Professional Standards & Compliance Manual

SAN

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Professional Standards & Compliance Manual for SAN Authorised Representatives

This manual discusses and explains your responsibilities and obligations as an Authorised Representative of SAN. It also addresses the legislative, regulatory and Licensee requirements involved in providing advice to a client under the SAN Australian Financial Services Licence (AFSL) and provides guidance regarding best practice.

Disclaimer

This material is prepared for the sole use of authorised representatives of SAN, AFSL No. 430062. The material contains content specific to the provision of financial product advice on areas authorised through the SAN AFSL and as such cannot be taken to be relevant to any other AFSL that may authorise its representatives to provide personal financial advice.

Information contained in the material is correct at the time of preparation. With changes in legislation over time, representations made in this material may become out-of-date or no longer correct. Any further reference to these materials should be checked against the legislation current at that time.

Table of Contents

SAN's AFSL

With the removal of the accountants' exemption on the 1st of July 2016, providing advice in relation to the establishment of a Self-Managed Superannuation Fund (SMSF) has the same licensing requirements as for any other 'financial product' in Australia.

The definition of a 'financial product' under Corporations law is 'a facility through which, or through the acquisition of which, a person does one or more of the following:

a) Makes a financial investment
b) Manages a financial risk; or
c) Makes non-cash payments

Superannuation funds meet this definition and accordingly, recommendations or advice relating to the provision of an SMSF to a client, and other advice involving SMSFs and superannuation funds, will be governed by the legislation covering the provision of financial advice.

Due to these changes and to support the accounting profession, the NTAA established the SMSF Advisers Network (SAN) which enables authorised members to continue to provide their clients with superannuation advice.

This Australian Financial Services Licence (AFSL) is not a "limited" licence. However, Authorised Representatives (ARs) operating under the SAN AFSL are restricted to providing the same level of advice as those operating under a limited AFSL. That is, providing personal advice on:

- Basic Deposit Products; and
- Superannuation (includes Self Managed Superannuation Funds).

In this way, the SAN AFSL closely resembles what is known as a 'limited' AFSL. SAN authorises its ARs to only provide advice in the areas of:

- Establishment of an SMSF;
- Commencement of a pension (Account based and Transition to Retirement);
- Contributions (Concessional, non-concessional and in-specie);
- Rollover of existing superannuation structures, whether partial or in full;
- Limited Recourse Borrowing Arrangements (LRBA); and
- Winding up an SMSF.

In addition to this, an AR can assist trustees with formulating the SMSF's investment strategy. It is also equally important to ensure you understand the areas in which you are unable to provide advice. Under SAN's AFSL, ARs are not authorised to provide advice in relation to the following areas:

1. **Insurance**; for example, if you are establishing an SMSF and you identify that the client has existing insurance within the current fund. To ensure the client does not lose the existing cover, you must:

   (a) advise your client of the risks associated with the loss of cover; and
   (b) refer the client to (or at the very least recommend, in writing, that the client seek advice from) an insurance specialist.

Steps (a) and (b) above must be done prior to rolling over the full balance from the current fund to the SMSF.

You can only 'scope out' life insurance advice in the following limited circumstances:

(a) You have verified that the client does not have personal risk insurance/s through their existing super fund and the client has confirmed that they do not want to receive specialist personal risk insurance advice by ticking the applicable clause in the Authority to Proceed, contained in the SOA.
(b) The client tells you that they hold adequate personal risk insurance outside their superannuation, and the client has confirmed that they do not want to receive specialist personal risk insurance advice on the adequacy of their existing insurances by selecting the applicable clause in the Authority to Proceed, contained in the SOA.
(c) The client tells you that they consider that they have sufficient other assets and do not require life insurance, and the client has confirmed that they do not want to receive specialist personal risk insurance advice by selecting the applicable clause in the Authority to Proceed, contained in the SOA.

SAN requires that, in every other case, ARs explain the personal risk insurance held by the client within their existing superannuation and should:

(a) wait until the recommended specific personal risk insurance advice is provided to the client by a suitably authorised advice provider before establishing the SMSF; or
(b) wait until the client has purchased personal risk insurance directly from an insurer if they choose to do so; or
(c) recommend that the client maintain a minimum balance in their existing super fund and continue to direct contributions to the fund if that is required to maintain the level of insurance held.

2. **Investment products**; for example, making comment on which products the client should invest in within their superannuation fund.

3. **Credit**, for example giving an opinion on which lender they should borrow funds from. SAN does not have a credit license and therefore no Authorised Representative of SAN can make comment on credit lenders. These clients will need to be referred to a credit specialist.

Being a SAN Authorised Representative

In order to provide financial advice, one must either have their own AFSL or be authorised under an existing AFSL.

From January 2017, to become authorised with SAN you must register as a Corporate Authorised Representative and all individuals who will be providing financial advice will be appointed under this entity.

Prior to 1 January 2019, all ARs of SAN must have demonstrated that they comply with RG146 accreditation in superannuation and Self Managed Superannuation Funds prior to being appointed as a representative of SAN.

Post 1 January 2019, all new entrants to the financial advice industry must adhere to the education requirements set by the Financial Advice and Ethics Authority (FASEA) prior to becoming authorised with SAN.

All existing advisers authorised prior to 1 January 2019 (including those who have been with another AFSL between 2016 & 2018) must ensure they meet the new education requirements by no later than 1 January 2024.

It is important to note that all ARs are responsible for the advice that they provide. This means facing the consequences of failing to adhere to legislative, regulatory or licensee requirements, which can range from disciplinary action to monetary fines through to suspension of authority or banning and even imprisonment.

Once you are authorised under SAN's AFSL, you represent SAN in both your actions and what you say to clients.

Who Can Give Advice & What are my Responsibilities as an AR of an AFSL?

Only an Authorised Representative can give advice to clients in relation to their superannuation. This means that if you choose to appoint only one person within your business as an AR, only **THEY** can give licensed advice. No other person can give advice. The client must not be under the impression that anyone other than an SAN AR has provided them with advice regarding their circumstances.

It is important to understand that when a person becomes an AR of an AFSL, it is the AFSL (also known as the licensee) that is responsible for any advice provided under the licence. There are conditions enforced upon licensees under the Corporations Act 2001 which the AFSL need to comply with to ensure that its ARs are operating in a compliant manner. As such, AFSLs must have systems in place to monitor and supervise its ARs.

Each AR also has a responsibility to every other AR under the same AFSL. Should one AR fail to follow the right process, then all other ARs under that AFSL may be impacted.

There are a number of items that can lead to an AR's advice and processes being reviewed and scrutinised, including where a client makes a complaint against the AR through the AFSL or directly to the Australian Financial Complaints Authority (AFCA).

In looking at such a breach, ASIC can decide to impose extra conditions on the entire AFSL and all of their ARs and the way that they provide advice. These extra conditions will be applicable to all of the other ARs under the licence.

In designing the practices and processes by which we operate, SAN has taken into account the conditions issued by ASIC. Whilst some ARs may feel that they are not "financial planners", it is important to recognise that the legislation that covers what you can say and do as an AR of SAN, is exactly the same as that for financial planners.

Section 2 – Representing SAN

As an Authorised Representative of SAN, it is important that you clearly identify your authorisation and ensure your clients understand your relationship with SAN and that the services you provide under SAN are separate to the services you provide under your accounting practice. It is particularly pertinent that your clients are aware that SAN is not responsible for activities and/or advice provided by your accounting practice.

You must also ensure that you manage your clients' expectations about the advice you can and cannot provide under SAN. Any misrepresentations may result in clients being provided with advice outside of the scope of your authorisation.

Inherent in your representation to clients, you cannot give them the impression that you are the AFSL. It must be clear that SAN holds the AFSL and you are a representative of SAN.

Misleading and Deceptive Conduct

As an AR of an AFSL, you must not engage in misleading and deceptive conduct. This includes not only your individual conduct with clients, but also how you represent yourself and your practice to the general public.

Under section 12DA of the Australian Securities and Investments Commission Act 2001, section 1041H of the Corporations Act 2001 and section 18 of the Australian Consumer Law:

"A person must not, in trade or commerce, engage in conduct in relation to a financial service that is misleading or deceptive or likely to mislead or deceive."

Misleading and deceptive conduct does not just apply to positive statements. It can extend to:

- Silence – refusing or refraining from doing an act. This also incorporates where there is a reasonable expectation that if a relevant fact exists, it will be disclosed;
- Forecasts – representation of future matters. You must have reasonable grounds for making the representation of future matters;
- Promises and opinions – implied representation of a present fact. If you knew the promise or opinion to be false or you made it with reckless disregard or if the promise or opinion is not capable of the performance stated.

A determination that you have engaged in misleading and deceptive conduct can have very serious and far-reaching consequences, including but not limited to:

1. Fines for the individual AR, the Corporate Authorised Representative (CAR) and the Licensee;
2. Criminal convictions;
3. Imprisonment; and/or
4. Disqualification from the industry.

SAN Authorisation Certificate

Included in your Welcome Pack was your Corporate Authorised Representative Certificate and/or your individual Authorised Representative Certificate.

These certificates should be displayed in your office or place of work, in a manner that is easily visible to your clients.

Though we don't prescribe how these documents should be displayed, we suggest that they are framed and placed alongside your other business registration or education documents.

You must also ensure that you represent yourselves clearly to your clients regarding your authorisation under SAN.

This includes ensuring all client facing documents used in the provision of providing advice under SAN (e.g. SOA documents, FSGs, Fact Finds, stationery items, email signatures, marketing documents etc), include the correct disclosure and details.

Branding Guidelines

This section outlines the specifics of what information you should clearly disclose on which documents. Note that you must ensure you do not use any of the ASIC banned words "Independent", "Impartial" and "Unbiased", as detailed in section 3.

Use of SAN logo

Whilst it is preferred, it is not mandatory to include the SAN logo on your marketing materials or stationery, as long as the disclosure of your relationship with SAN is clear.

Disclosure

On all relevant documentation, you must clearly disclose the relationship you hold with SAN. This disclosure must be clear enough to ensure clients understand that the Corporate Authorised Representative or the Authorised Representative does not operate their own licence.

Note that when disclosing your Corporate Authorised Representative or Authorised Representative details, you must state Corporate Authorised Representative and/or Authorised Representative in full. These terms should not be shortened to acronyms.

SOAs, FSGs and Fact Find templates are provided by SAN and therefore have the relevant information disclosed. You must not tamper or alter this information in any way without first having sought written approval from the SAN Compliance team.

Disclaimer

In some instances, it may be necessary to include a disclaimer in your marketing material. These disclaimers can include Factual Information or General Advice Warnings. Once you have submitted your documentation for review to SAN, we will assist you in what is required in these circumstances.

SAN Contact Details

When disclosing SAN's contact details, you can use our website address (www.san.com.au). There is no need to state our full street address and phone number as this information is easily obtained on the front page of our website.

Your Contact Details

Your contact details should include your phone number, address (street address at least) and other contact information such as your email address.

The details and disclosure information required on items are specific to the type of item.

Specific Documents

Business Cards - The authorised representative must be identified as an Authorised Representative along with their Authorised Representative number and contact details, as well as SAN's details including our AFSL number and ABN;

Letterhead - The Corporate Authorised Representative must be identified, along with their Corporate Authorised Representative (or Authorised Representative) number, ABN and contact details. SAN must also be identified including our AFSL number, contact details (website) & ABN.

Email Signature - The authorised representative must be identified as an Authorised Representative along with their Authorised Representative number and contact details; the Corporate Authorised Representative name and number; and SAN's details including our AFSL number and ABN;

Website – If you promote SMSF advice services, your home page should show SAN's details (name, website, AFSL number & ABN) and confirm that you are licensed to provide superannuation advice only through SAN. Full details of the Corporate Authorised Representative (including Corporate Authorised Representative number, ABN and contact details) along with details of the individual Authorised Representative, should also be disclosed on the website. This can be on the front page or on another relevant page of the website, but it must be clear that the SAN authorisation is in relation to superannuation advice only.

Following is some suggested wording that you can include on your website about SAN:

Since 1 July 2016, advice about superannuation must be provided through an Australian Financial Services Licence.

In order to provide personal advice to our clients in relation to superannuation and self managed superannuation funds, PRACTICE NAME has chosen to be authorised through the SMSF Advisers Network Pty Ltd (SAN) – the Australian Financial Services Licence of the National Tax and Accountants' Association Ltd (NTAA).

SAN supports our practice in providing advice regarding:

- Establishment of SMSFs
- Contribution strategies (amounts, types, withdrawal and recontribution)
- Pension strategies (account based and transition to retirement)
- Transfer of business real property into superannuation
- Withdrawals, commutations and death benefit payments
- Limited Recourse Borrowing Arrangements

- Provision of an asset class investment strategy (based on an assessment of your risk profile)
- Winding up of SMSFs

The person/people at this practice authorised by SAN to provide superannuation and self managed superannuation fund advice is/are:

Authorised Representative – Authorised Representative No. xxx xxxx
Authorised Representative – Authorised Representative No. xxx xxxx

If you have any questions in relation to your superannuation, please ask to make an appointment to speak with us.

Click here to view our Financial Services Guide

The SMSF Advisers Network Pty Ltd is an Australian Financial Services Licensee (No.430062), and is a fully owned subsidiary of the NTAA.

The NTAA has been a leading provider of education for accountants for over 20 years, delivering specialist knowledge in taxation issues and Self-Managed Superannuation Funds. Our practice is pleased to be a member of this association, and benefits from the education they provide.

Stationery Examples
Examples of stationery items can be found on the SAN website.

All marketing materials and stationery

All marketing materials and stationery must clearly disclose who is providing the advice (Corporate Authorised Representative or Authorised Representative number, ABN, contact details) and identify SAN (AFSL number, ABN, contact details). Where activities other than those covered by SAN are included in the document or item, you must clearly indicate that SAN only authorises the provision of superannuation advice.

IMPORTANT: SAN Approval

All marketing materials (including newspaper ads, signage, newsletters etc.) and stationery **must** first be submitted to the SAN Compliance team prior to the item being printed, used or provided to clients or prospective clients.

The item can only be printed, issued or published, after you have obtained written approval from the SAN Compliance team. Failure to seek approval prior to 'going live' with any of these materials may result in disciplinary action.

Please ensure that you retain these approvals, along with a copy of the approved document for your files.

The SAN Logo

The SAN logo uses three colors: Red, Black and Grey. Primarily the logo should be used on a white background for maximum impact and clarity.

High resolution SAN logos are available on the SAN website.

Clear space & sizing

The minimum clear space is indicated by the lines around the logo, measured by the width and height of the letter 'N' in Network. Try to maximize clear space whenever possible.

Colour Palette

The SAN corporate palette consists of three colours: SAN red, black, and grey.

