

IPA Victoria Congress 2015

Thursday 12 - Friday 13 March
RACV Healesville, Yarra Valley



IPA INSTITUTE OF PUBLIC
ACCOUNTANTS[®]

publicaccountants.org.au/viccongress2015

Outline

- Superannuation Landscape
- Types of Fraud
- How real is the problem?
- Actual Case Studies
- Red Flags of Fraud
- Prevention and Detection

The Superannuation Landscape

- In Excess of \$520 Billion and growing daily
- Average SMSF balance is \$1 million
- Aging population in Australia
- Insufficient controls and safeguards around superannuation particularly SMSFs
- Lack of ownership and participation
- Conditions of release required before money can be accessed

The Superannuation Landscape

- Trust: Australians are particular trusting as a culture
- Human nature dictates that we all have an element of greed and the desire to be financially secure
- People don't believe it will happen to them and consider the risks to be very low
- Greed + Trust + Naivety = Perfect Storm for FRAUD!

Types of Fraud

- Early access scams
- Mail Fraud
- Identity Theft
- Phishing Scams
- Social Engineering
- Investment Scams including Ponzi Schemes
- Advisor Fraud
- Elder Abuse

SCHEMING
CRAFTY
AGGRESSIVE
MALICIOUS
DON'T LET THEM CON YOU

Changing Face of Fraud

- The ability for sophisticated crime gangs to move large amounts of money around the world in minutes
- Opportunistic thieves: from trusted advisors to bikies are demonstrating their willingness to have a crack at the super pot
- Technology is making far easier for fraudsters and harder for law enforcement
- Identity theft, Key Logging software, Social engineering, Mirrored websites all tools available to would be fraudsters

Changing Face of Fraud

- Australian Crime Commission Task Force Galilee believes it is a significant problem and estimates of losses are conservative
- ASFA would argue that your super money is safe so long as controls are in place
- Until everyone who has a super account takes ownership of it the same way they would with any other asset the problem is going to escalate



Actual Frauds

Various Shapes and Sizes

Ponzi Schemes



a game nobody can afford to play!

Ponzi Schemes : Madoff's Infamous Hedge Fund

- Despite Bernie Madoff and the Wolf of Wall Street being almost household names, NEW Ponzi schemes are emerging on a weekly basis
- Madoff operated the worlds largest known Ponzi Scheme
- Madoff Investment Securities LLC was established in 1960
- It is unclear when the fraudulent activities began some believe it was early as the 70's Madoff claims it started in the 90's
- Part of his elaborate scheme included targeting the wealthy and charities this insulated him from the threat of sudden or unexpected withdrawals

Ponzi Schemes : Madoff's Infamous Hedge Fund

- Nobody was immune to Madoff's charm the rich the famous the mums and dads all wanted to be part of the Madoff magic
- Madoff was not only running a scam he did it with a high profile at one point he was chairman of the NASDAQ
- Stories abound of people begging him to manage their money
- Madoff had everyone fooled including the regulators (SEC)
- Despite a marketing strategy that claimed the use of sophisticated technology investors has no online access and statements were printed on a dot matrix printed and posted via mail.

Ponzi Schemes : Madoff's Infamous Hedge Fund

- The first real concerns about Madoff's operation were raised in May 2000, when Harry Markopolos, a financial analyst and portfolio manager at Boston options trader Rampart Investment Management, alerted the SEC about his suspicions
- In the previous year Markopolos had been trying to replicate Madoff's returns and had concluded almost immediately that Madoff's numbers didn't add up
- After four hours of trying and failing to replicate Madoff's returns, Markopolos concluded Madoff was a fraud

Ponzi Schemes : Madoff's Infamous Hedge Fund

- Markopolos told the SEC that based on his analysis of Madoff's returns, it was mathematically impossible for Madoff to deliver them using the strategies he claimed to use
- In his view, there were only two ways to explain the figures—either Madoff was front running his order flow, or his wealth management business was a massive Ponzi scheme
- But nobody would listen!

Ponzi Schemes : Madoff's Infamous Hedge Fund

The Red Flags:

- Consistent returns year in year out no volatility
- The fund was audited by a 2 partner practice with only one partner qualified who happened to be a long time friend of Madoff's
- Large commissions paid to keep everyone happy and not asking questions
- With his trading activities reaching far and wide around the globe European investors were equally hard hit
- Several big name companies involved including HSBC and the Royal Bank of Scotland

Ponzi Schemes : Madoff's Infamous Hedge Fund

- JP Morgan Chase held the bank account at the centre of the fraud
- Paid a settlement of \$1.7 billion
- The bank admitted to failing to file a "Suspicious Activity Report" after red flags about Madoff were raised
- It was alleged that JP Morgan did not have adequate anti-money laundering compliance procedures in place



Ponzi Schemes : Madoff's Infamous Hedge Fund

- Despite the red flags and the relentless pursuit by Harry Markopolos over a nine year period Madoff was not identified as a fraud by any of the normal channels such as regulators and or auditors
- It was the Global Financial Crisis that was the beginning of the end as people started wanting their money back!

