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Taking the stress out of compliance

ATEB Consulting Newsletter 52 - March 2009

General Insurance Brokers

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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
Directors/Partners	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Compliance / A&O Function	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Broker / Account Executive	✓		✓		✓	✓		✓	✓	
T&C Supervisor	✓		✓		✓	✓		✓	✓	
Back Office	✓				✓	✓				

1. TCF Assessments

Here is a flavour of what you can expect from an FSA TCF visit or by desk based monitoring.

Questions:

- What does TCF mean to you and your customers?
- How have you identified TCF gaps?
- How do you maintain knowledge and competence?
- What methods do you use to improve processes?
- Describe your sales process

- How do you assess the quality of advisers and their work?
- Who does the file checks?
- How do you take TCF into consideration in your day-to-day dealings with customers?
- What information do you gather about customers?
- How do you use this information from a TCF perspective?
- What controls do you have in place to ensure TCF?
- How do you know these controls are working?
- What review processes do you have in place to ensure the controls are working?
- Do you use customer surveys?

Evidence:

- Looking for evidence to back up all your answers e.g.
- TCF Gap Analysis
- TCF Management Information (MI)
- Adviser competence records (tests go down well)
- File check results and importantly, follow through

Brownie Points:

- Show your gap analysis and any other audits.
- Show that you review these periodically – built into your compliance monitoring plan.
- Be able to produce good quality MI.
- Most important of all, you must be able to demonstrate that you have acted upon and made changes because of your gap analysis, your MI, your complaint trends, your customer survey results, etc. Don't just answer the question - provide examples.

ATEB view:

This is not a comprehensive or exhaustive list, but by now, with all you've seen and heard on TCF, you must be seeing the key issues.

Action required by you:

Please do not think that this applies only to 'big' firms. All of this applies to you as well.

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2. Client Money Audit

This is an easy one to miss!

FSA client money rules state that:

A client money audit is required of all general insurance intermediaries (irrespective of whether they are a limited company, partnership or sole trader) who:

- hold client money in a non-statutory trust client bank account;
- or**
- have held more than £30,000 in a statutory trust client bank account at any time (even if only for one day) in the client money audit reporting period.

A firm should review regularly whether it needs a client money audit and appoint an external auditor to carry out the audit in accordance with Handbook requirements in CASS 5 and Chapter 3 of the Supervision Manual.

Please note that a firm is **not** exempt from the requirement to arrange a client money audit even if:

- it is able to rely on the rule waiver which removes the need for the firm to have its accounts audited (the small firm audit exemption);
- or**
- it does not need to have its accounts audited because it is a partnership or a sole trader.

Client Money Rules Re-Cap

The client money rules are to protect customers' money. They ensure a clear separation between money that belongs to your customer and money that belongs to your firm. If you receive and hold customer premiums, claims money or premium refunds you have three options:

1. You can hold money as agent for the insurer (commonly known as 'risk transfer') by entering into a written agreement with the insurer. In these circumstances, you will not be considered to be holding client money.
2. If you are holding client money you must strictly segregate it by transferring it to a client bank account that is the subject of a statutory or a non-statutory trust. This bank account cannot be used to reimburse other creditors if you become insolvent.
3. You can hold or 'co-mingle' money held as agent for an insurer with client money in your client bank account (a statutory or non-statutory trust). To co-mingle, you must obtain the insurer's written consent and acceptance that its interest under the trust is 'subordinated' to that of your client. What this means is that your client is reimbursed before the insurer if you become insolvent or if there is any misappropriation of the

money.

FSA Tools

Use the client money flowchart to get a quick explanation of what client money is and action your firm may need to take to protect it. [Client_money_flowchart](#) [PDF]

You can use the FSA's client money health check to assess quickly your understanding of client money and any potential weaknesses in your firm. [Client_money_healthcheck](#) [PDF]

The FSA have provided an in-depth guide which gives a step-by-step explanation of their client money requirements, there is more detailed information in chapter 6 of the client money guide regarding the Audit requirements. [Client_Money_Guide](#) [PDF]

ATEB view:

Are you correctly protecting your client money in accordance with the FSA requirements? The likelihood is you are, however it is always prudent to check your client accounts to ensure they don't fall foul of the rules.

