



Taking the stress out of compliance

ATEB Consulting Newsletter 57 - July 2010

Investment Firms / Mortgage Brokers

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Ladies & Gentlemen

Please find enclosed the latest compliance and industry news.

As usual, sit 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
Directors/Partners	✓	✓	✓	✓	✓	✓	✓	✓
Compliance / A&O Function	✓	✓	✓	✓	✓	✓	✓	✓
Money Laundering Officer				✓			✓	✓
Advisers & Trainees	✓	✓	✓	✓			✓	✓
T&C Supervisor	✓	✓	✓	✓	✓		✓	✓
Back Office			✓	✓			✓	
Mortgage Related (M)				✓	✓		✓	

1. RDR Business Planning Workshops

The FSA has said that leading up to RDR implementation:

"We intend to undertake further thematic supervision in the transition, and we will also be testing firms' preparedness for the RDR at intervals before 2012 by gathering data from firms."

And:

"The data gathered will help identify those firms not taking any, or insufficient action, to prepare for the new requirements and those firms at greatest risk of exploiting the pre-2012 situation."

And:

"Our new rules will mean that many firms will need to fundamentally change their business models."

And:

"We want to ensure, through our preparedness reviews, that firms have plans in place to move to our new requirements and are ready to comply by the end of 2012."

With these clear signals in mind, **ATEB will be running RDR business planning workshops commencing with the first batch in late September / early October.**

The initial workshops will focus on the key RDR elements and are designed to help you to formulate the basis of an implementation business plan. The workshop (in typical ATEB style) will also aim to put to bed the myths created within the press and give you the true facts around RDR.

Dates and venues together with costs will be issued shortly.

ATEB view:

It is our belief that many firms may underestimate the RDR impact and the amount of work that needs to be undertaken prior to 2012.

Action required by you:

We strongly advise you to attend and recommend that you send 2 key players from your firm (i.e. "RDR champion" plus a deputy) to maximise understanding and support continuity and consistency.

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2. RDR – Summary of where we are?

There is so much information flying around about RDR and so many FSA papers being published, that it is really difficult to see the woods from the trees. To help you create a scenic path through the forest, here is a brief synopsis of the four broad elements that constitute RDR, together with some considerations (although I'm sure you can think of more).

<p style="text-align: center;">Remuneration</p> <p>Advisers to set charges in agreement with client ('adviser charging')</p> <p>To be agreed early in sales process and before identifying suitable products</p> <p>No commission option (for Retail Investment Products)</p> <p>Commission to remain for legacy business and protection business</p> <p>Advisers can only receive ongoing remuneration for a pre-agreed, defined service</p> <p>Use of platforms must not undermine RDR adviser charging objectives (clear description of charges, avoidance of unnecessary switching)</p> <p>Removal of commission bias from the GPP market - not influenced by product providers; full remuneration disclosure; employers negotiate and agree cost of adviser services</p> <p>Pure protection not subject to adviser charging rules but firms must explain how they are remunerated and disclose commission</p>	<p style="text-align: center;">Considerations</p> <p>How much are you going to charge and for what?</p> <p>How will this be communicated and agreed with clients?</p> <p>Will you have scaled charges e.g. lower proportionate charge for larger investments?</p> <p>High initial charges will be less common and there will be less cross-subsidy by larger cases to compensate for lower earning smaller cases</p> <p>Client profitability will therefore be more important</p> <p>Hence the need for detailed client bank analysis (MI) and client bank segmentation</p> <p>Efficient processes will be key to profitability</p> <p>You may need to consider less complicated processes (simplified advice, direct offer, etc) for simplistic advice scenarios</p> <p>Will you need to consider 'discarding' some clients?</p>
<p style="text-align: center;">Clarity of Services</p> <p>Service to be 'Independent Advice' and/or 'Restricted Advice' (non-independent advice)</p> <p>Independent advice to consider all Retail Investment Products and providers (necessitating enhanced knowledge and CPD)</p> <p>'Restricted Advice' to include 'Simplified Advice' (e.g. decision trees)</p>	<p style="text-align: center;">Considerations</p> <p>Will you be able to offer a truly independent service given the breadth of knowledge and expertise required?</p> <p>Have you considered offering restricted advice for some products?</p> <p>Have you considered offering simplified advice services?</p>

