

ATEB NEWS

REGULATORY & INDUSTRY ISSUES

ISSUE No. 5
April 2002

Read By (Initial):

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(please circulate to all advisers)



- Market Issues & Compliance Updates
- Desk Based Monitoring
- Money Laundering
- Effective Organisation - Compliance Procedures Manual
- Financial Promotions
- Stationery & Disclosure
- Complaints Handling
- Supervisor Training & Courses
- Training & Competence – Recruitment of competent advisers

Ladies & Gentlemen

Life under the FSA is starting to take shape, our first impressions are positive in that IFAs can have more freedom to develop their businesses in the way they see fit, the downside has been the lack of support from FSA in helping firms interpret the new rules. We feel this was to be expected and as things develop we should be able to make greater sense of the FSA's intentions, plans and requirements.

Back in mid January ateb were working around the clock trying to deal with all the changes of regulator and then CP121 supposedly this will simplify things for the consumer! umm Not sure I understand what they mean. Although many organisations have encouraged IFAs to respond to this paper as is only natural the cynic in me says that decisions have already been taken. We will now need to wait and see what the FSA have in mind. Interestingly the EU have done a u-turn on the way in which they define independent financial advisers and this may have an impact on the FSA's plans. You may wish to see "Market Updates" section in this newsletter. There is also the exam review, consultation is underway, and we will keep you informed of important decisions.

ateb are now working toward the June 30th (ex -RPB have 12 months from N2) transitional rules deadline, ensuring that firms are adequately prepared and organised for this. We will be issuing a Compliance Procedures Manual that will contain key processes, job roles and compliance related information to support you in your goals to build and achieve best practice.

Kind Regards

ateb consultants

N2 Bulletins enclosed with this Newsletter

- ateb information bulletin 9 – Client classifications
- ateb information bulletin 10 – Recruitment & T&C
- ateb information bulletin 11– Money Laundering
- ateb information bulletin 12– Financial Promotions

Market Issues & Compliance Updates

1. New Hope – EU broaden the definition of Independent Advice.

It is widely believed that one of the FSA's main drivers for changing polarisation was the EU and their argument around commission bias. Ironically, the EU has just recently announced a change in definition of "Independent Financial Advice" to include advisers other than those who are remunerated by fees. The EU now state that "The impartiality and objectivity of advice" is to be secured "through effective disclosure of inducements / commissions and organisational arrangements to manage conflicts of interest in a multi function firm". This most certainly could undermine the FSA proposals for a defined payment system. AIFA the trade association for IFAs are currently studying the revised EU directive to see if it is compatible with the FSA's plans.



2. Money Laundering – Simplifying the process.

JMLSG have been working with industry and treasury to attempt to create a level playing field for taking verification of ID. Whilst there are still differences on the corporate side, the way in which individual and personal ID verification is taken is gradually stabilising. The production of a regulated intermediary certificate that has been agreed in principle by most industry parties including leading Life offices and the Association of IFAs (AIFA) will hopefully simplify things. More information is available in ateb bulletin 11 and the new Money laundering procedures that we will be issuing in due course.

3. FSA will not allow automatic "Grandfathering" for Mortgage & General Insurance.

Firms who are currently registered with FSA will not need to reapply for authorisation, however they will need to apply to vary their permissions. Firms that are currently members of the MCCB or GISC or other voluntary regulatory organisation (VRO) will not be guaranteed authorisation when the FSA assumes its powers. The likes of MCCB and GISC are working with FSA now to determine how their rules compare with those of the FSA. Depending on a set of criteria the FSA will decide whether member firms that are currently registered with a VRO can be given "Credit" in the application process.

4. Mortgage & General Insurance Regulation

It now looks as if GISC are likely to continue regulating for another two years, with the FSA assuming responsibility for authorisation from mid 2004. In advance of the statutory regulation of general insurance, the FSA have published a guide for intermediaries. Available from the website: www.fsa.gov.uk/mort_gen_ins/

A provisional timetable for the proposed regulation has been published in the guide. The mortgage advice consultation was published in February and it is expected that consultation will commence on General Insurance in July this year.

