

ATEB consulting Newsletter 9 - January 2003

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Ladies & Gentlemen

Please find enclosed the latest compliance and industry news.

As usual, site back and enjoy!

Kind Regards

ATEB consultants

Which article applies to me?

Please use the following table to decide which article applies to you, if any:

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|------------------------------|---|---|---|---|---|---|---|---|
| Directors/Partners | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Compliance / A&O Function | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Money Laundering Officer | | | | | | ✓ | | |
| Advisers & Trainees | | | | | | | ✓ | |
| T&C Supervisor | ✓ | | | | | | ✓ | |
| Pensions Transfer Specialist | ✓ | | | | | | | |
| Back Office | ✓ | ✓ | ✓ | ✓ | ✓ | | | |

1. Transfer & Opt Outs Reporting – A reminder

Don't forget to send in your Transfer & Opt out statistics by the end of this month. All the information you need is in **ATEB news for November**. **If you need a proforma to report or you are unsure, please speak with your local ATEB consultant.**

ATEB view:

None, for information only

Action required by you:

None, for information only

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2. End of January - Many Happy 'FOS, FSCS and FSA' Returns!

Those of you sad enough to be looking through the Complaints sourcebook will have noticed a rule requirement to send information on 'Relevant business' DISP 5.5.1 by the end of February each year. You may also remember that simply giving them the information they needed to calculate the appropriate fee was a confusing process last time. This year they have promised to make it easier and clearer.

We have spoken with FOS and they have informed ATEB that the FSA will be writing to all firms requesting up to date information which is needed to calculate all FOS, FSCS and FSA fees for 2003/2004. This will be done **at the end of January** so watch out for a full mailbag!

ATEB view:

Last year, we did experience errors in the information which the FSA hold on firms; therefore,

we strongly advise that you check the information carefully before sending back to the FSA. Either way, it will be comforting to know, ATEB will be there to help you with the completion if necessary.

Action required by you:

None, for information only

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3. Changes to Annual Controllers & Close Links Reports

Please read this article if you trade as a partnership. Changes are with effect from 1st January 03

Following a period of consultation, this reporting requirement now affects all partnerships i.e. not just those, which are Limited Liability. However, there is still an exemption for sole traders.

The changes in paragraph 4.14(1) of FSA Handbook notice 14 remove the exemptions available to authorised partnerships from the obligation to notify changes in controller and close links and to make annual controllers and close links reports. Please refer to article 3 in October Version of ATEB news for further information on close links and controllers reports.

ATEB view:

None, for information only

Action required by you:

Returns should be resubmitted to the FSA Notifications, Reporting & Data Maintenance Department at: Authorisation Division 25 The North Colonnade, Canary Wharf, London E14 5HS at the same time as your annual return.

Remember you can always speak to ATEB if you are unsure as to the procedure.

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4. Appointed Representatives - Annual Reporting

Please read this article if you have appointed representatives

A new annual reporting requirement will come into force on 30 September 2003, so firms with an **accounting reference date on or after 1 June 2003** will need to comply with the requirements. It is anticipated that * Principal Firms (*the authorised firm) will send a signed extract from the FSA Register, with any changes marked on the extract. The verification will be similar to that for controller and close links returns and responsibility for completion will fall on principal firms only.

ATEB view:

None, for information only

Action required by you:

None, for information only

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5. Appointed Representatives - Changes to advertising disclosure

Please read this article if you have appointed representatives

Recent rule changes reduce the compliance burden on principal authorised firms and remove the need for unnecessary regulatory information in advertisements. Short form 'image' advertisements can be issued for appointed representatives' businesses, without there being a need to mention the principal authorised firm's name as well. In making these amendments, the FSA is reducing 'regulatory clutter' in advertisements. Further information is contained in Handbook 15.

ATEB view:

None, for information only

Action required by you:

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6. Postal regulation 8 concession will be deleted

HM Treasury proposed revision of the Money Laundering Regulations 1993 and 2001

Background: The Treasury has recently been consulting on the implementation of the second EC Money Laundering Directive and changes to the legislation affecting regulated firms. This consultation is due to close in mid February.

Consultation: There is not much to report in the 20-page consultation document except that the postal regulation 8 concession will be deleted. The complexity of the regulation appears to have led to misinterpretation.

Basically the postal regulation 8 concession means that if a customer invests in a low risk product, where funds cannot be repaid or transferred to third parties and it is reasonable to do so by post or electronically, a payment drawn on an account in the name of the investor on an authorised financial institution in the EU will count as sufficient evidence of identity.

It is anticipated that the new regulations will come into force on **1st June 2003**.

ATEB view:

This will have little impact on firms because it was rarely used. Firms will still be able to take a risk-based approach to client identification, referring to their internal procedures and JMLSG guidance Notes.

