

Compliance Update Autumn 2020



Welcome to the Autumn Compliance Update sent from the leafy climes of Mt Eliza, Victoria rather than the semi-deserted Melbourne CBD.

The oft misquoted phrase *"May he live in Interesting times"* comes to mind as it, like COVID 19, is thought to have its origins as a Chinese curse. Whilst we can concentrate on the negative issues with which we and the entire world are currently faced, I prefer Robert Kennedy's adaption of the phrase in South Africa in December 1965 when he went on to say *"like it or not, we live in interesting times. They are times of danger and uncertainty, but they are also the most creative of any time in the history of mankind."* With times of danger and uncertainty also comes creativity and opportunity.

As those who know me would be aware, I have been involved in Financial Services through its interesting times. As the debt collector for Westpac in the early 80's personal credit squeeze, in charge of working out a margin lending portfolio after October 1987 and a Property portfolio for Westpac in 1991, an Internal and External Fraud investigator for Westpac through the 1990's and finally as a Head of Compliance for an AFSL in the GFC of 2007-2010. In each of these "interesting" times, communication was the key and from each applying the "learnings" from those times has always contributed to post downturn growth.

I have no doubt that from this current time, those who work with their clients, innovate how they service the clients and make the most of these times - all whilst staying safe - will be rewarded in the inevitable recovery. If you haven't already watched our MD Garry Crole on his webinar about the market, it is available in the [Adviser Resource Centre](#) and is worth the effort to watch.

In this issue of the compliance update I want to talk about:

- Team Update
- Review obligations
- FASEA education
- CPD
- Compliance Reviews through Fourth Line Regulatory Technology
- Complaints

Team Update

As you would be aware Richard Pollock and Tadeya Pacnik have both moved on and we have selected their replacements, however we are unable to provide an initial start date at the moment because of the work-from-home arrangements. The candidates are aware and I will make an announcement as soon as we can organize a start date.

All staff are working in isolation and I have been very pleased with the work that Anja and her team Nish and Olga have put into meeting the deadline for onboarding the *Yellow Brick Road* advisors. There is still a bit of work to do with client transfers and from Anita for their FSG's but under the circumstances it was a successful project. Shane Miller is for the moment handling the SoA PreVets and he will seek my assistance as required but please forward your documents for review through to him.

We have brought Fourth Line on board to assist with advice reviews and Cozette Crimp - who manages that process - has provided the update from the first months' reviews later in this update.

Do not be afraid to contact us either by email or our normal contact numbers if you have any queries.

Please note that the Adviser Resource Centre on the website has a lot of useful information that can answer queries and assist in dealing with clients and now may be a good time to explore the contents of the ARC.

Review Obligations

I had a telephone call from an adviser about how to handle a situation wherein a client doesn't respond to the request to review. Does this mean that we need to turn off Ongoing Service Fees? This is a very good question which raises both a number of issues and reminds us of the opportunities these times can bring to us.

ASIC have stipulated in their guides and commentary that in their mind the face-to-face annual review is the only real activity of the Ongoing Service offering that they value and that consideration should be given to turning off/refunding the fee if the review is not provided. A failure to respond to the request for a review, combined with the failure to agree to the Renewal Notice (OptIn) leaves no option but to cancel the fee arrangement.

However, with so many government stimuli, and changes to existing arrangements being released, our clients and prospective clients have never had a greater need for us to assist them with understanding the changes and how they can access the services being provided. This time will demonstrate to ASIC that the value of having an ongoing relationship between adviser and client is more important than just the receipt of an annual review. If we can prevent even one client from making a rash decision to sell down already discounted stocks or from cancelling an insurance policy that they won't be able to obtain again, we will have a long-term appreciative client. Our clients are telling us that one of the hardest tasks at the moment is simply identifying which parts of the stimulus package they are entitled to and how to obtain it. ASIC has already sent a letter to the Real Estate State boards warning them that Estate Agents that advise renters to access the Early Release of Super now or in the future to meet rental obligations are breaching the law as they would need to be licensed to provide that advice.

ASIC will need to understand that keeping clients informed in these times is just as important as the Annual Review.

The key will be to record in the client's file all of the touchpoints that you have with them. In these times, a client who does not respond to the request for an annual review need not have their fee turned off - provided the requirements of the issue and return of the Renewal Notice have been met.

It is also interesting that ASIC have come out and stated that they are not going to be seeking data from Fund Managers on compliance with meeting the ending of Grandfathered commissions nor will they be calling for client files or undertaking reviews for the previously announced Life Insurance review during the COVID-19 pandemic. They do however remind the fund managers that they need to have removed Grandfathered Commissions by 1/1/2021 or earlier.

CPD

We are entering the last quarter for the CPD year and you should have received an email update from Kaplan detailing your CPD to date. The consequence of not meeting the CPD target of 60 points by 30/6/2020 is that the failure to do so will be on your permanent record on the FAR register.

