

Sharemax Beslissing en die Doel van FAIS

Die Toets vir Geskiktheid (The Suitability Test)

Die vereiste dat adviseurs 'n omsigtigheidstudie (due diligence) moet uitvoer ten opsigte van produkte wat hulle aanbeveel, word verder as volg toegelig in die Ombud se beslissing in die Siegrist beslissing:

“ It must be said that the test for any FSP is not whether or not the investment is successful or proven, but whether or not the investment is suitable for a particular investor bearing in mind the latter's needs, profile and tolerance for risk. This appears to be ignored by all of the respondents...”.

Die Ombud is van mening dat adviseurs, veral diegene wat onder USSA se mantel gewerk het, amper uitsluitlik pensioenarisse geteiken het – mense wat 'n hoë risiko belegging die minste kon bekostig. Die beloofde hoër as normaal opbrengste is waarskynlik baie meer beklemtoon as die onderliggende risiko en potensiële likiditeit beperkings van hierdie tipe belegging.

Self-regulering

Paragraaf 21 van die Siegrist beslissing lees as volg:

The Act and the Code is structured in such a way that it requires, to a certain degree, self-regulation by the industry. The legislature expects that members of the profession will act in good faith and apply the provisions of the Act and Code. International experience, since 2007, has taught us that this industry requires more and more effective oversight. Currently, the oversight responsibility is left entirely to the principal. This makes no sense where the principal is behind the Ponzi scheme. The abuse of section 13 is a good example. At one point USSA had as many as 1376 section 13 appointed FSPs spread throughout the country. How it was possible to train and supervise this number is beyond explanation. USSA, as did Leaderguard, Bluezone and the others, failed to explain how they trained their large numbers of representatives. They abused the Act to take advantage of a loop hole which effectively allowed unlicensed FSPs to sell risky investments to an unsuspecting public.

Die FSB het intussen daarop gewys dat die syfer van 1376 inderdaad die totale aantal verteenwoordigers is wat onder toesig onder die USSA lisensie gewerk het. Selfs al gebruik mens hul syfer van 620, dan bly dit onmoontlik vir een sleutelpersoon om hulle effektief te kon oplei en toesig hou op nasionale vlak.

Die vereistes vir toesighouding is in 2008 aansienlik verskerp, wat nog meer vrae laat ontstaan oor die FSP se vermoë en voorneme om ter goeder trou, en in die gees van die wetgewing, op te tree. USSA is eers in 2010 gelikwedeer, terwyl daar, na die beste van ons wete, geen noemenswaardige toename in die bestuurskorps van die FSP was nie.

.