Ponzi Schemes

- Could Madoff happen in Australia?
- How easy is it to set up a sophisticated Ponzi Scheme?
- How do you get credibility? An AFSL license?
- How do you get people to help market your product?
- How do you find investors?
- The answer to all of these questions is Yes and you simply buy it!!



Ponzi Schemes

- In 2003 a reputable mid-sized Albury-based Australian funds-management business, Tolhurst Funds Management, was purchased for \$2 million
- Following the purchase, a series of name changes occurred and Tolhurst Funds Management became Astarra Funds Management and Tolhurst Capital Limited was eventually renamed Trio Capital
- As part of the purchase an Australian Financial Services Licence was transferred to Shawn Richard (new director), which gave him the authority to deal in sophisticated financial transactions without any scrutiny of his fitness to hold such a licence

Trio Capital

- Trustee of four APRA regulated superannuation funds and a managed investment scheme known as Astarra Strategic Fund
- Audited by WHK (external) and Internal Compliance KPMG
- Investors were getting 8-10% returns and promised 14% long term all this at a time when everyone else around the country was trying desperately not to post losses

Trio Capital

- More than 6000 Australians invested in Trio and its web of related companies
- Many of the investors were lured in after it was recommended to them by their financial planners and advisors
- It has been suggested that the recommendations were influenced by high commissions paid by Trio
- Trio was producing higher than average returns
- What could possibly go wrong?



Trio Capital

- Fraud Exposed by a whistle blower
- Investors lost \$176 million that is likely not to be recovered
- Despite TRIO exposing the significant vulnerabilities of Australian's Superannuation savings the average investor does not think it will happen to them
- \$55 million in compensation but nothing for the SMSF investors who lost their money



Case Studies

Investment Fraud



Investment Fraud

Facts:

- Approximately 12 victims
- Cloned website of a legitimate investment company
- Cold calling potential investors
- 10% returns
- Initial returns were good and there was encouragement to invest more
- Case is ongoing but traced back to Bkie gang and being investigated by Task Force Maxima



Case Studies

Elder Abuse



Elder Abuse Case 1

- SMSF assets approximately 2.4 Million
- Sole director corporate trustee single member fund
- Member falls victim to mental illness (dementia)
- Family and friends take advantage
- Currently being wound up under the supervision of the Public Trustee
- SMSFs particularly vulnerable when members lose capacity
- Currently over 300,000 elderly with dementia



Elder Abuse Case 2

- Fund sent to accountant for tax and audit annual work
- Accountant could not reconcile the paper work provided with the electronic data feed from the banking system
- Contacted the auditor to query what to do?
- Accountant adamant that the client was honest
- Auditor totally sceptical

Elder Abuse Case 2

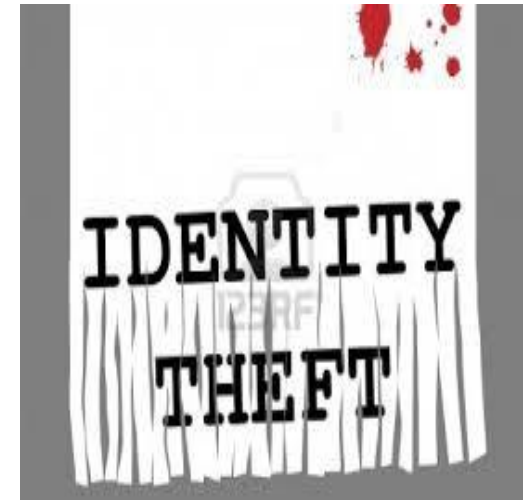
- Close inspection of all the documents and bank feeds identified a \$180K difference
- Confirmation with the bank confirmed the bank statements were not accurate???
- Back to the clients /trustees / members what is going on?
- After much discussion and hesitation the trustees admitted that their eldest son managed the family business and that he may know something as he had access to all documents bank accounts and power of attorney

Case Studies

Identity Theft

Case Study identity theft via the mail

- Back to Basics
- Single member fund
- Bank Statement stolen from the letter box
- Approximately \$120,000 withdrawn
- Fraud not detected until the member tried to access the bank account
- Whilst there are a lot of sophisticated scams out there this case was simple mail theft



Case Studies

Trusted Advisor

Case Study 1 Trusted Advisor

- Accountant setting up SMSFs
- Jailed 4 Years
- \$428,000 from unsuspecting SMSF clients
- The clause, contained in one of the documents used to set up the fund, appeared to the investors to authorise the company to deduct its fee for setting up the superannuation fund from the fund's bank account and to make authorised investments.
- Money used to fund his lifestyle



Case Study 2 Trusted Advisor

- Unsuspecting client met a man at a local club who was a local stockbroker
- Upon learning that the client had a small portfolio of shares in his SMSF the stockbroker suggested he could better manage the portfolio personally
- Because he was such a nice guy the client decided to take him up on his offer and following a brief visit to the FSP he transferred his portfolio of blue chip shares approximately \$300,000