Hex: #ed1c24 **RGB:** 237 - 28 - 36 **CMYK:** 0% - 96% - 86% - 0%	**Hex:** #000000 **RGB:** 0 - 0 - 0 **CMYK:** 75% - 68% - 67% - 90%	**Hex:** #a7a9ac **RGB:** 167 - 169 - 172 **CMYK:** 36% - 27% - 26% - 0%

Section 3 – Legislative, Regulatory & Licensee requirements

As an AR of an AFSL, it is important to understand your requirements, which can be split into three categories:

Legislative – This includes the Corporations, ASIC & SIS Acts. Failure to comply with legislative obligations can result in serious consequences that may include:

- Fines for the individual AR, the Corporate Authorised Representative (CAR) and the Licensee;
- Criminal convictions;
- Imprisonment; and/or
- Disqualification from the industry.

Regulatory – This refers to ASIC's guidance and their interpretation of the legislation. ASIC provides its guidance in the form of Regulatory Guides, Information Sheets and Reports. In particular, the following Information Sheets are specific to SMSFs:

- Information Sheet 227 What can limited AFS licensees do (INFO 227);
- Information Sheet 228 Limited AFS licensees: Advice conduct and disclosure obligations (INFO 228); and
- Information Sheet 229 Limited AFS licences: Complying with your licensing obligation (INFO 229).

Failure to adhere to ASIC's requirements may result in:

- Enforceable Undertakings. These are undertakings given to and accepted by ASIC which are enforceable in court. They are generally accepted as an alternative to civil or administrative action where there has been a contravention of the legislation that they administer. Enforceable undertakings can be applied to an individual Authorised Representative, a Corporate Authorised Representative or the Licensee as a whole;
- Fines;
- Disqualification from the industry;
- Criminal convictions; and/or
- Imprisonment.

Licensee – SAN's guidance and expectations for our ARs regarding how to apply the legislative and regulatory requirements in the day-to-day operation of an advice practice. The SAN Professional Standards and Compliance Manual outlines our policies and how they are expected to be applied across your advice business. The consequences of not adhering to these policies may result in:

- Disciplinary action including Action Plans;
- Re-instigation of the pre-vetting process;
- Reporting of the matter to ASIC; and/or
- Suspension or revocation of your Authorised Representative status.

By not adhering to the SAN Licensee requirements, you may also potentially waive your Professional Indemnity Insurance coverage should there be an issue with the advice you have provided.

Financial Planners and Advisers Code of Ethics 2019

The Financial Adviser Standards and Ethics Authority (FASEA) was established in April 2017 to set the education, training and ethical standards of licensed financial advisers in

Australia. As such, FASEA have introduced the Financial Planners and Advisers Code of Ethics 2019 (the Code) by which all financial advisers, including SAN ARs, must adhere to.

The Code comprises of 5 key Values and 12 Standards. All SAN ARs must comply with this Code under section 921E of the Corporations Act 2001.

You must always act in a way that demonstrates, realises and promotes the following values:
(a) trustworthiness;
(b) competence;
(c) honesty;
(d) fairness;
(e) diligence.

Trustworthiness:
Acting to demonstrate, realise and promote the value of trustworthiness requires that you act in good faith in your relationships with other people. Trust is earned by good conduct. It is easily broken by unethical conduct. Trust requires you act with integrity and honesty in all your professional dealings, and these values are interrelated.
Acting ethically, with trustworthiness, promotes trust in the profession of financial advice by consumers, enabling the community to feel confidence in accessing and utilising professional financial services

Competence:
Acting to demonstrate, realise and promote the value of competence requires you to have regard to the knowledge, skills and experience necessary to perform your professional obligations to each of your clients. It requires you to assess the professional services required by each client with regard to their individual needs, priorities, circumstances and preferences, expressed or implicitly identified as the subject matter of the financial advisory engagement. While it may be possible to supplement your professional competence by accessing the expertise of others, the duty of competence is ultimately personal and cannot be outsourced to others.

Honesty:
Acting to demonstrate, realise and promote the value of honesty requires that you conduct yourself with complete integrity in all your professional dealings with your clients and with all others that you engage with in a professional setting. It requires transparency, frankness and fairness to each of your clients, even where this may cause you personal detriment.

Fairness:
Acting to demonstrate, realise and promote the value of fairness requires that you bring professional objectivity to the task of engaging with clients professionally, and when recommending financial products and professional services. It requires you to properly investigate, evaluate and diagnose a client's need for professional services, and to self-reflect on the limits of your professional competency.

Diligence:
Acting to demonstrate, realise and promote the value of diligence requires that you perform all professional engagements with due care and skill. It requires you to manage your time and resources to deliver professional services in a timely, efficient and cost effective way to each client.

Values paramount:
These values are paramount. All the other provisions of the Code must be read and applied in a way that promotes the values.

The Standards

Standard 1:
You must act in accordance with all applicable laws, including this Code, and not try to avoid or circumvent their intent.

Standard 2:
You must act with integrity and in the best interests of each of your clients.

Standard 3:
You must not advise, refer or act in any other manner where you have a conflict of interest or duty.

Standard 4:
You may act for a client only with the client's free, prior and informed consent. If required in the case of an existing client, the consent should be obtained as soon as practicable after this Code commences.

Standard 5:
All advice and financial product recommendations that you give to a client must be in the best interests of the client and appropriate to the client's individual circumstances.
You must be satisfied that the client understands your advice, and the benefits, costs and risks of the financial products that you recommend, and you must have reasonable grounds to be satisfied.

Standard 6:
You must take into account the broad effects arising from the client acting on your advice and actively consider the client's broader, long-term interests and likely circumstances.

Standard 7:
The client must give free, prior and informed consent to all benefits you and your principal will receive in connection with acting for the client, including any fees for services that may be charged. If required in the case of an existing client, the consent should be obtained as soon as practicable after this Code commences.
Except where expressly permitted by the Corporations Act 2001, you may not receive any benefits, in connection with acting for a client, that derive from a third party other than your principal.
You must satisfy yourself that any fees and charges that the client must pay to you or your principal, and any benefits that you or your principal receive, in connection with acting for the client are fair and reasonable and represent value for money for the client.

Standard 8:
You must ensure that your records of clients, including former clients, are kept in a form that is complete and accurate.

Standard 9:
All advice you give, and all products you recommend, to a client must be offered in good faith and with competence and be neither misleading nor deceptive.

Standard 10:

You must develop, maintain and apply a high level of relevant knowledge and skills.

Standard 11:
You must cooperate with ASIC and monitoring bodies in any investigation of a breach or potential breach of this Code.

Standard 12:
Individually and in cooperation with peers, you must uphold and promote the ethical standards of the profession and hold each other accountable for the protection of the public interest.

Banned Words: Use of the terms Independent, Impartial and Unbiased

The *Corporations Act 2001* (the Act) prohibits financial services licensees from using the words 'independent', 'impartial' and 'unbiased' and other words of similar meaning in relation to the business or service that the person provides unless certain conditions are met. ASIC has listed 'independently owned', 'non-aligned' and 'non-institutionally owned' as words that it considers have a similar meaning and so are also prohibited. The conditions are:

- the licensee does not receive any:
    - commissions;
    - payments calculated on the basis of the volume of business the licensee places with an issuer; or
    - other gifts that could be reasonably expected to influence the licensee,
- the licensee's employer, or a person providing financial services on behalf of another person, or a person identified in any regulations does not receive any of the benefits listed above;
- a licensee receiving 'volume payments' does not receive any such payments in relation to the provision of the particular service to which the restricted words used relate;
- the licensee is free of direct or indirect restrictions relating to the financial products for which they provide services; and
- the licensee operates without any conflicts of interest arising out of their relationship with issuers of financial products that might reasonably be expected to influence the licensee in how they provide their services or carry out their business.

Though SAN does not receive any of the above, we do need to be cautious due to the conflicts that arise out of arrangements and relationships that SAN and its ARs may have. Accordingly, SAN must ensure that statements made by representatives in any published material comply with the relevant provisions of the Corporations Act.

Privacy Act 1988

The Privacy Act 1988 regulates the handling of personal and sensitive information about your clients. It deals with the collection, use, storage and disclosure and correction of a client's personal information.
Personal information is information or an opinion about an identified individual, or an individual who is reasonably identifiable.

The Privacy Act includes thirteen Australian Privacy Principles (APPs). The APPs set out standards, rights and obligations for the handling, holding, use, accessing and correction of personal information (including sensitive information).

The Australian Privacy Principles (APP)

While the APPs are not prescriptive, they do create certain obligations. The APPs deal with:

- open and transparent management of personal information;
- anonymity and pseudonymity;
- collection of solicited personal information;
- dealing with unsolicited personal information;
- notification of the collection of personal information;
- use or disclosure of personal information;
- direct marketing;
- cross-border disclosure of personal information;
- adoption, use and disclosure of government-related identifiers;
- quality of personal information;
- security of personal information;
- access to personal information; and
- correction of personal information.

Please refer to SAN's Privacy Policy to understand how we handle, use and disclose personal information.

The Hawking Provisions

The hawking prohibitions, set out in sections 736, 992A and 992AA of the Corporations Act 2001 ("Act"), in general terms provide that a person must not offer financial products for issue or sale in the course of, or because of, an unsolicited meeting or telephone call with a retail client (which is given an extended meaning in section 761G of the Act).

Communications captured under the hawking prohibitions

The hawking prohibitions apply only to unsolicited telephone calls and meetings. They do not apply to unsolicited communications such as emails, letters, and media advertisements.

Meaning of 'unsolicited'

In ASIC's view, a meeting or telephone call will be unsolicited unless it takes place in response to a positive, specific and informed request from a consumer.

A 'positive' request involves an active step by the consumer and should involve some conscious decision by the consumer. For example, a consumer's failure to opt out of receiving future telephone calls when given an opportunity to do so on an application form, does not constitute a positive act of requesting a meeting or telephone call. To be a 'specific and informed' request, ASIC considers that the request should make clear which financial products or classes of financial products the consumer wishes to discuss.

Purpose of the meeting or telephone call

Whether an offer for the issue or sale of a financial product breaches the hawking prohibitions depends, amongst other things, on the scope of the consumer's request.

All the surrounding circumstances must be considered and each situation will depend upon its facts.

An example given by ASIC is an offer by a doctor to issue an insurance product to a patient, where the patient sees the doctor for the purposes of a medical examination. Such a meeting would be unsolicited in relation to the offer of the insurance product.

Existing clients

Depending on the circumstances, a meeting or telephone call with an existing client may still be unsolicited for the purposes of the hawking provisions. The test is whether there is a positive, specific and informed request from the existing client.

Meaning of 'because of'

ASIC states that an offer is made 'because of' a meeting or telephone call if the offer is caused by, or a result of, the meeting or telephone call. Determining whether an offer is causally connected with an unsolicited meeting or telephone call will depend on all the circumstances, including the nature of the unsolicited contact, how much time has elapsed between that contact and the offer, and whether there are any intervening events that should be regarded as breaking the causal connection. Examples of when the causal connection would and would not be broken are contained in the guidance paper.

Ultimately, the onus is on the offeror to consider on a case by case basis whether a particular communication is caught by the anti-hawking provisions.

Where you are unsure of your position regarding a client in relation to the hawking provisions, please contact the SAN Compliance team to discuss.

Spam Act 2003

The Spam Act 2003 prohibits the sending of unsolicited commercial electronic messages (known as spam) with an Australian link. A message has an Australian link if it originates or was commissioned in Australia, or originates overseas but was sent to an address accessed in Australia.

What is a commercial message?

The Spam Act 2003 defines a commercial electronic message as one that:

1. offers, advertises or promotes the supply of goods, services, land or business or investment opportunities;
2. advertises or promotes a supplier of goods, services, land or a provider of business or investment opportunities;
3. helps a person dishonestly obtain property, commercial advantage or other gain from another person.

The Act classifies an electronic message as 'commercial' by considering:

1. the content of the message;
2. the way the message is presented;

3. any links, phone numbers or contact information in the message that leads to content with a commercial purpose, as these may also lead the message to be defined as 'commercial' in nature.

Considering the above, it is important to ensure that your communications with your clients do not fall within the classification of Spam. This means being careful when providing bulk communications to clients or potential clients and ensuring that these communications are not unsolicited.

What messages can be sent without consent?

Certain messages from the following types of organisations:

1. government bodies
2. registered charities
3. registered political parties
4. educational institutions (for messages sent to current and former students).

No Call No Contact Register

The No Call No Contact register is relevant to the Do Not Call Register Act. This act applies to telephone communication for marketing purposes. Under this Act, a client who does not wish to receive marketing calls is able to indicate this on the national database. If the client has elected to go on the national database, the Authorised Representative must not contact the client for marketing purposes without consent. Consent may be expressed or inferred.

As the Authorised Representative, you must enter this client into your No Call No Contact register, a template of which is available on the SAN website.

Please note, this register is only in relation to marketing and the authorised representative can and should contact the client with enquiries regarding advice.

Financial Services Guide

Financial Services Guides (FSG) are designed to ensure that a retail client is given sufficient information about you and what you offer, to enable them to decide whether or not to engage you to provide them with advice.

When to provide an FSG

It is a requirement that an Authorised Representative must provide a client with a copy of the latest version of the Financial Services Guide, before providing them with a financial service.

This means that you must ensure that the client has received a copy of the current FSG documents prior to providing them with advice.

You can do this in bulk if you wish by issuing the current Financial Services Guide documents to all clients at the same time. Alternatively, you can issue the Financial Services Guide on a client by client basis as you see them. This is your choice but you do need to ensure you retain a record of who you have issued the Financial Services Guide documents to, when, how and which version.

The client only needs to be provided with an FSG initially. The FSG does not need to be re-issued each time you have contact with the client if you have already provided the latest version to the client.

Upon being issued with a new version of the FSG you will be required to provide that document to a client before providing any advice; even if they have received an earlier version.

We suggest that you issue the Financial Services Guide to existing SMSF and superannuation clients when you next speak with them and for new clients at your first meeting.

All Authorised Representatives of SAN are supplied with an FSG which is a two part document.
Part 1 is about SAN and covers off on important information about who we are as a Licensee, the planning process, complaints etc. This is a universal document for each Practice.

Part 2 is an Adviser Profile and Fee Schedule. This document is personalised to your Practice and the ARs who operate within your Practice, as well as explaining how you charge for the advice you give and if you have any referral arrangements in place. Both Part 1 and Part 2 must be issued to clients as one document to make up the SAN FSG.

Note that there is no client sign-off required for these FSGs. Confirmation of receipt of the FSG, is included in the Statement of Advice.

Should you require updates or changes to the FSG, please send through your request to the Compliance team for approval.

