement this guidance?	
	C6Q4 What are the additional costs associated with implementing this guidance? Please provide details of one-off and/or	

	annual costs as applicable.	
C7 Periodic statement content for defined benefit members	C7Q1 Do you agree with our approach? If not, please explain why.	N/A to AIMA members.
	C7Q2 What system and process changes would be needed to implement this guidance?	
	C7Q3 What are the additional costs associated with implementing this guidance? Please provide details of one-off and/or annual costs as applicable.	
	C7Q4 What would be a reasonable timeframe for issuers to implement this guidance, in light of the other changes proposed in this paper?	
C8 Consistent presentation of fee information in the 'Fees and costs template'	C8Q1 Do you agree with our approach? If not, please explain why.	Are you suggesting that you can't break "management costs" down into its components, eg RE fee, manager fee, performance fee, expenses, indirect costs? Some issuers (particularly where they are a third party RE) like to do this.
	C8Q2 Do you believe further guidance is required?	
	C8Q3 Do you believe industry standards could be developed to improve levels of consistency?	
	C8Q4 What system and process changes would be needed to implement this guidance?	
	C8Q5 What are the additional costs associated with implementing this guidance? Please provide details of one-off and/or annual costs as applicable.	
	C8Q6 What would be a reasonable timeframe for issuers to implement this guidance, in light of the other changes that are proposed in this paper?	

C9 Reducing differences between superannuation product and managed investment product fee disclosure	C9Q1 Do you believe further changes are needed to reduce the differences in the fees and costs disclosure requirements for managed investment products and superannuation products? If so, please give details.	
C10 Making a consolidated version of Sch 10 available on ASIC's website	C10Q1 Do you agree with our approach? If not, please explain why.	Yes, this would be very helpful.
C11 Developing and implementing a surveillance strategy	C11Q1 Do you have any suggestions on what areas the surveillance should focus on? Please provide details.	Any surveillance strategy should be facilitative in nature, particularly where an issuer has shown reasonable endeavours to comply with the new requirements.

Michael Gallagher
Director, General Manager, AIMA Australia



M: [REDACTED]



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