Case Study – John Smith

- Increasingly Mobile Populations, especially retirees with assets
- Low interest rate environment driving investors up the risk curve, especially older investors with few or no earning years remaining
- Other issues unique to older investors (capacity, substitute decision-making, abuse, targeted scams)
- Ability to commute pensions and free up pension assets through early withdrawal provisions
- Sales activity happening across jurisdictional boundaries (live and via the internet)
Case Study – John Smith

- UNLICENSED INDIVIDUALS ENGAGING IN THE PROMOTION AND SALE OF INVESTMENT PRODUCTS (QUESTION OF REGULATORY AND DISPUTE RESOLUTION BODIES’ ABILITY TO DO ANYTHING IN THOSE CIRCUMSTANCES)

- IF CRIMINAL ACTIVITY, ENFORCED DILIGENTLY?

- ALTERNATIVE INVESTMENTS BEING SOLD AS RETAIL AND THE CHALLENGE THEY CREATE

- WHO COVERS THE SALE OF INSURANCE PRODUCTS AS INVESTMENTS? IF SEPARATE REGULATORS? ARE THE REGULATORY STANDARDS APPLIED THE SAME IN BOTH CASES?
Case Study – John Smith

- If dispute resolution in investments and insurance are covered by different dispute resolution bodies, which one has jurisdiction for a complaint involving the sale of an insurance product as an investment? Are the approaches and standards of fairness the same?
- Cross-border complaints and protocols between dispute resolution bodies
- Risk assessments made by firms in disclosure documentation and reliance upon them by investors at purchase, and later by firms when investment suitability is challenged (who says whether a fund is high-risk or not?)
- Product firm (fund companies, insurance companies, alternative investment companies) responsibility to ensure that their products are sold only by licensed intermediaries (firms and individuals)? LIABLE FOR LOSSES IF THEY DO NOT TAKE REASONABLE CARE?
Case Study – John Smith

- DEFINITION OF RISK IN DISCLOSURE DOCUMENTATION AND LATER WHEN LOOKING AT COMPLAINTS
- SHOULD LOSSES DUE TO INDIVIDUAL UNSUITABLE INVESTMENTS BE COMPENSATED OR DO YOU NEED TO LOOK AT THE PERFORMANCE OF THE OVERALL PORTFOLIO?
- SHOULD INVESTORS RECEIVE BACK ONLY THE AMOUNT LOST OR SHOULD THEY RECEIVE WHAT THEY SHOULD HAVE EARNED IF THEY HAD BEEN SUITABLY INVESTED (OPPORTUNITY COST)?
- WHAT DO WE LOOK TO AS THE BENCHMARKS FOR A SUITABLY-INVESTED LOW TO MEDIUM RISK PORTFOLIO?
Case Study – John Smith

- IS THE COMPENSATION OF THE SALESPERSON RELEVANT TO THE ANALYSIS OF THE COMPLAINT? WAS THE COMPENSATION STRUCTURE A CONTRIBUTING FACTOR IN THIS SITUATION?
- WAS THERE CONTRIBUTORY NEGLIGENCE ON JOHN’S PART? WAS HE SUFFICIENTLY SOPHISTICATED, DESPITE BEING A LOW-RISK INVESTOR, TO ASSUME SOME RESPONSIBILITY FOR THIS OUTCOME?
Case Study – Maia Sariman

- ABILITY FOR DISPUTE RESOLUTION TO SECURE COMPENSATION FROM FIRMS AND INDIVIDUALS IMPEDED BY DeregISTRATION/DISSOLUTION
- WHAT IS THE RESPONSIBILITY OF NEW FIRMS AND INVESTMENT ADVISORS TO ENSURE THE SUITABILITY OF INVESTMENTS ALREADY IN ACCOUNTS UPON TRANSFER IN OF ACCOUNTS/ASSETS?
- WHAT IS THE RESPONSIBILITY OF NEW FIRMS AND INVESTMENT ADVISORS TO ENSURE ADHERENCE TO INVESTMENT MANDATES UPON TRANSFER IN OF ACCOUNTS/ASSETS?
- WAS THERE A DISCONNECT BETWEEN THE INCOME OBJECTIVE AND THE RISK TOLERANCE?
- IF THERE WAS A CONFLICT, HOW SHOULD IT HAVE BEEN RESOLVED?
Case Study – Maia Sariman

- What are the expectations for investment advisors to meet with their clients upon transfer in of accounts/assets? How does this relate to the know-your-client requirements?
- Who defines a Sharia-compliant investment?
- If an investment is no longer Shariah compliant and the client insisted on maintaining a Shariah compliant portfolio without compromising the performance of the portfolio, what were the factors that the adviser should have considered, especially if they wish to retain the client, once the client’s concern came to their attention?
CONSIDERING THE CLIENT’S MANDATE, WHAT ARE THE CONTROLS THAT NEED TO BE PUT IN PLACE IN ORDER TO MITIGATE THE RISK OF NON-COMPLIANCE WITH SHARIAH PRINCIPLES/NON-ADHERENCE TO CLIENT’S MANDATE DURING THE LIFE OF THE PORTFOLIO?

CAN THE STANDARD VARY ACROSS JURISDICTIONS? IS THAT RELEVANT? WHAT ABOUT SITUATIONS WHERE THE INVESTMENT ADVISOR/FIRM AND THE INVESTOR ARE IN DIFFERENT JURISDICTIONS?

SHOULD INVESTOR COMPENSATION INCLUDE PAYMENTS FOR DISTRESS CAUSED?
Case Study – Maia Sariman

- Regarding the allegation of Sharia non-compliance, how do you quantify loss or entitlement to compensation in a situation such as this; especially if the returns from the Shariah non-compliant investments contributed to the overall positive performance of the portfolio?

- Should the investor be entitled to retain the cash equivalent of the portfolio gains and seek additional compensation for distress?

- Do we as regulators and dispute resolution professionals in non-Muslim jurisdictions know enough about the complexities of Islamic finance? Where can we seek out that expertise to build capacity?
REGARDING THE ALLEGATION OF SHARIA NON-COMPLIANCE, HOW DO YOU QUANTIFY LOSS OR ENTITLEMENT TO COMPENSATION IN A SITUATION SUCH AS THIS; ESPECIALLY IF THE RETURNS FROM THE SHARIAH NON-COMPLIANT INVESTMENTS CONTRIBUTED TO THE OVERALL POSITIVE PERFORMANCE OF THE PORTFOLIO?

SHOULD THE INVESTOR BE ENTITLED TO RETAIN THE CASH EQUIVALENT OF THE PORTFOLIO GAINS AND SEEK ADDITIONAL COMPENSATION FOR DISTRESS?

DO WE AS REGULATORS AND DISPUTE RESOLUTION PROFESSIONALS IN NON-MUSLIM JURISDICTIONS KNOW ENOUGH ABOUT THE COMPLEXITIES OF ISLAMIC FINANCE? WHERE CAN WE SEEK OUT THAT EXPERTISE TO BUILD CAPACITY?