

ATEB consulting Newsletter 33 - April 2005

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. Complaints Reports

Up to 31st March 2005

IFAs and Professional firms only: Deadline for complaints report for the period October to March 2005 is the 30th April. This will be the last paper based return. No returns necessary for General Insurance Brokers and or Mortgage Brokers.

From April 1st 2005

Mandatory Electronic Reporting (MER) for IFAs, General Insurance Brokers, Mortgage Brokers and Professional firms. Generally reports will be issued 6 months either side of your accounting reference date. However you will need to consult the transitional rules that determine your first report period. Located at <http://fsahandbook.info/FSA/handbook.jsp?doc=/handbook/DISP/TP/1>

ATEB view:

None, for information only

Action required by you:

Complete checklist in following article and refer to the section within the ATEB Manual on

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2. FSCS Hike up Compensation costs – Time for Change?

The levy requirement on firms in block A13 has increased by £7.4m, compared to the forecast in January, to reflect increases in anticipated compensation payments for precipice bond claims, based on the recent and current claims experience.

An FSA working group is looking into a potential installment plan to pay these costs. If such a scheme can be created it will be launched before the 2005/06 invoices are sent to small firms. The FSA is meeting soon to discuss whether a review of the fee block structure should be considered. Any change would change the formula under which costs are shared between regulated firms, although it's unlikely that there could be any redistribution of regulatory costs before financial year 2007/08.

ATEB view:

The recent FSCS announcement contains deeply frustrating news for IFAs. The industry needs a more "equitable" way to fund the FSCS. Why should firms that predicted the obvious problems with precipice bonds and decided to stay well clear of them now be left to pick up the financial pieces?

Action required by you:

For information - may affect your budgeting

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3. Changes to Reporting & Standing Data Notifications (Post April 2005)

As you know the 1st April heralded the move to electronic reporting to the FSA. Unfortunately, the on line Reporting forms are not currently available, however, the FSA has indicated that forms will be available in advance of the first report due date (period ending 30th June). To help with understanding RMAR, the best you can do at present is click on the following link <http://www.fsa.gov.uk/pages/Doing/Regulated/Returns/IRR/pdf/RMARgn.pdf> and refer to ATEB Feb Newsletter article 6 which has further information. We have provided an additional mini "notifications" checklist below to help:

✓	
	Check that you have responded to the FSA invitation to register for "Firms on line" if not click on the following http://www.fsa.gov.uk/pages/Doing/Regulated/Firms/index.shtml
	Appoint someone in the firm to take responsibility for the RMA Report (RMAR), Complaints Report, and Standing Data Notification.
	Diary internal reminder with persons needed to complete reports & notification copied to at least 3 people in case of illness etc. This should be for RMAR, Complaints and Standing Data. (See table below). This is very important because failure to report will mean automatic fines

Note 1: RMAR and Complaints will be **separate** returns but issued within the same time periods i.e. every six months.

Note 2: Standing data notification – At year end (accounting reference date) **only** and within 30 business days. Can be more often if firm wishes. Nil returns **not** required (i.e. no changes from previous year)

Accounting Reference Date	First Reporting Period	Return to be submitted by
31 Jan 2005	1 Apr to 31 Jul 2005	Mid Sep 05
28 Feb 2005	1 Apr to 31 Aug 2005	Mid Oct 05
31 Mar 2005	1 Apr to 30 Sept 2005	Mid Nov 05
5 Apr 2005	6 Apr to 5 Oct 2005	Mid Nov 05
30 Apr 2005	1 May to 31 Oct 2005	Mid Dec 05
31 May 2005	1 June to 30 Nov 2005	Mid Jan 06

29 Jun 2005	30 June to 29 Dec 2005	Mid Feb 06
30 Jun 2005	1 Apr to 30 Jun 2005	Mid Aug 05
31 Jul 2005	1 Apr to 31 Jul 2005	Mid Sep 05
31 Aug 2005	1 Apr to 31 Aug 2005	Mid Oct 05
30 Sep 2005	1 Apr to 30 Sep 2005	Mid Nov 05
31 Oct 2005	1 May to 31 Oct 2005	Mid Dec 05
30 Nov 2005	1 June to 30 Nov 2005	Mid Jan 06
31 Dec 2005	1 April to 30 June 2005	Mid Aug 05

Firms with an annual income of between £60,000 and £5,000,000 will be required to submit the Retail Mediation Activities Return (RMAR) in accordance with the table above.

