


Mortgage Advisers

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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:

	1	2	3	4	5	6	7	8	9	10
Director/Partner	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Compliance / A&O Function	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sales Advisor				✓	✓	✓			✓	
T&C Supervisor		✓		✓	✓	✓	✓	✓	✓	
Back Office										
Mortgage Related (M)					M	M	M	M	M	

1. The Financial Services Compensation Scheme (FSCS) to be overhauled

It has been announced that the FSCS will be expanded significantly and its funding radically overhauled. The annual capacity of the scheme will rise from £3.7 billion to £4.4 billion, under new FSA proposals. This is designed to allow the FSCS to cope with ongoing issues such as endowment mis-selling, as well as with future potential claims.

The scheme's funding is to be changed to a 'widening circle' model, where firms will be classified into one of five broad classes of firm – life and pensions, investment, general insurance, deposit or home finance. Each class will then split into two further sub-classes - providers and intermediaries. Under the 'widening circle' model compensation costs arising from a particular 'sub-class' will initially be borne by those firms. However, beyond a certain limit any further costs will be shared among the broader class of firms – both providers and intermediaries.

The changes for contribution groups, thresholds and the cross-subsidy through the wider general retail pool are proposed to come into effect on 1 April 2008. The FSA will consult later this year on proposals for setting the amount each firm will pay. This will be based on a percentage of the income from each contribution group they do business in and will apply from 1 April 2009.

Ateb view:

The proposals appear to be fairer as a firm's contribution will, after a transitional period, be calculated according to its relevant income from its activities and products.

Action required by you:

You can see how the changes will affect your type of firm by looking at the illustrations in Annex 3 of the current consultation paper. These show how current fee groups will be transferred in the proposals, and what the FSCS fees could look like for different firms if compensation needs to be paid.

More information can be found at:

http://www.fsa.gov.uk/pages/library/policy/cp/2007/07_05.shtml

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2. Changes to the T&C Sourcebook

Proposed changes come into force on 1 November 2007 to coincide with changes required by the Markets in Financials Instruments Directive (MiFID).

The focus is on more principle based regulation (MPBR), and being more 'outcome' based. It is aimed at streamlining, but the FSA emphasises it does not mean a relaxation of standards. The FSA's long term aim is to remove the T&C sourcebook altogether and rely on high level principles. There will not be any transitional provisions because it does not apply any new rules. Proposed changes include allowing firms to determine their own requirement for timescales for passing exams. The two year rule is being removed.

Ateb view:

There's nothing very controversial; it is aimed at slimming down the guidance and reinforcing their more principles based approach. We cannot see there being a need for any significant procedural changes for firms on T&C. The exam requirements stay the same as does the need to have an appropriate system to assess skills, knowledge & experience on an ongoing basis.

Action required by you:

We are keeping a watch on this and will provide more details when we can.

More information can be found at:

http://www.fsa.gov.uk/Pages/Library/Policy/CP/2007/07_04.shtml

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3. TCF update – FSA expect six outcomes

To stimulate action by firms that were being slow to appreciate the significance of TCF, the FSA introduced the March 2007 deadline. They said that all firms should be at least in the 'implementing' phase of their TCF work in a substantial part of their business by this date. It's worth noting that the March deadline is not a rule. It is a helpful supervisory tool that the FSA use to maintain focus and momentum.

In a speech given by Sarah Wilson, Director Retail Firms Division, on 19 March 2007, she covers the outcomes the FSA are looking for following a successful TCF initiative;

Six Outcomes:

1. The fair treatment of customers is central to all firms' corporate culture.
2. Products and services marketed are designed to meet the needs of identified consumer groups and are targeted accordingly.
3. Consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale.
4. Consumer advice is suitable and reflects their needs, priorities and circumstances.
5. Consumers are provided with products which perform as firms have led them to expect and the associated service is both of an acceptable standard and as they have been led to expect.
6. Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim or make a complaint.

Ateb view:

All firms by the end of this month should be well on the way to implementing changes that they have decided for themselves they need to implement in order to comply with the FSA Principles.

Action required by you:

Sarah Wilson's speech can be found at:

http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2007/0319_sw.shtml

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4. FSA fines firm over poor information gathering

The FSA has fined an advisory firm £10,500 for failing to properly monitor the quality of sales within an Appointed Representative firm. It did not record sufficient "Know Your Customer" information to be able to demonstrate suitability. They lacked enough detail on client objectives, attitude to risk and affordability. Suitability letters were also found to be inadequate and there were failings in its T&C scheme. The FSA was concerned that the firm had not heeded its findings from a previous visit and also required the firm to appoint an industry expert to carry out a past business review.

Ateb view:

This again shows the importance of strong fact finding at the outset. It is impossible to show that a recommendation is suitable if you cannot show that you have gathered enough personal information on which to base the advice. Distant memories of client discussions are not enough. It must be well documented. To scrimp in this area is false economy. Not only has this firm got to pay the fine, it has the cost impact on its reputation and of financing a third party review of its business. Interestingly, the FSA's action was for breaches of high level principles, rather than rules. Therefore, for them, the burden of proof could be said to be lower because it has only to prove that the outcomes of the firm's actions are not to the standards it would expect. However, it is a higher hurdle for firms because even if you have technically complied with a rule, the FSA can still find that you have not done enough, not acted in the right way or not treated the customers fairly.

Action required by you:

Ensure that your file checking systems are robust and make changes as necessary.

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5. FSA issue Protection Payment Insurance (PPI) questionnaires

PPI is a generic term that includes, but is not limited to, policies with one or more of the following types of benefits; accident, sickness, unemployment, personal accident and unemployment.