Identifying Your Clients

As an Authorised Representative of an AFSL, you are required to collect sufficient documentation to prove the identity of your client whether they are an individual person or an entity as per the Anti-Money Laundering and Counter Terrorism Financing Act 2006.

The AML-CTF Act 2006 recognises that as the AR has direct contact with clients, they are the best resource to collect sufficient and relevant documentation to demonstrate and ensure that:

- For individual clients, they are who they say they are; and
- For non-individual clients that the client exists and their beneficial ownership details are known.

The customer due diligence requirements include:

- Collecting and verifying customer identification information e.g. documents, data or other information obtained from a reliable and independent source;
- Identifying and verifying the beneficial owner(s) of a client;
- Identifying whether a customer is a Politically Exposed Person (PEP) (or an associate of a PEP) and taking steps to establish the source of funds used during the business relationship or transaction;
- Ongoing customer due diligence and transaction monitoring; and

- Obtaining information on the purpose and intended nature of the business relationship.

This means that where you provide advice in relation to superannuation including SMSF, you must collect sufficient documentation to prove that the client is who they say they are.

There are a number of client types that must be identified. These include:

- Individuals & Sole Traders
- Australian Companies
- Foreign Companies
- Australian Regulated Trusts & Trustees
- Unregulated Trusts & Trustees
- Partnerships & Partners
- Associations
- Registered co-operatives

Each of these client types have different identification requirements. You will find a Customer ID Form for each of these on the SAN website. These Customer ID Forms outline what information you need to collect and verify. This identification process is not a 100-point ID check.

Should you encounter a client whose identity you cannot confirm, you must not provide a service or advice. You should then notify SAN within 24 hours and we will provide you with guidance on how to proceed or if there is anything else you need to do.

Once you have completed the relevant Customer ID Form and gathered the required documentation, you need to verify the documentation and certify that it is a true and correct copy of the original and has been sighted by the person verifying it. You must retain a copy of the certified ID documentation on the client's file and provide a copy as required when implementing your recommendations.

Though there are some exceptions to identifying clients, it is a policy of SAN that each client and client entity is adequately identified. We believe that the best and easiest time for you to do this is when you see clients for the first time to provide them with advice under SAN. At this time, you should ask them to bring the relevant documentation to confirm their identity and the identity of any entity that you will be providing advice to.

Note that the client or client entity MUST be identified before implementation.

Austrac Reporting & Suspicious Transactions

As with any financial services provider, there is a risk of SAN's products or services being used to launder money and finance terrorism. SAN's AML/CTF policy is developed to prevent SAN from being misused and innocently and unknowingly being subject to financing terrorism and/or money laundering.

Under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act), you have an obligation to submit a Suspicious Matter Report (SMR) to AUSTRAC within 3 days, if you encounter or form a suspicion on reasonable grounds that:

- A person is not the person they claim to be; or

- You become aware that you may hold information that may be relevant to investigate or prosecute a person for an evasion (or attempted evasion) of a tax law, or an offence against a Commonwealth, state or territory law; or
- You become aware that you may hold information that may be of assistance in enforcing the Proceeds of Crime Act 2002; or
- In providing advice to a client, that the advice may be in preparation to a person committing an offence related to money laundering or terrorism financing, or relevant to the investigation or prosecution of a person for an offence related to money laundering or terrorism financing.

"Reasonable grounds" is determined as being where a reasonable person would conclude from all the circumstances and information available that the transaction or person is suspicious in nature. Within the Suspicious Matter Reporting, the reporting entity must explain why it has formed a suspicion.

You are not required to notify suspicious transactions to SAN, though you may wish to do so. The obligation is that you must report suspicious transactions to AUSTRAC if you have formed an opinion that a matter is suspicious.

Threshold Transaction Reports (TTR)

As an Authorised Representative of an AFSL, you are required to report to AUSTRAC within 10 business days, any transactions that involve the transfer of **physical currency** or e-currency of AUD10,000 or more (or foreign currency equivalent). This refers to actual cash being handed over, not ETF transactions.

When providing a threshold transaction report to AUSTRAC, you must include the following:

- The business details of the reporting entity (which is you);
- The customer of the service;
- The individual conducting the transaction (if different from the customer);
- Details of the transaction, including cash and other components.

Full details of what must be reported in a Threshold Transaction Report is available in AUSTRAC's Guide to making a Threshold Transaction Report for investment and superannuation businesses, which is available on the SAN website.

Conflicts of Interest

When providing advice under an Australian Financial Services Licence, you need to consider any conflict of interest that may arise in providing that advice.

A Conflict of Interest, as outlined in ASIC's Regulatory Guide 181 is defined as "circumstances where some or all of the interests of people (clients) to whom a licensee (or its representative) provides financial services are inconsistent with, or diverge from, some or all of the interests of the licensee or its representatives. This includes actual, apparent and potential conflicts of interest."

For example:

- Licensee A has an interest in encouraging client B to invest in higher risk products that result in high commissions, which is inconsistent with client B's personal desire to obtain a lower risk product;

- Licensee C has an interest in maximising trading volume by its clients (including client D) in order to increase its commission revenue, which is inconsistent with client D's personal objective of minimising investment costs;

- Licensee E is the trustee of a retail superannuation fund and has an interest in maximising the fees it earns from managing the fund (and therefore maximising the returns to its shareholders), but the beneficiaries have an interest in minimising the fees they pay as members of the fund;

- Adviser 1 is the owner of an accounting practice and has an interest in increasing revenue through accounting activities, identifying that the ongoing management of SMSFs can increase cash flow to the business;

- A 'one-stop shop' approach is taken where advice is given to a client to establish a SMSF, make investments or use specific services. The conflict arises from direct payments or indirect commissions, referral payment arrangements, representative remuneration structures or even management pressures.

It is critical to ensure any actual or apparent conflicts are disclosed, particularly in relation to:

- disclosure about the relationship between the accounting firms establishing a SMSF and the adviser providing the product advice;
- clearly articulating the roles of each person in the process, e.g. SMSF Specialist Adviser provides product advice and the Accountant provides the taxation advice.

Conflicts of interest include:

- Actual, apparent and potential conflicts;
- The Licensee's own conflicts as well as their representative's conflicts, and
- Conflicts that may arise as a result of non-financial services business or activities where they may give rise to a conflict with interests of financial services clients.

As per RG 181, there are three mechanisms for managing conflicts of interest:

- Controlling conflicts of interest;
- Avoiding conflicts of interest; and
- Disclosing conflicts of interest;

Given the nature of your authorisation under SAN, the type and number of Conflicts of Interest that may arise will generally be limited to the arrangements with your accountancy practice and any other referral arrangements that you may have in place for clients e.g. a solicitor, insurance specialist, financial planner etc.

All Conflicts of Interest must be adequately managed with internal controls and disclosures, or where this is not possible, the Conflict must be avoided or you must refrain from providing the affected financial service.

Conflicts of Interest are an important consideration for advice offered when recommending the set-up of an SMSF to a client and potential trustees/members.

In providing such advice, once the fund is established it is likely that there will be a recommendation to utilise the services of your accountancy practice to provide ongoing tax and administration services.

According to the 'conflicts priority rule' (Corporations Act Part 7.7A Division 2) as outlined in ASIC's Regulatory Guide (RG) 175;

> *"an advice provider must not recommend a product or service of a related party to create extra revenue for themselves, their AFS Licensee or another related party, where additional benefits cannot be demonstrated"*

As your own accountancy practice is likely to be a related party to the advice being provided, it follows that:

- The relationship between the 'two parties' should be disclosed, including any payment to be made; and
- The benefit of using the accountancy practice to provide services needs to be demonstrated in terms of your recommendation.

Details of this conflict must be included in the fees payable section of the SOA you provide to your client.

Your supporting documentation for your advice must also demonstrate how the advice is in the best interest of the client and support that you have placed the client's interest before yours or that of your accounting practice.

Further to your accountancy practice, you must disclose any benefit paid or received in relation to any referral arrangement. SAN will review any referral arrangements that you may have in place to ensure they are appropriately managed and disclosed within the FSG.

Conflicted Remuneration

As per ASIC's Regulatory Guide 246, conflicted remuneration is any benefit given to an AFSL, or its representative, that provides financial product advice to retail clients that, because of the nature of the benefit or the circumstances in which it is given, could reasonably be expected to influence:

- The choice of financial product recommended to clients by the AFS licensee or representative; or
- The financial product advice given to clients by the AFS licensee or representative.

In considering the ban on conflicted remuneration, ASIC will review the substance of the benefit over its form and the overall circumstances in which the benefit is given, such as:

- How does the Licensee or Authorised Representative gain access to the benefit?
- Who is giving the benefit?
- When is the benefit given?
- Why is the benefit given?
- How is the value of the benefit determined?
- What are the details of the benefit and its features?

To be conflicted remuneration, a benefit does not need to relate to a specific financial product. For example, the benefit could be one that means you are more likely to recommend only a particular issuer's financial products.

One area to be wary of is the payment of employee performance bonuses, if the bonus is calculated by reference to the number or value of financial products (which includes

SMSFs) recommended by the employee to clients and if it could be perceived as influencing the financial product advice to clients and therefore be seen as conflicted remuneration.

This means that bonuses paid to employees should not be based on the number of SMSFs that they establish for clients, or any other structure that rewards the employee for selling or promoting a particular product or strategy.

It is important to understand that the Corporations Act prohibits AFSLs and their ARs from accepting conflicted remuneration.
Should you believe you are in a situation that could potentially be viewed as being Conflicted Remuneration, you should contact the SAN Compliance team to discuss immediately.

Note that the fees you charge clients for the provision of advice, is not deemed to be conflicted remuneration.

Alternative Remuneration

There are a number of benefits that are considered to not be conflicted remuneration which are generally referred to as alternative remuneration or soft dollar benefits. The most common of these are benefits with a small value.

Benefits under $300 (including monetary and non-monetary benefits)

To be classified in this manner, the benefit must be less than $300 for each AFS licensee or representative and identical or similar benefits are not given on a frequent or regular basis. If benefits under $300 are given on a frequent or regular basis, and the combined value of all benefits received by an adviser is greater than $300, then it is likely to be considered conflicted remuneration. ASIC will consider a benefit is given on a frequent or regular basis if it is given to the same adviser at least three times over a 12-month period.

The details of all received benefits over $100 but less than $300 must be recorded in a register. Each Authorised Representative is responsible for retaining their own register (which can be kept at a Practice level) and this register must be available within upon request by any person.

Training and development

Education and training activities that are relevant to the provision of financial product advice to clients, are not considered to be conflicted remuneration.

This allows product providers and platforms to provide materials to participants at professional development days or conferences. Note that the participant, their employer or the licensee must pay for travel and accommodation relating to the course and/or development days/conferences as well as any events and functions held in conjunction with it, not the course provider. There is no geographic restriction on the locations of these events, however, you must keep a record of the education and training benefits you receive. Often, when the dominant purpose of a conference or professional development day is training and education, a non-monetary benefit is provided.

For further details on conflicted remuneration, please refer to ASIC's Regulatory Guide 246: Conflicted Remuneration.

Replacement Product Information

When recommending that a client dispose of, or reduce their interest in, all or part of a particular financial product and instead acquire all or part of, or increase the client's interest in, another financial product, additional disclosure requirements apply.

Replacement product advice includes any of the below recommendations:

1. Close or cancel a current product;
2. Purchase or move funds or providers; or
3. Switch funds, providers or investments – in full or partially.

Under section 947D of the Corporations Act, you must disclose in the Statement of Advice, the following client impacts when recommending that a client replace a financial product, in part or in full, with another financial product:

1. information about the following, to the extent that the information is known to, or could reasonably be found out by, the providing entity:
   (i) any charges the client will or may incur in respect of the disposal or reduction;
   (ii) any charges the client will or may incur in respect of the acquisition or increase;
   (iii) any pecuniary or other benefits that the client will or may lose (temporarily or otherwise) as a result of taking the recommended action;
2. information about any other significant consequences for the client of taking the recommended action that the providing entity knows, or ought reasonably to know, are likely;
3. any other information required by regulations made for the purposes of this paragraph;
4. unless in accordance with the regulations, for information to be disclosed in accordance with paragraph (a), any amounts are to be stated in dollars.

In addition to the information contained within the Statement of Advice, you must also have supporting documents held on file to support your recommendations.

Where you are recommending that a client move from a Retail or Industry super fund to a pension or an SMSF you must be able to show the details for the current fund including fees and benefits. If there is insurance held within the fund, you must disclose the loss of insurance benefits and how that may affect the client, the financial costs of moving out of the 'from' fund and any other consequential loss to the client. Without this information, you will be unable to demonstrate the comparison of the required information between the current situation and the recommended.
Note that this comparison is not an "apples for apples" comparison. You are not attempting to compare the same thing – your requirement is to show the client's current situation vs what you are recommending to ensure that the client has a full understanding of the implications and consequences of the advice.

The potential is high for errors to occur in providing advice to clients transferring from a retail or industry superannuation fund to an SMSF. The clients must be warned of the following matters which may relate to "benefits" and "other significant consequences" of a product replacement:

a) there is no statutory compensation fund for theft or fraud from an SMSF;
b) the impact on their personal insurance arrangements when they transfer from a retail or industry fund to a SMSF;
c) reduced access to dispute resolution bodies;
d) the appropriateness of different SMSF structures;
e) the trustee's obligations, and the time and skills necessary to operate an SMSF;
f) the trustee's obligations to develop and maintain an investments strategy; and
g) the need to consider an exit strategy if the SMSF is not suitable in the future.

Sunset Clause

As situations may change owing to economic, legislative or regulatory variations, a sunset clause needs to be included in every SOA. The Statement of Advice is only valid for ninety (90) days. After this time, you need to be able to demonstrate that you have contacted the client and they have confirmed that there have been no significant changes to their situation and that the advice remains appropriate for their needs and objectives.

This must be recorded as a file note and kept on the client's file.

Where any significant changes have occurred to the client's situation or the advice is no longer appropriate to the client, a new Statement of Advice must be provided to the client.

Authority to Proceed

An Authority to Proceed is mandatory and must be signed by all parties prior to the implementation of advice and then retained on the client's file.

This document provides and demonstrates the client's consent to the advice as well as the client's agreement to the fees and charges.

Proceeding prior to a signed Authority to Proceed being held on file is a breach of SAN's policy and where any complaints occur because of this, the SAN Professional Indemnity Insurance may not cover the advice as you would have acted outside the parameters of your agreement with SAN.