<p>Execution-only (non-advised) services to be allowed</p>	<p>Will your advisers be general practitioners or will expertise be spread across the firm?</p> <p>The use, scope and appropriateness of platforms will need careful consideration; a 'one-fits-all' scenario is unlikely to be tolerated</p> <p>Clear and transparent client propositions will be required, describing scope of service and transparent remuneration structures</p>
<p>Professional Standards</p> <p>All advisers to be qualified to a new, higher level, with qualification gap filling required</p> <p>Different qualification routes available</p> <p>Higher standards for CPD (structured, minimum hours) over and above qualification gap filling</p> <p>Advisers selling pure protection under ICOBS may be subject to minimum qualifications</p> <p>Introduction of a code of ethics for advisers</p> <p>Standards to be enforced by a Professional Standards Board (FSA)</p> <p>Firms required to hold a Statement of Professional Standing (awarded by accredited bodies)</p> <p>Adviser qualifications to be published on FSA Register</p>	<p>Considerations</p> <p>What qualifications are most appropriate for advisers?</p> <p>The 'easiest' route may not be the 'right' way to the diploma as qualification gap filling will be required</p> <p>Are advisers on track to achieve diploma?</p> <p>Is there a need for a structural re-organisation, for example, more para-planners?</p> <p>How will you get new advisers qualified?</p> <p>Post-RDR T&C requirements will increase significantly – for example, detailed training needs analysis, structured in-house and external training, etc</p> <p>Poor T&C systems may result in loss of Statement of Professional Standing</p>
<p>Prudential (Capital Adequacy) Requirements</p> <p>Increase in base requirements based on firm's expenditure</p> <p>Staggered implementation from 2011 (4/52th x expenditure), through 2012 (8/52th x expenditure) rising to 13/52th x expenditure by 2013</p>	<p>Considerations</p> <p>Do you understand what constitutes expenditure?</p> <p>Have you estimated your requirement?</p> <p>How will you meet the requirement?</p> <p>This may necessitate tying up significant amounts of cash – is there a better way to do this (talk to your accountant)?</p>

Key Reading	
FSA RDR Page	http://www.fsa.gov.uk/smallfirms/your_firm_type/financial/library/rdr.shtml
PS09/19 – Review of the Prudential Rules for Personal Investment Firms	<p>This paper sets out final rule changes to prudential requirements arising from CP08/20.</p> <p>http://www.fsa.gov.uk/pages/Library/Policy/Policy/2009/09_19.shtml</p>
PS10/6 – Distribution of retail investments: Delivering the RDR – feedback to CP09/18 and final rules	<p>This paper contained final rules on describing and disclosing advice services and Adviser Charging. It also set out the position on Simplified Advice.</p> <p>http://www.fsa.gov.uk/pages/Library/Policy/Policy/2010/10_06.shtml</p>
DP10/2 – Platforms: delivering the RDR and other issues for discussion	<p>This discussion paper sought views on changes to the regulation of platforms, to support the RDR remuneration objectives and to address issues identified through thematic work and wider experience.</p> <p>http://www.fsa.gov.uk/pages/Library/Policy/DP/2010/10_02.shtml</p>
CP10/12 – Competence & Ethics	<p>This paper included proposals on ethical standards which apply to investment advisers within scope of the RDR.</p> <p>http://www.fsa.gov.uk/pages/Library/Policy/CP/2010/10_12.shtml</p>
PS10/10 – Delivering the RDR: Corporate	<p>This paper contained final rules applying the consultancy charging to the corporate pensions market for group personal pensions, group stakeholder</p>

Pensions – feedback to CP09/31 and final rules

pensions and group self invested personal pensions (referred to here as GPPs).

http://www.fsa.gov.uk/pages/Library/Policy/Policy/2010/10_10.shtml

ATEB view:

There is more to do than you may think!

Action required by you:

We recommend that a strategic business plan be implemented and attendance of the initial ATEB RDR workshop.

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3. Disclosing Potential Disadvantages in Suitability Letters/Report

Did you know that whereas the rules regarding the content of suitability letters/reports are mostly generic and high level, that there is a specific requirement (in accordance with FSA handbook rules COBS 9.4.7(3)) that states that:

The suitability report must:

Explain any possible disadvantages of the transaction for the client.

ATEB view:

Now you know!

Action required by you:

Ensure you include this information within your suitability reports. Alternatively, you may simply wish to consider enrolling for a free 14 day trial for the ATEB suitability system!

<http://www.atebsuitability.co.uk/site/Product/FreeTrialSignUp/tabid/68/Default.aspx>

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4. FSA Handbook

The FSA is keen to promote the use of its personalised FSA Handbook. In theory, this is a good idea as it will tailor the handbook so that it matches the permissions and dynamics of your firm. It will be much shorter than the full handbook as it removes most of the material that is irrelevant.

Interestingly, if you have followed the instructions as dictated by the FSA screens and your firm breaches a requirement in the handbook because you had reasonably relied on the fact that it isn't in your personalised handbook, the FSA will not bring disciplinary action.

(Please note that the tool does not take account of any requirement or waiver which modifies the application of the Handbook for your firm and remember that the definitive version of the Handbook for legal purposes remains the full legal instruments published on the FSA website.)

ATEB view:

In principle this sounds great although we do know that the process is error prone and we have encountered problems in setting up personalised versions. As such we tend to stick to the tried and tested, but long-winded, full version.