Following on from FSA work during 2006, a number of firms have now received a questionnaire on PPI. The FSA may decide to visit your firm following receipt of the completed questionnaire.

The questionnaire is part of a new phase of work to determine the extent of changes required to the sale of PPI products. The four main elements of the programme involve visits to firms, enforcement action where appropriate, information aimed at consumers, and a review of current FSA rules on PPI.

Ateb view:

Hopefully the FSA work will drive providers to simplify their products and make the ability to claim more realistic. For many firms however, there is a counter argument to the FSA work; We would question whether most high street advisory firms actually advise enough PPI.

Action required by you:

In a nutshell you need to understand the eligibility definitions of any PPI sale and ensure that the product meets the demands and needs of your client and that you communicate the sale in a compliant and clear manner.

More information is available at:

www.fsa.gov.uk/pages/Doing/small_firms/insurance/practice/ppi.shtml

You may find the following document useful to check your current practices

http://www.fsa.gov.uk/pubs/other/factsheet_extras.pdf

Also if you would like some more background reading (Original OFT report) behind then changes then go to:

http://www.offt.gov.uk/shared_offt/reports/financial_products/oft869.pdf

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6. Changes to MCOB - Home Purchase and Reversion Plans

From 6 April 2007, MCOB applies to activities carried on for three types of product: regulated mortgage contracts (which include lifetime mortgages), home purchase plans and home reversions. Together, these products are referred to under the umbrella term 'home finance transactions' and there will be a number of related new terms in the FSA sourcebook and glossary.

The small number of firms that have varied their permissions to include Home Purchase and Reversion Plans will find the link below useful.

Ateb view:

None - for information only

Action required by you:

More information including FAQs can be found at:

http://www.fsa.gov.uk/pages/Doing/small_firms/mortgage/home_finance/index.shtml

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7. Changes to Mortgage Disclosure Documents from 6th April 2007

Following the introduction of regulation of 'Home Purchase and Reversion Plans', as mentioned in the previous article, firms will need to alter their IDD or CIDD from 6th April 2007.

Firms who have applied to vary their permission will need to remove reference to Home Reversion Schemes being unregulated and not covered by the regulatory protections.

However, the majority of firms that have not varied their permission will need to amend their document to remove reference to 'Home Reversion Plans'

Ateb view:

None for information only

Action required by you:

Templates for disclosure templates

http://www.fsa.gov.uk/pages/Doing/small_firms/mortgage/disclosure/index.shtml

Please note however as at March 26th, the FSA have not updated their templates for the CIDD as it still makes reference to home reversion being unregulated.

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8. FSA letter on Lifetime Mortgages

You may have received a letter from the FSA in February headed: "Lifetime Mortgages – firms carrying out low volumes of business".

The FSA's frequent warnings about this form of business must give rise to the thought that those who provide advice, but have not made an in-depth study of the subject and have insufficiently robust systems in place, may well be building up future problems for themselves.

Ateb view:

No surprises within the letter. The same principles can be applied to other high risk areas of business.

Action required by you:

If you have not seen this letter we recommend that you read it. The letter can be found at: http://www.fsa.gov.uk/pubs/other/letter_lifetimemortgages.pdf

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9. FSA Issues Findings on Quality of Mortgage Advice Review

The FSA carried out mystery shopping, visits and questionnaires between June and October 2006 and published disappointing results to the industry - ¾ of firms failed to hit the benchmark. Key recommendations from the FSA:

- Ensure all advisers are appropriately qualified and review the effectiveness of your T&C procedures
- There needs to be sufficient evidence on file of research to show why the product and provider were recommended
- Evidence must be retained of penalties involved in switch / replacement business cases
- Make sure that disclosure documents are accurate and clear
- Have KPIs / management information in place to ensure trends can be identified
- Regular file checks need to be in place to show oversight of quality of sales
- Check processes to be able to demonstrate affordability – adequacy of the fact find

Ateb view:

The high level of failures found in this review is disappointing. You cannot rest on your laurels, and need to keep systems and controls under regular review. Current low levels of complaints should not be taken as the only indicator of effective compliance! Regular controls and oversight are essential. No doubt the FSA will do the rounds again to evaluate whether firms are heeding these warnings – so act now and avoid future issues.

Action required by you:

More information can be found at:

http://www.fsa.gov.uk/pubs/newsletters/ma_newsletter_feb07.pdf

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10. Accounting for Goodwill – 9 months and counting

Goodwill is broadly the difference between the price paid by a company for a business and the book value of that business. It is allowed to be treated as an intangible asset on the acquiring firm's Balance Sheet.

The FSA have allowed a 3 year period for firms with Goodwill on their Balance Sheets to write-off the Goodwill and / or boost tangible Capital Resources in order to ensure the MIPRU 4 rules are complied with from 14 January 2008.

From this date, Goodwill will have to be deducted from a firm's Capital Resources and the FSA will expect the firm to maintain adequate resources after the deduction of Goodwill.

Firms should be devising or implementing plans that will address this issue and ensure sufficient Capital Resources from 14 January 2008 onwards after Goodwill is deducted.

Such plans could include the use of a subordinated loan (which is a certain type of debt capital from one party to another allowed by the rules for inclusion within the Capital Resources), but firms should note the requirements of MIPRU 4.4.7 R to 4.4.9 G which must be complied with in order for the subordinated loan to be eligible for inclusion in the Capital Resources.

There are other alternatives that could be considered and firms should examine all options.

Ateb view:

None - for information only

Action required by you:

ATEB strongly recommends that those firms affected by the change in treatment of Goodwill take immediate steps to address the situation and, where necessary, take professional advice. ATEB are aware of accountants who specialise in this area and will gladly make a referral.

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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

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