

# ATEB consulting Newsletter 35 - August 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:

<b>Investment (IFA)</b>	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Directors/Partners	✓	✓	✓	✓	✓		✓		✓			✓		✓	✓	✓	
Compliance / A&O Function	✓	✓	✓	✓	✓		✓		✓			✓		✓	✓	✓	
Money Laundering Officer																	
Advisers & Trainees				✓	✓				✓			✓					
T&C Supervisor				✓	✓		✓		✓			✓					
Pensions Transfer Specialist									✓			✓					
Back Office	✓	✓	✓	✓	✓							✓					
<b>*Mortgage (inc. IFAs)</b>	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Director/Partner	✓	✓									✓		✓	✓	✓		✓
Compliance / A&O Function	✓	✓									✓		✓	✓	✓		✓
Sales Advisor											✓						✓
T&C Supervisor											✓						✓
Back Office	✓																
<b>General Insurance</b>	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Director/Partner	✓	✓				✓		✓		✓				✓	✓		
Compliance / A&O Function	✓	✓				✓		✓		✓				✓	✓		
Sales Advisor																	
T&C Supervisor						✓											
Back Office	✓																

\*Includes Mortgage arms of IFA and APF firms

## 1. RMAR - Are you Ready for Firms "Off-Line"??

Clearly the FSA are not!!

During July and parts of August we encountered a complete breakdown in the RMAR SYSC within the FSA. They managed to breach their own threshold conditions and have failed to provide adequate resources to cover the monumental task of the on line regulatory reporting.

**Most of the firms that we deal with in hindsight would have been happier paying the £250 fee rather than incur the unnecessary expense and stress of RMAR.**

The main functional problems we encountered were:

- Greyed out (locked) areas which actually applied to firms
- No explanation given as to validation errors
- Guidance notes either not relevant or vague to the point of useless
- 28 day warning not given to firms with the earliest reports
- Not being able to log on at weekends, early or late in the day
- Numerous error messages on logging in
- The need to re-apply for passwords when clearly the right information was input
- Site jammed due to high volumes of traffic
- Help desk unaware of issues and being able to offer no reassurance, simply asking firms to "put it in writing"

- RMAR not available showing a "Search for return" option that failed to find the report
- After 20 minutes the system forces you to log on again
- Incorrect year ends (on FSA system) leading to RMAR not being available

You won't be surprised to know that the "Cost Benefit Analysis" on RMAR did not include the FSA SYSC failures. Unfortunately, the hassle and costs associated have now been borne by compliance firms such as ATEB and the firms required to report early.

The FSA has now extended the deadline, but there are still outstanding issues which have still not been corrected (time of writing late August 2005).

**Ateb view:**

Although this is no consolation to regulated firms, it feels good knowing that these superior beings can get it wrong big style.

**Action required by you:**

Go through the paper version fully to begin with and ensure that you are au fait with the report prior to attempting to complete on line.

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## 2. RMAR Practical Completion Tips

The following are examples of areas where we have encountered difficulty obtaining information or where we feel advance warning of FSA requirements will benefit you greatly. Remember that if you can't submit the return on time then you could face a fine of £250.

- **Get your accountant involved ASAP** - Copy the relevant section to them (Broadly, A, B, & D) – GI Brokers and firms holding client money will also need to copy in section C.
- Check your initial reporting period and ascertain with your accountant (bookkeeper) whether figures can be obtained easily and accurately for that particular period
- Ensure that you can obtain fee and commission splits between the various sectors: Investments, Mortgages & General Insurance (as relevant). For IFAs, this means splitting out term, critical illness, etc from investment income.
- "Payaways" – You will need to identify commissions which are paid away (i.e. to introducers)
- Appointed Representatives (ARs) – where you have ARs, the Principal firm will need to report commissions which the ARs have retained.
- Identify general insurance premium splits – All firms that are involved with general insurance (this includes term, critical illness, motor, liability, etc) will need to identify premium splits between contracts. **This may be difficult given that most firms record statistics by commissions.**
- Significant general insurance business – You will need to identify particular business that comprises 40% plus of your overall premium or 40% plus of a particular type i.e. Term Assurance, Motor, Household, travel, etc
- General Insurance Chains – This affects some General Insurance Brokers and other intermediaries dealing with the likes of Payment Shield. It applies where you are not submitting business direct to the provider and are using another intermediary (or intermediaries) in a chain. If this applies, then you need to be recording premium splits and be aware of significant business as above.
- Dealing as Agent – This section applies to General insurance Brokers who have "delegated authority". We suggest that you will need to check carefully your agency agreements to verify whether this will apply. If this applies, then you need to be recording premium splits and be aware of significant business as above.
- The above splits focus on "retail" business and, therefore, **General insurance Brokers in particular will need to split out again from their commercial business.**
- Commission Claw backs – This section applies to IFAs and requests the amount and number of policies in the reporting period. We suspect the FSA may cross reference to provider statistics in this area.