The Timing of Providing an Advice Document

The general rule in regards to providing a client with a Statement of Advice is to do so when you give the advice and must be provided before the advice is implemented. In some instances, you may discuss the advice with the client and therefore provide your recommendations verbally, before you have prepared the Statement of Advice. This can be somewhat risky and is discouraged by SAN for the following reasons:

1. You may not have had sufficient opportunity to conduct reasonable investigations and collected all relevant information about the client's circumstances in order to formulate appropriate advice that is in the client's best interest;
2. By providing verbal advice, the client may undertake the implementation of this advice of their own accord. In doing so, they may not have fully understood your advice or the requirements and may implement something other than what you have advised. They may even inform you that they do not require a Statement of Advice or your further guidance. In both cases, you are still responsible for the advice and should something go wrong, you may be held accountable.

Time Critical Advice

Occasionally, you may be in the situation where you need to provide the client with advice verbally and implement this before you can prepare and provide a Statement of Advice e.g. the client comes to you on 15th June and needs to make a contribution to super before the end of the financial year

This is referred to as "Time Critical Advice", and aside from giving the advice verbally, the following applies:

1. At the same time the advice is verbally provided, give the client a statement that contains information regarding:
   - **a)** the remuneration or other benefits that you or any associates may receive as a result of the advice;
   - **b)** any other interests, associations or relationships that you or any associates have that might reasonably be expected to have had an influence on the advice provided; and
   - **c)** disclosure of any relevant product replacement information such as fees and costs, loss or gain of benefits etc.
2. A clear record must be kept that the client has expressly instructed you that they require the advice, or a further financial service connected to the advice, to be provided immediately, or by a specified time. Note that only the client can instruct that the advice is Time Critical;
3. it is not reasonably practical to give the Statement of Advice to the client before that advice is implemented or a further service is provided as instructed; and
4. The Statement of Advice must be provided to the client within 5 business days after implementing the advice or providing a further service, or sooner if possible.

As you can see from the above requirements, it is generally easier to provide the Statement of Advice before implementation. The SAN SOA Software allows a Statement of Advice to be prepared quickly and efficiently, so the occurrence of time critical advice should be rare.

However, should you be in a position where you believe Time Critical Advice applies, please contact the SAN Compliance team immediately to discuss and ensure you meet the required time frames.

Failure to Provide a Statement of Advice

In the event that you fail to provide an SOA when required, a penalty can be applied by the regulator for each offence to an individual Authorised Representative and/or the Corporate Authorised Representative.

The consequences of not adhering to these policies from a Licensee perspective may result in:

1. Disciplinary action including an Action Plan;
2. Re-instigation of the pre-vetting process;
3. Reporting of the matter to ASIC; and/or
4. Suspension or revocation of your Authorised Representative status.

Civil Penalties

Breaches of any of the legislative obligations outlined in this Manual can also lead to civil action for loss or damage.

Under the Corporations Act, if a person suffers loss or damage because they were not provided with an SOA, or were provided with a defective SOA, they may be able to recover the amount of loss or damage sustained owing to the AR being in breach of their disclosure requirements.

Fee Disclosure Statements

As detailed in ASIC's Regulatory Guide 245, authorised representatives who enter into or have an ongoing fee arrangement with clients, must provide their clients with a fee disclosure statement (FDS) on an annual basis as well as requiring the client to opt-in to receive the ongoing service, every two years.

An ongoing fee arrangement exists where a client is charged an ongoing fee for a period of more than 12 months. This ongoing fee may include services outside of advice e.g. monthly newsletters, industry updates etc. This ongoing fee arrangement is essentially a retainer. The client pays you an annual fee to retain your services for that period.

To further clarify, a fee is any fee (however described or structured) that is paid under the terms of the ongoing fee arrangement between the authorised representative and the client.

The purpose of the fee disclosure statement is to inform a client about what services they are paying for, what services they have received and how much those services cost, in order to enable the client to make an informed decision about whether the arrangement should continue.

A fee disclosure statement must be provided in writing to the client and must cover a period of 12 months. Note that the first fee disclosure statement must be issued for the 12 months from the anniversary date of the client entering into the ongoing service arrangement. Further, the fee disclosure statement must be provided to the client within 60 days of the end of the 12-month period.

The fee disclosure statement must detail information about the ongoing fee arrangement, including:

- The amount (in Australian dollars) of each ongoing fee paid by the client;
- Information about the services that the client was entitled to receive; and
- Information about the services that the client actually received.

Failure to provide an FDS as required can result in penalties of up to $50,000 per adviser or $250,000 per Corporate Authorised Representative per breach of these regulations.

Providing an FDS is a mandatory legislative requirement when you are charging an ongoing advice fee. These must be sent to every client, every year and forms part of the ongoing audit and review process under SAN Compliance.

If you do not provide the services promised under a FDS, you cannot receive any fees in relation to such service that isn't provided.

Opt-in Requirements

Opt-In is a requirement introduced by the government as part of the Future of Financial Advice reforms (FOFA), for all new clients from 1 July 2013 paying an ongoing fee to an AR. Accordingly, opt in only relates to ongoing fee arrangements.

Under s962K of the Corporations Act, the fee recipient, which is the authorised representative, must send a Renewal Notice every two years (in line with the fee disclosure statement anniversary date), to clients with whom they have an ongoing fee arrangement.

These renewal notices must be in writing to the client and must be issued to the client within 60 days of the expiry date of the arrangement. The renewal notice must advise the client of the following:

- The client may renew the arrangement by giving the authorised representative notice in writing that they wish to renew;
- If the client elects not to renew the arrangement, it will be terminated and no further services will be provided or fees charged under the arrangement;
- If the client does not respond in writing to renew the arrangement within 30 days of the renewal period, it will be assumed that the client does not wish to renew and the arrangement will be terminated; and
- The renewal period is a period of 30 days beginning on the day on which the renewal notice and fee disclosure statement is issued to the client.

As with the fee disclosure statement, these requirements only apply if your clients have entered into an ongoing fee arrangement with you.

This brings us to the question - Do the fee disclosure statement and opt-in requirements apply to SAN authorised representatives? If you enter into an ongoing fee arrangement with your client, then yes it does. And yes, you MUST adhere to the stated requirements.

However, if you elect to charge your client a fee for service when you provide advice or service (which can be paid in instalments), then the fee disclosure statement requirements do not apply as there is no ongoing fee arrangement.

Professional Indemnity Insurance or PI Cover

Professional Indemnity Insurance provides your business and your clients with financial protection.

You are required to always maintain appropriate PI insurance. It is important to understand that you must not give advice without having the appropriate PI insurance in place.

SAN has arranged PI insurance for its ARs and it is a mandatory requirement that you join this group policy when you are appointed as an AR of SAN.

It is important to note that SAN's PI is separate from the PI that is offered through your accounting practice. Your practice policy will not cover for advice provided under an AFSL. Some practice policies offer cover for a limited licence, however, SAN is not a Limited Licence.

To ensure that you are covered by PI Insurance, you must adhere to all Legislative, Regulatory and Licensee requirements. If you choose to operate outside of these requirements, you may void your PI Insurance in the event of a claim against you.

Section 4 – Factual Information

In your dealings with clients, it is almost certain that you will be in a position where you are providing the client with factual information, rather than advising the client on what they should do, or how they should do it.

This can be a fine line at times. ASIC's Regulatory Guide 244 seeks to provide guidance in explaining the distinction between giving factual information, general advice and personal advice.

ASIC's guiding principles for giving factual information and scaled advice is outlined below:

Issue	Guiding Principles
Giving factual information	You can provide factual information to a client even if you have personal information about the client and use that information to determine what factual information to provide.
Giving scaled advice	Advice is provided along a continuous spectrum. You can scale all types of advice, including advice about complex issues. The inquiries you make, as an advice provider, will need to reflect the nature of the matters you are considering. Some points to consider when giving scaled advice are: • the rules that apply to 'scaled advice' and 'comprehensive advice' are identical; • scaled advice can include advice on a single topic or advice on multiple topics; • scaled advice is not lesser quality advice; • scaled advice does not mean that the advice provider who gives the advice can have lower training standards; and • while processes can be used to help you provide scaled advice, you need to use your expertise and skills as an advice provider to deliver good quality scaled advice.
Communicating the service you are providing	You must ensure that you communicate clearly to clients the service you are providing (i.e. information or advice). If you are giving scaled advice, you need to communicate clearly the advice you are providing and the advice you are not providing, and the implications of this. For example, when giving scaled advice, it should be very clear in your SOA (if you are required to give one) what advice you have provided and what advice you have not provided, the implications of this, and why you have taken this approach. ASIC consider that scaled advice will be unlikely to meet the best interest duty and related obligations if the client does not understand any of the significant limitations or qualifications that apply to it.

Delivering the information or advice	The Corporations Act is neutral about technology. This means that you can give factual information and advice by telephone, email, internet, video conferencing, or face-to-face, or in any combination of these or other ways. The way ASIC regulate advice is the same, regardless of the way you deliver the advice or how you scale the advice. This is because, in general, the same rules apply to all advice on the same topic, regardless of how it is delivered. However, different modes of communication may give rise to different challenges about whether a client understands the advice they are being given, and what the limits of the advice are.

As per ASIC's definition in RG244, "Factual information is objectively ascertainable information, the truth or accuracy of which cannot reasonably be questioned: see RG 36.21. Good quality factual information can often be useful for clients wishing to better understand the financial products or strategies available to them."

The following are excerpts from RG244 regarding how they view factual information:

"Factual information may be likely to be advice if it is presented in a way that is intended to, or can reasonably suggest or imply an intention to, make a recommendation about what a client should do: see RG 36.31.

We will not treat factual information given by you as general or personal advice if:
(a) you clarify at the outset that you are giving the client factual information where there is a reasonable likelihood of doubt; and
(b) the information is not intended to imply any recommendation or opinion about a financial product.

It is good practice to take reasonable steps to ensure that a client understands upfront that you are providing factual information, and not general or personal advice. This will avoid confusion and help the client to understand what service they are getting. However, if it is clear to the client that you are providing them with factual information, it is unnecessary to clarify that you are giving factual information.

What if you have personal information about a client?

You can provide factual information even if you have personal information about a client. We will not consider this to be personal advice merely because you have some personal information about the client.

It is possible to adjust the factual information you give, using the personal information you have about the client, so that the factual information you provide to the client is relevant and useful to them.

The test for whether you are giving personal advice includes:

(a) firstly, whether you are in fact giving financial product advice—that is, whether you are making a recommendation about a financial product (see RG 244.27 for the full definition); and
(b) secondly, whether you have considered the client's relevant circumstances in relation to giving or directing the advice, or whether a reasonable person might have expected you to do so (s766B(3)).

The test is not whether you merely possess information about the client's relevant circumstances.

Under your authorisation with SAN, you may come across a number of scenarios where factual information is all that the client is wishing to obtain.

Example 1:

Andrew is 43 years old and asks you how much he can contribute to his superannuation this financial year as a concessional contribution.

You can inform Andrew that based on his age, he can make concessional contributions of up to $25,000. You can further clarify that based on his current contributions of $17,000 (including employer contributions); he is able to contribute a further $13,000 in this financial year.

However, if Andrew then asks if he should contribute $13,000 or where he should fund this contribution from, he is seeking your opinion which would be deemed to be financial advice and therefore the advice process is required to be applied.

Example 2:

Joan is 66 years old and asks how much she needs to withdraw from her account based pension (ABP) in this financial year.

You inform Joan that based on her age, she must withdraw 5% of her current ABP balance. You can then confirm her current balance is $751,485 and that this means she must withdraw $37,574.25.

Joan mentions that she currently does not have those funds available in cash within her ABP and wants to know where she should withdraw these funds from. This crosses into advice and is advice that you cannot provide under your authorisation with SAN.

Note: In all instances where you are providing clients with factual information, you must ensure that the client clearly understands that this is factual information and that you are not providing them with advice about what they should or can do. You must retain clear file notes of these conversations, confirming that you did not provide advice and that the information was factual only.

Who can give factual information

You are not required to be licensed to provide factual information. This means that staff members within your practice are able to provide clients with this factual information. We strongly suggest that you ensure any person who is providing factual information to clients within your practice, clearly understands the distinction between factual information and advice. To assist with this, we recommend that they read this Professional Standards & Compliance Manual and view the SAN Induction videos.

Section 5 – Advice and the Advice Process

This section covers:

- Client's Best Interest Duty;
- The Safe Harbour Steps;
- The Advice Process;
- Provision of SMSF Advice;
- Identifying your clients.

Client's Best Interest Duty

Client's best interest duty was introduced in the financial services industry in July 2012 with the announcement of the Future of Financial Advice (FOFA) reforms within the Corporations Act.

While an AR has always been required to provide advice that was appropriate for the client, the reforms are an extension of sections 849, 851 and later 945 of the Corporations Act. These sections required that an AR needs to "Know Your Client" and "Know Your Product" and to demonstrate a reasonable basis for your advice.

While the intention of these sections was to emphasise that advice needed to be appropriate for the client, there was no set of prescribed requirements that demonstrated whether or not you had met the set standards.

As a result of the Global Financial Crisis, it was determined that this aspect of the legislation should be more direct and prescriptive, hence the introduction of section 961B of the Corporations Act which outlines the Client's Best Interest Duty and provides what are referred to as the "Safe Harbour" steps.

It should be noted that your previous history and relationship with a client is not sufficient to show that you are acting in the client's best interest and the onus is on you, as the AR, to ensure that your files and records demonstrate that you have acted in this way.

In providing advice to clients, you must show how and why your advice:

1. Is appropriate for the client,
2. Meets their needs and objectives; and
3. Places them in a better position than they are currently.

The safe harbour steps are a set of requirements that, once met, mean that you are likely (but not guaranteed) to be able to demonstrate that you are acting in the client's best interest.

These steps introduce the mechanics to evidence the nobility of your motivation for advice – that is, you have placed the client's interests before your own. That is, you have determined that the advice is appropriate for the client and helps them to achieve a better outcome than their current situation, rather than the advice resulting in you receiving a personal benefit, such as fees received through your accounting practice.

It is important to understand that under the FOFA legislation, you have three separate duties to fulfil each time you provide advice to a client:

1. To act in the client's best interest;
2. To provide advice that is appropriate; and
3. To prioritise the client's interests in the event of a conflict with yourself or an associated entity.

The Safe Harbour Steps

SAN requires ARs to comply with, and demonstrate compliance with each of the safe harbour steps when providing personal advice.

The safe harbour steps are a protection mechanism for ARs. By following the safe harbour steps, it is likely (but not guaranteed) that you can demonstrate that your advice meets the best interest's duty. In demonstrating your investigations and research, you should ensure to keep proper records such as:

- file notes,
- completing and updating Fact Find documents,
- risk profile documents and associated notes,
- SoAs; and
- Records of Advice, where appropriate.

Outlined below is a client scenario, illustrating how the safe harbour steps can be applied in the advice process.

Case study:

David and Jane Smith attend your office as they are looking to buy a property for their new business. They would like advice on how the property should be structured. Both clients have an industry fund as they were previously employees, however, they have recently purchased a real estate business. David will run the new business while Jane maintains her position as a bank branch manager.

