

MONEY MANAGEMENT – MARCH 6, 2008

JAMES MURPHY highlights how planners should satisfy their conduct and disclosure obligations under Financial Services Reform in providing a reasonable basis for their super switching recommendations.

Providing a reasonable basis for super switching advice has come under intense examination from the Australian Securities and Investments Commission (ASIC) of late, and this scrutiny is not likely to ease up any time soon.

The regulator has been cracking down on dealer groups and independent Australian Financial Services (AFS) licensees. This should be expected.

Financial Services Reform (FSR) law has been in place for some time now, but despite this, some dealer groups and independent financial advisers are failing to provide a reasonable basis for their super switching advice.

This was particularly evident in ASIC's *Shadow Shopping Survey on Superannuation Advice*, released in April 2006.

When it came to super switching advice the following findings were made:

- 28 per cent of cases surveyed did not have a reasonable basis; and
- a further 5 per cent probably did not have a reasonable basis.

Basically one-third of all super switching advice was non-compliant (or potentially so). With these results, it is no wonder super switching advice is high on ASIC's hit list.

The basic guidelines for providing a reasonable basis for advice

Here is a quick summary. Where personal advice is being provided to a client, the reasonable basis for advice rule (also known as the suitability rule) must be satisfied.

The reasonable basis for advice rule has been designed to ensure that personal advice provided to retail clients is fit for its purpose.

There are three key



requirements under the rule.

1. The 'client enquiries' requirement – the obligation to make reasonable enquiries into the client's relevant personal circumstances once those personal circumstances have been determined (that is, the fact find and needs analysis) – refer to section 945A(1)(a);

2. The 'subject matter' requirement – the obligation to consider and investigate the options available to the client (that is, investigating the 'from' and 'to' funds) – refer to section 945A(1)(b); and

3. The 'appropriate advice' requirement – the advice must be appropriate for the client having regard for the consideration and investigation of the subject matter – refer to section 945A(1)(c).

Additional requirements when providing super switching advice

When recommending the replacement of one financial product with another – as is the case when providing super switching advice – additional statements must be included in the Statement of Advice (under section 947D of the Corporations Act 2001). The statements are broadly:

- that the client's existing product has been considered;
- the cost of disposing the existing product and

acquiring the alternative product;

- the potential benefits that may be lost; and
- any significant consequences of the switch.

Hints to help satisfy reasonable basis requirements

It is certainly worthwhile providing the client with a clear and concise comparative analysis of those features that are deemed to be relevant to the client.

The adviser should be able to determine the relevance of the features and benefits of the existing and alternative superannuation fund(s) based on information obtained in the fact find and needs analysis.

A comparison of relevant rollover features is important for the following reasons:

- it demonstrates you understand the client and their objectives;
- it aids the adviser in adhering to the 'subject matter' requirement – the second element of the suitability rule; and
- it demonstrates the adviser is being clear, concise and effective in their disclosure to the client.

Financial advisers must highlight the benefits and features that may be lost (or reduced) by the client on switching to an alternative fund (refer to section 947D of Corporations Act 2001). This should be done, irrespective of whether those features or benefits are deemed relevant to the client's objectives.

James Murphy is the general manager of research and compliance at Midwinter Financial Services. Midwinter's Reasonable Basis software has been specifically developed to assist advisers in providing a reasonable basis for their product and strategy recommendations.



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