Reminder - Ltd Companies & LLP - If you need to include un-audited reserves to boost your capital resources, apply for the waiver as covered in article 10.

If you are not registered with firms online (you can check by calling 0845 6069966) then go to [https://mgi.fsa.gov.uk/RT/user\\_reg/userreg.asp](https://mgi.fsa.gov.uk/RT/user_reg/userreg.asp) and register.

**Ateb view:**

This report is fiddly and information retrieval does not sit naturally with current recording methods.

**Action required by you:**

Note the guidance above, obtain a hard copy of the RMAR and notes, and speak to ATEB if

you are unsure.

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### 3. What Does the RMAR not Replace?

With the advent of the RMAR, we had hoped that you could forget about certain reports which you currently have to send to the FSA. Well, that's only partly true.

The first RMARs are currently being completed and sent to the FSA and those of you have had the misfortune to be amongst the first will know all about the difficulties of completing it. So that you're kept on your toes, however, the FSA will still require the following reports at the appropriate times:

- Annual Questionnaire – this will only be necessary for authorised professional firms which are conducting other regulated activities (e.g. Corporate Finance) in addition to arranging and advising basic retail investments, mortgages and general insurances
- Complaints Returns – These will be done electronically (separate to the RMAR).

There is some good news, however. You need no longer submit a Pension Transfer and Opt Out Report as the Providers will make this information available to the FSA.

Close Links & Controllers Report – this will now also form part of the RMAR (Threshold conditions section). Note: Applies only to limited companies or partnerships.

Statement of Relevant Business – We believe this will now also form part of the RMAR. Section J specifically refers to this.

#### **Ateb view:**

Once the system works properly it will make things easier longer term.

#### **Action required by you:**

None, for information only. Related article is Article 3 (ATEB April Newsletter)

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### 4. Recent Feedback From Recent FSA Visits

The following is actual FSA feedback to a number of IFA firms, you may wish to take note and compare to your own records and controls:

- SL stated that the firm could not advise on Executive pension transfers and then, later in the same SL, included the phrase "do not transfer"
- Hard fact differences in the application form and the suitability letter (referred to retirement dates)
- Conflicting splits in investment funds between the FF and the SL and also within the SL
- Inconsistent comparisons on projections
- Early encashment penalties not disclosed
- Client's objectives woolly, not quantified and inconsistent
- Income being provided for clients who appeared to have large surplus income with no documented need for more income
- Client's attitude to risk not recorded
- Terms of business issued after the FF and the KFD
- Non disclosure of cash commissions
- SL did not relate specifically to the client's circumstances
- Illustrations issued after the proposal form
- Omission of the premium amount from the SL
- Contradictory information relating to the client's income in different documents on file
- Risks of investing offshore not documented
- Adviser had assumed the client's attitude to risk in the SL
- SL too long, leading the FSA to believe it was not "Clear Fair, and not misleading"
- Signatures of the same individual on different documents differed greatly
- PI Self Certification form showed cover as compliant when it was actually non compliant

*Note: SL – This could be the suitability letter or report*

#### **Ateb view:**

All these areas are avoidable if the firm invests time developing its processes and training its staff in the key requirements.

**Action required by you:**

Ensure that your sales procedure does not allow the above to 'slip through the net'.

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## 5. Tips on Suitability Letter and Client Reports

Having had the opportunity to examine some suitability letters and reports over recent months, I thought you might be interested in some common occurrences that are still prevalent, even today.

