EQT RELEASE

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Number of factors in fiducial responsibilities

Ensuring they act according to the highest levels of care and duty towards clients is not just a regulatory requirement for financial planners today, it is also sensible risk management for both their clients and themselves.

Mr Harvey Kalman, head of corporate fiduciary and financial services at Equity Trustees Limited (EQT), said that this view is even more critical in the operating environment that now exists following the US credit crisis of 2007 and which is to change even further with new regulations.

“Fiduciary care is not simply something that is a nuisance and which now has to be adopted because of the new regulatory framework for advisers.

“Most advisers have always tried to act in the best interests of clients. The difference now is that the ability to show that due care is taken will be essential protection for when things go wrong again, as they inevitably will.

“It is as certain as night follows day that there will be another investment crisis – the only unknowns are when it will happen and what form it will take,” he said.

Mr Kalman said that a significant development in Australia that has happened separately to, and mostly since, the US credit crisis occurred, is investors’ ability to take class action much more easily than ever before.

“It has always been an option for them, but the recent emergence of aggressive litigation firms actively seeking clients in class actions makes it much easier for investors to take action when they have suffered investment loss.

“For such reasons advisers need to fully understand and embrace their fiducial duty of care – including that they know their clients’ risk profiles, act accordingly, and have confirmed that clients themselves understand how the recommendations the adviser makes fit with this, and what the ramifications are.

“It certainly adds another level of difficulty to the adviser role and creates an unenviable balancing act for them, between seeking returns and managing risk with a number of new considerations now needing to be taken into account.”

Mr Kalman said that with the increased risk of litigation, the structure and role of the Responsible Entity (RE) when selecting fund managers to invest with, and their investor protection capabilities, is a good example of the considerations that need to be taken into account.

“Investors and their legal advisers pursuing capital losses incurred because of a fund collapse, or inappropriate behaviour by the manager, will look for someone with deep pockets they can sue.

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"When a small fund collapses with an in-house responsible entity that also disappears, it could be subsequently argued by an investor that the adviser shouldn't have recommended the fund because of the additional risk of an in-house RE.

"While ASIC is currently looking at improving the financial strength of in-house REs, this may not be enough to ensure their survival in fund collapses, and I believe such relationships should take on more importance in investment decisions."

Mr Kalman was quick to add that this belief does not mean that advisers can, or should, only recommend funds offered by large financial institutions.

"Some of the best returns are provided by boutique managers where the principals' interests are aligned with those of investors, and long-term performance should always be the main consideration.

"However, the strength and structure of the RE for such funds is an increasingly important risk consideration, and ownership, independence, size and strength of the RE should now be taken into account.

"Boutique fund managers can use an external specialist RE which offers both performance and risk management equal to or better than that of the largest fund manager," he concluded.

About Equity Trustees: *Equity Trustees is a publicly listed company that provides a range of financial services to corporate and private clients. Its businesses include private client wealth management, funds management, responsible entity appointments, and corporate and personal superannuation.*

The company manages more than $4 billion in its funds management, private client and superannuation businesses and has over $19 billion under responsible entity administration. Equity Trustees employs over 180 people in its Melbourne, Sydney and Brisbane offices.

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