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11 April 2022

Mr Lincoln Rogers
Lawyer, Superannuation Team
Australian Securities and Investments Commission
GPO Box 9827
BRISBANE QLD 4001

By email: remakinginstrumentsconsultation@asic.gov.au

Dear Mr. Rogers,

ASIC CONSULTATION PAPER 358 REMAKING ASIC RELIEF ON PRODUCT DISCLOSURE STATEMENTS, SUPERANNUATION DASHBOARDS AND FINANCIAL SERVICES GUIDES ('CP 358')

1. This submission is made by Alternative Investment Management Association (**AIMA**) and relates to 'ASIC Consultation Paper 358: Remaking ASIC Relief On Product Disclosure Statements (**PDS**), Superannuation Dashboards And Financial Services Guides' (**CP 358**) released by the Australian Securities and Investments Commission (**ASIC**) on 18 February 2022.
2. CP 358 proposes to remake seven existing ASIC legislative instruments, which are due to repeal or cease in the next two years, and consolidate them into three new instruments. These instruments impact the application of financial product and financial services disclosure laws to product issuers and other providers of financial services in certain prescribed circumstances.
3. AIMA's response to CP 358 is limited to those aspects concerning remaking relief for Shorter PDSs and PDS obligations (namely as they relate to hedge funds and multi-funds), as these are of primary relevance to AIMA's membership.
4. AIMA is the global representative of the alternative investment industry, with around 2,000 corporate members in over 60 countries. AIMA's fund manager members collectively

manage more than \$2 trillion in hedge fund and private credit assets including for Australian superannuation funds.

5. 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.

Shorter PDSs and PDS obligations

6. ASIC is proposing to remake the following three class orders and instruments into one single legislative instrument with an expiry date of 1 October 2027:
 - (a) Class Order [CO 12/749] *Relief from the Shorter PDS regime* (**Class Order 12/749**), which is due to expire on 30 June 2022;
 - (b) Class Order [CO 13/797] *Platform operators and trustees of superannuation entities using an agent to deliver a PDS* (**Class Order 13/797**), which is due to sunset on 1 April 2026; and
 - (c) *ASIC Corporations (Superannuation: Investment Strategies) Instrument 2016/65* (**Instrument 2016/65**), which is due to sunset on 1 April 2026.
7. The above three class orders and instrument are proposed to be remade as 'ASIC Corporations (Shorter PDS and Delivery of Accessible Financial Products Disclosure by Platform Operators and Superannuation Trustees) Instrument 2022/XX' (**ASIC Draft Shorter PDS Instrument**), as annexed to CP 358.

Proposal C1 – continue the relief given by Class Order 12/749 in a new legislative instrument that reflects ASIC's current drafting practice

8. AIMA supports ASIC's proposal to continue this relief, as it considers that the affected financial products (particularly hedge funds) are not well suited to the Shorter PDS regime, given their more complex nature.
9. AIMA is of the view that allowing multiple funds with common characteristics to be offered under a single PDS can be more cost-efficient than offering each respective fund under a separate, Shorter PDS – noting that product issuers still have the option to opt-in to the Shorter PDS regime, at their discretion.

Proposal C2 – continue the relief given by Class Order 13/797 in a new legislative instrument that reflects ASIC's current drafting practice

10. AIMA supports ASIC's proposal to continue this relief, as it facilitates existing industry practice under which financial advisers provide the PDSs for *accessible financial products* which can be indirectly held by investors through a platform to their clients.

11. AIMA notes that in paragraph 7 of ASIC Draft Shorter PDS Instrument, notional subsection 1015C(3C) cross refers to the following ASIC class orders:
 - (a) ASIC Class Order [CO 13/762] *Investor directed portfolio services provided through a registered managed investment scheme* – for the definition of “IDPS-like scheme”; and
 - (b) ASIC Class Order [CO 13/763] *Investor directed portfolio services* – for the definitions of “IDPS” and “operator”.
12. AIMA notes that these class orders are due to sunset on 1 July 2023 (as each of these were made on 1 July 2013) and from that time or their repeal date (whichever occurs earlier) they, and the definitions they contain, will cease to exist.
13. Therefore, when these class orders are replaced by new legislative instruments, a consequential change will need to be made to this part of the relevant legislative instrument to incorporate the then current sources of the definitions of “IDPS-like scheme”, “IDPS” and “operator”.

Proposal C3 – continue the relief given by Instrument 2016/65 in a new legislative instrument

14. We have no comments on this proposal as it is not demonstrably relevant to our membership.

General observations

Consequential changes to other ASIC class orders and legislative instruments

15. If there are any other ASIC class orders or legislative instruments which cross-refer to any of the instruments which ASIC is proposing to replace, then consequential amendments should be made at the appropriate time to cross-refer to the relevant replacement legislative instrument.

No substantive changes to legislative instruments

16. AIMA agrees that no substantive changes to content are required for the ASIC Draft Shorter PDS Instrument given, as ASIC acknowledges, the existing content is fit for purpose, operating efficiently and effectively.

Duration of each respective new legislative instrument

17. As ASIC has noted, there is no indication as to how long it will take the Government to settle a policy position.
18. AIMA prefers that each respective legislative instrument automatically sunset after **ten years** (i.e. 2032) rather than on the earlier proposed date of 1 October 2027.
19. Past experience suggests that it may not necessarily be reasonable to expect the Government to enact permanent legislation dealing with these issues within the next five

years, as historically these types of issues appear not to have been prioritised in the legislative agenda. AIMA would prefer to have the relief apply for the usual ten year period rather than (if nothing changes in the ensuing five years) have this consultation process repeated in five years' time.

20. If and when there is a more permanent legislative solution introduced while the instruments are in operation (whether within the next five years, or five to 10 years), the instruments can be repealed or amended as appropriate if and when that occurs.

Contact

21. AIMA would be happy to discuss any aspects of our submission or provide further information. Please use the following contact details:

Michael Gallagher

Managing Director, General Manager

AIMA Australia

Contact: [REDACTED]

Yours sincerely,

Michael Gallagher