### Recent findings

- Client's objectives (Demands & Needs) and key disclosure lost in masses of text
- No summary of client's circumstances
- Weighting of content - e.g. unnecessary overkill on 'why the provider', past performance, (not always accurate) repetition of the provider key features document
- 'Standardised' advantages and disadvantages that have not been related to the client
- Letters contain lots of short paragraphs 'aimed' at covering compliance rather than focusing on the needs of the reader
- Standardised and bland computer generated letters
- No structure and/or headings
- Confusing content - No prominent summaries contained in reports
- Letter still being referred to as a regulatory requirement
- Letters contain photocopied parts
- Poor grammar (spelling, spacing, order of words)
- Waffle - The same issue repeated using different words
- Too lengthy or too brief
- Inconsistent content i.e. risk referred to as 'medium', 'balanced' and 'middle of the road'
- Letters not signed or dated Letters where it is not clear who has given advice
- Letters that are too general - Reason 'what' letters and not enough benefit statements i.e. no link to the soft facts (Client's wants and desires stated in their own words)
- Too much emphasis placed on colourful charts and graphs and technical explanations

### Basic Tips on SL Production

- Keep your letters simple and completely relevant
- Include your recommendations and reasons early on
- Always highlight disadvantages clearly
- Ban vague words such as "flexibility" and "balanced" and bland objectives such as "Looking for income" or "Looking for growth" from your letters
- Ban all generic statements and possibly include these in a separate generic letter or report
- Ensure that you are asking, and recording, answers to the right questions during the FF process

**Ateb view:**

We would urge firms to use a central and controlled system for production which minimises errors and inconsistencies.

**Action required by you:**

Ensure that your sales procedure is robust enough to allow specific and relevant letters to be produced.

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## 6. Client Money

The FSA wrote to general insurance intermediaries supervised specifically within their Wholesale Business Unit (Responsible for the regulation of firms or groups which conduct primarily wholesale or institutional market business between professionals) with an update on the results of a recent review of a sample of firms' handling of client money. We thought that all general insurance broker firms would be interested in the feedback. They found that with some firms:

- Client money accounts were in deficit;
- Client money accounts did not have the correct trust status;
- Client money resource calculations were not performed on a regular and timely basis.
- Where a shortfall or excess occurred it was not dealt with correctly.
- Balances recorded on their broking and general ledger systems and used in the client money calculation were not in agreement;
- Where a firm operated a non statutory client money trust account, they had not received

- their clients' informed consent to their money being held in such an account;
- The status of the firm's client money accounts did not agree with the Terms of Business Agreements with the insurers, clients and other brokers;
- The firm's client money calculation did not include balances paid on to third parties for which the broker had duties as trustee and the calculation had not been adjusted for uncleared cheques or debit and credit card cancellation periods;
- Client money from appointed representatives was not correctly accounted for; and
- Where an insurer had given risk transfer and permission to co-mingle, it had not consented in writing to its interests in the client money account being subordinated to all other clients' interests.

**Ateb view:**

Although the FSA letter was directed at Wholesale Brokers, the principles apply to all retail brokers. We suspect that the above areas will form part of an FSA hit list on future visits.

**Action required by you:**

All areas above should be assessed against the firm's written procedures and application for client money. Shortfalls and weaknesses should be remedied as a matter of priority. Involve ATEB, your accounting software provider and your accountant, as necessary, to ensure full compliance ASAP.

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## 7. FSA to Focus on Firms' Mortgage Endowments Complaint Handling

The FSA is now entering the next phase of work on mortgage endowments, which will focus particularly on firms' complaint handling.

Firms must continue to handle complaints properly. The FSA will continue with its programme of robust supervision and, where necessary, enforcement. It is currently establishing a set of key performance criteria to identify any firms which are still failing to meet acceptable standards.

### Adequate contingency plans

The FSA will also pay particular attention to how firms prepare themselves for any potential increase in the numbers of complaints over the next 12 months, following the issue of further 'red' reprojction letters and the implementation of time bars by some firms.

The FSA expects firms to act now to make sure they have adequate contingency plans in place for any increase in the volume of complaints. Those firms not maintaining acceptable standards of complaints handling, will be required to rectify the situation.

### ATEB Complaints Handling Service

Firm principals may need to consider outsourcing some complaints, depending on resources.

**Ateb view:**

It is important for consumers that firms handle complaints fairly, effectively and promptly – as the FSA rules require. This will help demonstrate part of the Treating Customers Fairly policy.

