

Ateb Consulting Newsletter 21 - January 2004

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	13
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	13
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	13
Director/Partner	✓	✓							✓	✓		✓	
Compliance / A&O Function	✓	✓							✓	✓		✓	✓
Sales Advisor													
T&C Supervisor													
Back Office													

*Includes Mortgage arms of IFA and APF firms

1. Variation of Permissions – It's arrived!

Reminder to firms currently authorised: If you intend to continue advising on certain types of term, critical illness and PHI from January next year, you need to think about varying your permissions soon.

Ateb view:

The FSA is concerned that they may have difficulty processing all applications within the deadlines. Therefore, you must think about an early application to ensure that you will be able to advise from the commencement of regulation.

Action required by you:

To obtain your log on / password you should first go to:

<https://mgi.fsa.gov.uk/vopreg/RegistrationForm.asp> if you would like assistance, please contact ateb.

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2. New General Insurance Rules are finalised

The final rules are in Appendices 1 and 2 to Policy Statement - Insurance Selling and Administration & other miscellaneous amendments including feedback on CP187 located at: http://www.fsa.gov.uk/pubs/policy/ps04_01.pdf

This Policy Statement (PS) reports on the responses to that consultation and the decisions FSA have made in the light of those responses in finalising the rules.

One of the key changes relates to status disclosure by introducers whereby the FSA have reduced the amount of information which needs to be disclosed by the introducer.

Don't forget the Mortgage rules arrived October 03 and are located at:

Regulating Mortgage Sales: Final Conduct of Business Rules Volume 1&2

http://www.fsa.gov.uk/pubs/policy/ps186_vol1.pdf

http://www.fsa.gov.uk/pubs/policy/ps186_vol2.pdf

Ateb view:

Cannot say they are an enjoyable read rather a 'must' read!

Action required by you:

Work with ateb and let us guide you through the process.

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3. Transfer & Opt Outs Reporting – A reminder

Don't forget to send in your Transfer & Opt out statistics by the end of this month.

Ateb view:

Don't be late

Action required by you:

If you need a proforma to report or you are unsure, please speak with your local ateb consultant.

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4. Transfer & Opt Outs Reporting - What does 'correspondence only' mean?

There is no definition in the FSA Glossary, so it was up to ateb to do some investigative work! Looking at Handbook Notice 20 (March 2003) page 30, the FSA quote:

'Correspondence only' transactions include all of those non-advised sales where only information was provided'

We were asked to clarify this recently by a firm who had produced a back office print out showing a considerable number of 'correspondence only' cases. We established that these cases had been input incorrectly and should have been categorised as "advised sales". Unfortunately, the input options available within the back office system did not demonstrate an understanding of the FSA rules and support the potential future usage of the data.

You all know we are a sad bunch of anoraks, but we hope this helps with your reporting. If you are not sure you should speak with the FSA, direct.

Ateb view:

The terminology used by the back office providers can be different to FSA leading to inaccurate outputs.

Action required by you:

Be careful when inputting into back office systems.

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5. FSA fees, FSCS levies and FOS levies 2004/5 – Cut Off date 31 March 2004

The FSA will be writing to most firms requesting up to date information (tariff data request), which is needed to calculate all FOS, FSCS and FSA fees for 2004/2005. This will be done at the end of January so watch out for a full mailbag!

The FSA uses a firm's permission as at 31 March of each year to allocate it to fee-block(s). Your firm will incur fees for each fee-block it has been allocated to. You should ensure that you have the correct regulated activities within your permission. If you need to reduce, vary or cancel your Part IV Permission, you need to apply in writing before 31 March 2004.

If you do not make an application before 31 March 2004, your firm will be liable for all fees based on the permission held as at 31 March 2004. There is no re-calculation or waiving of fees for applications received after this date.

Note: This is a completely separate exercise to your Variation of Permissions (VOP) for mortgage and or general insurance activities.

Ateb view:

You can do something now to help manage these fees more effectively and ensure you do not incur any unnecessary expenditure on regulation.

Action required by you:

Check your records against the firms Scope of Permission Notice FSA register <http://www.fsa.gov.uk/register/> and speak to ateb if you are unsure as to what your permissions mean.

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6. FOS to increase 'General Levy' 2004/2005 (CP208)

Professional and IFA firms are likely to see an increase in their * general levy in 2004 / 2005. The increase is due mainly to higher volumes of complaints against advisory firms. For firms not holding client money this was £20 per approved person in 2003/4 subject to minimum of £75 per firm. Expect a fee of £35 per approved person in 2004/5. For firms holding client money this was £35 per approved person in 2003/4 subject to minimum of £75 per firm. Expect a fee of £65 per approved person in 2004/5.

