

We are pleased to introduce Boutique Capital's first Compliance Newsletter to our licensed Authorised Representatives ('ARs'). Further to the training modules provided via Talent LMS, this newsletter is another handy resource to help us jointly meet our regulatory obligations.

CYBER SECURITY

We have been enhancing our cybersecurity controls at Boutique Capital and have recently engaged Arctic Wolf, a renowned company specializing in comprehensive security operations.

For insights on email security and how to protect your email communications from cyber threats please read Arctic Wolf's Email Security Tips.

Here are some other key strategies to enhance your cybersecurity framework

Implement Multi-Factor Authentication (MFA)

to add an extra layer of security by requiring multiple forms of verification before granting access to systems.

Regular Software

Updates for operating systems and applications, to protect against known vulnerabilities.

Data Backup

to regularly mitigate the impact of ransomware attacks and other data loss incidents.

Employee Training

on cyber security best practices, such as recognising phishing attempts and using strong, unique passwords. There are many free resources available that can help raise awareness and maintain vigilance.

Incident Response Plan

to quickly address and mitigate the effects of a cyber incident (and it should be regularly updated).



BC Compliance will be reviewing the Treasury's *Digital and Cyber Security Strategy 2024-26* for relevance to BC and its ARs and will keep you updated.



ASIC's Regulatory Guide 234 ('RG 234') requires that all claims made in advertisements for financial products and services are accurate, clear, and not misleading. This is an objective standard i.e. it must be reasonable. After conducting over 400 marketing reviews over the past 11 months, we would like to provide the following [guidance](#).



SOURCING STATEMENTS:

Accuracy and Clarity

- Ensure that all statements are factually correct and can be easily verified with reliable evidence (including the date).
- Use *plain language* to avoid any ambiguity or misunderstanding.

Evidence-Based Claims

- Provide supporting data (references) from credible sources to back up any definitive claims made in the advertisement.
- *Keep records* of the sources used to substantiate claims, including documenting research studies, official reports, and expert opinions.

Avoiding Misleading Information

- Present a *balanced* view by including both the benefits and risks associated with the financial product or service.

USING DISCLAIMERS:

Clarity and Prominence

- Disclaimers should be clearly visible and prominent. They *should not be hidden* in fine print or placed in a way that makes them easy to overlook.
- Use a font size and style that is easy to read. The disclaimer should be in a similar form to the main body of the advertisement.

Timing and Placement

- Disclaimers should be presented at the *same time* as the main message or on the same page as the statement. This ensures that viewers can understand the disclaimer in the context of the marketing document.
- Place disclaimers close to the relevant claims that they qualify. This helps to avoid any confusion or misunderstanding.

Content and Language

- Use clear and *straightforward language* to ensure the disclaimer is easily understood by the target audience.
- Include *all necessary information* to provide a complete understanding of the risks, conditions, or limitations associated with the financial product or service.

Consistency

- Ensure that the disclaimer does *not contradict* the main message of the advertisement. It should provide additional context or clarification without causing confusion. It is also impossible to disclaim yourself out of the law of the land





Relevant Case Studies

During our recent mid-year compliance review meetings, we received plenty of interest in the Lanterne case. Here are the key learnings for your benefit.

ASIC v Lanterne Fund Services Pty Limited [2024] FCA 353

The wholesale licensee failed its general obligation to take all reasonable measures to ensure representatives comply with Australian financial services laws under Section 912A of the Corporations Act. Lanterne was fined \$1.25 million for multiple breaches of its AFSL between March 2019 and October 2021, including failing to:

- Have adequate risk management systems, technological and human resources.
- Ensure that its representatives were adequately trained.
- Maintain the competence to provide its licensed financial services.
- Ensure that its licensed financial services were provided efficiently, honestly and fairly.



Compliance Measures

Boutique Capital ('BC') Compliance has rigorous risk management systems:

Training: We provide training online via Talent LMS including quizzes to assess ARs' understanding. ARs must also provide updated Training Registers to confirm a minimum of 12 hours CPD per AR each FY.

Background Checks: Updated police and bankruptcy checks are required from ARs every two years on a rolling basis. Additionally, we now seek information regarding our ARs' professional memberships as well.

Controls Monitoring: We identify relevant controls and processes to manage your businesses, ensuring alignment with the investment mandate and sufficient technological/cyber security resources. This area will be continuously monitored.

Compliance Uplift: To ensure sufficient oversight as part of our monitoring function our compliance framework now follows a more prescribed methodology. We will test your controls, including reviews of your updated organizational chart, background checks, KYC processes (if applicable), technology resources, client correspondence, internal dispute resolution system (if applicable), complaints process, AML/CTF (if applicable), risk registers, and compliance plans (for AUSTRAC). Stay tuned for these compliance requests on an ad hoc basis, and we thank you in advance for your cooperation.



