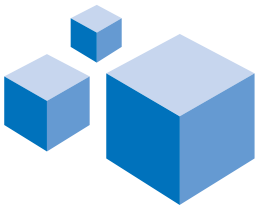

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Appointed Representatives

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Appointed Representatives

What is an appointed representative?

An appointed representative ("AR") is a person or firm which is able to arrange deals in investments and advise on investments by being authorised under the umbrella of a firm which is directly authorised by the FCA (the "principal") which is already authorised to arrange deals in investments and advise on investments.

In order to be an appointed representative, the AR must meet certain requirements, namely:

(i) it must not be an authorised person;

(ii) it must have entered into a contract with its principal and comply with the requirements in the specific appointed representative regulations; and

(iii) the principal must have accepted responsibility in writing for the authorised activities of the AR for the business specified in the contract.

If these conditions are satisfied, the AR will become an 'exempt person' for the purposes of the Financial Services and Markets Act and may then arrange deals in investments and/or advise on investments.

It is important to note that the relevant individuals will need to be approved to perform the customer function pursuant to the FCA's approved person regime.

Regulated activities which an AR may conduct

Appointed representative regulations (the "Regulations) list the type of activities that an AR may conduct, and these are also set out in SUP 12.2.7 of the FCA Handbook.

These can generally be summarised as advising and arranging activities.

An obvious point but one to note is that the AR cannot conduct any activity which does not fall within the scope of its principal's permission. If an AR wishes to carry on regulated activities wider than its principal's scope, then it must obtain authorisation in its own right.

All AR business will be FCA-regulated, as no PRA-regulated activities are set out in the Regulations, so a person cannot be an AR in respect of a PRA-regulated activity.

The advantages of becoming an appointed representative

While the appointed representative regime is not a route which every firm or person will take, others find it useful for a number of reasons, including:

- applying for direct authorisation from the FCA can be costly and time-consuming (an application can take up to 6 months to process)
- it may be more efficient for small businesses to be an AR rather than obtain direct authorisation
- on-going compliance costs for an AR are likely to be much less than for authorisation
- ARs need not comply with regulatory capital requirements
- it may obviate the need to seek authorisation under the AIFMD

FCA rules applicable to appointed representatives

As well as complying with the Regulations, the AR and its principal must comply with the applicable FCA rules, which can be found in SUP 12 of the FCA Handbook. The AR needs to understand and comply with the regulatory requirements applicable to the business it is carrying out and cannot delegate these to its principal. The AR's principal is responsible, however, for ensuring that the AR complies with the Handbook. An AR is therefore required to allow its principal

access to its staff, premises and records so that the principal can carry out its supervisory responsibilities.

Where an individual is appointed as an AR, in addition to complying with SUP 12, the principal should also ensure that, where applicable, the rules for representatives in COBS 6 (which deals with information about the firm, its services and remuneration) are complied with.

Role and responsibilities of the principal

The AR is appointed by a principal and the parties must enter into a written contract to this effect. The contract must contain certain required terms as required by the Regulations, as to which please see "Required contract terms for all appointed representatives" below.

Acting as a principal places a considerable burden on the principal in terms of costs and time and the burden increases the more ARs a principal has. This means that some authorised firms can be reluctant to take on ARs, their concerns often centring on the strict requirement to take responsibility for the AR's actions and the potential detrimental impact on the principal's reputation in the event that the AR acts negligently or outside its authority.

Obligations of principal prior to appointment

Prior to entering the contract, the principal is obliged by the FCA rules to ensure that its ARs are fit and proper to deal with clients in its name and that clients dealing with the principal's AFs are afforded the same level of protection as if they had dealt with the principal itself. This is because the principal is responsible, to the same extent as if it had expressly permitted it, for anything the AR does or omits to do in carrying out the business for which the principal has accepted responsibility.

The principal must therefore establish on reasonable grounds that:

1. the appointment does not prevent the principal from satisfying and continuing to satisfy its own threshold conditions;
2. the AR is solvent, is otherwise suitable to act for the principal and has no close links which would prevent it being effectively supervised by the principal;
3. it has adequate control over the AR's regulated activities for which the principal is responsible;
4. it has the resources to monitor and enforce compliance by the AR; and
5. the AR is ready and organised to comply with other applicable requirements in SUP 12.