Action required by you:

Check out the links above if you are in any doubt.

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3. Deregulation of Freight Forwarding, Removal and Self-Storage Insurance

The deregulation of freight forwarding, removal and self-storage insurance is expected to come into effect from 6 April 2009. If your firm is authorised to transact open cover freight forwarding and storage business and does not transact any other regulated activities, you must apply to the FSA to cancel your permission before 31 March 2009.

Note that appointed representatives will also be affected.

ATEB clients should refer to their consultant for guidance on cancelling permissions.

ATEB view:

For information only.

Action required by you:

If you, or your appointed representatives, are effected, you will need to take action.

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4. Changes to Professional Indemnity Insurance Indemnity Levels

Intermediaries which give advice on or sell insurance based products (both investment and non investment types) will be subject to new PII minimum indemnity limits from 1 March 2009. The limits have been changed, as required by the Insurance Mediation Directive (IMD), in line with the increase in the European Index of Consumer Prices, over the five year period since the IMD's entry into force.

The minimum limits for firms will be raised to €1,120,200 for a single claim (currently €1 million) and €1,680,300 in aggregate (currently €1.5 million). PII indemnity limits for firms not subject to the IMD remain unaffected

FSA expects PII cover taken out in a currency other than the Euro to meet the minimum indemnity limits when converted into Euros both when the policy is first effected and at renewal.

ATEB view:

For information only.

Action required by you:

Check your PI Policy and refer issues to your PI broker.
Even if you are mid-term or have just renewed, you need to increase your limits.

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5. Recording of Telephone Calls

Rules to tackle market abuse come into force from March 2009. They require only certain firms

to tape calls. Some telecommunications companies are targeting firms to get them to buy their services and in some cases they are misrepresenting the rules. The FSA knows there has been some misunderstanding of the rules which has meant that some firms believe they are caught by the rules and have assumed that all calls need to be taped.

The FSA has received numerous calls from financial advisers who were targeted by technology providers informing them that they are within the scope of the proposals and would be required to record their calls. **This is incorrect.** They have also seen some advertisements which completely misrepresent the rules and try to persuade firms that they should buy extra services. **These services are not required by FSA rules.**

What types of firm are outside the scope of the rules?

The rules exclude:

- retail financial advisers,
- insurance brokers,
- mortgage brokers,
- solicitors,
- estate agents and
- those receiving and executing loans.

What types of product are outside the scope of the rules?

The rules do not apply to:

- insurance products;
- dealing in the units of most collective investment schemes;
- corporate treasury activities; and
- corporate finance business.

What types of product are included?

The rules apply to products included in the market abuse regime. These are qualifying investments (include shares, bonds, options and futures) traded on a prescribed market (or investments that are related to these investments). For example, markets operated by EDX London Ltd, ICE Futures Europe, LIFFE, London Stock Exchange plc, PLUS markets plc, SWX Europe Limited, The London Metal Exchange and other EEA regulated markets.

ATEB view:

Looks like there are going to be a few disappointed phone companies.

Action required by you:

While not required by the rules, this is nevertheless something to consider, particularly as technology becomes cheaper. It would certainly provide increased risk management.

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6. Revised TCF Workshop Programme

The FSA are accelerating the TCF programme – more regions, more workshops, more firms!

ATEB view:

For information only.

Action required by you:

Be prepared.
Watch out for your invite.

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7. Unfair Terms in Consumer Contracts Regulations 1999

Under the above regulations, the FSA has the right to challenge firms who are using terms that the FSA deem to be unfair.

On the FSA website, you will see what is referred to as an 'Undertaking' [here](#) in which the FSA detail what they consider to be one firm's unfair use of terms in a client agreement.

