

ATEB consulting Newsletter 15 - July 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:

Investment (IFA)	1	2	3	4	5	6	7	8	9	10	11	12
Directors/Partners	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Compliance / A&O Function	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Money Laundering Officer												✓
Advisers & Trainees			✓			✓			✓			✓
T&C Supervisor			✓			✓			✓		✓	✓
Pensions Transfer Specialist									✓			
Back Office			✓						✓			✓
*Mortgage (inc. IFAs)	1	2	3	4	5	6	7	8	9	10	11	12
Director/Partner									✓	✓	✓	✓
Compliance / A&O Function							✓		✓	✓	✓	✓
Sales Advisor												
T&C Supervisor												
Back Office												
General Insurance	1	2	3	4	5	6	7	8	9	10	11	12
Director/Partner									✓	✓	✓	✓
Compliance / A&O Function							✓		✓	✓	✓	✓
Sales Advisor												
T&C Supervisor												
Back Office												

*Includes Mortgage arms of IFA and APF firms

1. FOS clarifies and amends rules - Early resolution of complaints

This change becomes effective from 1st September 2003

There has been confusion as to when firms should treat a complaint as received so they can resolve it "by close of business on the business day following its receipt"

(DISP 1.3.3R(2)). Some firms had argued that they might receive complaints at the weekend when they are running a reduced service and have no ability to handle and resolve complaints, or outside normal working hours.

Consequently, FOS have amended the rules to allow firms to treat a complaint as received on the next *business day* if the complaint is received on any day other than a *business day* or after close of business on a *business day*.

Other changes regarding early resolution of complaints and clarification of timescales are detailed in ATEB bulletin 20 'Treatment of Complaints' which accompanies this newsletter.

ATEB view:

It is important that firms recognise how to treat complaints early on, otherwise mistakes could become costly.

Action required by you:

ATEB clients should understand the contents of bulletin 20. Further information can be obtained from Handbook Notice 24, located at the FSA website at www.fsa.gov.uk

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2. FOS amend rules – clients buying units through a fund supermarket

This change becomes effective from 1st September 2003

There have been changes to the rules within the complaints sourcebook (DISP) which affect consumers who buy units in a collective investment scheme through a fund supermarket. **Currently, these consumers are beneficiaries of the units, but the units are registered in the name of the fund supermarket.** In contrast to investments made directly with a fund manager, where a consumer invests through a fund supermarket, these customers would currently have no recourse under current rules to make a complaint about the fund management. The Ombudsman's view is that these consumers do not match the definition of holders of units in the Handbook Glossary and are therefore not currently eligible complainants. The Ombudsman (FOS) may deal with a complaint only if it is on behalf of an eligible complainant.

The new rules will mean that these customers will become eligible complainants and will allow customers of fund supermarkets to make a complaint directly to the fund manager in whose fund their units are invested, where the complaint relates to the management of the fund. This change would also give consumers access to the FOS where the fund manager is unable to resolve the complaint.

ATEB view:

This amendment provides consumers with an effective remedy for their complaints. Without this amendment, consumers could be forced to pursue their complaint through the courts at considerable expense, or simply be resigned to accepting the damage or loss caused by the fund manager.

Action required by you:

None, for information only

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3. IFA firms still not disclosing commission correctly

ATEB have been doing the rounds and some IFA Firms are still not disclosing commission in 'cash terms' prior to sale as required by FSA rules.

It occurs mainly where there is no client specific illustration for example with some unit trusts and ISAs. A generic disclosure is just a repetition of what is probably in the generic KFD issued by the provider. During visits over the years, the PIA and FSA have continually pointed this out as a common breach.

Never mind Lord of the Rings and Harry Potter - try reading the 856 pages of FSA Conduct of Business Rules and you will discover complete enlightenment on pages 236 & 237 (COB 5.7.5 and COB 5.7.13) which highlights this magical FSA requirement!

ATEB view:

Disclosure is a hot topic with the FSA and we suggest that firms follow precise guidance.

Action required by you:

Build the precise disclosure into your systems. If you send post sale letters, you should issue something in writing pre sale.

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4. Compliant firms benefit at the expense of non-compliant firms.

Wondering what the 'permitted deduction' was which accompanied your periodic fee levy notice for 2003/04?

This related to £9.2m of financial penalties received in 2002/03 by FSA. The FSA ('and their band of merry men') have applied these penalties pro rata to reduce the amount that fee-payers (for example IFAs and professional firms) who undertake the same activities to which the penalties relate will pay in 2003/04. Umm....I wonder if Robin Hood was also a non-profit making organisation?

ATEB view:

Great news for all firms that are applying FSA rules and guidance carefully and ensuring in particular that all new business written remains compliant.

Action required by you:

None – this is for information only, however, if you are unsure as to how compliant you are with the FSA rules and guidance you can always call ATEB!

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5. Definitions of 'intermediate customer' and 'private customer' – Changes

These are consequential amendments resulting from other amendments within COB and become effective on 1st September 2003.