5. Stakeholder & Premium Protection – Compliance Tips

The demise of waiver of premium benefit for stakeholder causes a potential problem. If a client wants to protect premiums, the tendency is to select the stakeholder provider first and then tag on the premium protection policy with the same provider; currently we don't know of a standalone policy that can be used with more than one stakeholder. The problem with this is that the cost of the premium protection policy varies greatly. For example, Norwich Union appears to be significantly more expensive than Standard Life.

Our advice is as follows:

- The need for premium protection should be ascertained at the fact find stage
- If it is a need, then it should be a factor in determining the choice of provider.
- Using the above examples therefore, for a client wanting premium protection and assuming that all other product features are relatively similar, Standard Life would probably be a better option simply because the cost of premium protection is lower.

Market Issues & Compliance Updates

6. Don't forget to state the client's objectives in the Suitability Letter / Report

An FSA rule requirement is to state the clients investment objectives in the Terms of Business / Client Agreement. This can be waived as per Guidance 4.2.6 (See below) providing the client's investment objectives are confirmed as soon as practical after it becomes available. As you will notice, ateb decided from a procedural point of view to put a general statement in the TOB as follows:

"Details of your stated investment objectives will be included in the suitability letter we will issue to you to confirm our recommendation".

However, we then rely on the IFA to ensure that the client's investment objectives are clearly stated in the suitability letter or report.

Please don't forget to have these stated clearly, we know you will be doing this already but it doesn't harm to remind!



4.2.6 Guidance

COB 4.2.5R(2) does not require a firm to provide information that, by its very nature, is unavailable at the time the Terms of Business are issued. For example, a firm will not necessarily know a private customer's investment objectives before providing terms of business, since it may not be possible to determine the private customer's requirements without undertaking know-your-customer checks, as required by COB 5.2. In these circumstances, the firm should notify the private customer of any relevant information set out in COB 4.2.15E and COB 4.2.16E as soon as practicable after it becomes available.

7. Watch out for misleading information: Criminal Records

You may have been approached by a compliance consultancy warning you that; "you are required to undertake a criminal records check" for any new FSA application for approval from 11th March 2002. They suggest that IFA firms should register with the CRB via themselves with no cost for registration as opposed to £300 through the CRB.

umm sounds interesting ... now here are the facts

Just to be certain (as we had not come across this "new rule") ateb approached the FSA regarding this claim and can clarify that the information is totally incorrect and that it is not an FSA requirement to undertake a criminal records check on any new recruit / employee.

Information:

There have recently been two significant changes concerning access to criminal records:

- a) The Home Office set up the Criminal Records Bureau (CRB) to enable individuals to access their own criminal records. The industry needs to be aware of this for their processing of job applications and to know that, if firms register with the CRB, certain records can also be sent to them direct. These CRB services will be available to the financial services industry from 1 April 2002.
- b) The legislation, which enables the industry to access spent convictions, has been amended.

More information is available from the FSA website www.fsa.gov.uk within consultation paper 133

The FSA require a firm to take into consideration criminal convictions when recruiting. Indeed, this is one of the questions they ask on application. Remember when you recruit someone you should be building a picture of that individuals fitness and propriety, all the references should point to that individual being suitable. If you have suspicions then we may need to consider checking further and we would suggest you speak with ateb on an individual basis.

FSA “Desk Based Monitoring”

...Stop Press Stop PressThe following has just happened to two ateb firms

FSA request for information on “Execution Only” business

Investment Firms division (IFD) is currently undertaking a review as part of the ongoing work of the FSA Regulatory Events Department (RED) to ascertain how and in what circumstances IFAs transact execution only business. The FSA want to be certain that where advice is being given (no matter how minor) the case is not being treated as execution only.



What do they want to know?

- They go back to January 2000
- They request a breakdown of cases by product type
- They request a copy of the new business register with relevant cases highlighted.

They allow 10 days to respond

You may wish to think about the following

- How easy would it be to identify these cases?
- Do you do a lot of this type of business?
- Have you classified this business correctly?

If you are uncomfortable about this area, please speak to ateb now rather than leaving it until it may be too late.

Anti Money Laundering

I would guess that to most IFAs Money Laundering is a tiresome exercise that seems inconsistent and laborious. In fact you would be forgiven for thinking that an investigation is something that will probably never affect you.