**Action required by you:**

Make sure that you conduct detailed investigations and base your outcome on the facts. If you would like information on the ATEB complaints Handling Service, please let us know.

More information: A guide for complaints handlers is available at:  
[www.financial-ombudsman.org.uk/publications/guide-complaint\\_handlers.htm](http://www.financial-ombudsman.org.uk/publications/guide-complaint_handlers.htm)

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## 8. FSA Crackdown on Unauthorised General Insurance Firms

The FSA has begun a crackdown on firms which may be breaking the law by conducting unauthorised general insurance business since regulation began in January.

The firms being contacted have been selected on the basis of a number of information sources, including the FSA's database of firms that registered or applied for authorisation, but later withdrew. The FSA is also responding to leads received from the industry and the public. The FSA will visit both primary intermediaries (brokers who sell insurance as their main business)

and secondary intermediaries (firms who sell insurance as a secondary activity to their main business).

Within the secondary market, the FSA has initially focused on:

- motor dealers
- property managers
- travel agents
- high value retail outlets
- removal firms
- storage firms

The FSA will not put firms out of business unnecessarily. Where breaches are inadvertent or result from genuine misunderstanding, options for the firm will include obtaining proper authorisation. However, in order to protect consumers, the FSA can choose not to authorise firms which have willfully breached parts of the Financial Services and Markets Act and can take criminal proceedings if necessary.

**Ateb view:**

We support the campaign fully.

**Action required by you:**

Authorised firms should ensure that they are not involved in a chain with an unauthorised firm that is conducting regulated activities.

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## 9. FSA Issues Contracting out Report

Earlier this year, in response to concerns identified both by the FSA and by commentators such as "Which?", The FSA commissioned a report from OAC plc (Oxford Actuaries and Consultants). The report aimed to examine the financial impact to date on consumers who have contracted out of the additional State Pension scheme through an APP, compared to the position they would have been in if they had remained contracted in. Generally, the report does not favour contracting out. The Press, as ever, are scaremongering and the word mis-selling is now being banded around quite freely. Importantly, though, the FSA is firmly on record as stating: **"It is important not to equate a potential underperformance with mis-selling. Performance risk is an inherent feature of personal pensions, but remaining in the State Second Pension is also subject to potential uncertainty about future government policy"**.

*2005 - OAC report highlights that **ON AVERAGE** APP funds will provide lower pensions*

The OAC report is available at: [www.fsa.gov.uk/pubs/pensions/oac2005.pdf](http://www.fsa.gov.uk/pubs/pensions/oac2005.pdf)

*1996 - SIB report encouraged contracting out*

A copy of a SIB report in 1996, which found that most consumers could expect to be financially better off if they contracted out of the state system, is available at:

<http://www.fsa.gov.uk/pubs/pensions/SIB1996.pdf>

*Are we in danger of jumping the gun again?*

The OAC report makes a number of assumptions which include:

- the rate of future investment returns under the policies
- annuity rates at the time of retirement
- government policy on future pension entitlements under the S2P remains unchanged
- retirement ages remain unchanged

FSA Quote on the OAC report: **"The calculations are therefore not definitive for the financial position of individual consumers, which can only be known when they reach state pension age"**

The OAC report calculations **do not** consider all client preferences and circumstances at point of sale or the impact of any of the changes due in April 2006.

**Ateb view:**

Overall, we blame the insurance companies who once again are failing to deliver on

performance. In the same way that this OAC review is inconclusive, we would suggest that proving mis-selling has occurred will be equally inconclusive. The fact remains there will always be bad practice and, in our opinion, resources should be channeled into weeding these individuals out of the industry forever. The FSA directors need to recognise that using a sledgehammer to crack a nut will simply not work and if this approach is pursued we all know who will ultimately pay for it, don't we? Will the FSA stand up and be counted or allow themselves to be bullied into a review? We would be very surprised if the FSA encourages a full review, based on the earlier SIB paper content and the length of time it has taken for them to react to the potential problem.

**Action required by you:**

Feedback on the OAC report can be sent to: [contracting.out@fsa.gov.uk](mailto:contracting.out@fsa.gov.uk)

Risk Management – You may wish to identify your population of C/O clients and establish a strategy for dealing with a potential future problem now rather than leaving it until it becomes worse. Speak to ateb if you are unsure (Ateb bulletin 16 March 2003 has more information).