Action required by you:

You're free to have a go to create your own version, so good Luck! Check out the attached link:

<http://fsahandbook.info/FSA/servlet/PersonalControllerServlet?submit=instr#2>

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5. Mortgage Market Review

Approved Persons regime

The FSA are undertaking a series of Mortgage Market reviews. One of the key issues arising that affects you focuses on Approved Persons.

An approved person is someone who is approved by the FSA to perform a controlled function for an authorised firm. Controlled functions are jobs or responsibilities within a business that either have a significant influence on a firm's affairs, or are customer facing, or handle client assets.

To be approved to perform a controlled function, an individual must satisfy the FSA that they meet and maintain the criteria for approval (the fit and proper test (FIT)) and perform their controlled function in accordance with a set of standards (the Statements of Principle and Code of Practice for Approved Persons (APER)).

The proposed changes mean the introduction of a new controlled function for individuals dealing with customers (CF31) – effectively the mortgage adviser.

The compliance oversight function that currently applies to IFAs will now also be required for home finance intermediaries and home finance providers. Firms will be required to have in place a named individual, likely to be a director or a senior manager, who is responsible for compliance and compliance oversight of the firm's home finance activities.

The target date for beginning to accept applications is 31 March 2011.

Responsible Lending

Another market review deals with responsible lending.

The FSA is proposing that lenders must undertake and be responsible for verifying income for all mortgage applications by obtaining reliable evidence of the income stated on the mortgage application form. This will include self-employed borrowers, who like everyone else, will have to prove that they have the income to support the sums they are borrowing. Lenders must make an active assessment of affordability in every case, through a consideration of the applicant's income and expenditure.

In response to concerns about interest-only mortgages, the FSA are re-considering whether lenders should only sell interest-only mortgages where there is a definite method in place for repaying the capital.

Both these proposals could have a significant impact for advisers.

Of less direct interest perhaps to intermediaries but also included in the review are proposals to:

- Introduce additional requirements on those firms lending to borrowers with an impaired credit history;
- Apply more robust regulation of non-bank lenders;
- Strengthen the rules on arrears charges and how lenders calculate charges.

ATEB view:

Some of these changes could have a significant impact, in particular the proposals for interest-only mortgages.

Action required by you:

To find out more about the mortgage market review, go to

http://www.fsa.gov.uk/smallfirms/resources/one_minute_guides/64_mortgage_rvw.shtml

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6. Complaints Handling

The FSA have produced a 1 minute guide to handling complaints.

Whilst their focus is on the banking industry they have kindly encompassed small firms into this category. This is worth a read and is good refresher training for all staff who could be potentially involved in the procedural aspect.

ATEB view:

Good CPD material

Action required by you:

Check out the link http://www.fsa.gov.uk/smallfirms/resources/regulation_roundup/index.shtml

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7. Treating Customers Fairly

Whilst some of you lucky firms are only now going through your TCF assessments and could currently be in for a "random" visit from the FSA, the rest of you will already "be wearing the T-Shirt".

This is just a gentle reminder to those of you who think it's now ok to breathe out and file away those TCF documents. Sadly it isn't. TCF should be seen as an ongoing commitment by all firms and should appear regularly on the agendas of management meetings.

Your TCF meetings should now incorporate the whole of the firm's MI (Management Information) and you should be able to clearly demonstrate (to the FSA if required) information such as, business coming into the firm, trends in business received, NTU's, Product Providers etc. You would also be expected to demonstrate that you regularly review your firms' internal processes and that customer satisfaction is high on your agenda.

ATEB view:

TCF is how your firm operates as an organisation and should now form part of your firms' culture.

Action required by you:

ATEB recommend that if you haven't already done so, you make a start on reviewing your firms Gap Analysis, alternatively this should form an integral part of your annual compliance plan.

Here is a useful reference to the FSA website:

<http://www.fsa.gov.uk/smallfirms/tcf/index.shtml>

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8. Small Firms Financial Crime Review

The FSA have published their findings on "small firms' financial crime systems and controls" following a detailed review of 159 firms.

The aim of the review was to assess firms' awareness of the requirements under current legislation taking into account:

- Proceeds of Crime Act 2002 (POCA),
- Terrorism Act
- Money Laundering Regulations 2007
- And, where applicable, the role of the Money Laundering Reporting Officer (MLRO).

Whilst the FSA were encouraged to see that small firms appeared to have paid attention to financial crime issues they still considered firms to be weak in their assessment and mitigation of financial crime risks.

ATEB view:

You need to ensure that you have appropriate processes and procedures in place to cover the issues in this review. Speak to your ATEB consultant for more information.

Action required by you:

[Click here](#)

There is some very good material here, particularly for CPD, and includes an anti-money laundering self-assessment tool and a one-minute guide to the security of customer data.

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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 info@atebconsulting.co.uk.

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