



AFA National Forum 2008



Taking the risk out of your business

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ALEXIS Compliance & Risk Solutions

Overview

- Industry and regulatory environment
- Your responsibilities
- Risk concerns
- Professional Indemnity Insurance and RG126
- Risk management and compliance

Industry and regulatory environment

- ASIC restructure
- Further FSR refinements
- More disclosure
- Surveillance via campaigns not client complaints
- ASIC has a clear policy of “outing” and naming business for publicity

Your responsibilities

s912A General obligations

- Do all things necessary to ensure that the fin/services are provided “efficiently, honestly and fairly”.
- Comply with the fin/services laws
- Comply with the conditions on the licence

Your responsibilities

s912B Compensation Arrangements

... must have adequate arrangements for compensating those persons for loss or damage suffered because of breaches of the relevant obligations under Chapter 7 by the licensee or its representatives...

Risk concerns

- Are your terms of engagement structured properly?
- Are your risk disclosures appropriate?
- Are your fee and commission disclosures appropriate?
- Non approved product issues
- Adviser Product knowledge
- Is your PI insurance adequate?
- Review your complaint management procedures.

Risk concerns

Terms of engagement

Is the contract between the adviser and the client and it establishes clear expectations in the mind of the client as to what to expect from the adviser.

It outlines the services the adviser will provide, the expectations of both parties, the liability of the adviser to the client and the context against which the client can measure the advisers performance.

Risk concerns

Fees and commission disclosures

35 In relation to the fees or commission charged, the Panel cannot deal with complaints in relation to the level of commission and charges made by a member unless there has been non-disclosure or misrepresentation. However, if the appropriate level of professional service has not been provided to a complainant the Panel may rule that there has been a breach of contract and the commissions must be refunded.

Source: www.fics.asn.au Determination No. 16283 Page 18 of 23

Risk concerns

Adviser product knowledge

Financial advisers must provide their clients appropriate recommendations in relation to investments in order to meet their duty of care. An adviser must take into consideration the client's needs, circumstances, risk profile and time frame for investment before providing their advice.

Source: www.fics.asn.au Determination No. 16283 Page 18 of 23

Professional Indemnity Insurance

- **Regulation 7.6.02AAA** which commenced on 1 July 2007, makes it compulsory that an AFSL have adequate PI insurance to cover potential consumer losses.
- **ASIC RG 126** sets out how ASIC will administer the PI insurance requirements (Nov 2007, March 2008).
- 2 year implementation period from 01.01.08-31.12.09.

PI Insurance requirements

- Authorized insurer
- Amount of cover
- Scope of cover
- Terms and Exclusions
- Persons covered
- Automatic reinstatement
- Legal costs
- APL lists
- Retroactive cover
- Run-off cover

Professional Indemnity Insurance

RG 126.13

“.. PI insurance is not designed to protect consumers directly and not a guarantee that compensation will be paid. It is designed to protect the insured (licensee) against the risk of financial losses arising from poor quality services....

Professional Indemnity Insurance

RG 126.14

“.. the insurance is not designed to cover product failure or general investment losses, claims for loss solely as a result of the failure (eg. Insolvency) of a product issuer or where a return on a financial product has not meet expectations”..

Risk Management and Compliance

RG 126 Compliance requirements

- July 2008. Obtain PI insurance which includes the **higher FICS/FOS monetary limits** (\$150K invest complaints, \$280K insurance complaints)
- July 2008. **Update your FSG Disclosure** to include a statement about the kind of compensation arrangements the AFSL has in place (RG126.110- 113)

Risk Management and Compliance

RG 126 Compliance requirements

- July 2008. **Assess Adequacy.** Undertake a review of your business risks to assess what is adequate compensation arrangements for your AFSL (RG 126.51 - 63).
- 2008. **Update your risk management plan** to include PI insurance as an AFSL risk (RG 126.30-33)

Risk Management and Compliance

RG 126 Compliance Arrangements

- 2008. **Request to discharge your security bond.** ASIC has the discretion to discharge any security bond (RG 126.84-87)

Any Questions?

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