Location of Supervision Forms (including Standing Data)

<http://www.fsa.gov.uk/pages/Library/Communication/Forms/spervision.shtml>

ATEB view:

None, for information only

Action required by you:

Follow the checklist above and refer to the section within the ATEB Manual on Reporting & Notifications.

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4. Attitude to Risk – Does This Match Your Clients Circumstances?

Today, most advisers take great care in assessing attitude to risk. Many firms are using questionnaires and profilers to determine the clients risk profile. Certainly things are a little more scientific than say 10 years ago. Most firms make copious notes either within the fact find or on a separate document to back up their assessment.

However, some advisers are still simply ticking a scale of [1 to 10] or [Cautious, Medium and High] etc. A standard bland paragraph in their suitability letter follows, normally generated by computer. This approach has shortcomings and will only serve a purpose if the "right profile" has been established. This is highlighted in a recent publication by the FOS http://www.financial-ombudsman.org/publications/ombudsman-news/44/44_risk.htm

Please click on this link and read the article. In summary the FOS argue that on one hand a Fact find might state something such as "balanced" and yet the physical circumstances of the customer (age, Investment experience, asset / deposit spread, dependents, expectations etc) may tell a different story i.e. "cautious".

In essence, the FOS decisions mean that there may be scenarios where IFAs will not be able to rely solely on the standalone risk rating; you will need to ensure that your assessment is correct, is supported by all the data you have on the client and is evidenced against a standard or system.

ATEB view:

In our visits and newsletters we have expressed our concerns to this "pick a profile" approach. Unless you are recording some "meat on the bones" i.e. specific reasons then there is always the chance that "your documented assessment" could be later challenged by a customer.

Action required by you:

Where it applies develop more robust assessment of your client's attitude to risk.

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5. FSA step up Mission to Improve Compliance of Financial Promotions

Financial promotions have always been a particular risk area for consumers – they play an important and influential role in how consumers make decisions. But because consumers may not have a sufficiently complete understanding of products and of the risks associated with

them, consumers may be misled by financial promotions. Recently, this has led the FSA to increase its resources in this area so that they can focus more on financial promotions.

Some firms, however, are still flaunting the rules, particularly in the area of mortgages. This can be evidenced by looking in any daily local or national newspaper; we can still see some firms using the FSA Logo, quoting an incorrect status disclosure, omitting APRs, using small print to hide important issues, etc

ATEB often get moans from firms where we have "bulked up" a draft advert with additional risk warnings, APRs etc. It's only a matter of time before the FSA catch up with these firms. We suggest "Whistle Blowing these firms" using the following link....
<http://www.fsa.gov.uk/Pages/Doing/Regulated/Promo/Report/index.shtml>

Remember any advert, including your website, can easily be translated to **"Dear FSA come and visit us we are having problems controlling the quality of our promotional output"**

The FSA have released a couple of documents that will be of interest to firms. The first is a financial promotions bulletin http://www.fsa.gov.uk/pubs/other/fp_bulletin1.pdf aimed at mortgage & general insurance, the second is an update paper on progress against their business plan http://www.fsa.gov.uk/pubs/other/promo_forward.pdf Both are surprisingly easy to read and would be valuable CPD for compliance officers of firms involved in financial promotions. The paper makes reference to Direct Offer which is an area often used by firms are more often than not done incorrectly.

ATEB view:

It's an important area; you never know who is reading your advert.

Action required by you:

Ensure that your systems and controls are sufficient to deal with your promotional output.

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6. De-Polarisation at 1st June 2005

General feedback so far seems to be business as normal for IFAs from 1st June with a slight adjustment in their sales process to cater for the option of offering fees.

Most firms are now opting to depolarise at 1st June. If you do there is no need to inform the FSA. You will however need to have key documentation in place to issue to customers.

"5 Key Documents from 1st June"

	Comments
1. IDD / CIDD "Key Facts"	Change the tick in section 4 investment to the top box from the 1st June.
2. TOB	This can be reduced from 1st June, where information is covered elsewhere for example in the CIDD.
3. Menu "Key Facts"	Of course customers are going to read this – excluding teachers that is! In section 4 of the Menu, in the "If you choose the commission option", you will need to show your maximum commission figures in the table. If you exceed the maximum on a sale, it's a breach. You also need to <u>offer</u> a fee and be whole of market to hold yourself out as independent. We have a copy of the commission calculator with the 1st June figures. If you would like a copy please let us know by email. Note: Commission tables are not required if you offer a "fee only" service.
4. Fee Agreement	In our experience where firms charge fees they are often agreeing and billing clients after the second call or even later. Reason being, by this time they have had the chance to demonstrate value. This will be too late under the new regime, fees will need to be agreed <u>up front</u>
5. Firm Charter	Explains about the firm and how you will add value. Not a regulatory requirement, but without this how do you consistently promote the value

ATEB view:

We understand what the FSA are attempting to achieve. We think however that the Key Facts Logo could be confusing rather than informative. When the question is asked of a consumer "Did you receive the key facts document?" The consumer may have received 4 or 5 with the brand (includes provider literature) but would probably not instantly recognise the differences. In our opinion "**Key COST Facts**" and "**Key SERVICE Facts**" etc would have been clearer.