The following is based on some feedback from an ex fraud squad officer:

Thinking that it can't be done is the reaction of a law abiding citizen (IFA) who does not see the point. The whole point is that the people who do launder Money are NOT law abiding. There are criminals with more "cash" than they can possibly spend in their lifetime. They therefore buy term assurance (and anything else they can get through), which may turn ANY dirty money into clean money even if it does go to their children in 25 years time. After all they CAN'T spend it anyway so if its "clean" in the long-term future that is better than what they have now. The main point to remember is that you (the IFA) may NOT be dealing with "normal" citizens.



The ex fraud squad officer confirmed that "Term Assurance" is a very common way of laundering money - probably because people assume it would not be. Money Launderers are from all (seemingly) walks of life, young, professional, even plenty of "sweet old grannies" and it is precisely for this reason that the industry is so tight in its regulation.

Here are some top tips to making the process more successful. Please also see ateb bulletin 11 that accompanies this Newsletter and the new ML procedures giving more detail.

1. Follow the firm's procedures.

- Often it is reputable firms, which are specifically targeted.

2 All staff should always obtain guidance.

- All money laundering issues where there is uncertainty should be referred initially to the MLRO.

3. Remember your responsibilities.

- The adviser is PERSONALLY responsible for obtaining accurate identification and background information.

4. Ignore Exemptions & Exceptions.

- Best practice dictates that firms take fresh ID on every piece of business

5. Keep clear and accurate records.

- See procedures for what detail is required, records should be retained for at least 5 years.

6. Always "Know Your Client & Business".

- Don't rely on ID from previous years; it may be out of date and document full circumstances on the fact find.

7. Report Suspicions:

- If you are uncertain about any aspect of a transaction, report it.

8. Undertake Money Laundering Training

- All staff and the MLRO should have regular training and keep up to date with changes.

Life under FSA - Effective Organisation and Best Practice Procedures:

Those of you who have had the pleasure of accessing the FSA handbook recently, in particular the conduct of business rules (COB) will realise that the rules are not easy to understand or interpret, and there are also enough of them!

There is even an argument that because under PIA there was more prescription, there was clearer guidance. Because it is likely that in practice most IFAs will not access the rules on a regular basis, it is vital that documented processes exist that are used and referred to by its staff. This is particularly important in areas of high risk such as anti money laundering, complaints handling, financial promotions etc.

ateb has therefore produced a set of core procedures that firms can adopt and adapt as required. These procedures will form part of the firms "Compliance Procedures Manual" which we will issue to firms soon.



We have also taken the opportunity to update the annual audit report and the compliance plan. You may be aware that under FSA it does not stipulate that a compliance plan is a requirement although best practice dictates that all IFA firms should have one.

Interestingly, should a firm wish to apply for new or a changed category of FSA membership, the FSA insist on a Compliance Plan and a "Regulatory Business Plan". We have therefore moved the format of the compliance plan to link more closely with FSA requirements and have developed a "Regulatory & Compliance Business Plan".

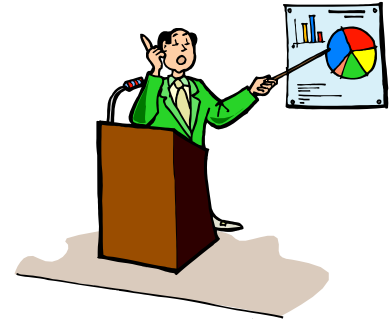
Detailed below is how the three documents interact and will help contribute to maintaining an effective and compliant best practice business process for IFA firms.

Document	Purpose	Main content
Compliance Procedures Manual	This is where key procedures specific to the firm are located.	Key procedures such as: complaints handling, anti money laundering, financial promotions etc), FSA statements of principal, Code of Practice and job descriptions for its approved persons.
Annual Audit Report	This report will help ensure a compliant and effective regime is maintained within the firm.	Contains findings and conclusions from the audit. The report also summarises the key areas for action over the next 12 months, together with timescales for implementation and apportioned responsibilities.
Regulatory & Compliance Business Plan	This plan acts as a general and central record of key business issues that is updated on an annual basis.	It contains a regulatory business plan including marketing and business issues in part one. Key compliance issues are located in part two. It may also contain general plans for the business over the coming 12 months.