The agreement required the client to sign on the basis that: *"I confirm that I have received, read and understood this agreement and agree to the terms set out within".*

The FSA state that *"a term is deemed to be unfair under Regulation 5 of the Regulations if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract, to the detriment of the consumer. Firms should draft contracts in plain and intelligible language and must also give consumers a proper opportunity to read all of the terms of the contract. Consumers should check the details of the contracts*

they enter into. But a contract term requiring consumers to declare that they have read and understood the terms of the contract is likely to be unfair because it binds consumers to terms which, in practice, they may not have any real awareness of."

The firm concerned has amended its terms to: *"This is our standard client agreement upon which we intend to rely. For your own benefit and protection you should read these terms carefully before signing them. If you do not understand any point please ask for further information."*

The firm also agreed not to rely on the original term in an unfair way in contracts with existing clients.

ATEB view:

We suspect that similar terms will exist in numerous agreements.

Action required by you:

Review all your agreements.

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8. Surgeries

Not too many of you will have experienced FSA inspection visits. The FSA has been running surgeries across the country and we would suggest that it would be in your best interests to attend a surgery if they occur in your area.

In March, they took place in Stoke on Trent, Derby and Leicester. We suggest you keep an eye open for more convenient venues.

Surgeries are free and they give you the opportunity for a one-to-one chat with an FSA supervisor and give you the opportunity to discuss any regulatory issue informally.

ATEB view:

While you may be thinking – ‘Have you gone mad my young compliance consultant’ – we feel you would benefit!

Action required by you:

Something to consider.

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9. Data Protection Licence For Self-Employed Advisers

One of our fellow compliance consultancy firms has identified this issue.

They have confirmed with the Information Commissioner that self employed IFA's are required to notify and be registered in their own right. They would not be covered under a company registration.

If your advisers are self-employed, they must register directly. The cost is £35 and you can point the relevant staff to a step by step guide [here](#).

They place themselves at risk if they do not register, as well as possibly providing a problem for the firm.

The issue has also been raised about the situation where administration work is contracted out. The principle is the same because they have access to confidential information and should therefore be registered in their own right.

ATEB view:

For information only.

Action required by you:

Self-explanatory.

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10. Systems & Controls Rule Changes

On 1 April 2009 changes to the FSA's Senior Management Arrangements, Systems and

Controls sourcebook (SYSC) will come into force. The changes will mostly affect mortgage and insurance intermediaries and IFAs, although they apply to all firms not subject to the Markets in Financial Instruments or Capital Requirements Directives (MiFID), except for insurers.

Currently, you are subject to SYSC 2 – senior management arrangements – and SYSC 3 – systems and controls. From 1 April 2009 the FSA will apply the 'common platform' (SYSC chapters 4 to 10) to these firms instead of the requirements in SYSC chapters 2 and 3.

The changes focus on such areas as outsourcing, managing conflicts of interest and training and competence.

The key change affecting IFAs will be the requirement to have a Conflicts of Interest policy in place.

The FSA are making these changes in line with their move to principles-based regulation, creating one common set of high-level provisions for all firms for oversight and systems responsibilities, which can be applied flexibly and proportionately.

All firms should familiarise themselves with the changes and take action if necessary. See [here](#).

ATEB view:

This will not affect you greatly.

Action required by you:

Nevertheless, you need to be aware of the requirements and make any necessary changes.

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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 Huw Reynolds email huw@atebconsulting.co.uk.

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Contact Us:

T: (0191) 285 4938
M: (07957) 384 575
E: huw@atebconsulting.co.uk
W: www.atebconsulting.co.uk

ATEB consulting is a trading name for ATEB Business Solutions Limited
Registered in England & Wales Reg. No: 5075208
2 Stoneyhurst Road West, Gosforth, Newcastle upon Tyne, NE3 1PG
VAT Registration: 755 4601 27

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