

‘Going FCA Direct?’

If you are an adviser looking to set up your own advisory firm, the decision whether to join a network or operate directly with the FCA is a major part of your business plan. This equally applies to advisers who are already members of a network and are reviewing whether they should remain with their existing network provider, change networks or apply to be directly authorised with the FCA.

Regardless of the position you are in, it is imperative that time is spent researching so that you make the correct decision for you and your firm, due to the costs and time spent setting up the correct procedures for whichever route you take.

This document aims to:-

- Provide you with the questions you need to ask yourself to help come to the correct decision
- Outline the process you will need to follow if you decide to be directly authorised by the regulator
- Confirm how CATS can help you both applying for FCA approval and on-going compliance support

Being a member of a network

Advantages	Disadvantages
Feeling of safety as the network are responsible for the compliance of their members.	May have to do processes which are not relevant to your business/customer base.
The network is responsible for keeping on top of any FCA guidance and interpreting the rules to follow.	Your interpretation of the FCA rules may be different to the networks or the network takes a stronger stance on things than the FCA actually require.
Sharing of best practice ideas with fellow members.	May have different people conducting your visits every time thereby having lack of continuity.
Support in numbers.	Different person answering queries via the helpdesk.
Research resources available.	Possibly high costs - % of turnover
Possible enhanced commissions for protection business	Cannot be an adviser for more than one firm
Usually there is a large website with a large amount of material.	
Complaint Handling	
Technical support	
No need to conduct online FCA financial returns	

Being directly authorised

Advantages	Disadvantages
Control over the business – not answerable to anyone.	You are responsible for the compliance of the firm.
Processes are bespoke to the firm and targeted towards your customer base.	You may feel exposed.
Cheaper costs.	Fear of the regulator coming to your office.
You can choose whether to have compliance support.	Online FCA financial returns
Participate in the success of business.	
You are free to use whatever providers and funds that you wish	
Can advise on areas of business which a network may restrict such as ETFs, Unregulated Collective Investment Schemes, etc. (subject to the firm having the correct permissions for the area that you wish to advise upon).	
May be perceived to be totally independent and not 'owned' by another body.	
Business acquisition may be easier to conduct without reference for approval to a network.	
Any exit strategy may be easier to conduct.	

Questions to ask yourself

- Am I concerned that I will miss compliance jobs?
If yes then the route to take may be to be an appointed representative. However being an appointed representative does not absolve the firm totally from compliance jobs. There will still be procedures to follow and you need to ensure that you remain up to date with any directives issued by the network.
- Am I concerned about having a visit by the regulator?
If yes, then being an appointed representative may be the safest route but again the firm may be subject to an adhoc visit if the regulator is checking on the systems and controls which the network is following. It does not guarantee that the firm will not have a visit by the regulator.

By being directly authorised arguably there is a higher chance of having more contact with the regulator but equally there are some directly authorised firms which have never had a visit.

- Do I want to outsource the compliance responsibility total?
If yes, then the appointed representative route may be the best route for you. However you are responsible for adhering to the systems and controls of the network which may be geared towards the lowest common denominator.

If the firm were to receive a complaint the network would be responsible for the review of the complaint but the firm will still be required to pay for any PI excess if redress is being offered. Furthermore you may not agree with the outcome of the complaint which you may not have any control over.

- Do I want complete control over how my firm operates?
If yes, then the directly authorised route may be the better option. Whilst there is more responsibility for compliance, you can control the procedures to put in place and ensure it is bespoke to your firm and relevant to the firm's customer base.
- Do I want to benefit from enhanced commissions for protection and mortgages?
If yes, then the appointed representative route may be the better route. However there are mortgage clubs around which offer enhanced terms for directly authorised firms.
- Do I want to be told what procedures, forms etc. need to be followed and completed for each piece of advice?
If no, then being directly authorised would be the better route.

If yes, then the network route would be the better option.

- Do I want processes that fit my business model?
If yes, then the directly authorised route may be the better option.
- Am I happy to follow set procedures even though they may not suit my client service proposition?
If no, then the directly authorised route may be the better option.
- Who will hold the Compliance Officer function (CF10) and Money Laundering Reporting Officer function (CF11)?
This is mandatory for directly authorised firms. If you are not keen to be on the FCA registered holding these functions then the network route would be the better route.
- Do I want to have the re-assurance that a firm will buy my firm when I retire?
If yes, then there are some networks who offer deals to buy the firm when the adviser wishes to retire from the profession.
- Do I want a bespoke service?
If yes, then the directly authorised route may be the best option where you can review the offerings of a number of compliance firms and negotiate terms relevant to your firm.

