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# **RESPONSIBLE MANAGER TRAINING – LANTERNE FUND SERVICES**

**MAY 2023**



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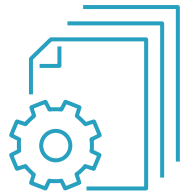
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# LEARNING OUTCOMES

By participating in this session you will:



Examine the background and legal grounds of the Lanterne Fund Services case



Describe the 5 key compliance failures alleged by ASIC



Understand ASIC's expectations when complying with the licensee obligations



List the key resources available and compliance activities to implement or improve

# LANTERNE FUND SERVICES - THE BACKGROUND

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Thursday 7 July 2022



22-174MR ASIC issues civil penalty proceedings against wholesale licensee Lanterne Fund Services for risk and compliance failures

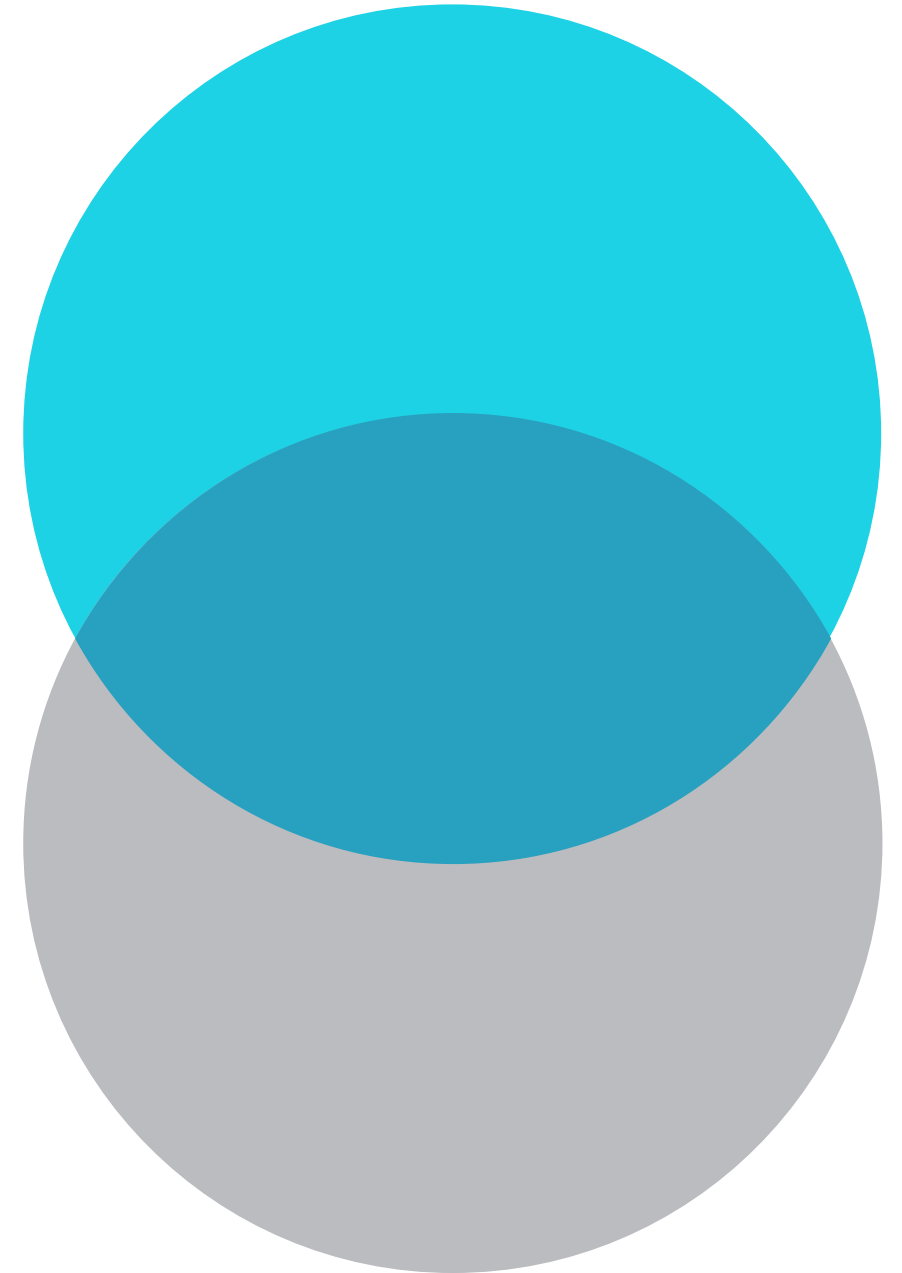
- AFSL commenced in 2018 and between 2019 and 2021 authorised 60+ CARs and approx. 200 ARs.
- Peter Cozens was the sole director; he was also the Responsible Manager. For a period, there was a second RM with no direct involvement in the business.
- Lanterne was authorised to provide financial services to wholesale clients. The CARs included venture capital funds, managed investment schemes, corporate advisory services, property funds etc.
- CARs paid \$5,000 upfront and \$3,000 per month in licensee fees.
- Lanterne had 1-2 part time administration staff.

