



Alternative Investment Management Association – Aust Chapter  
[REDACTED], AIMA Australia

15 October 2025  
Simplification Team  
Australian Securities and Investments Commission  
GPO Box 9827  
Melbourne VIC 3001

**Sent via email:** [simplificationconsultativegroup@asic.gov.au](mailto:simplificationconsultativegroup@asic.gov.au)

Dear Simplification Team,

**AIMA Australia Submission  
REP 813: Regulatory Simplification**

**1. About AIMA**

AIMA, the Alternative Investment Management Association, is the global representative of the alternative investment industry, with more than 2,000 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than \$2.5 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. In addition, AIMA has over 150 local based corporate members including managers and key service providers. For further information, please visit AIMA's website, [www.aima.org](http://www.aima.org). AIMA's affiliate association, The Alternative Credit Council (ACC) deals specifically with non-bank and private credit.

**2. Consultation**

REP 813 seeks feedback on ideas to reduce complexity in regulatory guidance and administrative processes, focusing on practical changes ASIC can make now, as well as areas where law reform could help.

AIMA appreciates and encourages ASIC's efforts in relation to simplification and measures to ease regulatory burden. We have set out below further suggestions and comments with a view to streamlining aspects of the current law and interactions with ASIC.

This submission has been prepared by members of AIMA's Regulatory Committee.

**3. Submission**

**3.1 Electronic signing / lodgement**

AIMA supports ASIC's intention to further reduce the need for paper forms to be submitted.

Submitting paper forms adds time and risk to the regulatory filing process for ASIC clients. For example: a suitable staff member generally needs to print, sign, scan and copy documents in an on-site office environment; lodging paper filings are subject to the inherent risks and delays of the postal service; additional time is required to monitor whether the ASIC mail centre has received and accurately processed the filing.

The following are just some instances of paper filings our members have noted for transition to on-line filing where possible:

- ASIC F315: cannot be lodged online.
- ASIC F484: a paper form is occasionally required in some unexpected circumstances - e.g.: where an entity is part of a corporate group and has a similar name to another registered entity within that group a paper F484 may be needed– this issue can require discussions with ASIC Call Centre staff in order to be identified, and may initially appear to be an ASIC portal issue.
- Foreign registered companies and entities: many of the ASIC forms required for lodgement can only be submitted in hard copy form. One specific example in need of rectification is ASIC Form 405 - Statement to verify financial statements of a foreign company. Form 405 must be lodged once each calendar year and at intervals of not more than 15 calendar months.

Online lodgement is not available, and lodgements must be made by post. This means any financial statements and supporting documents (for example, the accompanying external auditor reports) must be printed and posted. For larger entities this can involve printing and mailing over 900 pages. The time required to arrange these filings and ensure that the lodgement is accurate prior to secure couriering of the lodgement (ordinary post is not appropriate for a lodgement of this size) is excessive.

- ASIC Form 5111 (Compliance plan audit report of a registered scheme) with accompanying audit report.

### **3.2 Compliance plan – Wet-Ink signatures**

Most other documents can be signed by electronic signature – however compliance plans require all directors to ‘wet sign’ the compliance plan. Why two directors or a director/secretary cannot sign and bind the responsible entity (as they can for almost any other document) is unclear. Why wet ink signatures are uniquely required for this document is also not clear and is outdated and cumbersome.

### **3.3 Change of auditor process: ASIC guidance and ASIC forms**

ASIC RG 26 was updated in 2024; however, improvements could still be made such as:

- Adding commentary and guidance relevant to foreign entities registered with ASIC.
- Greater clarity as to the application of various requirements where an entity falls into more than one ‘category’ (e.g. a public company that is also an Australian financial services licence (AFSL) holder).
- ASIC INFO Sheet 65 would be better merged into ASIC RG 26 as there is a certain level of duplication.

As mentioned above, ASIC F315 cannot be lodged online.

### **3.4 Marketing / Promotion by electronic means / social media – RG 234**

ASIC could revise RG 234 to explicitly address digital marketing and social media practices, incorporating current technologies, platforms, and consumer behaviours to ensure clarity and compliance.