The AR must complete and document the following:

Point 1 – Identify the objectives, financial situation and needs of the client

You must identify why your client sought advice.

This information must be gathered within the fact find and other supporting documentation, including detailed file notes of the conversations had with your client. The fact find and file notes must specifically state why the clients are seeking advice and what they want to achieve, e.g. their goals and objectives. It is important that you establish the reasoning behind what they want to achieve so you can provide them with appropriate advice.

Clients may provide instructions that are unclear or seem inconsistent with their circumstances. In these situations ARS need to make further inquiries of the client before proceeding to give advice.

In this case study, the clients have recently bought a business and are wanting advice on the best method / structure to purchase the property.

Point 2 – Identify the subject matter of the advice sought by the client and the objectives, financial situation and needs of the client that would reasonably be considered as relevant to the advice sought on that subject matter (client's relevant circumstances)

You must identify what advice your client is seeking based on the client's relevant circumstances.

To do this, you first need to determine what advice areas the client would like to address. You will need to use your expertise and experience to determine what the client's relevant circumstances are. You may also need to make further enquiries to identify the client's

relevant circumstances or to confirm the information already held about the client is current.

This information must be captured in the fact find and may also be recorded in subsequent file notes.
It is important that ARs understand that the scope of the advice can only be determined after identifying the subject matter of the advice sought by the client. The scope of advice should be determined by you or the client, consistent with the client's relevant circumstances.

In this scenario, on the surface it looks like the client only wants to purchase a property and may want to discuss the accounting implications. However, in this case the client may benefit from the establishment of an SMSF with a Limited Recourse Borrowing Arrangement to fund the property purchase. Therefore, the scope of the advice as determined by the client, would be to address both the establishment of an SMSF and use of a Limited Recourse Borrowing Arrangement to meet the client's goals and objectives.

The subject matter is determined by the advice sought (whether explicitly or implicitly) by the client's objectives, financial situation and their relevant needs.

Where a client says that they want a Self-Managed Superannuation Fund, you need to consider if this would meet their objectives. An SMSF can be a strategy to meet the client's objectives but generally is not the objective itself. To clarify what the actual objective is, you will need to ask further questions e.g. "Why do you want a SMSF?".

Note that just because a client requests something e.g. an SMSF, this does not mean that it is the best solution. It is your responsibility to identify how the client can best meet their needs and objectives. This may not always include the solution the client initially requests. In this situation, you must ensure that the client understands why their initial request (e.g. a SMSF) will not meet their stated needs and objectives.

Point 3 - Where it is reasonably apparent that information relating to the client's relevant circumstances was incomplete or inaccurate, make reasonable inquiries to obtain complete and accurate information.

Whether something is 'reasonably apparent' will be assessed by reference to what would be apparent to someone with a reasonable level of expertise in the subject matter of the advice sought, were that person exercising care and objectively assessing the information given by the client.

A warning in the Statement of Advice that the advice is, or may be, based on incomplete or inaccurate information relating to the client's relevant circumstances will not prevent ARs from avoiding the obligation to make reasonable inquires to obtain complete and accurate information.

This point is to ensure you have adequate information to make a recommendation. For example, where clients provide a super balance of about $200,000, it is your responsibility to ascertain the exact amount. This can be done by obtaining recent superannuation statements or by obtaining a third-party authority (available on the super fund's website) to request the relevant information from the superannuation fund directly.

Not having accurate information could have ramifications as to whether your advice is appropriate or not. Therefore, you have a responsibility to ensure you have accurate information to base your recommendations on.

You can still make a recommendation if you believe you have sufficient data to support it. In this instance, you must still satisfy your obligation to make reasonable enquiries to obtain complete and accurate information, and then clearly state the areas of your advice that may be impacted by not having the full information. You must include confirmation of this in your Statement of Advice. For example:

"We note that you have declined to provide a full and detailed budget of your living expenses. Without having an accurate statement of your living expenses, we are cannot clearly determine if you are able to contribute the full amount recommended. We have based our advice on the figure that you have provided to us. Should you wish to provide updated or further information, we would be happy to reassess your situation."

Where you believe that you do not have sufficient information to formulate advice, then you should decline to make a recommendation on this basis or until you have the information that you need. Make sure that all of these conversations are recorded in a detailed file note. In a recent ASIC review of SMSFs, 91% of the files reviewed identified the advice provider did not demonstrate compliance with the appropriate advice requirement in section 961G of the Act. In some instances, the advice provider did not demonstrate they had properly investigated and considered the client's existing superannuation product that would have been appropriate for the client to retain. This lead to a finding that the advice provider would not have been able to demonstrate the advice to dispose of the existing product was appropriate.

Point 4 - Assess whether the provider (Authorised Representative) has the expertise required to provide the client advice on the subject matter sought and, if not, decline to provide the advice.

Under your SAN authorisation, you are able to provide advice in regards to basic deposit products and superannuation only. Anything outside of this must be referred to someone else (note that you don't have to refer to a specific person, just recommend that the client seeks advice from a specialist in that area, and document that you have made this recommendation to the client).

Though you may have relevant qualifications to provide advice in a specific area, you may determine that a client's situation and circumstances are complex or beyond what you have previously dealt with, and that the client requires advice from someone who has greater experience and depth of knowledge than you.

In this case study, the client is likely going to increase their level of debt and would therefore likely require insurance to protect them in the occurrence of an insurable event. As an AR of SAN, you cannot give insurance advice. However, it is important that you raise the need for the client to review their insurance and explain that you are not able to provide insurance advice but that they should seek specialist advice.

Not providing advice to a client does not mean that you are not meeting your obligations and requirements. In fact, it means that you are acting in the client's best interest to help them achieve the best outcome for their circumstances.

Point 5 – If, in considering the subject matter of the advice sought, it would be reasonable to consider recommending a financial product, conduct reasonable investigation into the financial products that might achieve those objectives and meet the needs of the client that would reasonably be considered as relevant advice on that subject matter; and assess the information gathered in the investigation.

The aim of point 5 is to ensure you investigate (for example, by conducting relevant research) and assess the information gathered in that investigation to determine that the product you are recommending is in the client's best interest.

You must be able to demonstrate that you have considered alternatives that may achieve the client's stated goals and objectives. A reasonable investigation does not require an investigation of every product available. To the extent required in section 961B(2)(e), it should include a reasonable investigation into information about the client's current superannuation structure and whether it might achieve the client's objectives and meet the client's needs relevant to the advice you are providing. This investigation will also assist in any switching disclosure required.

An example might be where a client has a certain desire to beneficially own assets, either directly or indirectly through their superannuation fund. Your enquiries should extend to seeking information about whether the current superannuation structure provider can satisfy that objective and meet the client's needs. If the existing superannuation provider does not allow for this type of structure, then the only alternative available to your client is to use a trust structure, within or outside the superannuation environment.

The outcome of the assessment of the information gathered may be that the existing superannuation fund(s) are not suitable based on the client's needs and objectives.
In this case study, an SMSF may be suitable for the clients (note that the information provided in the case study is not sufficient to determine the best course of action for these clients). However, to support this recommendation, you must have evidence on file that illustrates how this strategy would meet the clients' objectives and demonstrate that you have considered alternative strategies and why these alternatives have been discounted.

In this specific case study, you must consider if the clients' goals could also be achieved through another strategy, for example, purchasing the property outside of superannuation.

If you determine that the strategy to utilize an SMSF and Limited Recourse Borrowing Arrangement is better able to meet the clients' needs and objectives, you must be able to demonstrate that the recommendation is more appropriate and is in the clients' best interest.

Point 6 – Base all judgements in advising the client on the client's relevant circumstances.

In formulating your advice, you must ensure that your recommendation/s reflect the client's relevant circumstances, as identified in Step 2. To demonstrate your consideration of this step, you must retain on file all documentation which establishes that you have based all of your judgements in advising your client on that client's relevant circumstances.

You must make it clear that the advice is appropriate, given the client's current circumstances. Should the client's objectives not be attainable or realistic, you should advise the client accordingly and make a relevant recommendation that meets their needs and objectives. Alternatively, you can have the client reassess their objectives.

Using the case study example, the recommendation to utilise an LRBA would assist in meeting the clients' objective to purchase a commercial property for their business. In addition, the strategy would be relevant to their position if we can demonstrate that the clients are able to afford and maintain the strategy. You must also ensure they have the knowledge and understanding of and accept the responsibilities as trustees of an SMSF.

The following should be considered and recorded in the client's file:

1. Whether the client can meet their ongoing trustee obligations and how they would do this (do they have the skills and expertise to manage their investments themselves or would they outsource this to a specialist);
2. That the asset balance will commercially support the ongoing administrative costs (ASIC suggest that a balance of at least $200,000 is required to establish an SMSF from a cost perspective);
3. Why their existing retail or industry fund cannot meet the client's needs and objectives.

Point 7 – Take any other step that, at the time the advice is provided, would reasonably be regarded as being in the best interests of the client, given the client's relevant circumstances.

Point 7 is intended as a "catch all" step. You should consider whether there is anything else that needs to be taken into account in the clients' situation that may not have been considered in the first six steps.

Other steps may include a referral to (or at the very least a recommendation that the client seeks advice from) an external advice provider, such as a specialist risk insurance adviser, and recommending that advice is not implemented before obtaining that other advice.
For each piece of advice provided, SAN requires that ARs retain on file all documentation which demonstrates consideration of, and compliance with, each of the seven safe harbour steps. These points can be demonstrated in a variety of ways, including:

1. the signed fact find document;
2. relevant file notes;
3. strategy notes;
4. emails;
5. statements from super providers;
6. bank statements;
7. research;
8. Product Disclosure Statements;
9. the Statement of Advice; and
10. any other supporting documentation.

By ensuring that each of the safe harbour steps have been met, you should be able to demonstrate that your advice does meet the client's needs and objectives and is in their best interest.

The Advice Process

When giving advice under an AFSL it is a requirement that all Authorised Representatives follow the processes set out in the Corporations Act. We have broken this down into six major steps. These are:

Step 1 – Introduce the advice process;
Step 2 – Gather client information relating to their situation, goals and objectives;
Step 3 – Determine and document the strategy;
Step 4 – Prepare & provide the advice document;
Step 5 – Implementing the advice; and
Step 6 – Regular reviews.

Step 1 – Introduce the advice process

When a client (existing or new) comes to see you, it is important that you set their expectations of the advice process. This is part of managing your relationship with your client and ensuring they understand that you must follow certain processes to meet your obligations as an Authorised Representative.

To do this, you should inform your clients of the changes that took place as at the 1st of July 2016 and introduce the Financial Services Guide (FSG). The FSG must be provided to a client as soon as you are aware that you are likely provide them with financial advice. Importantly, the FSG must be provided to your client before you actually provide any financial advice.

The FSG must be explained to the client, covering the following:

1. That superannuation advice is now covered by new legislation, and requires you to be licensed to provide such advice;
2. That in order for you to continue to provide a high level of service to your clients, you have elected to outsource licensing to a licensee, the SMSF Advisers Network;
3. The client will be invoiced by the SMSF Advisers Network for the advice services provided;
4. Outline of the advice you are able to provide;
5. How the client can provide instructions or information;
6. The advice planning process;
7. What is a Statement of Advice and when must one be provided;
8. How you will be charging for superannuation advice given under the licence;
9. Any Associations and Relationships that SAN may have;
10. Professional Indemnity Insurance;
11. Privacy Policy and where to find this;
12. The Complaints Procedure and what clients should do if they have a complaint; and
13. Who you are and how you are remunerated.

It's also important to mention to your clients that advice you now provide regarding superannuation will be issued under SAN.

Step 2 – Gather client information relating to their situation, goals and objectives

You must demonstrate that you have gathered sufficient details about your client. The Fact Find is a tool to help you demonstrate that you have gathered the relevant client information and accordingly, have a basis for your advice.

It is a requirement under SAN that each client completes a Fact Find and signs off to confirm that all of the information is true, correct and current. A completed and signed Fact Find must be uploaded to the SAN SOA Software for each client.

Step 3 – Determine and document the strategy

You should support your recommendation by keeping working papers, where you formulate your recommendations, including the following:

1. Whether the client has a requirement for funds elsewhere (personal or business);
2. What are the client's retirement income goals including when they would like to retire;
3. Why you believe the advice is appropriate to and in the best interest of the client;
4. How the advice meets the client's goals and objectives;
5. Any projections prepared to demonstrate how your advice will assist in meeting their needs (ASIC's Money Smart website www.moneysmart.gov.au has some calculators that you can use for this purpose); and
6. Any other documents that support your recommendation.

Ensuring that you have sufficient documentation supporting your consideration of the client's situation and how they can achieve their goals and objectives will assist in meeting your obligations under clients' best interest duty.

You should clearly demonstrate that your advice will place the client in a better position than they are currently.

Step 4 – Prepare & provide the advice document

Once you have formulated your recommendation, you need to document your advice in a Statement of Advice (SOA).
The Statement of Advice is a fundamental document which must be prepared and presented to your client when providing advice under SAN.

When completing an SOA, the recommendation needs to be supported with the following elements:

1. The advantages or benefits;
2. Any risks or disadvantages; and
3. If recommending the replacement (in part or full) of one financial product with another, for example rollover of existing super into an SMSF, you must show
   a. a comparison of fees of the existing product vs the recommended product,
   b. a confirmation of the benefits lost and advantages gained and;
   c. disclose any other consequences of the replacement, for example, the loss of insurances within super if applicable.

Once you have explained your advice to the client and ensured that they understand what the advice is, why it is appropriate to them, how it meets their needs and objectives and how the advice is in their best interest, the client will need to make a decision about how they would like to proceed.

When recommending to establish an SMSF and there is an existing superannuation product, you can provide advice on the existing fund to the extent required for making a recommendation to establish the SMSF.

This may include the fund's existing asset allocation, fees, performance and any existing insurance.

Providing advice to the client in the Statement of Advice does not mean that the client is obliged to proceed with your recommendations. The client should be made aware that the decision is theirs and they can choose to implement:

1. All of the advice;
2. Parts of the advice or changes to the suggested advice; or
3. None of the advice.

This will be recorded in the Authority to Proceed (ATP) which the client must sign off to indicate what they wish to do.

For SAN SOAs, there is a timeframe of 90 days for clients to agree to implement the advice. Should this timeframe be exceeded but the clients still wish to proceed, it is your responsibility to confirm the following and record it in a detailed file note:

1. The client's circumstances have not significantly changed in this period of time; and
2. The advice is still appropriate and in the client's best interest.

If there has been a significant change in the client's circumstances or it is deemed that the initial advice provided is no longer appropriate, you must update your client file accordingly and prepare a new Statement of Advice for the client.