SUP 12 in the FCA Handbook provides further clarification as to how a principal can determine the solvency and suitability of a proposed AR.

Continuing obligations of principal

During the AR appointment, the principal will be responsible for:

1. the acts and omissions of the AR at senior management level;
2. continued monitoring of the AR's suitability;
3. financial checks;
4. making sure the AR does not hold client money;
5. obtaining approval of AR's staff under the approved persons regime;
6. ensuring that the AR satisfies the FCA's training and competence requirements;
7. monitoring the AR's compliance with the AR agreement;
8. keeping records of its AR, including any multiple principal arrangements; and
9. notifying the FCA of certain events, such as the termination of the AR's appointment or any change in information or conditions of appointment or any approved person ceasing to perform a controlled function.

An AR can have more than one principal, albeit that certain activities prohibit multiple principals, for example any designated business for retail clients. If a principal appoints an AR which is

already an AR for another firm, the principal must enter into a written agreement, a multiple principal agreement, with every other principal the AR may have. Again, the multiple principal agreement must contain certain required terms set out in SUP 12 (see SUP 12.4.5C).

Required contract terms for all appointed representatives

The terms of the contract which are required in all AR agreements are set out in SUP 12.5 and include the following:

1. provision permitting or requiring the AR to carry on business consisting of one or more of the regulated activities listing in the Regulations;
2. provision prohibiting the AR from carrying on regulated activities in breach of the general prohibition under s.19 of FSMA;
3. provision obliging the AR to carry out its regulated activities in a way that is, and is held out as being, clearly distinct from any of the AR's other business that is performed as an AR of another firm;
4. provision prohibiting the AR from representing other counterparties or enabling the principal to impose such a prohibition;
5. provision enabling the firm to impose restrictions as to the other counterparties the AR may represent or as to the types of investment for which the AR may represent other counterparties;
6. any provisions that are required to enable the principal to comply properly with any limitations or requirements on its own permission;
7. provision requiring AR to co-operate with the FCA in any information gathering exercise i.e. being readily available for meetings, granting access to records, answering questions and granting access to business premises;
8. provision requiring AR to give to the principal's auditors any books, accounts and vouchers of the AR and entitlement to information and explanations from the AR's officers;
9. provision giving the principal the ability to terminate the contract if it has reasonable grounds to believe that certain conditions set out in SUP 12.6.1R(2) are not satisfied, or are likely not to be satisfied;
10. provision requiring AR to comply, and to ensure that any persons who provide services to the AR comply with all relevant requirements that apply to its activities as the principal's AR;
11. provision requiring the AR to notify the principal that it is seeking appointment as the AR of another firm and any change in the business it carries out for that other principal and the termination of any such appointment; and
12. provision prohibiting the AR to hold client money.

Becoming an appointed representative

In order to become an AR:

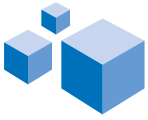
1. the AR must enter into a written agreement with a principal whose scope of permission covers the regulated activities relevant to the proposed AR's business;
2. the agreement must contain the required terms set out in SUP 12.5;
3. once the agreement is finalised, the principal must notify the FCA via ONA within 10 business days after commencement of activities (see SUP 12.7.1R);
4. the FCA will add the information to the FCA Register;

Once appointed, the AR must understand and comply with all rules and regulatory requirements relating to its business as an AR, including record-keeping requirements, and must use the following regulatory wording where appropriate: "[name of AR] is an appointed representative of [name of principal] which is authorised and regulated by the Financial Conduct Authority [of the United Kingdom]."

Tied agents as appointed representatives

A tied agent is a person who acts for and under the responsibility of a MiFID investment firm (or a third country investment firm) in respect of MiFID business (or the equivalent business of the third country investment firm). Most tied agents appointed by UK MiFID investment firms are also ARs, but for a tied agent to be an AR, it must carry on its activities as a tied agent in the UK. If it does not carry on activities as a tied agent in the UK, it will not be an AR (but will be referred to as an EEA tied agent). A tied agent carrying on its activities as a tied agent in the UK will be subject to the rules set out in SUP 12 as an AR, as will its UK MiFID investment firm as principal.

This document is for general guidance only. It does not constitute advice
January 2014



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