* Based on the budgeted costs and numbers of FOS staff required to deal with the volume of complaints which the FOS expects to receive about the firms in each industry block (An example of an 'industry block' would be advisers not holding client money).

Ateb view:

None, for information only.

Action required by you:

None, for information only.

More information: www.fsa.gov.uk/pubs/cp/cp208.pdf

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7. FOS Case Fees – are you a 'regular' or 'occasional' user?

You may be relieved to know that, according to FOS, most IFA firms are only 'occasional users'!!

FOS analysis in 2002/03 showed that less than 20% of firms covered by the FOS were charged case fees. Of this figure, about 50% are of a size that means that, in the future, they are likely to generate three or more complaints per year. The FOS deems these firms to be 'regular users'.

FOS believes that for "regular users", paying a significant number of case fees are facts of business life, for which the firms can make appropriate business plans.

FOS are proposing that the case fee for the year ending 31 March 2005 should remain **unchanged at £360**, and that they will **not charge firms for the first two** of their cases that they deal with (as long as their annual levy has been invoiced and paid).

The "special" case fee will be reduced by £50 from £600 to £550. (This could be for a mortgage or general broker who opts in before statutory regulation by FSA, due later in 2004 early 2005).

Ateb view:

A move in the right direction. At least this gives firms which only have occasional complaints some breathing space in terms of the cost of case referral to FOS.

Action required by you:

Ensure that you pay the annual levy on time!

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8. Money Laundering – Execution Only Business

Where Execution Only business is transacted, although quite rare nowadays, firms should not forget that money laundering still applies to identifying the client.

ML 3.1 Identification of the client: The Duty

3.1.3 (1) a relevant firm must take reasonable steps to find out who its client is by obtaining sufficient evidence of the identity of any client who comes into contact with the relevant firm to be able to show that the client is who he claims to be.

(2) If the client with whom a relevant firm has contact is, or appears to be, acting on behalf of another, the obligation in (1) is to obtain sufficient evidence of both their identities.

COB 5.2 Know your customer

5.2.2 A firm which arranges an execution only transaction for a private customer is not generally required to obtain any personal or financial information about that customer, except when the Money Laundering sourcebook applies.

Ateb view:

Remember it's not just about verifying name and address; ask yourself: does the transaction seem unusual given the clients circumstances?

Action required by you:

Build in required checks to your procedures and brief staff.

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9. Access to criminal records

This article is aimed at Firm Principals, Compliance Officers and Human Resources Staff.

Recruiting firms should note (if not done so already) that the Criminal Records Bureau (CRB) has been set up by the Home Office to enable individuals to access their own criminal records (or Scottish Criminal Records Office (SCRO) for those employers based in Scotland). If firms register with the CRB (SCRO), certain records can also be sent to them direct. This would be particularly important when processing job applications for key people, such as approved persons.

The FSA are leaving it for the industry to decide its own policy on whether they use the CRB (SCRO). However, they have gone on record as stating: ***'failing to carry out criminal records checks may bring into question the adequacy of firms' procedures on recruitment and for ensuring the fitness and properness of their Approved Persons'***

The FSA hopes that the changes have the indirect effect of reducing the likelihood that the industry will employ inappropriate people. The various proposals and policy changes are detailed in Consultation Paper 133 <http://www.fsa.gov.uk/pubs/cp/133> and Policy statement 133 <http://www.fsa.gov.uk/pubs/policy/ps133>.

Ateb Bulletin 22 (Access to Criminal Records) which accompanies this Newsletter has more information on the changes, jargon and your options. This bulletin explains the types of 'disclosures' (criminal records) available and their relevance.

Ateb view:

Firm principals will need to decide whether they apply for these records. A great deal will depend on the level of recruitment and the robustness of existing systems.

Action required by you:

If you intend recruiting in the near future and believe it prudent to obtain a 'standard disclosure' for a new partner and/or investment adviser, we suggest that firms register

through an * Umbrella Registered Body or, alternatively, larger firms may find it more cost effective to register with the CRB directly <http://www.crb.gov.uk>.

* Umbrella Registered Bodies will perform similar functions to Registered Bodies by countersigning applications on behalf of organisations requesting disclosures. Ateb have researched the cost of this service and currently a 'standard' disclosure through www.1stcheck.co.uk would be £7 administration plus CRB fee of £24 per applicant. To register for a pack email: enquiries@1stcheck.co.uk.

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10. Changes to Financial Promotions to take effect 1st June 2004

Background

Some of you may be aware that the FSA have been busy researching the way in which firms promote and market products. This has resulted in some significant tightening of the rules. The changes (See appendix 1 to Policy Statement 183) which have been introduced are designed to deal with the following concerns.