The references to 'unregulated collective investment scheme' and 'regulated collective investment scheme' have been deleted from the definitions of 'intermediate customer' and 'private customer' respectively, with a reference to 'collective investment scheme' inserted into the definition of 'intermediate customer'.

ATEB view:

None, for information only

Action required by you:

None – This is for information only. We will update the ATEB compliance procedures Manual (CPM) soon with the changes.

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6. Glossary definition of 'Direct Offer' has changed

The Glossary definition of 'Direct Offer' has changed with effect from 1st September 2003. We thought it was worthwhile repeating the new definition purely because many IFAs are involved with this type of promotion. A 'Direct Offer' financial promotion is ...

A financial promotion which:***(a) contains:***

(i) an offer by the firm or another person to enter into a controlled agreement with anyone who responds to the financial promotion; or

(ii) an invitation to anyone who responds to the financial promotion to make an offer to the firm or another person to enter into a controlled agreement;

(b) specifies the manner of response or includes a form in which any response is to be made (for example by providing a tear off slip).; and

(c) is not a real time financial promotion.

ATEB view:

There is still confusion within IFA firms as to what constitutes 'Direct Offer' and how to approach it in a compliant manner.

Action required by you:

Don't forget 'Direct Offer' is usually approved by the product provider and must contain specific key information. Of course, you can always ring ATEB if you are unsure!

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7. MCCB Changes – Introducing the 'You & Your Equity Release' leaflet

Changes take effect from September 2003

The MCCB have released a leaflet 'You & Your Equity Release'. This is in addition to the 'You and your mortgage' leaflet already being used. Order forms for the new leaflet can be found at www.mortgagecode.co.uk

This leaflet gives a broad outline of what Equity Release is, gives an idea of the extra information that should be available to customers, and the impact of the mortgage code. The leaflet refers to the CML booklet on Equity Release, which is useful source of information to both intermediaries and clients alike. This can be located at www.cml.org.uk

ATEB view:

None, for information only

Action required by you:

If you are advising on Equity Release then the 'You & Your Equity Release' leaflet should be issued and not the 'You and your mortgage' leaflet. You will also need to update other supporting literature such as separate terms of business. Luckily, we have a 'Blue Peter' version (i.e. one we prepared earlier) available for ATEB clients. We can email you one upon request.

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8. FSA review Financial Promotions – Consultation Paper 188

The FSA are proposing certain changes (mainly to the financial promotion rules in COB 3) to make it easier for consumers to understand the financial products offered, including any potential risks.

FSA proposals fall into three main categories:

- (1) Provisions on the marketing of 'structured capital-at-risk products' (SCARPs) (This includes 'precipice bonds')
- (2) Provisions on financial promotions for 'structured deposits'; and
- (3) Additional financial promotion guidance and reorganisation / consolidation of existing guidance in COB 3 Annex 4.

The consultation period for CP188 will end on 31 October 2003 and the FSA aim to make final rules and guidance in January 2004. The provisions for SCARPs will take effect from 20 February 2004. The other rules will take effect in July 2004, providing firms with a transitional period of six months.

ATEB view:

This is a crucial area of regulation for firms; it can also be relatively complicated and will become more demanding, speak to ATEB if you are unsure.

Action required by you:

None, we will keep ATEB clients informed of the changes.

If you would like more information or would like to respond further then go to the FSA website www.fsa.gov.uk/pubs/cp/188.pdf or email responses to cp188@fsa.gov.uk

9. Feedback from CP157 – Examination Review

The FSA have published a 'feedback statement' (fs157) relating to a consultation, which commenced in November last year. In the original consultation and discussion papers, the FSA set out proposals for a new modular examination structure for the financial services industry and focused on investment advice on packaged products and proposed eleven examination modules. CP157 incorporated and built upon the principal themes set out in DP9 and its subsequent feedback. The eventual aim is to create a full structure that can be used by practitioners in all branches of the industry to confirm their qualification requirements and to identify career pathways across and through the industry.

Responses to CP157 indicated that there was a large measure of support for the examination review although certain changes are proposed in relation to the overall structure and some of the detail of the module content. More information has been requested for example, on how module combinations relate to regulated activities.

ATEB view:

Difficult to have a viewwe are in the hands of the Gods (sorry I mean the FSA)

Action required by you:

None, we will keep ATEB clients informed of the changes.

If you would like more information or would like to respond further then go to the FSA website www.fsa.gov.uk/pubs/cp/fs157.pdf or email responses to cp157@fsa.gov.uk

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10. Insurance selling and administration & other miscellaneous amendments - Consultation Paper 187

FSA will regulate the selling and administration of non-investment insurance contracts from 14 January 2005. CP187, along with other Consultation Papers that FSA have already published, will implement the Insurance Mediation Directive (IMD). The draft rules in this Consultation Paper will also implement the requirements of a number of other EU directives, including the Distance Marketing Directive (DMD).