Financial Promotions (Advertising & Marketing)

Our thanks to David Hirst (Practice Manager York Office) for the following two articles:

Jargon's a wonderful thing! It can do so many things. Confuse, mislead, make you appear an expert, make you appear different from the previous Regulator. Here's an example, "Non-Real Time Financial Promotion" - now that's what I call jargon.



ateb has now reviewed the new "Financial Promotions" regulations contained mainly in "Conduct of Business" rules Chapter 3. We have created a set of procedures, which we will be discussing with each of our clients over the next few weeks and will cast some illumination over some very innovative jargon. These procedures will of course be included in the procedures manual.

If you just can't wait for the procedures to find out the meaning of "Non-Real Time Financial Promotion", you will be relieved to know that ateb bulletin 12 that accompanies this Newsletter gives you a broad understanding of some new terms and an explanation of this particular piece of jargon.

The Financial Promotion rules themselves have no great surprises and make a lot of sense. If you do advertise, use mail-shots or use mail-shots provided by product providers then you need to tread carefully. Any breach of these rules is plain for all to see!

Therefore we suggest that before embarking on any campaigns you check ideas out with your local ateb consultant, well, that's what we are here for!

Stationery & Disclosure

The rules for stationery & disclosure are found in section 5 of the conduct of business rulebook (COB). It is important that firms think about the June 30th deadline. Remember this is when you must comply with the FSA rules on stationery and disclosure. The main areas to affect firms will be letterheads, business cards, brochures, emails, websites etc. There is not a lot of change here but the main points are:



- either the phrase "regulated by" or "authorised by" can be used
- use of the FSA logo is **not** permitted
- there are specific points about stationery used by Appointed Representatives and Introducers
- there is a requirement to explain that "Independent" advice is given on first contact with the client, so we suggest that this can be put onto stationery. (Normally included in the terms of business)
- the above requirement to explain independent advice is given is a **must** for electronic first contact such as e-mails and web-sites

ateb has produced some written procedures in this area and these will form part of the compliance procedures manual to be issued soon.

Handling Complaints - Best practice

This article recaps on some best practice issues to complaint handling. More detail can be found in the “ateb N2 Information Bulletin” number 4 and updated complaints procedures. Complaints and the perceived need to complain is something most of us accept is now part of the litigious and tabloid society that we live in today. ateb's advice following N2 would be to develop your systems to avoid this situation occurring in the first instance. However should it occur then be able to deal with it effectively and efficiently. Let's just recap on a few basic points in question and answer format that should act as a reminder for handling future complaints.

Q. What should be covered in a firm's written complaints procedure?

- How to recognise and acknowledge the complaint
- Investigating the complaint
- Reaching a decision on whether or not to uphold the complaint
- System of fair redress where appropriate.
- Notifying the client of the final decision and his right to refer to the ombudsman.



Q. Who needs to be familiar with their firm's complaints procedure?

All advisers and everyone in the firm who comes into contact with clients

Q. Do complainants need to say, "I wish to complain" for the firm to recognise it as a complaint?

No - A complainant can phrase their complaint in many different ways. They might say, "I'm not happy" or "I'm dissatisfied with". It doesn't matter if, in your opinion, the complaint is not justified. This would be pre-judging the outcome.

Q. Should the complainant put the complaint in writing, before the firm does anything else?

No - The client does not need to put their complaint in writing. With an oral complaint, the firm must acknowledge the complaint in writing and set out its understanding of the client's complaint and, in that letter, the client must also be given the opportunity to say whether the firm's understanding of the complaint is correct.

Q. Who should handle complaints?

An adviser should not investigate a complaint about advice they have given. Someone else, who was not involved in giving the advice should handle the complaint and that person should be specified in the complaints' procedure.

Q. How much time should we spend investigating the complaint?

It's not about time spent, you must prove that you have acted fairly and reasonably and objectively investigated the complaint. There must be an audit trail, to demonstrate that a thorough investigation has been carried out.

Q. What happens if the investigation is taking a long time?

If you have not been able to complete the investigation within the prescribed time-scales, you must write to the client and update them on progress.

Finally, remember dealing with a complaint in the right way may also help your defence if the complaint is taken further, for example referred to the ombudsman.