Action required by you:

Obtain sufficient money laundering verification for all clients!

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7. Get Smart – Revisit your greatest area of risk now!

The following was brought to the attention of ATEB and concerns an actual complaint adjudication by FOS, the contents of which you may find interesting. The article is not intended to worry you, but it will certainly make you think carefully about your processes in particular, the way in which you record a fact find and assess investment risk.

In brief:

1. A long-standing client of an IFA makes a complaint regarding investment risk.
2. Client was fairly experienced investor who had higher risk elements in previous pension portfolios and a SSAS.
3. Clients' objective was to exceed returns from bank or building society.
4. IFA agreed 20% of total capital to be invested in unit trusts of higher risk.
5. Client prepared to tie capital up for a minimum of 5 years.
6. Suitability letter and subsequent letters mentioned funds recommended were of a more volatile nature and would fluctuate.
7. 6 weeks later client made further investments into most of the funds recommended earlier and added Japanese special situations.
8. 4 months later client made further investments into a medical discovery fund that had been newly launched.
9. One year later (during which the markets had performed poorly) the client believed the unit trust portfolio previously recommended was too high risk.

Client argued that because his previous pension portfolio was advised on some years ago, and his circumstances had changed considerably since (he had separated, was approaching retirement and was looking to purchase a residential property). As a result, the client believed his attitude to risk was less tolerant today.

Outcome:

Ombudsman found in favour of the client. He believed that the file information supplied by the IFA did not accurately reflect the client's new circumstances and adjusted attitude to risk. The client's personal circumstances had changed; also, the agreed 20% to invest in the unit trust portfolio was exceeded by the IFA. The Ombudsman did not feel that the client's previous experience of investing in higher risk investments was sufficient to make the investment suitable. **The Ombudsman requested that the IFA refund initial contributions plus interest less current encashment values with Interest charged at 8% per annum**

ATEB view:

Evidence is critical - It is the weight of evidence that determines the view taken by the ombudsman. There are members of the public who are abusing the legislation that was introduced to protect them. IFAs need to be one step ahead and ensure that the way in which they accept clients is always clearly defined and documented. You must take into full consideration clients' circumstances when documenting a client's attitude to investment risk. If risk is of a higher nature this should be made clear to clients. The risk should be ascertained at every recommendation. Portfolios should be split accurately to reflect asset allocation appropriate to risk. Client reviews should be used to 're-base' investment risk.

Action required by you:

None, for information only

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8. Misleading Financial Promotions - FSA encourages consumers to report

The Financial Services Authority is asking consumers to help it monitor financial advertising by sending in examples that they think are misleading. To help consumers spot misleading adverts, the FSA has published a new guide. The guide explains how consumers can report an advert they think is misleading using the new online reporting form. Consumers can also write to the FSA or call a helpline number.

Financial promotions include adverts in newspapers and magazines; product brochures, leaflets and other marketing literature; direct mail shots; posters; TV and radio adverts; promotional e-mails and text messages; and adverts on websites, including IFAs' own sites.

Firms are responsible for ensuring their promotions meet the 'clear, fair and not misleading' standard - they are not required to have their advertisements approved by the FSA before they are published, although they should go through an ***internal documented compliance check prior to publication or release and log the advertisement in the Financial Promotions Log, retaining draft and published copies.***

The FSA is currently conducting a project monitoring how well firms are complying with the standards that it sets.

Consequences

Where adverts fail to make the grade the FSA takes action. This can include:

- telling the firm to amend, or withdraw, the advert.
- making a firm contact customers where it thinks they could have been seriously misled by an advert about a product and offering those customers the chance to pull out at no cost;
- fining or 'naming and shaming' a firm where there have been very serious or persistent breaches of the rules;
- publishing statistics twice a year about the numbers and types of reports received about misleading adverts and the types of action taken.

The first report will be published online in spring 2003.

ATEB view:

Adverts should provide a balanced description of the good and bad points, avoid hidden features and small print; avoid misleading statements and the firm should take particular care when advertising complex products. If you are unsure about any financial promotion please speak with your local ATEB consultant.

Action required by you:

None, for information only

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Important Note:

The ATEB Newsletter is intended to provide general guidance on areas of compliance and T&C; however it is not a replacement for the main Rules and Guidance contained within the FSA Handbook.

We welcome all feedback. If you have any feedback or questions relating to any articles then please direct them to your local ATEB consultant or the newsletter editor Steve Bailey email steve@atebconsulting.co.uk

Unless you have consulted specifically (as part of a regular visit) with ATEB on a particular issue then ATEB Consulting accept no liability for any actions taken based on the information contained solely within the newsletter.

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