At this stage we have postponed the planned state-based PD days but will be offering a wide range of webinars over the next 3 months to assist those who may have left their run a bit late.

Please remember if you complete a CPD event that is not directly hosted by InterPrac you will need to send the details including the CPD certificate/notification to CPD@interprac.com.au or @libertas or @sequoia depending on your AFSL.

It is disappointing that there are still some advisers who have not completed the simple task of personalising their Training Plan and submitting it for lodgement. The AFSL has completed the majority of the training plan but it is left to each adviser to provide at least 3 areas that they will undertake as CPD to meet the General portion of the training plan. This may be a semester of external study, it may be undertaking securities training through the ASX or using the TAL Risk Academy to improve Life Insurance skills. FASEA expect to see targeted CPD to match the areas of advice and simply doing the rounds of Fund Manager Lunches (the rubber chicken circuit) - when and if it comes back - will not be sufficient. For the non-accountants, it is worthwhile commenting on how you will meet the TASA portion of your requirement.

If you haven't yet sent in your training plan PLEASE DO SO IMMEDIATELY.

Compliance Review – Fourth Line

Cozette Crimp (cozette.crimp@interprac.com.au) works with me in the compliance team and is responsible for working with Fourth Line - our newly engaged Reg Tech and advice assessment provider.

We have recently had a meeting with Fourth Line to discuss the first months' progress and Cozette has put together the following report on the initial findings/discussion with the operators.

Fourth Line Update

As some of you will be aware by now, InterPrac has welcomed Fourth Line into our tool belt in order to provide an additional level of industry-standard reviews into the audits we conduct of your businesses.

So what is Fourth Line? It is an automated algorithmic review software aided by human oversight which conducts compliance and risk audits of financial advice. We upload your files via a web-based portal and within a few days we receive a comprehensive evaluation of your SoA. InterPrac will be using Fourth Line as a "first line of defence" in our auditing process, as well as also to conduct the occasional Pre-Vet review. It is important to note that Fourth Line is not replacing the in-person audits conducted by your compliance manager; rather it is acting as an additional, third-party and objective framework which allows us to streamline our process and hone in on the more pressing areas for improvement. In the current COVID-19 restrictive times we will utilize the services of Fourth Line to keep on top of our audit processes.

We have tested the software on a select group of advisers in each of the states and so far have been very impressed with the clarity and quality of feedback on these SoA's. In the coming months, we will continue to work with the team at Fourth Line to deepen the mutual understanding of how we can make sure you shine in your reviews by embracing industry best practices and regulations, while also letting their team understand more about what we prioritize in our advisers. As we continue to upload more of your files, the AI and analysts will also become better acquainted with our dealer group, and we will gain a broader understanding of the overarching "problem areas" and on what our advisers are doing really well.

How does Fourth Line rate an SoA? The algorithm and human analyst are grading your SoA's on three criteria: MO100, Content, and Advice. The algorithm uses insights from AFCA cases, ASIC reviews, and the ASIC regulations guide to inform the score. Let's take a look at the different score categories:

- **MO100:** In developing the software, Fourth Line worked alongside the lawyers at Mills Oakley to develop a rigorous 100 point compliance score based upon the principles of Safe Harbour (a to g), content & presentation, appropriateness of advice, and conflicts & disclosure.
- **Content:** The content score is all about the presentation of the information and ensuring all of the required elements of an SoA are accounted for.
- **Advice:** The advice score is allocated on the basis of how appropriately the scope of the advice works clearly and cohesively with the goals/objectives of your client(s).

Throughout the reviews we have conducted thus far, we have identified a few recurring areas in need of improvement. Some of these issues come down to templates, and we are actively working with the Fourth Line team to perfect our templates and ensure we provide you with the best structure possible to maximise the efficiency and clarity of your advice.

There are however some ways in which your business can ensure your SoA's perform as well as they can and provide your clients with clear and thought-out ways of achieving their financial goals. This next section will explore these tips one by one. Note: Never give your reader the option to make assumptions. The more thorough your documents, the less opportunity there is for a client or a lawyer to poke holes in your strategy.

- Ensure your clients' personal and financial information is clearly laid out in your document. Anyone picking up your SoA should be able to see all of the information that has been considered in defining your financial strategy. By omitting any of these fields, you run the risk of being accused of negligence and lack of care. Things to include:
 - Assets & liabilities
 - Occupation, income/salary (if self-employed, define the industry)
 - Expenses (does not need to be itemized but there should be a figure)
 - No. of dependents (if none, write zero)
 - Savings account(s) balance(s)
- Include evidence of your clients' goals and objectives being established in the Fact Find.
 - Best case scenario: include a direct quote from your client(s) wherein they express their financial goals. You do not want to leave room for accusations that you steered their goals for them.
 - Avoid templated goals/objectives. These goals will be personal and driven by the specific circumstances of your client, and they should be laid out just as individually.

