AIMR Issues New Provisions to Professional Standards Relating to Fees  
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The Association For Investment Management and Research (“AIMR”) recently issued new requirements and guidance (“Fee Provisions”) to investment firms that claim compliance with AIMR Performance Presentation Standards (“AIMR-PPS” or “Standards”) relating to the calculation methodology and disclosure requirements of costs and/or fees that a client incurs when maintaining an investment portfolio.1

INTRODUCTION
AIMR believes there is a range of different types of costs and/or fees that a client incurs when maintaining an investment portfolio. In general, there are three main types of fees and/or costs: Investment Management Fees, brokerage commissions, and Administrative Fees.2 Administrative Fees include Custody Fees and may also include accounting fees, consulting fees, legal fees, performance measurement fees, and other applicable fees. Investment Management returns are typically presented (i) Gross-Of-Fees Return defined to be the return on assets reduced by any Trading Expenses (i.e., the direct cost of buying or selling the assets) and/or (ii) Net-Of-Fees Return defined to be the Gross-Of-Fees Return reduced by the Investment Management Fees incurred. The AIMR fee provision follows these two approaches.

CALCULATION METHODOLOGY REQUIREMENTS

Fees Generally
The Standards require that returns must be calculated after the deduction of actual Trading Expenses incurred during the reporting period. Trading Expenses can be: (i) Direct: as in the case of brokerage commissions and any other regulatory fee, duty, and/or tax (e.g., stamp duty, SEC fee, etc.) associated with an individual transaction, or (ii) Indirect: such as a bid/ask spread.

For purposes of the Standards, firms must include (i.e., reduce) both Gross-Of-Fees and Net-Of-Fees Returns by the Trading Expenses incurred in the purchase or sale of securities. These costs must be included because they must be incurred in order to implement the investment strategy. Estimated Trading Expenses are not permitted.

In some cases (particularly when initially compiling a “compliant” track record), the actual fees charged to each discretionary portfolio under management are not available. Firms that wish to show Net-Of-Fees

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1 While the Guidance Statement refers to the Global Investment Performance Standards (GIPS), all interpretations issued by AIMR related to GIPS are applicable to AIMR-PPS.

2 These fees and/or costs are defined terms in the Fee Provisions.
performance results are permitted to use the highest Investment Management Fee incurred by portfolios in the composite to reduce Gross-Of-Fees performance. However, firms are prohibited from using the highest Investment Management Fee to add to the Net-Of-Fees Return in order to obtain a Gross-Of-Fees Return. Adding back the highest fee would result in overstating the Gross-Of-Fees Return. When adjusting from Net-Of-Fees to Gross-Of-Fees performance, firms must use either the actual investment management fees or the weighted-average investment management fee for the composite.

**DISCLOSURE REQUIREMENTS**

**Bundled Fees**
A bundled fee is a combination of several fees to create a one “Bundled Fee”. A Bundled Fee can include any combination of fees including Trading Expenses, Investment Management Fees, Custody Fees, or any other related fees. A Bundled Fee can be specific to a client, as is the case with “all-in” fees, or can be specific to a particular product, as is the case with “wrap” fees.

If a firm includes a portfolio with a Bundled Fee in a composite, it must disclose that the composite contains portfolios with Bundled Fees and disclose the percentage of composite assets that are Bundled Fee portfolios. Firms are required to disclose the various types of fees that are included in the Bundled Fee.

Some Bundled Fees can be segregated into the various underlying components (e.g., the firm can “unbundle” the fee and identify each segment that comprises the Bundled Fee). In other cases, only portions of the Bundled Fee can be segregated (e.g., Investment Management Fee segment can be identified and separated, but the Custody and Trading Expenses cannot).

In cases where the Trading Expenses cannot be identified and segregated from a Bundled Fee, either the entire Bundled Fee, or the portion of the Bundled Fee containing the Trading Expenses, must be included in (i.e., reduce) the Gross-Of-Fees and Net-Of-Fees Returns. In these cases, Custody and other Administrative Fees might be included in the Gross-Of-Fees and Net-Of-Fees Returns. Firms may also find that when the components of the Bundled Fee cannot be identified that the Gross-Of-Fees Return is equal to the Net-Of-Fees Return.

In order to assist prospective clients in better understanding the fees included in the Gross-Of-Fees Return calculation, firms must disclose if other fees are included in the Bundled Fee in addition to the Trading Expenses. When presenting Net-Of-Fees Returns, firms must disclose if other fees are included in addition to the Investment Management Fee and Trading Expenses.

Some investment product returns such as mutual funds are typically calculated net of other fees (e.g., Custody and other Administrative Fees).

In order for these products to be treated consistently with regards to the definitions of Gross-Of-Fees and Net-Of-Fees in the Standards, firms are allowed to add back all fees and expenses (e.g., Investment Management, Custody, transfer agent, share registration, marketing, and regulatory fees) except for Trading Expenses. When calculating Net-Of-Fees Returns, firms are allowed to add back all fees and expenses except for Trading Expenses and the Investment Management Fee, provided that the firm can identify all these fees. Estimated fees are not permitted.

**Additional Fees: Sub-Advisor, Pooled Funds and Fund-of-Funds**
Firms may invest a portion of a larger portfolio in a pooled fund, utilize a subadvisor, or create a fund-of-funds structure whereby they incur additional fees charged by the underlying fund or paid to the sub-advisor. In these situations, firms must present the Net-Of-Fees performance net of Transaction Expenses and Investment Management Fees, (including the underlying fees). AIMR is silent on how to calculate gross of fee performance. However, it would appear appropriate to add both the underlying investment management along with the firm’s investment management fee.

In all cases, the firm must disclose in each composite presentation the current Fee Schedule appropriate to the particular composite.

**EFFECTIVE DATE**
The Fee Provisions can be found on AIMR’s website at [www.aimr.org/standards](http://www.aimr.org/standards). The effective date of the Fee Provisions is January 1, 2005. No retroactive compliance is recommended or mandated.
Kirkpatrick & Lockhart LLP maintains one of the leading investment management practices in the United States, with more than 60 lawyers devoting all or a substantial portion of their practice to this area and its related specialties. The American Lawyer Corporate Scorecard, published in April 2003, lists K&L as a primary legal counsel to the investment companies, board members or advisory firms for 15 of the 25 largest mutual fund complexes. No law firm was mentioned more frequently in the Scorecard.

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