Consultation Paper 187 seeks comments on:

1. Feedback on CP160 and draft conduct of business rules
2. Combined status disclosure form for mortgage and investment firms
3. Exempt professional firms – extending the current regime to mortgages and insurance

Quick summary:

In part 1 of this consultation the FSA propose that there will be additional requirements for disclosure, T&C, financial promotions, complaints handling. The term 'suitability' will be applicable when advising both retail and non-retail customers. Commission disclosure will not apply to retail customers and money laundering will not be such an issue and broadly speaking will not be required when advising and arranging pure protection and general insurance.

In part 2 of this consultation the FSA propose that a firm must use a combined initial disclosure document when it is selling a mortgage and packaged investment product at the same time. Firms will be able to choose to include their services relating to non-investment insurance contracts in this form if they wish.

If you would like to discuss any aspect of the 318 pages of this consultation paper, or if you would like support with the application and ongoing process you are welcome to contact ATEB for support. (Contact us)

ATEB view:

FSA appear to be taking a relatively pragmatic approach to the new regulation but lets not hold our breath.

Action required by you:

Imagine that you are watching an egg timer, soon the sand will run out and it will be time to apply for authorisation (next few months), October 2004 (Mortgages regulation commences) and January 2005 (General Insurance regulation commences) – ***Will your firm be ready?***

If you would like more information or would like to respond further then go to the FSA website www.fsa.gov.uk/pubs/cp/fs187.pdf or email responses to cp187@fsa.gov.uk

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11. Supervisor Training

Reminder: If you employ investment advisers (anyone giving advice on insurance company products to members of the public) then you must have an allocated firm supervisor (or supervisors). For fuller information on whether supervisor training applies to you please refer to ATEB practice bulletin 15 on supervision and our February newsletter article 6. ***The need to have supervisor training is a relevant and up to date issue having been remarked upon during a February FSA visit.***

Overview:

Day 1- overview (9.30am until 4.30 pm)

- Setting field sales process standards
- Consistent and accurate assessment skills
- Using an objective observation aid
- T&C Knowledge
- Overview of general T&C requirements on regulated firms.

Day 2 - overview (9.30am until 4.30 pm)

- Theory of coaching and training
- Constructing SMARTA development plans
- Giving consistent feedback
- Structuring one to ones
- Monitoring performance and training needs analysis

Who should attend?

- Qualified supervisors wishing to top up existing supervisor knowledge
- Newly appointed supervisors
- Supervisors who had previously been classified as 'self supervising' (under PIA)

Do I need to attend both days?

- You may wish to attend only a single day at present; there will be other days later in the year.

Course details:

Dates:	Day 1 – Tuesday 2nd September and Day 2 – Tuesday 23rd September
Location:	Leyburn in North Yorkshire
Cost:	£150 plus vat per day per person

ATEB view:

Where relevant and suitable training has not been undertaken within firms it will result in a serious breach of the regulations and the consequences may be significant. It is more than possible that the FSA will suspend the firm from trading until this requirement is met. Although we often quote the regulatory requirements, lets not forget that quality supervisor training will almost certainly have a positive impact on your business.

Action required by you:

Please let us know if you would be interested in attending by email or telephone. (Details follow). We will confirm exact course location and details in joining instructions prior to the course.

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12. FSA reminds firms of their Anti-Money Laundering responsibilities

Since July 2002 the FSA have been consulting on how to reduce the industry wide risk of financial crime from money laundering. This included a proposed risk-based mandatory review by all firms of all existing customers. Thankfully, the FSA announced on 22nd July 2003 (FSA Press Release) that it would not introduce a new industry-wide requirement for all regulated firms to undertake a special review of their current customers' identity.

The obligation to verify the identity of new customers remains. Financial services providers are required to verify the identity of new customers under both the Money Laundering Regulations 1993 and the FSA Money Laundering Sourcebook. Some customers may never have been identified either because they became customers before the Regulations came into force on 1 April 1994 or because a firm did not comply with the requirements in the period before the FSA took over its responsibilities in December 2001.

Financial services providers may not accept new business without evidence of a client's identity. ***Therefore firms that do not have sufficient documentary evidence for existing clients on file will be expected to gather that information now before submitting an application even if previously exempt, e.g. a pre 1994 client.***

As part of their work on Money Laundering, the FSA will be publishing a Discussion Paper on 'Know Your Customer' and 'Monitoring' in late July/ early August, ATEB will keep you informed of developments.

ATEB view:

A reduction of financial crime remains a high priority with the FSA and firms continue to run a legal and regulatory risk (SYSC 3.2.6R) if adequate systems and controls are not in place. This is clearly a sensible and pragmatic decision and whilst we understand and support the need for firms to have systems in place in order to identify their clients, a mandatory review of existing customers' identity would have been an onerous and costly task, particularly for small IFA firms.

Action required by you:

Probably very little - Most small IFA firms are requesting detailed evidence and have been ignoring the exemptions anyway!!

The FSA press release can be found at: www.fsa.gov.uk/pubs/press/2003

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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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