Case Study 2 Trusted Advisor

- Four months later the stockbroker had control of the portfolio and began working his magic
- There were daily calls to the client and lots of projections regarding the market behaviour
- A couple of months later the client received an inheritance of \$250,000 and promptly handed that over to his new found financial wizard!
- 12 months later a further investment of \$200,000 was made

Case Study 2 Trusted Advisor

- During the first 18 months despite almost daily calls the client had no access to the portfolio and relied on what the stockbroker told him with regard to performance
- During the investment period the client believed his money was invested in blue chip lower risk shares....WRONG
- The clients situation changed and they needed to access some money and requested \$100,000 be cashed out

Case Study 2 Trusted Advisor

- Following the request they discovered the market was not doing so well and more specifically their portfolio was not quite where they thought it would be
- Turns out the blue chip shares were in actual fact high risk CFDs and the stockbroker was not so hot at trading in these products
- The clients \$750,000 portfolio was only worth a little over \$200,000
- The client decided to get some advice....and found a lawyer in the yellow pages who advertised expertise in financial services and related disputes!!
- The lawyer having gathered lots of information from the client spent the next year preparing to confront the FSP

Case Study 2 Trusted Advisor

- Once prepared the lawyer sent a letter of demand making some rather wild unsubstantiated claims and suggesting that a quick payment of \$250,000 was in order
- No shock the FSP denied liability and asserted that their representatives provided general advice only
- Not sure where to go now the lawyer decided a forensic accountant might be helpful

Case Study 2 Trusted Advisor

- A review of the case found compelling anecdotal evidence that personal advice had been given and that no Statement of Advice (SOA) had been prepared or provided to the client
- The Forensic report was sent to the FSP and it was promptly rejected
- At this stage the clients had sold their house and were hemorrhaging money
- A barristers opinion was sought and whilst positive about the merits of the case caution was advised as ultimately much of the case would be determined on a he said she said basis

Case Study 2 Trusted Advisor

- With little or no money to fight a lengthy court battle it was suggested that FOS may be an option
- The lawyer promptly lodged an application with FOS claiming losses of \$600,000
- FOS accepted this and the case proceeded albeit slowly
- After much information gathering and commentary from both sides the case manager assigned recommended that the case be dropped in favour of the FSP
- The client requested a full determination from the Ombudsman

Case Study 2 Trusted Advisor

- The determination found the FSP breached its duty of care and statutory obligations owed to the Applicants by having them engage in trading high risk CFDs and related products
- Allowance was made for the Clients failure to mitigate their loss and contribution to their own loss
- The arguments for fraud were not addressed by FOS and the clients declined to pursue the broker criminally
- Likely would have succeeded in financial gain by deception

Case Studies

Property Ponzi Scheme



Case Study Property Investment Ponzi Scheme

- Company seeking investors via private mortgage
- Initially offered 10% returns, targeting unsophisticated investors
- The funds were used by the director to fund lavish lifestyle expenses
- Investors solicited closer to the collapse were offered returns of anywhere up to 980% per annum!
- At the date of the liquidation investors were owed around \$4 million.
- Director plead guilty to ten counts of ‘obtaining property by deception’, one count of ‘fraudulently inducing a person to invest money’ and eleven counts of ‘obtaining financial advantage by deception’

Case Studies

Social Engineering



Case Study Social Engineering

- This type of fraud uses a variety of measures including social media and email to collate a profile of a person to facilitate the fraud
- In this case through email and Facebook the would be fraudster was able to obtain bank account details and private banking managers contact information
- Ascertain that the person was taking an overseas trip
- Whilst the person was on holiday the fraudster contacted the private banker and requested a withdrawal on the basis that they had been robbed whilst on holiday

Red Flags of

FRAUD

Red Flags of Fraud

- High / abnormal returns
- Lots of overseas obscure investments
- Difficulty getting direct confirmation on details of investments
- One stop shop financial and accounting services
- Unsolicited investment advice

Prevention and Detection

- Good internal controls
- Dual signatures
- Monitor what is going on with your money or your clients
- Don't be gullible it is amazing how many people are prepared to part with 100's and 1000's of dollars but don't want to pay a lawyer or an accountant for an hour to confirm it is legitimate
- Check the ASIC website
- If it is too good to be true it probably is

Prevention and Detection

- Data Security is Key:
 - Don't have bank statements sent to unlocked or unsecure mail boxes
 - Don't email your SMSF records even to your accountant
 - Don't reply to emails requesting information about your accounts especially requests to reset passwords

Prevention and Detection

- Accountants and Auditors have a big role in both prevention and detection
- Educating clients on the potential dangers of fraud and how to avoid them
- Being on the look out with an level of scepticism that is appropriate don't just assume it is low risk
- As the SMSF pot grows so does the risk it is a numbers game and sooner or later one of your clients may become a number

Questions:



Thank you

Sharlene Anderson Partner Forensics
Worrells Solvency and Forensic Accountants
www.worrells.net.au (03) 9613-5500



Thank you

IPA Victoria Congress 2015

Thursday 12 - Friday 13 March
RACV Healesville, Yarra Valley



IPA INSTITUTE OF PUBLIC
ACCOUNTANTS[®]

publicaccountants.org.au/viccongress2015