

ATEB consulting Newsletter 10 - February 2003

1. New Rules on Status Disclosure (CP138 & PS138)
2. New Disclosure wording
3. Changes to Financial Promotions
4. Changes to Terms of business
5. Use of the FSA Logo
6. Self-supervising principals - only applies to sole traders and sole principals
7. CP166 Reforming Polarisation
8. CP169 PI Insurance

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. New Rules on Status Disclosure (CP138 & PS138)

An FSA 'consultation' was issued last May (CP138). Some of the areas consulted upon will become FSA Policy effective from 1st March 2003, and others will be deferred because they may clash with the Distance Marketing Directive (proposed European Union legislation). Broadly speaking, the FSA has deferred the introduction of enhanced consumer awareness of the range of and limits to complaints and compensation arrangements, which would have involved **a more detailed and prominent disclosure than is currently required within IFA terms of business**. The FSA have said that they will consider the deferred rules in the context of their implementation of the Directive.

For proposals on status disclosure within (CP138) which have been implemented as policy, most have a long transitional period in which firms can adjust to the changes. Generally, IFA firms have until **30 September 2004** to change the disclosure wording they use. This date matches the implementation date of the Directive (rules for which FSA shall be consulting on in summer 2003).

ATEB view:

These are straightforward changes that IFA firms should introduce well in advance of the regulatory transitional expiry date, subject to printing costs.

Action required by you:

With regard to changes ATEB will brief firms individually and make the necessary changes to your systems and controls automatically. The following articles 2 to 5; expand on issues raised in CP138 and PS138.

[Return to Features List](#) or [Contact Us](#)

2. New Disclosure wording

The FSA considers that the words '**authorised and regulated by the Financial Services Authority**' will give consumers the clearest and most helpful message about the firms they deal with. You should not use the abbreviated 'FSA'. To distinguish between the relationship with the FSA and their professional body, 'Professional Firms' can supplement the wording, but only if the firm has taken reasonable steps to satisfy itself that the presentation of its statutory status will, as a consequence, remain clear, fair and not misleading. Appointed Representative firms should refer to GEN 4: Statutory status disclosure Annex 1R (located in cps138) for specific guidance on the wording that applies to their circumstances.

ATEB view:

None - for information only

Action required by you:

Introduce this new wording on your letterheads, emails, relevant financial promotions, business cards, websites etc as soon as practical, the deadline is the **30 September 2004**.

[Return to Features List](#) or [Contact Us](#)

3. Changes to Financial Promotions

Excluding 'direct offer', most other financial promotions are not required to use the statutory status disclosure. There are exceptions to this rule, details of which can be found in the firms' internal financial promotion procedures. However, if you are using the statutory status disclosure within a **financial promotion, issued after the 1st March 2003** then it should include the new wording 'authorised and regulated by the Financial Services Authority'. The exception to this is where you have agreed compliance relating to a financial promotion prior to 1st March 2003. In these circumstances you may then use the promotion at any time prior to 30th September 2004.

ATEB view:

None - for information only

Action required by you:

All financial promotions should be recorded in a log, ensure that if you are using a promotion with the previous disclosure wording that you can prove compliance was agreed prior to 1st March 2003. ATEB will update your internal procedures with the changes.

[Return to Features List](#) or [Contact Us](#)

4. Changes to Terms of business

Firms may continue to rely on terms of business or a client agreement issued to a client before 1 October 2004 until they next update these documents. IFA firms have until **30th September 2004** to amend their terms, but a revised copy will not have to be sent to customers just to reflect the new statutory status disclosure wording.

ATEB view:

None - for information only

Action required by you:

None - ATEB will issue IFA firms with a new terms of business updated with the new status disclosure and some other amendments required as part of the Investor Compensation Directive (European Union legislation).

[Return to Features List](#) or [Contact Us](#)

5. Use of the FSA Logo

IFA Firms can reproduce the FSA logo as part of a statement by a firm, on letterheads or their electronic equivalent that the firm is 'authorised and regulated by the Financial Services Authority', but only in connection with a regulated activity carried on from an establishment in the United Kingdom. Broadly speaking you should not alter the FSA logo in any way if you decide to use it on letterhead (or electronic equivalent) It cannot be used on business cards, compliment slips etc.

Copies of the FSA logo that are capable of being reproduced for printing can be found on the FSA's website at http://www.fsa.gov.uk/pubs/other/copies-_of_the_fsa_logo/index

If you would like further guidance on the use of the FSA logo, look at CP138 Guidance Note 3, contents of which expire on 30th April 2003. Following this date GEN 5: Annex: 1G become

ATEB view:

None - for information only

Action required by you:

If you wish to use the logo give ATEB consulting a call and we can guide you.

[🏠 Return to Features List](#) or [✉ Contact Us](#)

6. Self-supervising principals - only applies to sole traders and sole principals

This article impacts directly on IFA firms which have two or more partners or directors and where at least one of them is advising private customers on packaged products.