Areas for consideration

Business structure

If you are a brand new firm your first decision is to decide whether you will be a sole trader, partnership, limited liability partnership or limited company. Each will have various tax advantages and disadvantages so you will need to discuss this with your accountant. The business structure will also impact how the firm meets the capital adequacy requirements which the regulator requires the authorised body to. For example, for limited companies the company, as a separate legal entity, will have to show that it has liquid resource available at all times in its own right. For sole traders and partnerships personal property may contribute towards capital adequacy requirements.

Capital adequacy

'Capital adequacy' is required to provide the regulator with some reassurance that if the authorised entity got into financial difficulties there are sufficient funds in place to continue to a point to redirect customers to another authorised firm, provide them with options etc.

Currently the capital adequacy for a firm looking to provide investment and pension business is £15,000. However this is increasing as from 30.06.2017 to £20,000 or 5% of a firm's investment business annual income, whichever is the greater.

For mortgage and protection only businesses the capital adequacy the minimum amount is £5,000 or 2.5% of the firm's annual net brokerage income (assuming client monies are not held).

Please note that goodwill is not allowed to be taken into account so if you are buying an existing practice the goodwill you are buying does not have a value for regulator purposes.

Furthermore if the firm is intending to obtain the permissions to have discretionary powers on client assets (i.e. discretionary management), hold client monies, hold or control client assets and/or have MiFID permissions then the capital adequacy amounts can be significantly higher.

Professional Indemnity Insurance

All firms are required to hold compliant professional indemnity insurance (PII). The insurance needs to cover £1.7 million in aggregate. Ideally the excess for be £5,000 or less so that capital adequacy does not need to be increased.

The application for PII needs to be submitted at the same time as the FCA application is submitted to ensure that compliant cover can be obtained. This is because the FCA will not provide the entity authorisation until they are satisfied that compliant PII cover is in place.

The cost for PII varies across the market place. It is dependent upon the type of business that you intend to write and the projected turnover of the firm.

Adequate resources (management, staff and systems and controls)

As well as financial resources the FCA will want to be comfortable that customers will not be disadvantaged by poor advice or servicing. Therefore they will want details of any accountancy systems used and back office systems (i.e. CRMs) to be used. The FCA will want details on how the firm will operate in the event of an emergency i.e. IT failure, the loss of client data, fire, theft, flood, etc. This is known as the firm's Disaster Recovery plan or Business Continuity Plan.

Sufficient competent staff must be in place to be able to service the clients to an acceptable standard.

Consideration needs to be given as to who will hold the controlled functions as Compliance Officer (CF10) and Money Laundering Reporting Officer (CF11). Ideally the individual should have experience in holding these controlled functions or be an experienced adviser who is aware of what these controlled functions involve.

The FCA will also ask how the firm's intends to ensure that they are meeting their regulatory requirements and how they intend to keep up with changes in the profession. It is worth noting that you do not have to use a compliance consultancy or support firm. However, if no support services are used the regulator will want to be comfortable that the firm can keep up to date with any changes required.

When submitting the application you will also be signing a declaration to say that the firm has Training & Competence systems and compliance documents in place. Whilst these do not need to be set up with the application initially, the FCA can request sight of these at any time.

Competency

The FCA must be satisfied that the applicant is 'fit and proper' to be authorised.

The FCA assesses: -

- the competence and ability of management;
- the management's commitment to carrying on the business with integrity; and
- the management's commitment to carrying on the business in compliance with the regulatory regime

Client proposition

Before you are in a position to trade, you need to decide what your client proposition is going to be and investment approach. This will form the basis of your business plan going forward and help identify your target market. The business plan will be part of the application form submitted to the FCA.

The FCA application process

The FCA's website provides you with guidance if you decide to be directly authorised by them. This can be found at:-

<http://www.fca.org.uk/firms/about-authorisation>

Before you start to complete all the forms the following documents need to be in place:-

- Business plan (5 years)
- Cashflow forecast
- Profit and Loss forecast
- Organisation chart
- Data protection licences
- Compliance procedures
- Opening balance sheet
- Forecast closing balance sheet after 12 months trading or first years trading;
- Monthly profit and loss account for the first years of trading;
- Monthly cashflow forecast;
- Latest accounts (if previously traded); and
- Professional Indemnity Insurance quotation.