As you are aware, ateb has produced some written procedures in this area and these will form part of the compliance procedures manual to be issued soon.

Training & Competence – Supervisor Skills

How good are your supervisory skills?

Appropriate supervision is crucial to the successful running of a business; here is fairly simple approach to check how well you apply yourself in the financial services supervisor role? Give yourself a rating and award 1 point for Low, 3 for Medium and 5 for High depending on how well you do the following. Total your points and apply the scoring grid below – Good luck.

		L	M	H
1	Do you document a regular review of your advisers' work?			
2	Do you document review meetings with your advisers?			
3	Do you check that your advisers are undertaking appropriate training activities?			
4	Do you have regular conversations with your advisers regarding individual cases?			
5	Do you supervise complex areas of financial planning with your advisers?			
6	Do you go on accompanied calls with your advisers?			
7	Do you document the feedback from these accompanied calls?			
8	Do you have easy access to KPIs for your advisers?			
9	Do you refer to KPIs for your advisers as part of the monitoring process?			
10	Do you carry out annual appraisals on your advisers?			
11	Do you carry out an annual assessment of skills and knowledge on your advisers?			
12	Do you feel your advisers perceive you as being well organised?			
13	Do you feel your advisers perceive you as having time for them?			
14	Do you have an individual training & development plan that you follow and review?			
15	In practice, how well do you record and document T&C?			
16	What is your knowledge of the FSA T&C regime?			
	Sub Total			
	Total Score			

How did you rate yourself?

Total Score	Comments	Action
Below 32	Below par performance as supervisor	Either look to develop skills in this area or alternatively look to delegate this responsibility elsewhere.
32 to 60	You have a basic supervisory skills application	You should look carefully at any areas above that you have marked (1)
60 to 80	Clearly, you are conscientious and dedicated to the role with an excellent understanding of what the FSA are looking for, no doubt both the business and you personally will benefit from this.	No Action required keep maintaining high standards.

Supervisor Skills & Knowledge Training:

Now seems an appropriate time to promote the next ateb supervisors training course, it is open to those who would want refresher training in addition to those requiring training to satisfy the FSA rule requirements.

Date & Location	2 Days Course covering the following:	Cost
20th & 21st June In Newcastle	<ul style="list-style-type: none"> Training & Competence knowledge Assessment Skills Coaching & Training theory – Development skills Feedback Skills Monitoring Skills 	Cost is £150.00 plus vat per person per day based on a minimum number of delegates attending both days.

For further information, or if you would like to attend call Steve on 01670 822984 to book a place.



Training & Competence - Recruitment

Training & Competence Sourcebook – Subtle changes to recruiting “Competent” advisers

Please read in connection with ateb bulletin 10

Under the FSA T&C rules, it is now feasible to apply to FSA for the position of competent investment adviser (CF21) for a new recruit joining your firm, provided (at N2) they had been assessed as competent under their previous firm with no significant break in employment since joining your firm.

This provision does not however by-pass the requirement to carry out a thorough recruitment process and to adequately train and assess a new joiner as competent. Remember all of this will need to be fully documented.

The implications are that you would need to assess (Classroom based) the adviser as competent prior to any client contact.

Before you consider the above here are some questions you may ask:

- Would you feel comfortable with just this brief introduction and assessment?
- In the short to medium term how will they adapt to your firm?
- How conscientious and dedicated to your methods and high standards are they?
- What standards do they follow in practice; will this reflect what they told you at interview?
- Will they follow your processes accurately or just continue to do things the way they used to with their previous firm?
- If you already know the person – how well do you really know them?

ateb would always advise that firms gain approval for any new recruit as a “Trainee Investment Adviser” (CF22) with a period of on job training whereby the firm can assess files, persistency of new business and client contact. This would be a type of “Provisional Licence” and could run in parallel with a contract probationary period.

The firm can decide how much on job training is required and where a new adviser is particularly experienced, with well-documented previous activities, the firm could decide to reduce this period accordingly. Remember there is no stipulation on the minimum length of time a person remains as a trainee. (Provided they have the full generic qualification i.e. FPC or equivalent).

Don't fall into the trap of taking the “easy option”. The FSA place great emphasis on recruitment approval and record keeping and if you are uncertain about any aspect of recruitment, please speak to a member of the ateb team.