To summarise, from midnight on 30th November 2001, all advisers who were advising private customers on packaged products were required by FSA rules to be supervised. **Notably, this included firm principals who, under PIA, had previously been 'self supervising'**. The implications were that IFA firms (excluding sole traders and sole principals) would be required to have **a minimum of two supervisors** who satisfied the requirements of rule TC 2.7.5 R and / or had been grandfathered under TC Transitional rules. Rule TC 2.7.5 broadly speaking requires IFA supervisors to have documented coaching and assessment skills. Sole traders and sole principals can however remain self-supervising.

ATEB view:

The key here is to accept that some change may well be necessary, but don't panic, a sensible and pragmatic approach is all that is required.

Action required by you:

If this applies to your firm, and you are a principal, please read the accompanying practice bulletin 15. Those IFA firms which do not use the regular management service are welcome to call ATEB for clarification on how this may affect them.

[🏠 Return to Features List](#) or [✉ Contact Us](#)

7. CP166 Reforming Polarisation

The way you operate is going to change, but not too much! You will be doing a great deal of what is proposed in CP166 already, so don't panic. You will already have heard or discussed the proposals in CP166. We don't propose to go into any detail here, but would be happy to discuss with you in person.

Key Points:

- The traditional definitions (independent and tied) will go
- You can decide to give advice across the whole of the market (or a sector of the whole market) and/or from a limited number of providers and/or from a single provider
- There will be scope to determine which business model best suits you.
- You could therefore be independent for some products and tied for others!
- Consumers will be given an initial disclosure document, which sets out the three ranges of advice, with a tick box against each. Where the scope of advice is other than whole of market, firms are obliged to provide, on request, a list of the companies and products in their range.
- Worryingly, it would appear that the FSA is proposing that three (3) documents will be given and explained to customers at initial contact, namely the
 - **Initial Disclosure Document**
 - **Terms of Business**
 - **The Firm's Menu**
- We think this is unworkable and that some consolidation is inevitable.
- There are restrictions on the use of the word independent. For a business to call itself independent, it must offer whole of market advice and give its customers the option of paying by fee.
- It is proposed to abolish the better than best rule, although any stake (> 5%) held by a provider in a firm, must be disclosed to customers initially and in the suitability letter if a product from that provider is being recommended.
- The FSA will monitor where a firm places more than twenty percent of business with a particular provider. In acquiring a stake in an IFA, the provider must not impose any requirements about business production.

The suitability of advice rules/standards, remain broadly the same as they are now.

ATEB view:

For the majority of IFAs, we don't foresee major upheaval. There will be procedural changes (documentation, sales process), but professional IFA firms are already meeting the majority of requirements.

Action required by you:

None at the moment. ATEB will keep you abreast of developments as part of our monthly visits.

[Home](#) [Return to Features List](#) or [Contact Us](#)

8. CP169 PI Insurance

The FSA paper acknowledges the scale of the problem. Importantly, it also addresses the concerns of the PI market over retrospective regulatory reviews, where current standards of compliance are applied retrospectively (as with the pensions review). In this respect there is ongoing work to define 'mis-selling'. New legislative provisions for reviewing past business are described, which greatly restricts the power of the FSA to undertake these reviews and makes them subject to a parliamentary process.

The aim is to restore confidence to the PI marketplace. Annex 4 of the paper should be read by all firms experiencing difficulty in obtaining PI.

Key Points:

- There are no easy solutions and it will take time to restore confidence to the markets.
- The FSA propose to change the evidential provisions in their rules so that the prescribed wording for PI policies is amended. This formalises the general rule waiver that the FSA introduced last year intended to ease the problem of finding cover (although there is little evidence that this has worked).
- The new requirements should ease underwriters concerns. Two obvious changes to this effect are the proposals to apply compliance rules applicable at the time of the sale and to allow excesses to apply to case defence costs.

The Future

- The FSA still wants to maintain compulsory PI cover; particularly as EU requirements to hold PI come into place in 2004.
- It is feasible that firms will be allowed some leeway to use capital as a means of reducing the required PI cover, for example by increasing the excess.
- Larger firms (£10M turnover) may have the option of self-insuring.
- Also proposed is the option of allowing EU standards of cover to be used, although this would have to be disclosed, probably to clients, as the EU requirements do not meet FSA minimum standards.

The FSA seek input on industry solutions e.g. insurance from within the industry. However, the product providers have made it clear that they are not willing to provide significant financial support for such a scheme. Any industry driven scheme is likely to require full underwriting however, so there is not going to be any cheap and cheerful solution!

ATEB view:

The FSA has at least acknowledged the problem. However, the issues are not going to be addressed easily or in the short term.

Action required by you:

None at the moment. ATEB will keep you abreast of developments as part of our monthly visits, however if your PI renewal is due soon we suggest that you address this now rather than leave it until the last minute.

[Home](#) [Return to Features List](#) or [Contact Us](#)

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.

Contact Us:

ATEB Consulting
The Old Post House
29 Nedderton Village
Northumberland
NE22 6AX

T: (01670) 822984
M: (07703) 576951
E: steve@atebconsulting.co.uk
W: www.atebconsulting.co.uk