Key areas of concern for FSA were:

- Past performance is **often used to suggest future returns**;
- Financial promotions contain **excessive small print**, including a past performance warning, which is disliked by consumers;
- **Selective time periods** are often used to make past performance information look particularly attractive. **A mandatory five-year figure is very often lost in small print**; and
- Financial promotions can **foster unrealistic expectations** and may lead consumers to invest inappropriately in higher risk funds.

In fairness, most of this impacts on the product providers, however IFAs and professional firms should take note. Ateb believes that Firms may be at particular risk if they include 'out of context' past performance information in reports and/or suitability letters. This is just the type of situation in which the FSA could argue that the client was misled. Our advice would be to refer the client to a sales aid (promotion) approved by the provider and/or independent research rather than include 'snippets' from the promotion. Firm principals and compliance officers should check that past performance in all correspondence is well balanced and presented in a way that is **'clear, fair and not misleading'**.

More Information can be found at:

CP132 (April 2002) <http://www.fsa.gov.uk/pubs/cp/132/>

CP183 (May 2003) <http://www.fsa.gov.uk/pubs/cp/183/>

PS 183 (December (2003) <http://www.fsa.gov.uk/pubs/policy/ps183.pdf>

Ateb view:

Always ensure that you have considered carefully the content of any financial promotion (for example marketing letter) and that it has been through a sign off process in line with your firm's internal written procedures. Be very careful if you are using past performance figures in your reports.

Action required by you:

None for ateb clients, we will update your internal procedures as required.

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11. Projection rates on packaged products

Ateb has received a number of queries about the growth rates assumed in product provider illustrations. There appear to be inconsistent rates used and this has caused confusion with the IFA and the client.

The FSA Handbook prescribes the basis on which product provider illustrations must be prepared. It includes standard return assumptions for different types of product, for example, pensions and ISAs: 5%, 7% and 9%. It is important to recognise that these rates assume a significant weighting of equities within the packaged investment product.

Accordingly, where a provider firm considers that these rates would overstate the investment potential of a particular product, for example, **where its asset mix contains a higher element of bonds, then, under * FSA rules, it must use reduced rates**. Some firms may regard a switch from equities as a relatively temporary one, in which case the FSA specified rates continue to reflect long-term investment potential.

* FSA rules provide (Conduct of business sourcebook 6.6.49R(2)) that if a provider firm expects the specified rates to overstate the investment potential of a contract, then reduced rates of return must be used, this is likely to be the case for funds heavily invested in bonds. A failure to have regard to COB 6.6.49 R (2) and the consequent use of inappropriately high rates of return could mislead a consumer

Note: This article should not be confused with changes to Statutory Money Purchase Illustrations that were introduced in April 2003 to project the value of personal and or occupational pension funds and future contributions in terms of today's money.

Ateb view:

Although the underlying rule is not new, the changes in illustrating reflect changing times. The underlying general principle still remains that communications with consumers should in all cases be clear, fair and not misleading. Obviously any discrepancies when comparing quotes that are not 'like for like' should be explained clearly in writing.

Action required by you:

None, for information only.

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12. Annual Reviews: Maintaining Competence - A Reminder

Normally December and January are the time to conduct adviser reviews, although this will vary among firms.

The types of review will range from a basic appraisal to a more detailed assessment of skills and knowledge under examination conditions. The review is an excellent opportunity for the firm to check that its staff are meeting the requirements that their respective roles demand.

The FSA gives firms flexibility in their approach. There are key FSA T&C rules which apply, in particular to 'Investment Advisers' and need to be considered for example: ***TC 2.6.1 R A firm must have appropriate arrangements in place to ensure that an employee who has been assessed as competent to engage in or oversee an activity maintains competence.***

Other FSA guidance is more general, for example, the second and fourth commitments state that authorised firms should ensure that: ***'Its employees remain competent for the work they do and Its employees' competence is regularly reviewed'***. The Fit and Proper Sourcebook also explains that approved persons competence is maintained and a review would help satisfy the requirement.

Ateb view:

Ateb recommend an annual review for all advisers and key compliance positions, we have proforma's to help.

Action required by you:

Speak with your local ateb consultant or contact steve@atebconsulting.co.uk if you would like assistance or further information.

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13. Mortgage Qualifications Training - CeMap and MAQ

The FSA has confirmed that individuals who already meet MCCB's Fitness and Competence Requirements, and who have gained a professional mortgage qualification, will not need to sit a new examination in order to advise on standard mortgages after statutory regulation is introduced on 1st November 2004.

Do you have any individuals (advisers or back office) that are still looking at CeMap or MAQ?

During 2004, Ateb will be running a series of two-day workshops for either MAQ or CeMap. We will be releasing dates of workshops in the next couple of weeks. In the meantime, if you would like to register an interest, please let us know by email or telephone.

Ateb view:

None, for information only.

Action required by you:

Contact us for further information.

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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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