ASIC cancels licence of Guildfords Funds Management Pty Ltd

Guildfords failed to adequately supervise an authorised representative, enabling unauthorised high-risk trading of derivative products, specifically CFDs, resulting in investor losses. Consequently, ASIC banned Guildford's Responsible Manager ('RM'), Key Person and sole director from being involved in a financial services business for four years. ASIC also cancelled Guildfords' AFSL due to significant and systemic failures of oversight and compliance including:

- Non-compliance with financial services law, dealing in CFDs without an AFSL (as trustee of the Magnolia Head Fund), and breaching reporting obligations to ASIC.
- Releasing funds for CFD trading without conducting checks or making objective enquiries.
- Failing to oversee documents containing misleading or deceptive representations (in relation to the CAR Magnolia Investment Management Pty Ltd ('MIM')).
- Failing to maintain training registers of its representatives.
- Did not adequately manage the conflict of interest arising from its RM also being a director of Magnolia Asset Management Pty Ltd ('MAM')



Compliance Measures

Boutique Capital ('BC') Compliance has robust compliance measures as follows:

Authorised Financial Services:

The level and type of financial services offered by your firms (e.g. providing general financial advice/ dealing/ issuing/ providing custodial service) have been cross-checked for consistency and must remain aligned with the financial services authorised under our license.

Compliance Review:

Seeking all draft promotional materials and substantive website updates be submitted to the Compliance inbox for review prior to distribution/ go-live. We cannot overstate the importance of this control.

Compliance Registers:

Seeking updated training, breach, conflicts (having recently provided this policy) and complaints registers from your firms periodically.





Greenwashing

ASIC continues action on misleading claims to deter greenwashing misconduct aimed at stamping out misleading and deceptive conduct in relation to sustainable finance-related products and services.

ASIC has made 47 regulatory interventions to address greenwashing misconduct during the 15-month period up to 30 June 2024, including the commencement of two Federal Court proceedings and over \$123,000 in infringement notice payments. ASIC also progressed the civil penalty proceedings against Mercer Superannuation (Australia) Limited ([24-173MR](#)) and Vanguard Investments Australia ([24-213MR](#)), which concluded with penalties of \$11.3 million and \$12.9 million, respectively.

[View the full media release.](#)



Privacy

We are also monitoring draft legislation updates to the Privacy Act with a first tranche of reforms aiming to improve online safety. These will be directed at automated decisions, overseas disclosure of personal information, data security and data breaches, children's privacy, introducing new civil penalties, expanding enforcement powers and developing a statutory tort for serious invasions of privacy.





AML/CTF

- AUSTRAC recently published national risk assessment reports on the current and emerging risks that Australia faces in combating money laundering and Australia's exposure to terrorism-financing threats.
- The AML report covers vulnerabilities relating to legal structures i.e. companies and trusts, accountants and lawyers that are considered high-risk and stable, digital currencies that are considered medium-risk and increasing, while custodians and Managed Investment Schemes are considered low-risk and stable.
- The CTF report covers fundraising methods whereby fraud is considered medium-risk and stable, crypto jacking/ cyber-extortion (e.g. ransomware) is considered very low risk and stable, while the method of moving funds around using digital currencies in considered increasingly high-risk, however dealers of securities are considered very low-risk and stable.
- Please note AUSTRAC recently published detailed guidance for businesses that use outsourcing arrangements to meet their AML/CTF arrangements. Please let us know if you have any questions.
- Our ESVCLP and CAR clients that have funds that BC does not manage should also note that AUSTRAC issued infringement notices for failures to report the 2022 annual compliance report.

MANAGED INVESTMENT SCHEMES REGULATORY FRAMEWORK REVIEW

The consultation process in relation to the potential overhaul of the wholesale investors' test had a favourable outcome in that the status quo remains unchanged. Our MD, Tim Baker, is on the Regulatory Committee of AIMA Australia, which made submissions advocating on behalf of fund managers throughout Australia and we are very pleased with this outcome. Of course, we will keep you updated about further developments in this space, if any.

Thank you for your continued commitment to maintaining high standards in our industry. We hope these summaries provide valuable insights and reinforce the importance of robust compliance and risk management practices. In the next newsletter, alongside the regulatory updates, we will look to include examples of cybersecurity best practices and considerations for foreign investors.

As your trusted business partner, we always welcome your feedback to help us improve. We would also be delighted to include an interview with one of our AR Fund Managers, so please let us know if you're interested in being featured.