# LANTERNE'S PROCESSES AND SYSTEMS

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- **No discernible due diligence** on the CAR and only limited due diligence on the entity's directors. The due diligence process was not documented.
- CAR agreements contained **limited guidance about the CARs' and ARs' obligations** under financial services law and was not tailored to the CAR's business or industry.
- Had one compliance manual. The **Compliance Manual did not reflect Lanterne's business** of authorising CARs and ARs and contained limited information on the regulatory and compliance obligations of CARs and ARs.
- **No formal or documented risk management system.** No systems or processes in place to identify and assess risks, nor any controls to manage or mitigate risks.
- Mr Cozens did not have experience in the businesses and industry in which the CARs operated. There was no processes for ensuring **adequate number of qualified responsible managers** or to ensure they remained appropriately qualified.
- **Did not provide training**, did not require ARs to provide or verify training undertaken and did not maintain records.
- **Relied solely on self-reporting of non compliance.** Each month CARs had to provide an attestation that they met their obligations and report any non-compliance.
- Informal meetings were conducted from time to time. No notes or minutes were taken. **No audits or other supervision.**
- **No IT capability.** All records were kept in a paper filing system.

- 1. KEY FAILURES**
- 2. COMPLIANCE EXPECTATIONS**
- 3. RESOURCES AND TOOLS**



## CASE STUDY - RISK MANAGEMENT

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- Failed to identify risks
- Failed to document any identification or assessment of risks
- Failed to have a risk management framework and basic risk management tools
- Relied on initial due diligence of the directors of the CARs, and monthly compliance attestations and self-reporting of compliance failures
- Compliance Manual was out of date and was not tailored to the business, or describe the regulatory obligations of the licensee or representatives.
- Did not have any risk management expertise and did not engage external consultants with expertise
- Did not have an incident management system

# RISK MANAGEMENT

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- Document your risk management framework
- Identify and evaluate risks faced, including non-compliance of CARs and ARs with financial services laws
- Implement and monitor controls to manage risk
- Review regularly and update your analysis of risks
- Integrate with a compliance management system to identify, evaluate and respond to regulatory risks
- Have oversight of your risk management system

## COMPLIANCE EXPECTATIONS





# RESOURCES AND TOOLS

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## Have

- Compliance Manual
- Risk Management Procedures
- Risk Register
- Onboarding Procedures
- Compliance Committee Agenda and Minutes

## Do

- Ensure your compliance manual is tailored to your business
- Conduct an initial assessment of risks – assess the potential risk, identify measures to control the risk at an acceptable level – and document the risks in your risk register
- Review the risks regularly e.g. at the compliance committee meetings – and update the risk rating and controls
- Conduct and document due diligence on ARs
- Look for risks as you implement your compliance arrangements

## CASE STUDY - MAINTAIN ORGANISATIONAL COMPETENCE

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- Failed to have responsible managers with sufficient time to be effective
- Failed to have a sufficient number of responsible managers
- Responsible managers did not have appropriate expertise
- Did not have a documented and implemented process for assessing responsible managers and ensuring they remain appropriately qualified over time

## MAINTAIN ORGANISATIONAL COMPETENCE

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- Document your process for reviewing and assessing organisational competence
- Ensure responsible managers maintain expertise e.g. training
- Ensure responsible managers are involved in the business and have sufficient time to fulfill their duties
- Complete a review of organisational competence regularly and when the business operation changes

## COMPLIANCE EXPECTATIONS





## RESOURCES AND TOOLS

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### Have

- Compliance Manual
- Responsible Manager Procedures including:
  - Organisational Competency Assessment
  - Licensee Competency Matrix
  - Register of Responsible Managers