Action required by you:

We are talking with firms individually and updating procedures to deal with changes. There will also be a bulletin issued soon. Firms will need to organise and document training before 1st June. This training should cover how the new documents will be explained to customers and this should be consistent throughout the firm. Beware of mystery shoppers!!

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7. Beware of Referred Complaints – Understand the Rules

A very well known life office has been referring complaints it has received to the IFA without any attempt to investigate its own shortcomings. The office incorrectly quotes the FSA:

"it is the view of the FSA that the party responsible for giving the advice should investigate the complaint"

Now let's look at what the FSA really say....

DISP 1.4.18 R (1) "A firm which has reasonable grounds to be satisfied that another firm may be solely responsible for the fault alleged in a complaint may refer the complaint to that other firm, but if it does so it must....."

DISP 1.4.18 R (2) "A firm which has reasonable grounds to be satisfied that another firm may be jointly responsible for the fault alleged in a complaint, may refer the complaint to that other firm but if it does so it must..."

Here is an extract quote from part of one complaint letter that we examined:

"we can provide copies of the [Provider Name] literature supplied to us in 1994 which made no explicit mention of the risks involved in the policy"

In fairness the client did complain about other issues which the IFA is under obligation to investigate. However, the IFA cannot be expected to investigate the fact that the marketing literature (produced and signed off by the provider) in 1994, allegedly misled the client (as per their letter).

As we have highlighted above, not all complaints are about "advice" and therefore it is our view that the phrase that this particular office use has been established so that they can "bounce" **all** complaints where an agent is involved.

ATEB view:

It is ATEB's view that the part of the letter (***no explicit mention of the risks***) should have been investigated by the provider and they need to respond as part of a **joint** investigation (DISP 1.4.18 (2))

Action required by you:

Ensure that you are aware of who is responsible for investigating a complaint. Don't just assume that it your sole responsibility where a complaint is referred by a life office. Life Offices are often non compliant with some areas of the FSA rules. If in doubt speak to ATEB.

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8. General Insurance - What Should Staff say on the Telephone?

Isn't it amazing how the so called "folk lore" arises even around the FSA and its rules. When advising some of our clients we sometimes come across beliefs that are thought to be FSA rules but actually are not. They appear to be a corruption of a real rule that is spread by the press or broker community itself.

Recently we have come across several insurance brokers who believe that when a client or prospect rings the firm the person contacting them must state that the firm is "authorised and regulated by the Financial Services Authority". We have even come across firms who have it as a first line automatic answering machine to make sure that they "don't break the rule!"

The good news is that there is no rule stating that this information must be given when answering the telephone. The FSA specifically state "every letter (or electronic equivalent) which it or its employees send to a private customer with a view to..... etc. etc." (Guide to the FSA Handbook, general Rules Part 1).

So where has this belief come from?

We suspect it may come from the rules surrounding telephone sales. This leads me nicely into, making general insurance sales by telephone, and providing instant cover.

Where there is a gap between the client making an enquiry, being given a quote over the phone and then being sent the proposal, terms of Business/IDD and other documents, the client should see the Terms of Business/IDD **before** they apply for the insurance.

However in cases where cover is given immediately over the 'phone (motor insurance for example) then the client is committed to the insurance without the benefit of the information required in ICOB 4.2, which is covered by the Terms of Business/IDD.

The rules say that they must either be given all this information or agree to have only a limited amount of that information. **That limited information includes the fact that the firm is authorised and regulated by the FSA.**

This is all now getting very complicated! However, ATEB consulting have devised a workaid for staff which guides them through the telephone sales process and also what documents must be sent on to the client.

ATEB view:

None, for information only

Action required by you:

If you are an ATEB client then your consultant will help with this.

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9. With Profit Funds – 'Should I Stay or Should I go'

With apologies to The Clash (and further apologies to those of you who don't know who The Clash are), this is a conundrum that many of you face.