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## 10. Small Mortgage & GI firms (Limited Companies & LLPs) no Longer Require Audit

### Background

Limited companies and Limited Liability Partnerships are usually required to appoint an Auditor as audited accounts are required by the Companies Act 1985. Sole Traders and Partnerships often do not need audited accounts. Although there is a small firms exemption under the Companies Act, this does not apply if you are authorised by the FSA.

### Exemption from audit

The Department for Trade and Industry announced it will, from 5 September 2005, amend the Companies Act 1985 to enable small mortgage and general insurance intermediary firms to take advantage of the small company exemption from having a statutory audit. This broadly includes companies carrying on only mortgage and/or general insurance mediation business with a turnover of under £5 million.

### Changes

- The changes apply to accounts filed after 5 September 2005 and not to specific year ends.
- The definition of FSA regulated activities in s247A and s249B of the Companies Act 1985 will no longer include Mortgage & GI business, meaning that these companies will no longer be ineligible for small company and audit exemptions (regarding the latter, whether the company is directly regulated or an appointed representative).
- Where a client money audit was previously required, this remains unchanged.
- The changes will not affect Personal Investment Firms (broadly, IFA firms)

### Waiver

As a result, the FSA is offering a waiver to firms not required to appoint a statutory auditor from the requirements that only audited reserves may be included in regulatory capital as reported in their regulatory returns.

It is envisaged that the rules will be changed permanently in the future.

**Ateb view:**

The Government has realised the detrimental impact of the rules for small firms and has agreed to back down. Unfortunately, the lack of forewarning on the issue and the nature of the effective date means that many Mortgage & GI business firms will have already received needless and costly audits.

**Action required by you:**

Firms can take advantage of this waiver by going to the relevant part of the FSA website at: [www.fsa.gov.uk/Pages/Doing/Regulated/Notify/Waiver/Consent/index.shtml](http://www.fsa.gov.uk/Pages/Doing/Regulated/Notify/Waiver/Consent/index.shtml)

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## 11. Why the Simplest of Mortgage Adverts can be Quite Complicated!

**Fact:** Many of the adverts that we see in national and local newspapers are non-compliant.

**Why?** – Mainly because the firms concerned have overlooked the detailed FSA rules and guidance that apply to mortgage advertising. The FSA are actively encouraging compliant firms and the public to whistle blow these non compliant adverts. So they will be caught eventually.

I recall back in November approving a newspaper advert for a firm and afterwards it contained more warnings and regulation than content. Needless to say, the firm decided to withdraw the advert!

This goes to prove that the simplest of mortgage adverts can be quite complicated! Let's look at a couple of example statements and let's assume that the initial draft of the advert contains very little else, except maybe a contact number and firm name together with a statement below.

"Have you been refused a mortgage? – Call us now"  
"We offer mortgages to individuals with CCJs- Free phone XXX"  
"Having difficulty obtaining a mortgage?- Call us now"  
"Worried about mounting debt – let us help"

You may be surprised to learn that all these statements trigger the need for a representative APR that is stated clearly and not in small print.

Independent advisers will always need to enclose information on fees because, by definition, they must offer a "pure fee" option when advising and arranging. This fee needs to be relevant to the advert, therefore you cannot include lower fees than you expect to charge.

There are prescribed risk warnings that need to be included in all cases and others depending on content, for example, lifetime mortgages, foreign currency and debt consolidation.

You will have other rules to check depending on circumstances and, after all this, you still have general catch-all phrases such as "clear, fair and not misleading" and "plain and intelligible language, and is easily legible".

Extremely basic adverts may qualify for an exemption from the above requirements, but these would be limited to something like "we are mortgage brokers" or "we arrange mortgages"

Quite a lot to consider!

**Ateb view:**

Remember a non compliant advert is really an advert to both the FSA (and your competition) that states broadly to the FSA "we are lacking in control and knowledge - please pay us a visit"

**Action required by you:**

This can be a complex area, speak to ATEB if you are unsure. More detailed rules can be found in Conduct of Business Rules Section 3.

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## 12. Do you Give Past Performance Information to Customers?