### Do

- Annual review/assessment of the competency of the responsible managers
- Maintain a register and matrix
- Have a training plan for responsible managers
- Update background checks on responsible managers periodically to ensure they remain fit and proper persons
- Involve responsible managers e.g. in the compliance committee
- Ensure responsible managers take time to complete compliance tasks

## CASE STUDY - ADEQUATE TRAINING

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- Failed to assess the skills and competency requirements of ARs
- Failed to provide or arrange training, professional development, or other instructional programs for ARs
- Relied on self-assessment that ARs had undertaken training, and did not request or obtain training records

## ADEQUATE TRAINING

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- Document a training and competency program
- Assess ARs against the required skills and competencies
- Develop and implement training programs
- Maintain records of training

## COMPLIANCE EXPECTATIONS





## RESOURCES AND TOOLS

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### Have

- Compliance Manual – Training and Competency
- CPD Policy & Training Plans
- Onboarding Procedures
- Reference Request Forms for prospective ARs

### Do

- Conduct due diligence on ARs (and directors of CARs)
  - Obtain and keep qualifications, CPD records
  - Obtain a reference from the previous licensee
  - Police and bankruptcy checks
  - Align authorisations to qualifications
- Set and monitor completion of Training Plans
- Provide training and instructional programs e.g. induction for new ARs

## CASE STUDY - REASONABLE STEPS TO ENSURE COMPLIANCE WITH LAWS

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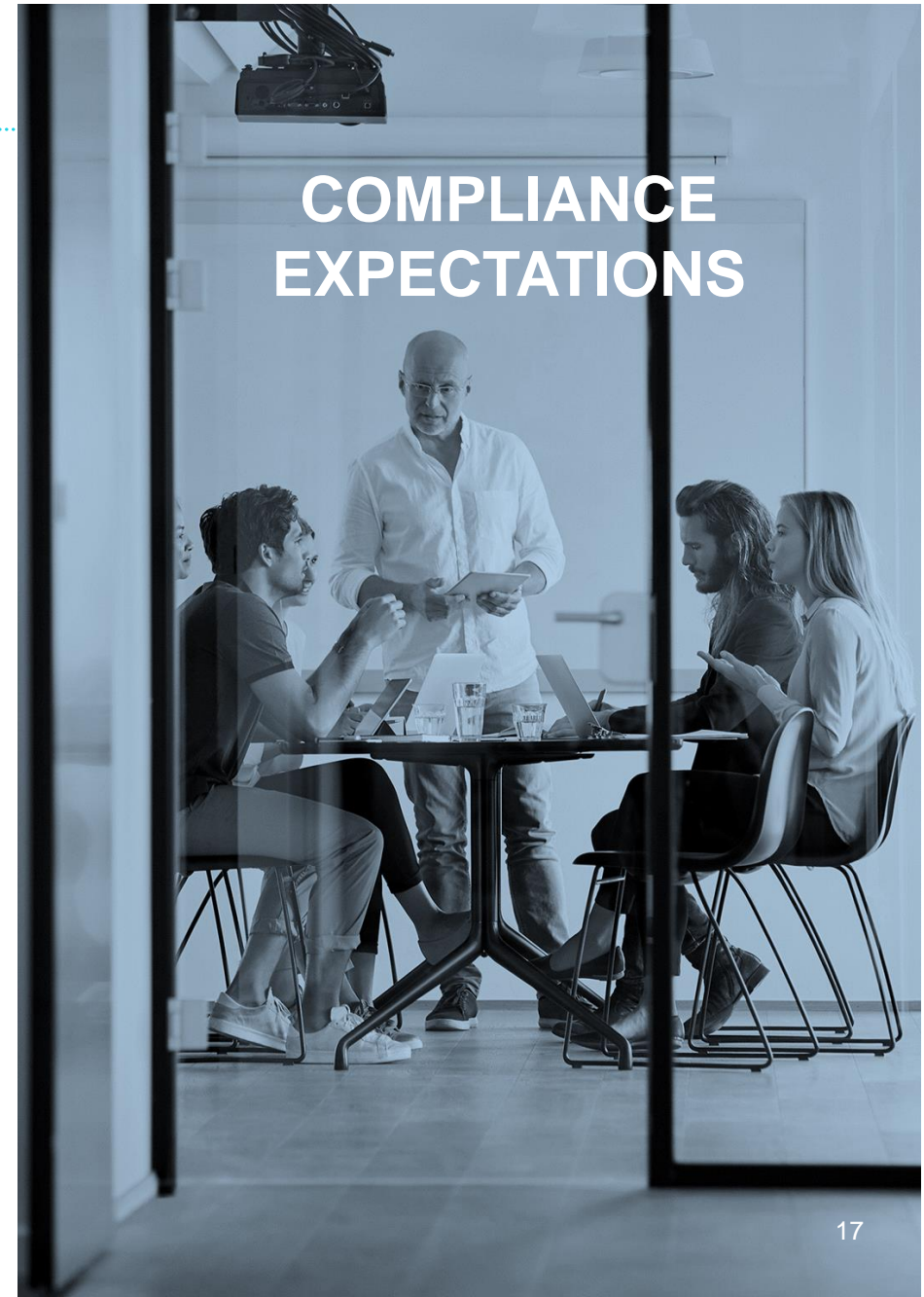
- Did not have a documented and rigorous due diligence and background checks process for ARs
- Failed to provide guidance to ARs about the nature, extent and discharge of their obligations
- Did not have a systemic and documented audit process
- Failed to document informal discussions between the licensee and its CARs and ARs
- Relied on pro forma monthly compliance self-assessments by the CARs to monitor ARs
- Failed to record or follow up exceptions reported by CARs
- Failed to conduct performance reviews of the licensee's employees or responsible managers.