The problem is – how do you determine whether it is suitable advice to recommend a transfer from WP funds, taking into account all the transfer penalties? This is of course a highly subjective decision and is dependant on numerous factors. IFAs opinions vary, but we know that some of you are worried by the high degree of exposure that some clients have to with profit funds. You may have a 'gut feeling' that transferring would be the right course of action but are put off by the potential downsides, in particular the possibility of future complaints. In this respect, please see the quotation below.

"In our opinion the level and importance of a Market Value Adjuster (MVA) has been over emphasised, and consequently prevailed more in the mind of the client, the adviser and the compliance department than it needed to. This has had a detrimental affect on the relationship between adviser and client and it is something we plan to put right with the use of With Profit Assessor!"

Investment Edge Research Ltd (IER Ltd) (February 2005)

Ian Anderson of Investment Edge believes that there is little doubt that MVAs have been the deterrent insurance companies had hoped they would be. The With Profits Analysis Service from IER Ltd is designed to de-mystify the ambiguity that surrounds MVAs and the uncertainty over future bonus rates.

The analysis report produced by IER Ltd makes it possible to compare the surrender value (smoothed return) with an actuarial calculation of the returns achieved by the insurance company (unsmoothed return). This information is **client specific** and will help in identifying if the MVA is fair or spurious and if there is an anomaly in the smoothing process that is capable of being exploited for the client's benefit. Each report includes a series of client specific calculations based on the asset allocation of the with profit fund at crucial dates. This information provides a transparent and unambiguous reference for the advisor and client to measure the results of the changing asset allocation within the fund and compare these with the bonuses declared by the insurance company.

Reports can be produced for all types of policy from over 50 product providers dating back nearly 40 years.

ATEB view:

We must make it abundantly clear that this is not our area of expertise. As such, we are not making a specific recommendation for the services of Investment Edge, but are recommending that you consider the issue in general with respect to your clients. In our brief dealings with Investment Edge however, it is clear that they have a deep understanding of this issue and have developed complex research tools and analysis. We are sure of one thing however; any advice to transfer funds (from any source) must be supported by documented rationale and research.

Action required by you:

If this is an issue that worries you, then you must decide for yourselves whether discussing the issue with Investment Edge would be worthwhile. We do not know what IER Ltd charges for this service. Investment Edge Research Ltd can be contacted on 01383 861222.

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10. Anti Money Laundering Guidance – “Under Review”

The government sector and the authorities accept there is a need to recognise more clearly that various sectors in the financial services industry, and business lines – whether in terms of products, or typical customers, or delivery channels can be materially different, and so an approach to preventing money laundering that is appropriate in one sector may be wholly inappropriate (whether because it is too prescriptive, or because it is not prescriptive enough) in another.

The authorities and industry believe that allowing senior management to manage the risk of the firm is more likely to deliver systems and procedures that have a better chance of addressing the prevention and detection of money laundering and the financing of terrorism.

JMLSG has therefore decided to carry out a thorough revision of its guidance. The draft guidance being published seeks to address the following issues:

- To allow senior management to manage their money laundering and terrorist financing risks in a risk-based way;
- To focus the resources employed in anti-money laundering and combating terrorist financing on the areas in each firm that carry the higher risk;
- To enable the guidance to be tailored for firms in different business sectors;
- To allow firms to make better use of modern technologies;
- To reduce the demands for several pieces of documentation on most customers, reflecting the likelihood that most customers are not money launderers or terrorists.

These proposals have been subject to discussion across a broad section of the industry, and with government, regulators and law enforcement, as part of the development process. They are now being offered for wider industry and public consultation and comment, to give user groups and other interested parties an opportunity to contribute to the development of guidance that is practical and proportionate, and that allows recognition of the different risk profiles of customers across the industry.

ATEB view:

We welcome sensible and pragmatic changes that are wholly suited and relevant to the individual market sector. In light of the proposals you may wish to consider the ATEB information bulletin that promotes the use of technology in identifying customers. **Email us for more information or Click [Here](#).**

Action required by you:

We will keep you updated with changes however, various links follow for your information:

Consultation Paper : www.bba.org.uk/content/1/c4/54/04/Consultation_Paper.pdf (open for comments until 30th June 2005)

Main Text: www.bba.org.uk/content/1/c4/53/97/Part_I_Guidance.pdf (new proposed guidance)

Sector Guidance: www.bba.org.uk/content/1/c4/53/98/Part_II_Guidance.pdf (IFA guidance to be added later)

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11. FSA “Desk Based Monitoring” in the Field

Most firms thought they had seen the last of the FSA field visits; not so - they have been visiting firms in large numbers and there seems to have been more visits in the last 6 months than in the entire PIA period of rule. They are visiting General, Mortgage and IFA firms.

