

Sequoia Virtual PD Day

November 2020 Presented By:
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Agenda

- ▶ Introduction
- ▶ ASIC
 - ▶ Disclosure
 - ▶ Annual Fee Consent
 - ▶ Sole Purpose test
 - ▶ Grandfathered Commission
- ▶ Fourth Line and SoA issues
 - ▶ Collection of data and Scope of Engagement and Goals and Objectives
 - ▶ Replacement Product Advice Reports
 - ▶ Best Interest and Clear and Concise.

ASIC Regulatory Changes

- ▶ Consultation Paper 329 from March 2020 has provided proposals for implementation from 1/1/2021 out to 1/7/2021. It has however not yet released the legislation that enables these changes which has led to confusion.
- ▶ Disclosure of Non - Independence. Those advisers who do not meet s923A of the Corporations Law to enable being described as Independent (and that's all in the room, because your AFSL doesn't) will need to provide a disclosure of Non-Independence in the FSG.
 - ▶ The wording which will be prescribed will be required to be provided in a box with a Title in **BOLD Not Independent**

ASIC Superannuation Sole Purpose Test

- ▶ ASIC wrote to Superannuation Trustees that it was their requirement to ensure that fees deducted from Superannuation funds met the Sole Purpose Test of being for Superannuation member advice and or for Insurance held by the Super Fund.
- ▶ Trustees/Fund managers are pushing that requirement out to AFSL's and we are having to respond with the provision of and declaration about the Sole Purpose Test for fee's debited from Super Funds

Annual Fee Declaration and Acknowledgement

- ▶ This is the crucial piece for us. At present the draft legislation isn't clear whether going to an annual Ongoing Arrangement is sufficient to stop the need for FDS and Renewal Notices.
- ▶ The FDS and RN is a flawed process and needs to be changed.
- ▶ An Annual Fee agreement must not exceed 13 months or it will be considered to be an on-going fee arrangement and at present the way it is worded is that it is an annual acknowledgement, consent to charge and expectation of the services to be received for the fees to be charged.
- ▶ An annual consent to charge a fee that is based on an existing agreement would be considered to be an on-going Fee arrangement and subject to FDS and RN.
- ▶ A number of Fund Managers are expecting to have the legislation require them to actually hold a copy of the clients consent to the charge.
- ▶ We have not implemented and have not required those already on annual agreements to change until we see the legislation.

Top 5 Issues that cause problems at AFCA and ASIC

- ▶ Fee for No-Service
- ▶ Gaps in Documentation
- ▶ Providing a Quasi MDA service that you are not authorized to do
- ▶ Risk Profile versus Recommendations
- ▶ Best Interest and Alternatives

Fee for No Service

- ▶ Insto's have screwed the industry and put us all in the cross-hairs.
- ▶ 3 parts to the argument/issue
- ▶ The agreement
 - ▶ Regardless of on-going or annual agreement if you don't have an OSA then you need to engage with your PDM and get one done.
 - ▶ It must be comprehensive to demonstrate "value".
 - ▶ It must be flexible to avoid needing to have refunds.
 - ▶ Mandatory is a review arrangement.
 - ▶ Should also be specific about contact and administration
 - ▶ Nice to haves are Newsletters, Seminars etc (these are not valued by ASIC)

Fee for No Service (2)

- ▶ The second part is Delivery.
 - ▶ The file needs to record what has been delivered to clients - in addition to the review which can be as simple as a No-Change RoA to a whole new Fact Find/Goals/Risk Profile and new Foundation SoA.
 - ▶ If you are not using a Financial Planning Software then the requirements for file notes or other CRM become more onerous.
 - ▶ We are currently in the final stages of having available through Adviser Logic a “light” Financial Planning Software solution that will be cost effective for those advisers who don’t have access and don’t require the full solution.
 - ▶ If you send an email or receive or make a telephone call to the client then record.

Fee for Service (3)

- ▶ The final part is reporting
 - ▶ Regardless of the outcome of the changes in legislation it is likely an obligation akin to the current FDS will still be required. We will deal with Renewal Notices when the legislation is finalized.
 - ▶ Financial Planning Software is not 100% foolproof but should provide the majority of information required. The need to accurately report income received was highlighted in the 2018/2019 ASIC surveillance where they decided over 80% of FDS's were incorrect.
 - ▶ Must represent 365 days
 - ▶ Must include all income received
 - ▶ Must include services provided

Gaps in Documentation

- ▶ AFCA and ASIC are rules based organisations.
- ▶ AFCA expect to see certain documents on files.
 - ▶ Signed Fact Find
 - ▶ Risk Profile (signed if not completed electronically)
 - ▶ Comprehensive File Notes
 - ▶ Not just the original meeting but working papers on advice plus an implementation email
 - ▶ Too many files have a gap between the original SoA and what was implemented
 - ▶ A Wholesale/Sophisticated form needs to have a file note that the client was aware and understood the risks of being treated as a 708 client.
 - ▶ Make file notes contemporaneous and date and identify - don't expect that 7 years later we will know who "Peter" was.

Gaps In Documentation (2)

- ▶ We do not prescribe how the businesses will store client files as it needs to work for the business however.
 - ▶ SoA's and RoA's should be labelled and if saved in the same drive as Draft.
 - ▶ The final Word Version should be labelled as Final.
 - ▶ A PDF that includes the signed PDF should be saved.
- ▶ Working papers saved to file should include:
 - ▶ Life Risk Analysis
 - ▶ Alternative Strategies and Products considered
 - ▶ Further information and investigation carried out.
 - ▶ By all means use a white board with clients but take a screenshot or picture and save to the file.

MDA Services

- ▶ None of our licences have an MDA authorization.
- ▶ We have been caught by some advisers operating what amounts to an MDA service because they buy/sell shares on clients behalf without providing clients with the advice and obtaining the clients agreement.
- ▶ Just because a client is wholesale does not mean you can operate an MDA
- ▶ We have arrangements with 3rd parties who do operate an MDA to utilize the facilities if an MDA is required.
- ▶ 99% of clients are more suited to an SMA.
- ▶ PI Insurance will not cover an unauthorized MDA and for AFCA/ASIC it is an automatic fail.

Risk Profile versus Recommendations

- ▶ Risk Profiles are an easy kill for ASIC & AFCA.
- ▶ We do not expect that a client will be religiously in line with the Asset Allocation.
- ▶ Movements out side of 10% require commentary and why.
- ▶ Don't manipulate investments to fit an asset allocation.
- ▶ An ARIET is not fixed interest nor is a hybrid.
- ▶ Risk Profiles are not to be scared of but the recommendations need to be in line with them or the explanation of why not.
- ▶ Remember that in the event of a dispute every client is conservative!!!!

Best Interest and Alternatives

- ▶ The Compliance Managers will go further into Alternative Strategies and Products tomorrow when discussing the SoA.
- ▶ The issues we face at AFCA and ASIC in regard to alternative products and strategies include:
 - ▶ SMSF - Value, Level of Understanding and Need.
 - ▶ Switching of Insurance - Cost, Features, exclusions. Be very careful about Agreed Value/Premier IP policies that can never be replicated.
 - ▶ Super switching - Value, features that are meaningful, consideration of existing product and provider.
- ▶ When faced with a loss calculation AFCA will always pick the cheapest positive performer when assessing the “but for the adviser result”.

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Questions?