# REASONABLE STEPS TO ENSURE COMPLIANCE WITH LAWS

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- Have a documented process for background checks and due diligence of prospective ARs.
- Provide clear guidance and instructions to ARs about complying with financial services laws.
- Monitor and supervise ARs through a program of audits following a prescribed methodology.
- Risk assess ARs and audit high risk ARs more frequently.
- Have a system to respond to negative audit findings, events or breaches.





## RESOURCES AND TOOLS

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### Have

- Appropriate CAR and AR Agreements
- Compliance Manual – Monitoring and Supervision Policy
- Audit Question Set
- Licensee Standards
- Breach Register

### Do

- Have a formal audit procedure and methodology
- Document audits
- Remediate audit findings
- Assess and report breaches and incidents
- Consider both internal and external reviews
- Ensure ARs understand their obligations and licensee's expectations

## CASE STUDY - RESOURCE ADEQUACY

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- Failed to have adequate trained and skilled compliance and risk management personnel (particularly to undertake audits)
- Failed to have a human resources plan or process to establish and maintain adequate human resources
- Failed to have staff training, development plans or reviews
- Failed to plan for the temporary or permanent absence of the Responsible Manager
- Failed to have technology resourcing plans such as a disaster recovery plans, back up processes, updated hardware or suitable software
- Did not have either internal or third party IT capability
- Failed to consider or assess the financial resources needed to provide the financial services or carry out supervision arrangements
- Collected fees but did not adequately resource the business

## RESOURCE ADEQUACY

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- Assess the human resources needed by the licensee to cover basic risk management, compliance and supervision.
- Have documented staff training and development plans
- Have plans to deal with loss of key persons
- Document technology resource plans, undertake a security assessment, regularly review IT requirements
- Absent internal capability, obtain third party specialist support for human and IT resource needs
- Have processes in place to meet financial requirements
- Consider financial risks in risk management systems
- Assess the financial resources need to provide financial services and carry out supervision arrangements

## COMPLIANCE EXPECTATIONS



# RESOURCES AND TOOLS

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## Have

- Compliance Manual
- Adequate Resourcing Assessment
- Cybersecurity Policy

## Do

- Complete an adequate resourcing assessment annually
- Consider what is an adequate level of monitoring and supervision e.g. number and frequency of audits
- Ensure compliance staff are trained to conduct audits
- Dedicate enough time to risk management and compliance activities
- Engage an IT service provider
- Undertake an IT security assessment
- Add resource risks to your risk register e.g. key person, cybersecurity, IT, and financial risks.
- Develop and deliver a training program
- Document your plan if a responsible manager is absent

## WHAT'S NEXT FOR THIS COURT CASE?

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ASIC is seeking:

- declarations from the Court that Lanterne breaches its obligations
- that Lanterne engage an independent expert to review and report on its systems, processes, and controls, and that Lanterne implements the independent expert's recommendations
- that Lanterne pay a pecuniary penalty (to be decided by the Court) and all costs

At the case management hearing on 24 February 2023, the matter was adjourned to 15 May 2023 for a hearing on penalty and liability.

# THANK YOU

Questions