Step 5 – Implementing the advice

Where you are recommending that a client establishes an SMSF, and the client holds existing insurance in their current super fund, SAN ARs must obtain written confirmation of acceptance by the client of the risks of not getting specialist personal risk insurance advice. To ensure that this confirmation of acceptance is recorded, the client is required to, as part of completing the Authority to Proceed, select the most appropriate response with respect to their decision about obtaining specialist risk insurance advice.

Where the client has accepted your advice, the recommendations will then need to be implemented. Where this process will be managed by your accounting practice, it must be clear to the client that this is a "referral" to the accounting practice to manage the implementation process.

Support that a "referral" has been made, the following must be disclosed in the SOA:

1. That the accounting practice will implement the advice;
2. You are associated with the accounting practice;
3. What fees will be payable to the accounting practice; and
4. You may benefit from the fees that are paid to the accounting practice.

This is important as the accounting practice would then be seen to be following directions for implementation, rather than giving the client guidance which could be construed as advice. You must also ensure that you have satisfied your statutory duty to prioritise the client's interest when referring them to an entity that you will benefit from either directly or indirectly.

Step 6 – Regular reviews

Once you have implemented the advice, it is important that you do not forget about your client. You should schedule regular reviews depending on the advice provided to the client and the client's needs, but a review should be offered at least annually.

You may wish to charge the client an ongoing service fee – essentially a retainer. However, if you choose this option, it is a requirement under the Future of Financial Advice (FOFA) provisions that the following be undertaken:

1. Ensure the ongoing service fee is agreed to by the client;
2. Provide the client with confirmation of what they will receive for their fee, keeping in mind that these are services outside those offered by your accounting practice;
3. Record the anniversary date (the date that the ongoing service arrangement is agreed to by the client and/or the date from which the fees are paid);
4. Provide the client with a Fee Disclosure Statement every 12 months (within 60 days of the end of the 12-month period), confirming all fees they have paid to you and exactly what service they have received (not only what they were entitled to receive, but what they actually did receive);
5. You must renew your arrangement with your client every two years. This is called Opt-In. Where the client does not confirm that they wish to continue the ongoing service arrangement within 60 days, you must cancel the arrangement and any fees involved.

The above are requirements under ASIC and must be adhered to. Alternatively, you may wish to charge for the advice at the time the advice is provided. If you charge a fee for

each advice document that you provide, you will not be captured under the Fee Disclosure Statement and Opt-In requirements.

Providing advice on SMSF establishment

To ensure you meet your responsibilities and obligations as an Authorised Representative, you should follow the advice process steps for all of your advice documents.

As the majority of financial advice provided by SAN Authorised Representatives centres around SMSFs, it is important for you to understand what you need to do to demonstrate that your advice is appropriate to and in the best interest of your client.

You must bear in mind that an SMSF is quite an involved -structure and is not suitable for everyone, regardless of their financial and personal circumstances or their desire to have an SMSF.

When assessing whether or not to recommend the establishment of an SMSF, you should consider a number of items including, but not limited to:

1. Suitability & roles and responsibilities of trustees: Is the establishment of an SMSF appropriate to the client? You must be able to demonstrate why the SMSF is appropriate and the members understand their responsibilities as trustees, how do they want to structure – individual or corporate trustees – pros and cons of both;
2. Minimum balance and costs of running an SMSF: ASIC has suggested a minimum of at least $200,000 is needed for an SMSF to be cost-effective. This needs to include set-up costs, winding up costs, ongoing investment management, compliance and advice. If the recommended starting balance is less than $200,000, you must demonstrate why this is appropriate and in the client's best interest, given that it is likely to cost them more. Again, simply recording that the client wants an SMSF is not sufficient; and
3. Alternatives to an SMSF structure: you must also consider the client's current situation and other possible strategies to determine why an SMSF can place the client in a better position. The aim of this is to demonstrate that you have considered alternatives to the recommended course of action. You need to record reasons why the alternatives do not achieve the goals and objectives of the client or why your recommendation for an SMSF can better meet the client's goals and objectives. e.g. switching from an APRA regulated fund to an SMSF.
4. Investment strategy: the trustees must create, regularly review and maintain an investment strategy which reflects their current appetite for risk and review this on a regular basis, adopting changes to reflect current circumstances.
5. Record keeping/time and commitment to running the fund: does the trustee/s have the necessary financial literacy and desire to run the SMSF? If not, this may not be the most appropriate structure for the clients.
6. Sole purpose test requirement and arm's length basis: trustees/members need to understand that the fund is established for the sole purpose of providing an income stream in retirement and that assets purchased by the fund are done so on an arm's length basis.
7. Investment strategy changes over time: need to explain to trustees/members that their risk profiles may change over time (as they age), and accordingly, their asset allocation may change.

Providing Limited Recourse Borrowing Arrangements advice

In some instances, it may be appropriate for an SMSF to consider borrowing to invest by utilising a Limited Recourse Borrowing Arrangement (LRBA).

As a high-risk strategy, there are a number of criteria that must be met when recommending the use of borrowing within an SMSF via an LRBA. These include:

1. The Loan to Value Ratio (LVR) should not exceed 70%, as per SAN's guidelines. Should you wish to recommend a LRBA with an LVR greater than 70%, you must clearly support why this is appropriate and in the best interest of the client and seek SAN's approval prior to proceeding;
2. No trustee should be within 10 years of retirement. This is due to the higher risk that the strategy poses. Again, you must seek licensee approval for advice that you wish to provide that falls outside of this requirement, ensuring that you have sufficient information and reasoning to support your recommendation;
3. Each trustee must have a risk profile of growth or above. This is due to the higher risk that the strategy poses and the approach that the clients should have to investing. Should any of the trustees have a risk profile less than growth, you will need to provide sufficient justification for this and seek licensee approval prior to providing the advice to the SMSF trustees;
4. There should be a buffer in cash flow to allow a 3% increase in interest rates. This ensures that the strategy would still be viable should interest rates rise.
5. Discussion about how long it will take the clients to pay off the loan, and repaying the loan if an unexpected event occurs, the upfront costs of investing (e.g. stamp duty, loan fees, estate agent fees).
6. Adequate discussion of the inherent risks of utilising an LRBA, including:

    - Lack of liquidity;
    - When and how to wind up the strategy in relation to the time implications required;
    - Restriction of contributing large lump sums into super;
    - Lack of access to capital until the member meets a condition of release;
    - How the client's retirement will be funded by the strategy;
    - What the client will do if the property is not rented for a period of time

Section 6 – Preparing & Providing a Statement of Advice

When providing advice to clients, this advice must be provided in an advice document, namely a Statement of Advice (SOA).

However, before you get to an SOA, you need to go through the Advice Process set out in Section 5 and ensure you collect and prepare all required documentation to ensure that you have sufficient detail to formulate your advice.

This documentation includes:

- The Fact Find document;
- Investigating alternative strategies;
- Recording file notes of the client meeting/ conversations etc;
- Preparing and documenting your strategy papers;

Once you have all information that you require, you can then put together your Statement of Advice, utilising the SAN software.

The Fact Find Document

SAN has an approved Fact Find document which must be used to gather and record the client's information. Every client that you provide advice to under the SAN AFSL, must have completed a SAN Fact Find.

A Fact Find must be completed prior to providing a client with advice, as the Fact Find forms part of your basis for advice and without a basis, you will not be able to determine what advice is appropriate and in the best interest of the client.

In completing the Fact Find, you must clearly record why the client sought your advice what they wish to achieve by seeking your advice, and what their relevant circumstances are. When preparing your advice, you must be able to demonstrate that your recommendations meet the goals and objectives of your client, as they are recorded in the Fact Find.

What client information do I need to gather?

Whilst you are required to obtain the information necessary to provide advice, you need to ensure that at minimum you collect the following:

1. Financial position (income, expenditure, assets and liabilities);
2. Personal details (occupation, age, desired retirement age, dependents);
3. Client's goals and objectives;
4. Risk profile;
5. The subject matter of the advice sought (to be able to determine the scope of the advice).

All applicable areas of the Fact Find should be completed.

Where the client refuses to provide information, rule a line through the section and make a notation to the effect "client did not provide".

The Fact Find should be completed and signed prior to providing advice.

As part of the pre-vet and audit processes, SAN will review the Fact Find document alongside the resulting SOA to ensure that the information recorded in the Fact Find document is accurately reflected in the SOA.

When does a Fact Find expire?

A Fact Find does not have an expiry date and can remain current for a period of time if:

1. There has been no significant change to the client's personal situation, objectives or financial circumstances and that you have verified with your client that this is the case.

2. The fact find template is the most up to date version.

3. Your file notes should detail that you reused the Fact Find, the date the Fact Find was originally prepared.

If you are relying on the information provided and signed off in a Fact Find, any changes must be clearly indicated with the date of alteration next to the amended information. The client needs to initial and sign-off on the alterations.

If there are significant alterations e.g. scope of advice, risk profile and/or change of employment details etc, then a new Fact Find must be completed.

You must not use white out or liquid paper or similar correction material to amend information.

Prior to providing advice to clients, you need to ensure that the information you have about them is current. If there are no changes required to the Fact Find that you have on file, your file notes must reflect that you have confirmed with the client that there has been no significant change to their information.

Should there be an updated version of the Fact Find; a new Fact Find must be completed prior to providing advice.

Who can prepare a Fact Find document?

Having been your client's tax practitioner for several years, you will undoubtedly have knowledge and information on file about the client. Having this information at hand is a great advantage, however you must still document that information in order to support any recommendations you make.

Where you hold a client's personal information in your accounting files, you can prepare a Fact Find prior to the client appointment. Note that the Fact Find can be completed by anyone in your office, but bear in mind that advice can **ONLY** be given by an Authorised Representative.

When you have recorded the client's relevant personal and financial information in a Fact Find (either completed by your office or by the client themselves) you must ensure that the client reviews the document carefully.

It is your responsibility to ensure that you have sufficient and relevant information about the client to formulate your advice.

Should the client refuse to provide you with the requested details, you must assess the information that you do have and determine if you have a sufficient basis on which to formulate advice that is appropriate to and in the client's best interest.

If you believe you do have sufficient information that can support your advice, then you can provide advice but you must inform the client of the consequences of not providing you with the requested information. If you do not have sufficient information to formulate advice, you must refuse to provide advice and inform the client of the reasons why. It is of the utmost importance you understand that you are responsible for ensuring you have a reasonable basis for advice and that you take reasonable steps to determine the client's current situation and circumstances. Simply stating that the client didn't want to give you that information is not a sufficient reason to provide advice without a basis.

Alternative Strategies

Your client file must also contain research regarding alternative strategies. The purpose of this is to demonstrate that you have reviewed the client's situation and taken into consideration what is appropriate for them. This can include why it is appropriate for the client to move from their existing super fund. You need to show why the existing super fund or other alternatives are not able to achieve the desired outcome for the client.

In addition to demonstrating your alternative considerations, you must also make comment on why you have not recommended the considered alternative.

Your considered alternatives must also be summarised and disclosed in the Statement of Advice.

File Notes

File notes are a very important element of your activity as an AR of SAN.

File notes should be completed after each conversation, should be comprehensive and must contain the following information:

- Date, Time of commencement and conclusion of meeting;
- Who was present at the meeting;
- Agenda of the meeting;
- Issues and questions raised (by both client and AR);
- Noting confirmation of information and understanding;

In the event of a complaint, file notes may have a heavy weighting on the outcome of the complaint.

The Statement of Advice

Sections 947A & 947C of the Corporations Act, outline the requirements of a Statement of Advice provided by an Authorised Representative. In summary, these include:

1. The title "Statement of Advice" must be used on the cover of the advice document, it can be abbreviated to SOA thereafter;
2. Details of who is providing the advice including the AR name, statement that the AR is a representative of SAN, AR's contact details and business address, SAN's AFSL number and contact;
3. A statement setting out the advice, including information about the basis on which the advice is or was given i.e. your understanding of the client's current situation and the client's goals and objectives;
4. In the event that the information relating to a client's circumstances is incomplete or inaccurate, a statement warning the client that the advice:
    (i) is or may be based on incomplete or inaccurate information relating to the client's relevant personal circumstances; and
    (ii) therefore, the client should, before acting on the advice, consider its appropriateness, having regard to the client's relevant circumstances
5. Clearly outline how your recommendation/s meets the client's needs and objectives;
6. Any disadvantages of the advice;
7. The advantages of the advice;
8. A comparison of the current fund (where applicable) and the fund recommended (SMSF), outlining the difference in fees, charges, access, benefits etc;
9. The client's Risk profile;
10. The alternative options considered and investigated by the AR and details of why they were deemed not appropriate;
11. How the recommended strategy meets the client's needs, goals and objectives;
12. Information about any associations or relationships that the AR, the AR's Practice, the Licensee or any associates of these may have (this includes details of your associated accounting practice and any referral arrangements that any entity related to the provision of the advice may have), that may reasonably be expected to be or have an influence on the advice provided;
13. The total amount of the remuneration and benefits payable stated as an amount, or if the total amount cannot be identified when the SOA is provided, set out a description of the method of calculating the remuneration and benefits, including if appropriate, percentages and worked dollar examples. You must also include written details of when and how the remuneration and other benefits are payable;
14. The cost for implementing the advice;
15. The steps that are required to implement the advice provided;
16. An Authority to Proceed. The Authority to Proceed is to be signed by all parties, including the AR. Where the advice is provided to an SMSF then all trustees of the SMSF need to sign the Authority to Proceed. Advice cannot be implemented where the Authority to Proceed has not been signed by all parties.

Execution Only / Client Instructions

It is possible that you may also encounter the circumstance where a client approaches you with clear instruction about what they want to do and they confirm that they do not want you to provide them advice.

You need to be very careful in these situations, especially where you have an existing relationship with a client. This is because as a specialist who is aware of the client's situation, you have a duty of care to your client to identify if their instructions are appropriate to them and their circumstances. Should you implement a client's instructions when you are aware of their financial situation and it is then later identified that the action was not appropriate to the client, you may be held accountable.

Should you be in a position where a client approaches you with instructions that they would like you to implement without providing advice, the following steps must be followed:

1. Offer to provide advice to the client.
2. If the client declines, explain the risks of not seeking advice.
3. Capture the reason for declining advice and the risk warnings provided via a file note.
4. Complete and submit the no advice/execution only via the SAN SOA Assist software.
5. SAN Compliance will contact you to confirm if this is no advice scenario. Note that you will need to provide a summary in the file note section of the scenario so that we can determine that this is a no advice scenario.
6. Present the no advice document to your client to read, sign and acknowledge.
7. Email the signed no advice document to compliance@san.com.au.

If you are ever unsure of whether you are in a no advice situation, please contact the SAN Compliance team.