If the answer is "no" then this article will not apply

On 1 June 2004, the FSA introduced new rules relating to the use of past performance information in financial promotions. Although, we have covered this in previous newsletters we feel it could easily be overlooked (as if you don't have very much to do already!) and, therefore, it is worth covering the key points again. The FSA believes that there is little or no link between historic good performance and future good performance. As such, they do not consider it a useful guide for consumers to predict future returns.

They do not want consumers to place undue importance on past performance data and, therefore, they decided to deal with these issues by setting strict standards in this area.

Examples of past performance could be fund alerts, general issue or client request of fund statistics (e.g. micropal), performance figures issued within suitability reports, seminar presentations etc

The rules now state that if you mention past performance anywhere in your promotion, you must also state – unambiguously and without reservation – that past performance should not be seen as an indication of future performance. (COB 3.8.11 R) – You should no longer use the phrase: "past performance is not necessarily a guide.."

## Do you issue past performance information in a prescribed table?

If you subscribe to the FSA rules and guidance, then you should. For packaged products this means a standardised past performance table. You must not include any additional information in the table or attach anything attached to the table in any way. Below is an example of a standard table

ABC Far East Equity Fund - Discrete annual performance % increase or decrease

1999	2000	2001	2002	2003
Qtr 1 to Qtr 4	Qtr 1 to Qtr 4	Qtr 1 to Qtr 4	Qtr 1 to Qtr 4	Qtr 1 to Qtr 4
10.0%	-12.0%	-18.2%	11.4%	21.5%

There is nothing to prohibit firms illustrating past performance data in other ways as well as the prescribed table (eg graphs), as long as it is separate from the table and the promotion does not give undue prominence to the past performance information overall. There are rules that prescribe presentation of performance for less than 5 years and, where data is available for less than a twelve month period, past performance information may not be included.

### Ateb view:

Agree with the overall philosophy, however I cannot see how a table is clearer than colour coded graphs?? – Although I could be missing something here!

### Action required by you:

Ensure that all past performance information is approved prior to issue. Further information available at COB 3.8.11 R to 3.8.16 G.

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## 13. Mortgage Firms not Complying – Results of FSA Mystery Shop

Many mortgage firms are not yet complying with FSA regulations on the provision of disclosure documents to customers, based on the findings of a mystery shopping by the Financial Services Authority.

Earlier this year the FSA commissioned a mystery shopping exercise as part of its work with the mortgage industry. The FSA was simply looking to see if firms were handing over the two "Key Facts" documents, the Initial Disclosure Document (IDD) and the Key Facts Illustration (KFI).

Findings showed that firms were non-compliant in over half of the mystery shops.

- Just over 1 in 4 firms failed to provide an IDD or a KFI;
- Just under 1 in 6 firms failed to provide both an IDD and a KFI; and
- Just over 1 in 10 provided the documents, but not at the right time.

### Ateb view:

Worrying!! – I would suspect that these firms breaching the rules will now have their cards marked.

### Action required by you:

Be on the lookout for FSA Mystery shoppers & ensure that all sales staff have a compliant written procedure that they understand & follow.

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## 14. FSA to Simplify Handbook and Remove Unnecessary Rules

The Financial Services Authority has recently set out the first phase of its programme to simplify its Handbook and remove unnecessary Rules and Guidance as part of its drive to achieve better regulation for firms.

The FSA are quoted as saying:

***"We are determined to be more rigorous about the costs and burdens that regulation imposes on firms"***

**"We will continue to gather views from all our stakeholders about how other parts of the Handbook can be improved to deliver better regulation in practice."**

The Review covers simplification and streamlining of

#### Anti Money Laundering

The main proposal is to delete the Money Laundering sourcebook (ML) altogether from the Handbook and to replace it with brief, high-level provisions in the Senior Management, Systems and Controls sourcebook (SYSC).

#### Approved Persons Regime

At present, there are twenty-nine CFs and some of these would be merged together or removed.

#### Training and competence

The consultation proposes to reduce the scope of our detailed rules on training and competence, so that they do not apply to individuals who only deal with wholesale (or non-private) customers.

#### Retail Conduct of Business

The FSA wants to ensure that it takes the opportunity of upcoming changes deriving principally from the new Markets in Financial Instruments Directive (MiFID) to review and simplify the sourcebook as a whole.

