

11 May 2026



Australian Securities and Investments Commission
100 Market Street
Sydney NSW 2000

By email: IM.sunsettingconsultation@asic.gov.au

Simple Consultation (CS 47) - on the Renewal of ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 (ASIC Instrument 2016/968)

The Financial Services Council (FSC) welcomes the opportunity to provide a submission in response to ASIC's consultation on the proposed renewal of the ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 (Instrument) ahead of its scheduled expiry on 1 October 2026.

The FSC recognises that the October sunset of the Instrument offers the opportunity for ASIC to consider the regulatory framework in light of significant growth in the MDA sector and the sector's experience with the regulatory settings in recent years. It is important that the regulatory framework for MDAs is fit for purpose, permitting the efficient use of these services in the market while appropriately addressing risks applicable to MDAs relative to other similar offerings.

In parallel with this Simple Consultation, ASIC are in the process of reviewing the managed accounts sector (with a focus on the use of Separately Managed Accounts (SMAs) offered through advice) and, separately, a review on the governance of Managed Investment Schemes (MISs). To support certainty for providers and clients, in this submission the FSC provides support for a remake of the Instrument for a period of up to five years. We also recommend the consideration of certain targeted, technical changes to enhance the utility of the Instrument in supporting access to MDA services. We suggest that any significant changes that might be considered are deferred until the findings of the other regulatory projects, mentioned above, have been established.

About the Financial Services Council

The FSC is a peak body which sets mandatory Standards and develops policy for more than 130 member companies in one of Australia's largest industry sectors, financial services. Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, and financial advice licensees. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing more than \$4 trillion on behalf of over 16.9 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is one of the largest pools of

managed funds in the world.

Regulatory regime applicable to MDAs

Under the current financial services regulatory regime, MDA providers and external MDA custodians are subject to managed investment scheme (MIS) provisions and certain disclosure requirements in the Corporations Act.

Further, through Instrument 2016/968 ASIC recognises that MDA providers have more limited functions than responsible entities of registered schemes and provides relief from relevant requirements. The Instrument currently provides conditional relief from the MIS provisions in Chapter 5C, the ongoing disclosure provisions in Chapter 6D, and the product disclosure obligations in Part 7.9 of the *Corporations Act 2001*. It also modifies the financial services disclosure provisions in Chapter 7.7 of the *Corporations Act* to provide conditional relief in relation to statements of advice and financial services guides for MDA services.

Having been in place for some time, the existing relief has provided MDA providers, advice licensees and others with a level of certainty as to how these services will be regulated. The market operates on the basis that these regulatory arrangements are appropriate settings for the sector, albeit with the knowledge that the Instrument has a sunset clause which places the regulation of MDAs in a slightly different position to comparable services and products. Despite this, the sector has a reasonable expectation that the broad settings currently in place are durable.

If the Instrument was not remade, a range of requirements applicable to the MIS regime may apply to many MDA arrangements. This would have a material impact on the viability of MDA services, removing regulatory certainty, and would need to be considered very carefully with appropriate transition. As discussed above, the FSC believes the Instrument should be remade for a period of up to five years, with any significant changes only considered once the current managed accounts and MIS reviews are complete and any relevant findings established.

Recommendation 1 – The Instrument should be remade for a period of up to five years, with any significant changes only considered once the current managed accounts and MIS reviews are complete.

Statement of Advice review requirements

The FSC considers there is a tension between the expectations required in the Regulatory Guide for MDA providers (RG 179) and the Instrument with respect to Statement of Advice (SoA) review requirements.

Section 912AEB (7) of the Instrument states that “the licensee must have no reason to believe that: (a) the investment program does not comply with the requirements for a Statement of Advice in Subdivisions C and D of Division 3 of Part 7.7”. The requisite requirement outlined in RG179.174 asks that external MDA Providers “review the SoA given in relation to that investment program before entering into the MDA contract, and not enter into the contract if you have reason to believe that the MDA is not appropriate to the client’s relevant

circumstances.”

In this specific instance the expectations of the Regulatory Guide appear to exceed what is designed to be required by the Instrument, effectively asking the MDA Provider to assess the quality of the advice provided, or at the very least casting doubt about the extent of the assessment required. The SoA in question will already have been developed and provided by a licensed, professional financial adviser under the best interests obligations. For the MDA Provider to have to provide an additional check on the suitability of the advice to the specific client’s circumstances is duplicative and out of step with similar obligations in the financial services sector. In addition, given the MDA provider may not have visibility of the client’s full circumstances, there may be limitations to the judgement it can make. Clarity as to the extent of a Provider’s level of enquiry is required.

Recommendation 2– Review and appropriately align the relevant paragraph of RG 179 to narrow the obligation in line with the Instrument. The focus of the obligation as described in RG 179 should shift from specific client suitability to a broad focus on the reasonableness of the investment methodology.

Design and Distribution Obligations (DDO)

Feedback from FSC members suggests the application of DDO to MDAs is complex and unclear. This has meant practices are inconsistent, for example, the application of Target Market Determinations (TMDs) in the context of MDAs. There remain inconsistencies and uncertainties in how TMDs are prepared and what they should cover.

Recommendation 3– To ensure certainty ASIC should provide clear regulatory guidance on the application of DDO across MDAs

Fees and Costs disclosure

The existing approach to fees and costs disclosure for MDAs contained in the Instrument and Regulatory Guide present issues given their alignment to the MIS regime requirements. MDA Contracts and FSGs must each contain information about fees and costs in relation to the MDA service that complies with Part 2 of Schedule 10 of the *Corporations Regulations 2001*. This aims for comparability, and may deliver regulatory efficiency, but it has led to practical issues emerging given the differences in the two types of investment.

Given the different ways MDAs can be structured, strict adherence to the MIS fees and costs requirements often don’t make sense. It can lead to complex disclosures that can confuse clients given information being presented to them may lack relevance to the MDA service being offered (as compared to a MIS).

In addition to this, disclosure is required across both the MDA contract and the FSG, leading to duplicate disclosures of all investment options managed by outsourced investment advisers, based on industry interpretation of the relevant provisions. This occurs alongside the supporting SoA materials which, separately, will include or refer to relevant product/service level information. The length and complexity of the disclosures required will therefore, in some cases, compromise the utility and relevance of information provided to the client.

Recommendation 4 – Review the application of the MIS template fee and cost disclosures and consider where modifications could apply to address differences between typical MDA services and MISs, whilst maintaining comparability.

Net Tangible Asset (NTA) requirements

Although not directly referable to the Instrument or its proposed extension, we remind ASIC of the FSC's feedback on its recent consultation CP 388 - *Net tangible assets requirement for responsible entities*.

In our submission the FSC suggested that it is appropriate for ASIC to explore the introduction of NTA requirements for MDA providers which currently do not have to meet an NTA requirement. The FSC does not propose a specific NTA requirement or calculation at this point, however we suggest further consultation with industry considering the appropriate settings to deliver a calibrated but appropriate baseline financial buffer.

The FSC welcomes the opportunity to further discuss the matters outlined in this submission. To arrange a meeting, please contact me on [REDACTED] or email [REDACTED]

Yours sincerely

[REDACTED]
Policy Director, Financial Advice & Strategic Advocacy