Currently, the guide has allocated less than 2 pages of guidance on ‘Internet advertising’, whilst there has been significant advancement in the use of digital marketing and social media since 2012.

Below are some suggestions as to how ASIC could modernise RG 234 and close this gap:

#### **a) Include Specific Guidance on Digital Channels**

- *Social media platforms*: Clarify how rules apply to posts, stories, reels, and influencer endorsements on platforms like Instagram, TikTok, LinkedIn, and Facebook.
  - *Search engine marketing*: Address practices like paid search ads, SEO claims, keyword targeting and guidance on ethical use of behavioural targeting.
  - *Email and SMS campaigns*: Provide standards for disclosures and consent in direct digital communications.
- b) Define Standards for Influencer and Affiliate Marketing
- Require clear disclosure of paid partnerships or affiliate links.
  - Set expectations for financial influencers (“finfluencers”) regarding accuracy, disclaimers, and licensing obligations.
- c) Update Terminology Restrictions for Digital Contexts
- Revisit terms like “safe,” “guaranteed,” or “independent” in the context of hashtags, captions, and short-form content. E.g. ‘*#guaranteedinvestment*’.
- d) Provide Case Studies and Enforcement Examples
- Share recent enforcement actions involving digital marketing breaches.
  - Include hypothetical examples of compliant vs. non-compliant digital ads.
- e) Introduce a Living Document or Summary
- Create a digital summary to RG 234 that can be updated more frequently than the main guide, inclusive of a summary of recent changes made.
  - Include FAQs within the RG.

### **3.5 Wholesale client test – SMSF**

In August 2014, ASIC announced a “no action” position where a self-managed superannuation fund (SMSF) trustee is treated as a wholesale client, notwithstanding that the trustee does not meet the \$10 million net asset threshold, even though the financial service in question may relate to a superannuation product. The no action position was in response to ASIC’s previously stated position in QFS 150 (no longer available and originally published in 2004) that a financial service would generally relate to a superannuation product where it was provided to a SMSF trustee and that in order for the SMSF trustee to be considered wholesale, the SMSF trustee needed to have net assets of at least \$10 million. ASIC seemed to ignore all other wholesale client tests that might be available to the SMSF trustee.

QFS 150 was heavily criticised within the industry with sections considering it incorrect and others at best reluctantly accepting the position. While the no action position in respect of QFS 150 was welcome news by large parts of the industry, ASIC stated at the time that its no-action position “will not affect any private rights of action that may be available to third parties”. Seemingly in reliance on this statement, AFCA has publicly stated (as recently as 19 June 2025) that:

*“[t]he bottom line is that, under the law, if an advisor provides advice to a trustee in relation to an SMSF, it must be treated as a retail client unless the SMSF has \$10 million or more in assets.”*

We refer you to this news release published by AFCA: <https://www.afca.org.au/news/latest-news/when-can-smsfs-be-treated-wholesale-what-financial-advisers-need-to-know>. The divergence in approach by ASIC and AFCA (being a body in which we understood has its powers delegated to it by ASIC) is unhelpful and causing significant concern in the industry. Further, it is not clear how AFCA, being a scheme that we understand is overseen by ASIC under powers granted to ASIC in the Corporations Act 2001 (Cth), can take a position different to that of the body overseeing it. AIMA welcomes clarity on this issue and, ideally, acceptance of the widely held industry view that an SMSF trustee can satisfy the definition of wholesale client relying on other limbs available in section 761G of the Corporations Act 2001 (Cth) (and not just the net assets test of net assets of at least \$10 million).