This less prescriptive approach will put a clear focus on senior management responsibility for systems and controls.

#### **Ateb view:**

Cynically I can't help thinking that they have another motive in mind behind these changes; Are they attempting to ease the regulatory burden on themselves that was self inflicted due to their lack of understanding and foresight into how their rules would eventually impact in the market place? – You decide.

The FSA 'talks a good game' regarding helping their stakeholders – let's see some action.

#### **Action required by you:**

Consultation paper 05/10 'Reviewing the FSA Handbook' is available on the FSA website at: [www.fsa.gov.uk/pages/Library/Policy/CP/2005/05\\_10.shtml](http://www.fsa.gov.uk/pages/Library/Policy/CP/2005/05_10.shtml). They are inviting responses by 31st October 2005.

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## **15.**

The Guides to the FSA Handbook for Small Mortgage and insurance firms has been updated and is now available (together with the guide for small IFA firms) on the FSA website at <http://fsahandbook.info/FSA/usefullinks/handbookguides.jsp>

The guides will help intermediaries to find the rules in the FSA Handbook of Rules and Guidance (the Handbook) that apply to them.

The Guides direct firms to those parts of the Handbook which will usually be relevant to typical small intermediaries with simple organisational structures and which do not carry on any regulated activities other than retail investments, mortgage or insurance mediation activities.

The Guides are only a tool to help firms access the Handbook and to find the rules that are relevant to the firm. It is not a substitute for reading the rules themselves and is not a comprehensive statement of your firm's obligations under the FSA rules.

#### **Ateb view:**

They are well written and offer excellent guidance to small firms.

#### **Action required by you:**

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## 16. Direct Offer Material

You can find the definition of a 'direct offer financial promotion' in the glossary to the FSA Handbook. The definition is very wide and broadly includes all those financial promotions which tell the consumer how to (or how to offer to) enter into an agreement with a firm.

The FSA has specific rules for direct offer promotions: the underlying reason for this is to ensure that consumers are provided with sufficient information to enable them to make an informed decision about engaging in an 'investment activity'.

### Examples of a Direct Offer

- A website containing promotional material, where the consumer can click and submit an application is a direct offer
- A brochure pack which includes an application form is a direct offer

### Unbalanced promotions

A common problem is firms producing unbalanced promotions – for example, where significant risk warnings are only provided in the key features document, rather than explained up front.

### Target audience

The more complex the product the more difficult it will be to provide the information required in a way that will allow the consumer to make an informed decision. In some cases, firms may decide it is not practicable to advertise certain products on a direct offer basis.

### Medium

Firms also need to think about the medium they use; websites are an increasingly popular medium for direct offer promotions. Firms should be aware that the DMD rules mean that direct offer financial promotions can only be issued in a 'durable medium'. Firms could consider suggesting to customers that they might wish to print or save the webpage, when they make an application from it, as a record of the information they based their decision on. It would also be helpful to give instructions to customers on how to print or save the webpages.

#### **Ateb view:**

Direct Offer is a complex area, but can be a lucrative and low risk source of business if time is invested approving the advert and process.

#### **Action required by you:**

COB 3.9 provides details on the further information a firm must include in a direct offer financial promotion. Speak to ATEB if you are unsure.

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## 17. Self-Certification Mortgages & Record Keeping

There have been recent allegations of financial fraud surrounding the application process for self-certification mortgages and, in that connection, the FSA has written to major lenders to determine the adequacy of controls in this area.

The FSA is also reminding firms that they must not assist clients in committing a criminal offence by:

- encouraging them to lie about their income in order to obtain a larger mortgage; or
- turning a blind eye to a self-certification of income when they know it to be false, or there are reasonable grounds to doubt its accuracy

#### **Ateb view:**

Firms should treat this particular area of regulation very seriously.

#### **Action required by you:**

If an existing client of yours applies for a self-certified mortgage you should check that the

stated income is consistent with what you already know about him or her.

If it is a new customer, ask sufficient questions to determine that the income is consistent with their overall circumstances. A well documented fact find will be essential.

In addition to recording the above areas carefully, we would urge firms to document the number of cases (Name, nature & dates) that the firm turns down on self certification basis. This can then be reproduced and may help prove that the firm is selective in this area.

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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](mailto:steve@atebconsulting.co.uk)*

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