SAN SOA Assist software

To assist our ARs to generate Statements of Advice, SAN has designed and developed a software solution.

The SAN SOA software allows you to quickly and easily generate an SOA that is tailored to your client. The framework of these SOAs meet the compliance requirements under the Corporations Act and ASIC guidelines, however the overall compliance of these documents depends on the input and personalisation of each advice document to the client in question.

This software is mandatory for all SAN ARs to use in the generation of SOAs, along with the retention of all relevant supporting documentation. These functions form an important part not just of the advice process, but also the monitoring and supervision aspects that all AFSLs are required to undertake.

Invoicing of Advice Fees

Invoicing through SAN is a simple and automated process generated through the SAN software. An invoice for advice payable to SAN can be generated through the SAN software. This contains a BPay number to allow electronic payments to be made to the SAN bank account. Once received, these payments will be remitted to SAN authorised representatives on the 15th and 30th of each month without any deduction. Once payment of an invoice has been received, this will be reflected in the SAN SOA Software.

We do recognise that in some instances advice fees may be offset against the accounting fees charged for the implementation of the advice provided. The SAN SOA Software allows for this option and discloses the potential conflict of interest that arises.

Note that you should carefully consider what you invoice through SAN versus what you invoice through your accounting practice.

It is important that you do not invoice for advice (SMSF advice under SAN) through your accounting practice. If there is ever an issue with advice provided and it is unclear who is responsible for the advice.

Record keeping obligations that apply to personal advice

When you provide personal advice to your client, records of that advice must be kept for at least **seven years** after the advice is provided and the records must be accessible upon request as per section 912G of the Corporations Act. This includes records of all information relied on, and actions taken, which show compliance with the best interests duty and related obligations.

ARs must ensure that records of the following matters are kept in relation to the provision of personal advice:

1. information relied on and the action taken that demonstrates that you have acted in the best interests of the client (this requires all information relied on and the action taken that demonstrates that you have satisfied each of the safe harbour steps);
2. the advice (SOA), including the reasons why it would be reasonable to conclude that the advice is appropriate to the client; and
3. where you know, or reasonably ought to know, that there is a conflict of interest, the information relied on and the action taken by you which demonstrates that you have prioritised the client's interests.

Examples of documents which will assist you in meeting your record keeping obligations are:

- SOAs
- Fact find
- file notes
- correspondence
- Supporting documentation e.g. superannuation statements
- audio recordings of telephone conversations and/or client meetings.

It is the sole responsibility of ARs to ensure that adequate records are on the client file and retained for the required period of time.

The specific record keeping obligations with differ depending on the situation:

No advice is given
No advice scenarios are assessed on a case-by-case basis. You will need to have detailed file notes outlining that you explained the risks of not seeking advice, the reason that the client declined to receive advice, and a signed execution only document from the client. ARs should refer to the Execution Only/Client Instructions section for further information.

Advice is given, but not implemented
You will also need to have a completed fact find, SOA, file notes outlining why the client has not proceeded and a copy of the signed Authority to Proceed showing that they declined the advice.

Advice is given and implemented,
You will need to have a completed fact find, SOA, file notes (e.g. client has knowledge / experience to run an SMSF), signed Authority to Proceed showing that they proceeded with the advice and the implementation documentation e.g. SMSF trust deeds, trustee declaration. ARs are required to ensure that records of each of the matters discussed above are kept for **seven years** after the date the advice was provided to the client and be accessible for production at all times during that period.

Section 7 – SAN Monitoring & Supervising

SAN has a statutory obligation to, among other things, take reasonable steps to ensure that ARs comply with financial services laws. SAN must also ensure that ARs are adequately trained, and remain competent to provide financial services under SAN's AFSL.

One of the steps taken by SAN to meet its obligations as an AFSL holder is to monitor and supervise the performance of its ARs. SAN has a number of ongoing monitoring and supervision processes, including:

- pre-vetting of advice;
- auditing of advice; and
- spot-checking of advice.

Each of these processes are explained below, and further information is contained in SAN's Pre-Vet and Audit Policy, accessible via the SAN website.

Our monitoring and supervision program incorporates your advice activities from the time you meet a client, to the ongoing relationship you have with them, as well as your personal ongoing professional development and training.

Pre-Vetting Advice

When you commence giving advice to clients, you will be required to have the advice vetted prior to presenting the advice to your clients. This process ensures that you have good technical knowledge regarding the subject matter of the advice, but also and just as importantly, a good understanding of the advice process.

The pre-vet process requires you to provide SAN with all supporting documentation including the fact find, file notes and any other information you have used in the formulation of your advice, e.g. superannuation statements. This information must be retained in the SAN SOA software by uploading it under the documents tab.

The Compliance team will then review your advice to check that it is appropriate for the client and technically sound. This includes a detailed review of:

- The current situation of the client and their risk profile as recorded in the Fact Find;
- The advice that you are providing;
- Why the advice is appropriate to the client and meets their needs and objectives;
- How the advice places the client in a better position than they are currently;
- What steps are required to implement the recommendations;
- The applicable advantages and disadvantages of your advice;
- Where relevant, a comparison of fees and benefits of the current fund vs the recommended situation; and
- The relevant remuneration and any other conflicts have been clearly disclosed.

This pre-vet process is managed through the SAN SOA Software. Once the SOA has been reviewed, you will receive feedback and will work with you until SAN is satisfied that your SOA and supporting documentation meets the relevant requirements.

ARs who are on pre-vet will also be subject to random spot checks as explained below. Removal or continuance of the pre-vet requirement will be determined at the discretion of the SAN Compliance team. Note that all LRBA advice will be pre-vetted.

Audits and Spot Checks

SAN subjects ARs to regular audits as a further step to ensure that they are continuing to meet their ongoing responsibilities and obligations.

Accordingly, each SAN AR will be audited at least annually, **after** graduating from pre-vet in accordance with SAN's Audit Policy. Formal audits include a detailed review of several random client advice files. These file reviews will be similar to the pre-vet process, however as the advice will have been implemented, we will also review your implementation process and documentation.

In addition to file reviews, the Compliance team will also review a number of other aspects of your processes and compliance requirements. This will include, but is not limited to:

- An AR questionnaire;
- Ensuring that you have completed your relevant CPD training;
- Review of your stationery and other marketing materials, including your website (if applicable); Review of your relevant registers e.g. FSG, breaches and complaint registers.

Upon the conclusion of the audit, you will receive a written report. In the instance areas for improvement are identified, these will be noted and an action plan provided. Should there be serious errors or breaches, these will need to be addressed and rectified. Other remedial action may be undertaken depending on the issues identified.

These actions may include the authorised representative being required to have all advice documents pre-vetted, further training to be undertaken by the AR or termination of AR status.

In addition to the audit and pre-vet processes, SAN will also, at its discretion, perform random spot checks of client files and undertake a review of the relevant AR's adherence to SAN's compliance requirements as set out in this Manual and SAN's policy documents. The same remedial actions apply as per the AR Audit process.

The SAN Client File

Documentation and information in relation to advice provided to your clients through SAN must be contained in the SAN Software. As detailed in Section 6, ARs must ensure that records of the following matters are kept in relation to the provision of personal advice:

1. information relied on and the action taken that demonstrates that you have acted in the best interests of the client (this requires all information relied on and the action taken that demonstrates that you have satisfied each of the safe harbour steps);
2. the advice (SOA), including the reasons why it would be reasonable to conclude that the advice is appropriate to the client; and
3. where you know, or reasonably ought to know, that there is a conflict of interest, the information relied on and the action taken by you which demonstrates that you have prioritised the client's interests.

This will likely include the following documents:

- Fact Find;
- Trust deeds and investment strategy documents for SMSFs;
- File notes regarding client meetings, subsequent information, strategy considerations etc;

- All research documents and materials e.g. superannuation statements, bank account statements etc;
- Certified copy of the client's or entity's identification;
- Copies of signed Statements of Advice;
- Copies of all implementation documents e.g. application forms;
- Any other documentation in relation to the advice you have provided and implemented.

These Client Files will be reviewed when an audit, spot check or AFSL check is required.

Continuing Professional Development (CPD)

As of 1 January 2019, The Corporations Act 2017 (the Act) requires that all individuals identified as a 'relevant provider' (this includes authorised representatives of financial services licensees) are required to meet the requirements for continuing professional development set by the Standards Body (FASEA).
The Act requires the Standards Body to set requirements for continuing professional development in relation to each CPD year of a financial services licensee.

In line with FASEA's CPD requirements, SAN ARs:

1. Must develop and maintain a Continuing Professional Development (CDP) Plan on a continuing basis, that identifies areas for improvement in competence, knowledge and skills and the professional development proposals for making those improvements;
SAN will publish our CPD plan on our website at the start of each CPD year. ARs can elect to follow our CPD plan, or prepare their own. If you choose the latter, you must submit your CPD plan to the SAN compliance team for review and approval at the start of each CPD year. CPD plans must include the planned activities to be completed.

2. Must complete at least 40 hours of CPD activity in each CPD Year, however, in special circumstances if the AR is working part-time for the whole of the CPD year, with the prior written consent of the licensee, they must complete at least 36 hours of CPD activity in each CPD Year: in both cases, 70% must be approved by their licensee;
Within the 40 hours (or 36 with SAN's approval), ARs must have met the minimum the minimum CPD hours for each CPD category as outlined below.

3. Must maintain a continuous, up-to-date and accurate record of their CPD activities, including evidence of completion of any CPD activity that is intended to be relied on to meet this Standard and keep records for 7 years from the end of each CPD year; noting that FASEA encourages a digital solution that can track CPD activities, evidence and outcomes, while providing portability and accountability;
All SAN ARs must upload, and keep up to date, their CPD records to their SAN CPD Register located on our website.

4. Must provide those records to the licensee in order for the licensee to meet its compliance with the CPD Year requirements.
SAN will be monitoring CPD completion through each AR's online CPD register.

The CPD year will run between 1st January and 31st December each year. There are 5 CPD categories, with minimum requirements for each:

CPD Category	Description	Minimum CPD Hours Per Year
Technical competence	The activity is designed to enhance participants' technical proficiency and ability to develop and provide advice strategies that are appropriate to the objectives, financial situations and needs of different classes of retail clients.	5
Client care and practice	The activity is designed to enhance participants' ability to act as a client-centric practitioner in advising retail clients	5
Regulatory compliance and consumer protection	The activity is designed to enhance participants' understanding of applicable legal obligations and how to comply with them.	5
Professionalism and ethics	The activity is designed to enhance participants' capacity to act as an ethical professional.	9
General	The activity is designed to maintain and extend participants' professional capabilities, knowledge and skills, including keeping up to date with regulatory, technical and other relevant developments, but is not in an area referred to in another item of this table.	0

Once the minimum CPD hours for each category have been met, ARs may attribute the remaining 16 hours to any of the above categories.

Although there are no longer CPD categories for specific advice areas, SAN expects its ARs to undertake an appropriate amount of activities that relate to the areas they are licensed to advise on, mainly being superannuation and SMSFs.
CPD requirements must be completed on an annual basis. Completing additional training in one CPD year doesn't enable you to 'bank' these for future training periods. The full quota (including the minimum hours in each CPD category) must be completed each year.

The following types of learning are options that may be undertaken to complete your CPD requirements:

1. Formal relevant education (provided by an Education Provider) may contribute to the CPD requirement including degree equivalent study to meet legislative requirements (such as bridging courses and approved degree studies) and any formal study towards other qualifications and designations relevant to the practice of the AR, to a maximum of 30 CPD hours per year.

2. Non-formal education including:
    a. Education for the purposes of achieving a relevant professional designation (e.g. CA, CPA etc)
    b. Education for the purposes of meeting requirements in specific financial advice provisions (e.g. Stockbroking, SMSF, Aged Care, etc.)
    c. Education for the purposes of accreditation in specific forms of financial products relevant to licensing arrangements (e.g. Credit)

3. Other CPD as approved by the Licensee:

a. Sessions/Workshops such as conferences, PD days, update sessions, which are relevant to financial advice – approved CPD

b. Professional or Technical Reading to a maximum of 4 hours – approved CPD

Education that is measurable, appropriately assessed and leads to further qualification outcomes for participants is preferred as it more likely provides structured and independent results for the participants work and training needs.

Should you attend any CPD events that you would like to record on your CPD register, you can lodge these through the SAN CPD register on the SAN website. You will need to enter the details of the session including:

- The CPD title/event;
- Association i.e. who the training was provided by;
- CPD event date; and
- CPD hours for each Knowledge Area covered in the CPD event.

All CPD registered must be accompanied by a certificate or other documentation as proof. These documents must include the following information:

- The AR's name;
- Date of event;
- Proof of successful completion of the CPD session or training. This may be a certificate of completion or attendance record. If a certificate of completion or attendance is not provided by the training facilitator, a copy of the session's agenda and a confirmation of your registration at the event may be sufficient.

Once you have lodged your CPD training as above, the status will show as submitted. This will then be reviewed by the SAN Compliance team and once approved will show as complete.

You are required to complete your CPD training requirements by 31 December each year and you will receive reminders about your CPD in the lead up to this deadline.

Should you fail to complete your CPD requirements, you will be contacted by the Compliance team with a remediation plan. Note that failure to complete CPD adequately may result in suspension or other disciplinary action.

Each year, SAN may need to update its CPD policy by taking into consideration FASEA requirements, Corporations Act requirements and any Best Practice bench marks as well as SAN's internal requirements. Any changes will be communicated to all SAN ARs.

Should you have any questions about your CPD training, please contact the SAN Compliance team.

SAN registers

As an Authorised Representative of SAN, you are required to keep registers relation to the operation of your advice practice. This includes:

1. Complaints register
2. Breach register;
3. Suspicious transactions;
4. Alternative remuneration;
5. No Call No Contact register in relation to marketing materials;
6. Fee Disclosure Statements and Opt-In and;
7. Any other issues in relation to your provision of advice to clients under the SAN AFSL.

Please note that register templates are available on the SAN website www.san.com.au.

Complaints

What is a complaint?

A complaint is generally defined as an expression of dissatisfaction made to or about an organisation, related to its products, services or staff, where a response or resolution is explicitly or implicitly expected or legally required.

In applying this definition, it is clear that the client does not have to state that they wish to make a complaint, just that they are not happy or dissatisfied about how you have assisted them, whether that be advice or services provided.

Should a client have a general enquiry e.g. following up certain information or seeking further information or if they express dissatisfaction about matters which are outside of the control of the Licensee or Authorised Representative (e.g. market circumstances), this would not be considered to be a complaint.

Dispute Resolution Process

SAN is required to have a dispute resolution process in place for retail clients that:

- consists of an internal dispute resolution procedure that complies with Australian Standards, and ASIC requirements (in accordance with regulations), and
- covers complaints against SAN and/or its Authorised Representatives made by retail clients in connection with the provision of all financial services covered by the licence.