Recent visits have provided ATEB with feedback on issues of concern to the FSA. With a number of visits planned in the Newcastle area in the next few weeks it may be worth taking note. Key areas and the "usual suspects" follow:

File checks – The FSA found evidence of checking, but still found many letters and files contained errors and omissions.

Attitude to risk – More evidence is needed and greater structure to process.

Records of research – Little evidence of this, some firms are still using the provider sales aid as "independent" research.

CPD / Training Records – This was an area that the FSA felt could be improved. We are aware that following a recent monitoring visit the FSA has told an IFA (not an ATEB client!) that they may re-visit in the immediate future to ascertain how the firm demonstrates that its adviser are maintaining their competence. This has come about because training records were not being properly kept.

ATEB view:

Firms need to be more disciplined.

Action required by you:

None, for information only

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12. Menu - VAT Treatment of Services by Financial Advisers Charging Fees

This article is aimed at IFAs and Professional firms charging fees to their clients. **Please do not interpret this article as ATEB providing advice on VAT, we are simply attempting to highlight an area that you should consider carefully.** It is you, however, who must decide the most appropriate action for your firm.

Understanding of how VAT should be charged appears to be contradictory and confusing. HM C&E, have produced an information sheet (see link below) which states clearly "the value of your supply for VAT purposes will be the amount charged to your customer".

Therefore, following this particular guidance, if you offset the bulk of your fee by commission, it's the balance (fee less the commission) which will be 'charged to the customer'. ATEB suspects that where Firms are agreeing **commission offset** with the customer then it will be the lower amount (the difference) that is chargeable. HM C&E also talk about a 'predominant service', which seems to suggest that where a firm is charging a flat fee for a 'holistic (comprehensive) advice service and minimal arranging of policies takes place, then VAT could be charged on the whole service.

ATEB view:

Getting this wrong due to HM C&E lack of clarity will not affect anyone except the advising firm, it's a hassle, but you must understand and apply the correct procedure based on how your individual firm operates.

Action required by you:

We recommend that firms take individual professional guidance on this and / or telephone the National Advice Service on 0845 010 9000.

Other issues you may wish to clarify and consider are:

- Under commission offset, how much should you invoice the client for – is it the balance or the full fee amount?
- If you charge the full fee amount, and commission is used to offset this, is the commission deemed taxable as income of the client?
- Are there benefits of having separate documents, one for 'holistic advice' and one for 'arranging'?
- If you are VAT registered are you entitled to reclaim all (or only some) VAT on your business expenses?

More Information is available at:

- VAT Information Sheet 02/2003
<http://www.hmce.gov.uk/forms/graphics/info0203.pdf>
- Notice 701/49 & 701/36
<http://www.hmce.gov.uk/forms/catalogue/catalogue.htm#700>
- 700 chapter 32
<http://www.hmce.gov.uk/forms/graphics/700-p192-238.pdf>

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13. ATEB IT Solutions – Combined IT & Compliance Solutions!

As you may be aware ATEB has always strived to use the latest IT tools to the advantage of both our clients and ourselves. With this in mind we started offering an IT consultancy service a little over a year ago. The business has continued to grow and as such we believe we can offer a unique service to IFA firms when compared with traditional IT consultancy companies. This is because we not only have an in depth knowledge of IT systems but also understand how IFA firms operate. By bringing together the two we can offer tailored IT systems designed with the client's regulatory needs in mind.

Some of the services we can offer include:

- Pro-active IT Infrastructure Maintenance
- Callout Support Packages
- Network Installation & Upgrades
- Back Office System Installation & Integration
- Microsoft Operating Systems/Office Applications Licensing & Consultancy
- Domain Based Email Systems
- Remote Access (VPN) Systems
- Server Installation & Maintenance
- Wireless Network Design & Implementation
- Disaster Prevention/Planning
- Website Consultancy
- Broadband Installation
- Software/Hardware Procurement

ATEB view:

As the financial services industry moves further towards an IT orientated market place, can you afford to miss out on the latest changes?

Action required by you:

If you believe we could be of assistance with any IT related issues you may have, why not arrange for a free initial consultation which can include a complete system audit.

To arrange such a visit contact either your ATEB consultant or David Anderson directly on 07734 459913 or email: david.anderson@atebconsulting.co.uk

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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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