Having decided what your client proposition is and your target market you are now in a position to decide what permissions you need to apply for in order to trade. The FCA will not provide you with any direction as to which permissions you need to operate – you are responsible for applying for the correct permissions in order to trade. If you operate outside your scope of permissions you will be in breach of FCA regulations and therefore may be fined and/or banned from trading.

Once you feel you are in a position of completing the application the forms can be downloaded from the following page:-

<http://www.fca.org.uk/firms/about-authorisation/authorising-soloregulated-firms/retail-intermediaries-application>

Separate 'Form A's' will need to be completed for each adviser in order to obtain the CF30 controlled function (i.e. to be able to advise clients). A CV may need to be submitted especially for those individuals holding other controlled functions such as CF10 and CF11.

Legally the FCA has six months to consider a straight forward application. However it can take up to a year for more complex cases such as applying for discretionary permissions, applying for passports under MiFID, holding client assets etc.

The FCA fees for a straight forward application are £1,500. This is **non-refundable** so if you change your mind or the FCA reject your application this is not refunded to you. The FCA also require electronic copies of the application form and supporting documents to be provided to them which can be submitted by an encrypted CD or emailed across to them as PDF documents.

Compliance support

If you are considering being directly authorised by the Regulator then a good starting point is the Association of Professional Compliance Consultants (APCC). Their website can be found at:-

www.apcc.org.uk

This website provides you with useful tips on the questions to ask. A useful start would be:-

- What support do you feel you need?
- What personnel resource will you have to focus on compliance?
- How much are you looking to spend?

Your compliance support firm should:-

- Be competent to do the job
- Have sufficient resource to look after the firm
- Ideally have their own PI insurance
- Hold their own data protection licence
- Be well qualified/ experienced

The APCC can provide you with a list of compliance consultants around the UK detailing the areas which the compliance firm specialises in. All these firm's subscribe to the APCC and by doing so adhere to a code of conduct.

How can CATS help?

CATS have helped a number of firms attain their FCA authorisation over the years.

We offer two levels of service for the FCA application:-

- Full
- Abbreviated

The 'Full' service means that we will draft all of the compliance documents that you need in order to make the application to the FCA and to start trading once the application has been approved. This includes the following documents:-

- Business Continuity plan
- Disclosure documents
- Compliance Manual
- Compliance Monitoring plan
- Anti Money Laundering procedures
- Training & Competence Plan

The cost of the 'Full' service is £1,750 + VAT. This is payable once the FCA application pack has been presented to you. However we will also assist with any queries that the FCA may have when reviewing the pack so you are not left alone.

The 'Abbreviated' service is where you complete all of the documents and the application forms but we will review the completion of the documents and offer guidance for improvement. The cost of this level of service is £600 + VAT.

CATS on-going compliance support

As part of the application process the FCA will ask the firm what compliance support they intend to have in place to ensure that they operate compliantly. By recruiting a compliance consultant this does not absolve the firm from their compliance responsibilities.

CATS philosophy though is to work alongside the firm offering best practice guidance as well as monitoring the procedures already in place.

Each firm is different in terms of the level of support they require as it depends on their internal resources, size of the firm and procedures.

Below is a list of services that we can provide giving you an idea of the ways that CATS can assist a firm:-

- File checking
- Annual health checks
- Collation of Management Information
- Skills assessments
- Implementation and review of systems and controls
- Training on Anti Money Laundering, the Bribery Act, Complaint Handling and Data protection

Dependent upon the size of the firm our charges start from:-

£525 + VAT per day for monthly or adhoc visits

£260 + VAT pm for quarterly visits (up to 3 advisers)

£110 + VAT pm for annual visits (up to 4 advisers)

For the serviced contracts where you pay by direct debit you will also benefit from:-

- Compliance help desk support – telephone and email – including adhoc review of documents when requested
- Financial Promotions review
- Business relations with Insurance brokers for PI insurance
- Monthly Newsletters
- Access to template checklists and procedures (not suitability reports)

Reassurance

CATS can confirm:-

- We have a very qualified team
- The team has a vast amount of experience in a wide range of compliance areas
- We cover the UK
- We hold our own PI insurance
- We hold our own data protection licence
- Are members of the APCC and adhere to their code of conduct

- Are members of various Recognised Professional Bodies such as the IFP, PFS and CISI

Further details can be found on our website:

<http://www.complianceandtraining.co.uk/whyus>