SAN must also be a member of an external dispute resolution scheme, approved by ASIC to cover the above complaints (other than complaints that may be dealt with by the Superannuation Complaints Tribunal.

SAN is a member of Australian Financial Complaints Authority (AFCA), formally known as the Financial Ombudsman Service (FOS). This is an external dispute resolution body which is fully funded by members of the Financial Services Industry and provides assistance to consumers to help them in resolving complaints relating to members of the financial services industry.

AFCA requires that:

- Licensees first seek to settle a complaint internally through the internal dispute resolution (IDR) process, and
- Appropriate records are kept of all complaints including details of the date and nature of the complaint and the Licensee's response, for seven years from the date the complaint was finalised.

SAN is also required to maintain a central register of all complaints relating to its financial services operations.

What if I receive a complaint?

In the event that you do receive a complaint from a client, there are a few steps that you must first undertake:

- Acknowledge the client's concerns.
- Do not admit liability to the client. This is very important. Though you can empathise with the client and inform them that you will review the situation, you should never say that you or your staff are at fault in the first instance. This is because you may potentially waive your Professional Indemnity Insurance.
- If the client is verbally expressing dissatisfaction, request that they provide this in writing to you. Note that the complaint does not need to be in writing to be a complaint, though we require it in writing to ensure we understand the scope and the resolution sought. A complaint exists when the client notifies you, not from when they provide it in writing.
- Report the complaint to SAN within 24 hours of becoming aware of it. We will ask you to complete a complaint form and update your complaints register, and we will assist you with how you can deal with the complaint. We will always encourage you to deal with your client directly, unless it is apparent that this would be detrimental to resolving the complaint. We will also notify our PI Insurers of the complaint.
- SAN, with your assistance, has 45 days in which to investigate the complaint and determine a reasonable resolution. Should this not be achieved, the complaint will be referred to ACFA of whom SAN is a member.

If you believe that you can resolve the issues raised by the client you may do so, with SAN's guidance. However, in the event that any offer of compensation is to be made, it must first be referred to the SAN Compliance team who will advise if appropriate.

If the issue remains unresolved after **seven** days, the matter will be referred to the SAN Compliance team. Note that we will keep you informed and current on all activity involving an active complaint.

Once the complaint is referred to SAN, we will write to the client confirming receipt of the complaint, the expected timeframe for response and details of the external dispute resolution scheme of which SAN is a member.

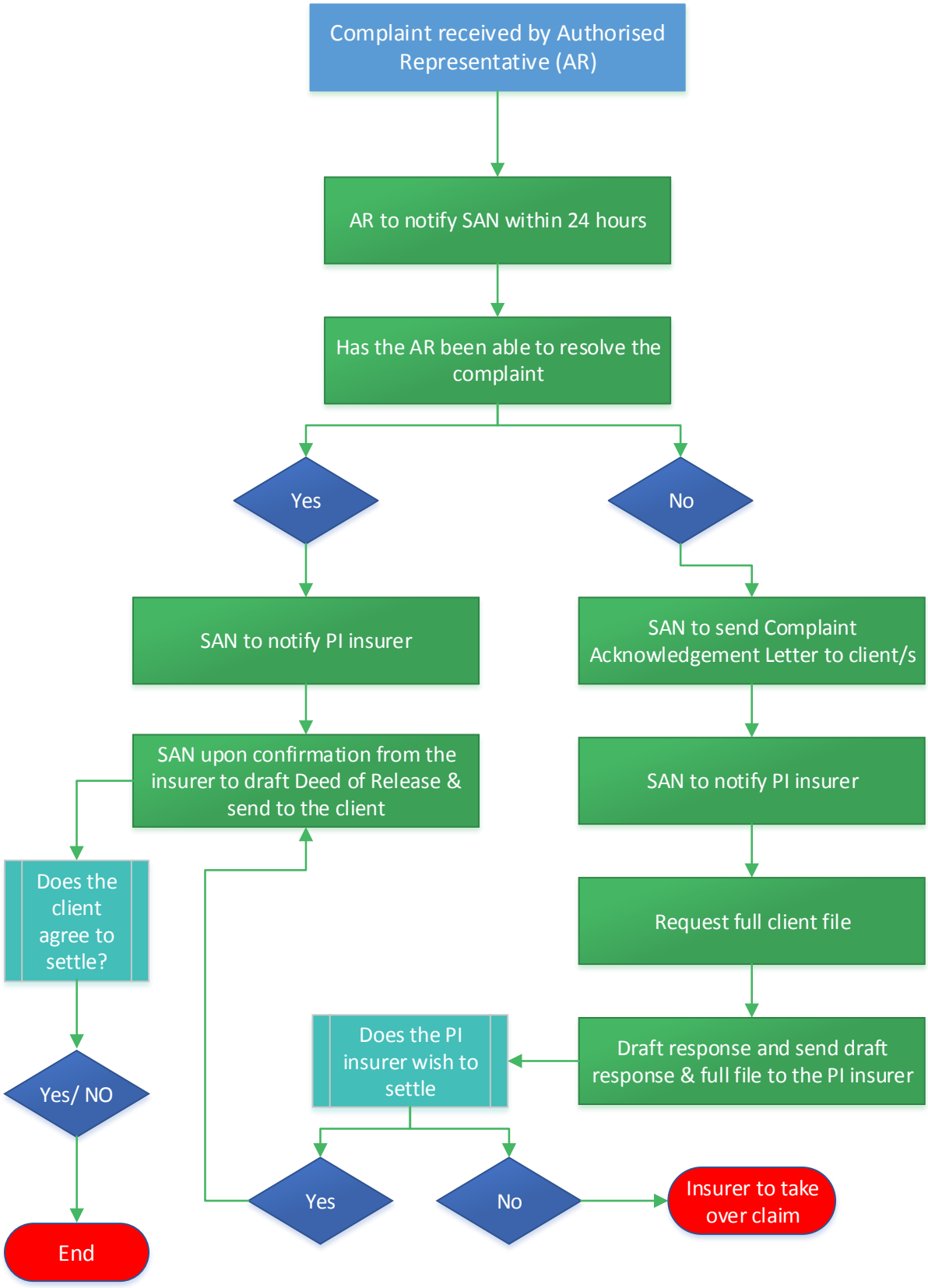
Some important points to remember when dealing with complaints are:

1. You should never admit liability in any instance;
2. If you are in any doubt, you should refer to SAN's Compliance team

Monitoring of the Complaints Register

During the Authorised Representative's audit, we will review your register to ensure it is current and maintained in accordance with the Licensee guidelines.

SAN's Complaint process



Breaches

A breach occurs when an AR has acted in a manner that does not meet the legislative, regulatory or licensee requirements.

Breaches can include:

- Not issuing an FSG before providing advice to a client;
- Not providing an SOA to a client when advice has been provided;
- Not clearly or accurately disclosing the remuneration that you will receive in relation to the advice;
- Failing to disclose replacement product information; and
- Failing to complete your required annual CPD training.

Breaches can be identified in a variety of ways. These can include:

- Self-identification i.e. you identify the breach and report this to the Licensee;
- Auditing of files;
- Client complaints; or
- ASIC reviews.

You must notify SAN immediately should you become aware that you may have breached any of your requirements. This will ensure that we are able to work with you to fully identify what has happened, why it has happened, how it can be rectified and how it can be prevented in the future.

When considering a breach, the licensee will need to determine how serious the breach is, as any breach that is considered to be significant must be reported to ASIC.

SAN encourages its ARs to self-report breaches that may occur. Self-reporting enables SAN to take a proactive approach and work with you and your practice to review, rectify and remedy the cause of the breach.

Should it be determined that the AR was aware of the breach and failed to report this to SAN, this will result in disciplinary action against the AR and/or the practice, which may include pre-vetting requirements, an Action Plan for resolution, suspension or termination of authorisation with SAN.

Section 8 – Resignation / Termination as an AR of SAN

There may come a time when you decide to part ways with SAN or there may be circumstances where SAN have deemed it necessary to revoke your authorisation. If this occurs, SAN has a process that we follow to ensure we comply with our requirements as an AFSL.

As set out in Section 6, the law imposes a direct obligation on ARs to provide certain information to SAN upon request, notwithstanding that the AR may have ceased to be authorised by SAN.

Resignation

As per your Corporate / Authorised Representative agreement, you need to provide SAN with 30 days written notice that you wish to resign your current authorisation, unless mutually agreed by all parties.

Once we have received notification of your resignation, SAN will request a formal letter of resignation which includes an effective termination date. Upon receipt of this letter, you will receive a formal release letter notifying you when your authorisation with SAN will be revoked.

You will also be requested to return your original certificates of authorisation (Corporate and Individual) and your SAN sticker.

Failure to return these items or complete any outstanding action items before your termination date may result in SAN suspending but not revoking your authorisation and continuing to direct debit your monthly licensing fees until such time as these items are returned or completed.

Termination

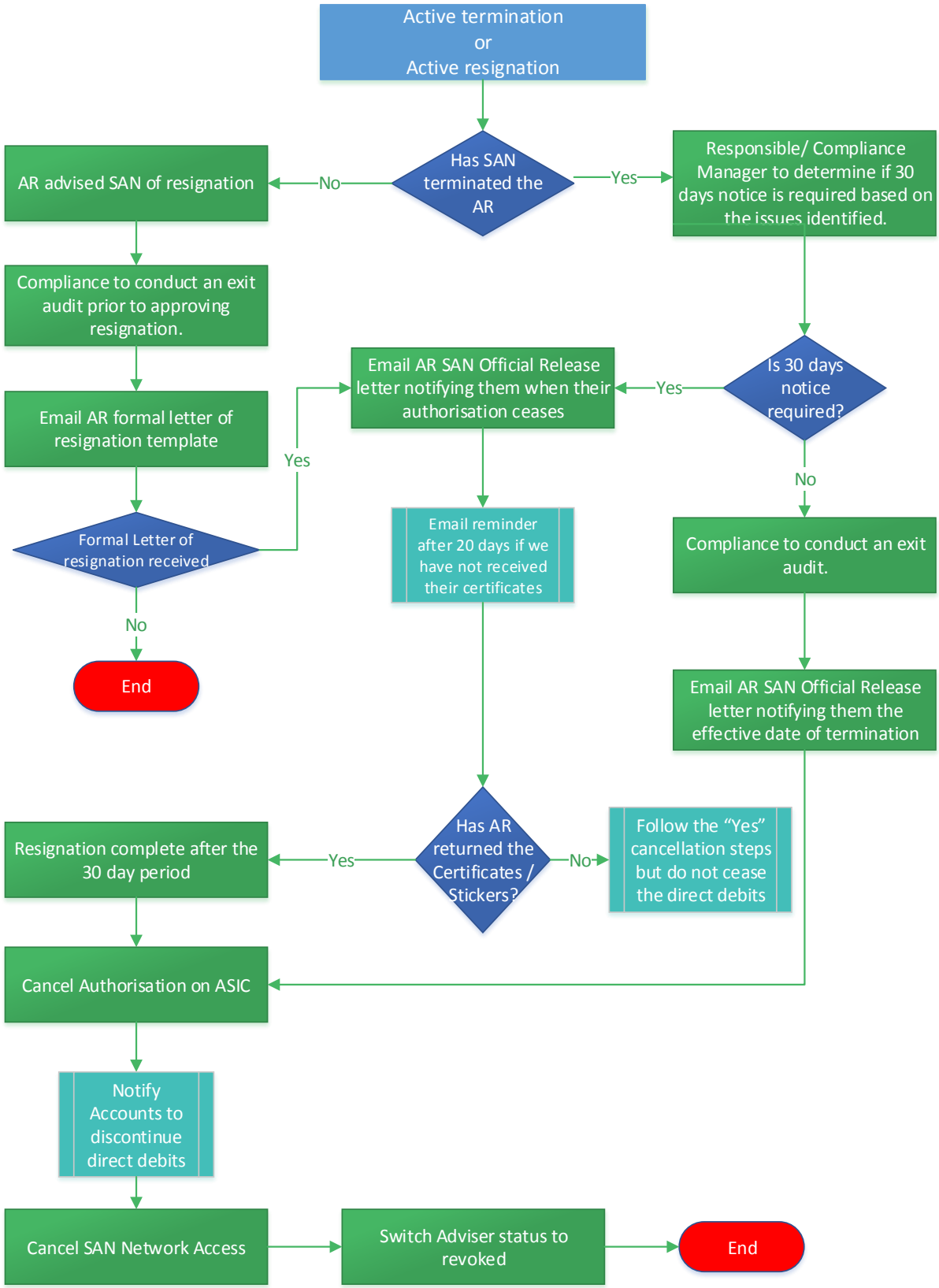
In line with your Corporate / Authorised Representative agreement, SAN is also able to terminate the agreement upon the provision of 30 days written notice.

If you breach legislative, regulatory or licensee requirements, SAN is able to terminate the agreement effective immediately.

Should SAN decide it is necessary to revoke your authorisation, you may be required to undertake the same actions as per the above outlined Resignation Process.

The Resignation / Termination process is outlined below:

SAN's Resignation / Termination Process



Conclusion

In conclusion, we are here to assist you to make sure that you are meeting the requirements of the AFSL and giving good quality advice to your clients.

Please call us on 1800 906 456 or email compliance@san.com.au to let us know how we can be of assistance or to arrange some time for a discussion about any questions or queries about providing licensed advice through SAN.

Glossary

ABN	Australian Business Number
AFCA	Australian Financial Complaints Authority
AFSL	Australian Financial Services Licence / Licensee
AML-CTF	Anti-Money Laundering and Counter Terrorism Financing
AR	Authorised Representative
ASIC	Australian and Securities Investment Commission
AUD	Australian Dollars
AUSTRAC	Australian Transaction Reports and Analysis Centre
CAR	Corporate Authorised Representative
CPD	Continuing Professional Development
FASEA	Financial Adviser Standards and Ethics Authority
FDS	Fee Disclosure Statement
FOFA	Future of Financial Advice
FOS	Financial Ombudsman Service
FSG	Financial Services Guide
LRBA	Limited Recourse Borrowing Arrangement
NTAA	National Tax and Accountants' Association Limited
PDS	Product Disclosure Statement
PEP	Politically Exposed Person
RG	Regulatory Guide
SAN	SMSF Advisers Network Pty Ltd
SOA	Statement of Advice
SMR	Suspicious Matter Reporting
SMSF	Self-Managed Superannuation Fund
TRIS	Transition to Retirement Income Stream. Sometimes referred to as a TTR (Transition To Retirement) or TRAP (Transitional Retirement Account Pension)
TTR	Threshold Transaction Reports