- Fourth Line are in accord with InterPrac: the key to advice is ensuring that the Scope of the advice identifies the clients' reasons for the advice and that it both relates to the Fact Find and is relatable to the client. It cannot look to be simply set by the adviser.
- Forward projections for your recommended strategy are a simple and important way of tying the scope back to the goals. Forward projections are always a safe element to include, however should always be included in the following cases:
 - If investments are being made outside of super to demonstrate how the strategy is likely to meet the clients objective.
 - If the client is in retirement, how long will their money last?
 - If the client has provided a goal for retirement, e.g. retire at 60 with income of \$50,000 in today's dollars is always best demonstrated in a projection.
- A comparison between your recommended products/strategy should always be clearly portrayed alongside alternative products, and the status quo.
 - Fourth Line suggests a like-for-like comparison which ties the benefits to the client goals, and clearly displays the winning factors of the chosen strategy

In order for Fourth Line to work most efficiently, and for the AI to be used to its full potential, we recommend the following:

- When asked to submit your documents for review, ensure you are submitting the final or most recent version of your SoA, as well as a Fact Find and Risk Profile. Points do get deducted if any of these elements are missing.
- Please send these documents through as either a Word Document or as a converted PDF document. Avoid scanned documents wherever possible. Scanned documents impede on the AI's ability to analyse the data and therefore can cause your review to be compromised.
- If providing additional files, please ensure these documents are crucial to painting a clear picture of how your strategy was crafted. E.g. correspondence via email or meeting notes which display a client's specific goals

Our experience working with Fourth Line so far has been really encouraging and we look forward to building this collaborative relationship with them. Our goal is to help our advisers give the soundest advice and to provide you with the tools to protect yourself from common mistakes which could lead to negative reputational and financial repercussions.

Please note: if you have received an email from Fourth Line, please feel free to disregard it. An email is sent to you once we have logged your adviser details into the system. A lump sum import of advisers was done initially however any more recent additions to the AFSL's have been added manually and appear to be triggering these emails. No login will be required for advisers as this is a tool that will be used exclusively by the Compliance Team.

Should you have any questions regarding Fourth Line, please do not hesitate to contact myself, Shane Miller or Michael Butler.

Complaints

Just as a rising tide floats all boats, so does a volatile falling market increase the level of complaints that we are likely to see. Having been through similar scenarios in 1983, 87, 91, 95, 2001, 2007 and now 2020 it is a fact that we will not be able to totally avoid complaints however we can mitigate the likely receipt. Advisers need to be mindful and I provide the following recommendations to assist in the minimisation of complaints:

- Prevention is better than the cure. Whilst we cannot go back in time and put everyone in cash at the peak of the market, we can keep in touch with our clients on a regular basis and keep them informed that this is not a fundamental financial market event but an event caused by a health crisis. Business in Australia will recover as the health crisis recovers. Some will be lost but the innovation and new markets for others will put them in a good place for growth. Use the "Hello Monday" updates from Garry Crole who has long been a lone voice of caution in regard to the size and management of some of the Industry Funds and their ability in a liquidity event to meet those needs. Clients who are kept informed and whom we guide away from fear-based decisions will be less likely to look at short-term losses and make complaints.
- Don't be defensive. If a client rings concerned about their portfolio and questioning why it hasn't performed better, try not to take it personally but look to explain what is going on. Be empathetic to their fears and concerns as some with too much time on their hands will listen to the doom and gloom commentators, not just in the media but on social media as well. Understand that the client is working from a place of fear and as we all know the best way to defeat fear is to understand the basis for that fear and be educated on what to do.
- The complaint brought forward by the client when they ring is probably not the real issue, so you need to calmly explore what the real drivers for the complaint might be and work out whether there are areas of the Government Stimulus that the clients can access to alleviate the issues. As their adviser, you are in the box seat to assist them through this period.
- If the client is intent on making a complaint then it must be escalated to Compliance at the outset. We will encourage you to work with the client initially to resolve the situation but we need to be aware, and if required we have to let the PI Insurers know.

Your AFSL management team has a lot of experience and sometimes we come under criticism for not approving some products, being dismissive of some of the cheaper "popular" solutions that look to be disruptors in the growth times for the Industry. I know that I was criticised by some for not looking to support CCube as a Financial Planning Software platform. When we reviewed the platform it was obvious to us that whilst it had some good features it needed a lot of development work before it was suitable. CCube went into administration and shut down this week because it did not have the funding to continue. This industry is littered with well-intended ideas that fail and usually leave the Financial Planner vulnerable.

It is interesting that the Government is only now starting to question the value in having Industry Super Funds that are so large that they aren't able to invest in an orderly market and are forced into the purchase of large illiquid assets. This has of course been a particular position that Garry has held for some time. On the same basis, our Investment Committee has had concerns about some ETF's that do not hold actual liquid assets but rely on synthetic instruments that can be difficult to liquidate, and consequently has not approved them. Our decisions are not always popular but we make them based on experience and with the interest of you, our clients and your clients in mind.

Regards

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