### **3.6 Out of date regulatory guides**

The following ASIC Regulatory Guides were produced a long time ago and would benefit from an update:

- RG 53 The Use of Past Performance in Promotional Material Issued 1 July 2003 – guidance should be updated and also reflect current mediums of promoting products including social media platforms such as LinkedIn.
- RG 234 Advertising financial products and services (including credit) - issued 15 November 2012 – as outlined above.
- RG 94 Unit pricing: Guide to good practice – issued August 2008. Guidance could be generally updated, including consideration of appropriate thresholds for compensation (the latter being particularly relevant when considering one’s obligations under RG 277 Consumer Remediation).
- RG 65 Section 1013DA disclosure guidelines – issued in November 2011. While this guide is only applicable to long form PDSs, it is often used as a touchstone for disclosure in shorter form PDSs, together with ASIC Information Sheet 271. Harmonisation across RG 65 and ASIC Information Sheet 271 may be helpful, particularly in light of recent enforcement activity.

### **3.7 Useability of ASIC portal**

As of 16 June 2025, AFSL applications, variations, cancellations and notifications (e.g. change of details, change of responsible manager and change of control) – now referred to as ‘transactions’ by ASIC – are to be made through the new ASIC Regulatory Portal. While the introduction of the ASIC Regulatory Portal has streamlined the process regarding the lodgement of the AFSL-related ‘transactions’, we note that the following issues need to be addressed in order to make the new ASIC Regulatory Portal more user-friendly:

- the ASIC Regulatory Portal does not allow for a user to navigate to the next page when completing an online form for a transaction (e.g., to see what other questions need to be answered and what information needs to be provided), without fully completing the responses (including uploading the relevant documents) on the then current page. This issue makes it harder for users to know exactly what information they need to have in order to complete the relevant form and may take the user more time to complete the relevant form for the ‘transaction’ (which can be challenging where it is time sensitive). For these reasons, we propose that ASIC updates the ASIC Regulatory Portal, so that a user can navigate to all screens of the relevant form;
- as the introduction of the new ASIC Regulatory Portal has resulted in significant changes to AFSL variations and applications, it would be helpful if ASIC could produce samples of the applicable questions (including the information that needs to be provided) in separate documents that users can read and consider prior to trying to complete the relevant online form via the ASIC Regulatory Portal. This would allow users to be able to collate all of the relevant information (some of which takes time to collect) prior to completing the relevant application form;

- similar to the request immediately above, it would be helpful if ASIC could produce samples of the applicable questions in relation to reportable situations (including the various waterfall options that apply) in separate documents that users can read and consider prior to trying to complete the relevant notification via the ASIC Regulatory Portal. This would allow users to be able to collate all of the relevant information (some of which takes time to collect) prior to completing the relevant notification;
- further related to reportable situations, members have reported unsatisfactory user experiences in relation to preparing updates to reportable situations where navigating to find prior reports, and then preparing updates to those prior reports, have been challenging with drafts disappearing inexplicably from the portal at times. This adds time and stress to users when reporting deadlines are key.

### 3.8 Corporate authorised representative

While the recent decision in *Australian Securities and Investments Commission v BPS Financial Pty Ltd* [2025] FCAFC 74 (**BPS Case**) clarified when financial service providers can rely on the “authorised representative” exemption, the court noted that it did not need to decide whether authorised representatives can ever issue financial products. Instead, the court’s focus was on whether, in the particular facts of the case, BPS was genuinely acting in a representative capacity. For this purpose, the court examined the text, context and purpose of (a) section 911A(2)(a) (wherein the exemption operates where a person “provides the services as representative of a second person”); (b) section 911B(1) (wherein a person must only provide a financial service “on behalf of” another person when certain conditions are met); and (c) the definition of “authorised representative” in section 9 (i.e. a person that provides the relevant financial services “on behalf of” the licensee).

As such, there still appears to be some ambiguity in this respect – while the case does not necessarily rule out the possibility that an issuer can rely on the corporate authorised representative (**CAR**) exemption, it is now unclear where that will be possible. As a result, whether greater certainty in the legislation/regulatory guidance around authorised representative arrangements should be considered. In particular, ASIC should also revisit, simplify and update the guidance in Information Sheet 251 given the decision in the BPS Case.

\*\*\*

The AIMA contacts in respect of this Submission are:

██████████  
Managing Director  
Head of AIMA Australia  
AIMA email ██████████

Yours faithfully

██████████ Managing Director, AIMA Australia National Group