

Chapter 10A

FCA Approved Persons in Appointed Representatives



10A.1 Application

General

- 10A.1.1** **R** This chapter applies to *SMCR firm* with respect to their *appointed representatives*.
- 10A.1.1A** **G** ■ SUP 10C deals with the *approved persons* regime for *SMCR firms* themselves.
- 10A.1.2** **G** This chapter is also relevant to:
- (1) *FCA-approved person* of an *appointed representative* of an *SMCR firm*; and
 - (2) an *appointed representative* of an *SMCR firm*.
- 10A.1.3** **G** The *rules* in this chapter specify descriptions of *FCA controlled functions* under section 59 of the *Act* (Approval for particular arrangements).
- 10A.1.4** **G** The directions in this chapter relate to the manner in which a *firm* must apply for the *FCA's* approval under section 59 of the *Act* and other procedures.

Overseas appointed representatives: UK services

- 10A.1.5** **R**
- (1) This chapter does not apply in relation to an overseas *appointed representative* in relation to *regulated activities* which are carried on in the *United Kingdom* other than from an establishment maintained by it or its *principal* in the *United Kingdom*.
 - (2) An overseas *appointed representative* means an *appointed representative* which has its registered office (or, if it has no registered office, its head office) outside the *United Kingdom*.

Overseas appointed representatives: UK establishments

- 10A.1.6** **R**
- (-1) Only the following *FCA governing functions* (as modified by this *rule*) apply in relation to an overseas *appointed representative* which maintains (or whose *principal* maintains) an establishment in the *United Kingdom* from which *regulated activities* are carried on:
 - (a) the *director function*;

- (b) the *non-executive director function*; and
 - (c) the *chief executive function*.
- (1) The *director function* only applies to the extent that the *person* performing that function:
 - (a) has responsibility for the *regulated activities* of the *UK* establishment which are likely to enable them to exercise significant influence over that establishment; or
 - (b) is someone whose decisions or actions are regularly taken into account by the *governing body* of that establishment.
 - (2) The *non-executive director function* only applies to the extent that the *person* performing that function:
 - (a) has responsibility for the *regulated activities* of the *UK* establishment which is likely to enable them to exercise significant influence over that establishment; or
 - (b) is someone whose decisions or actions are regularly taken into account by the *governing body* of that establishment.
 - (3) [deleted]
 - (4) [deleted]
 - (5) [deleted]
 - (6) [deleted]
 - (7) [deleted]
 - (8) An overseas *appointed representative* has the same meaning as in
 - SUP 10A.1.5R.

EEA firms

- 10A.1.7 **R** This chapter does not apply in relation to the *appointed representative* of: an *EEA SMCR firm*
- if and in so far as the question of whether a *person* is fit and proper to perform a particular function in relation to that *firm* is reserved to an authority in a country or territory outside the *United Kingdom* as contemplated by section 59(8) of the *Act*. This *rule* has effect to the extent that, and for as long as, section 59(8) of the *Act* remains in effect under the standstill direction (as it relates to that section) as defined in the direction made by the *FCA* under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 that came into force on *IP completion day* and is titled "Main FCA Transitional Directions".
- 10A.1.8 **G** [deleted]
- 10A.1.9 **G** [deleted]
- 10A.1.10 **G** [deleted]

10A.1.11 R

Incoming EEA firms: passported activities from a branch

Only the following *FCA controlled functions* apply to an *incoming EEA firm* with respect to its *passported activities* carried on from a *branch* in the *United Kingdom*:

- (3) the *customer function* other than where this relates to the function in ■ SUP 10A.10.7R (4) and ■ (7).

10A.1.12 R

[deleted]

Incoming EEA firms etc with top-up permission activities from a UK branch

10A.1.13 R

In relation to the activities of a *firm* for which it has a *top-up permission*, only the following *FCA controlled functions* apply:

- (1) the *FCA required functions*, other than the *apportionment and oversight function* and the *compliance oversight function*;
- (2) the *significant management function*, in so far as it relates to:
 - (a) *designated investment business* other than *dealing in investments as principal*, disregarding article 15 of the *Regulated Activities Order*; or
 - (b) processing confirmations, payments, settlements, insurance claims, *client money* and similar matters, in so far as this relates to *designated investment business*; and
 - (c) [deleted]
- (3) the *customer function*.

10A.1.14 R

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Appointed representatives

10A.1.15 R

The descriptions of the following *FCA controlled functions* apply to an *appointed representative* of a *firm*, except in relation to *CBTL business* or an *introducer appointed representative*, as they apply to an *FCA-authorised person*:

- (1) the *FCA governing functions*, subject to ■ SUP 10A.1.16 R and except for a *tied agent* of an *EEA MiFID investment firm*; and
- (2) the *customer function* other than in relation to acting in the capacity of an *investment manager* (see ■ SUP 10A.10.7R (6)).

10A.1.16 R

- (1) This chapter is modified in relation to an *appointed representative* meeting the conditions in (2) so that only one of the following *FCA governing functions*:
 - (a) *director function*; or
 - (b) *chief executive function*; or

(c) *partner function*; or
(d) *director of unincorporated association function*;
applies, as appropriate, to an individual within that *appointed representative* who will be required to be an *FCA-approved person*.

- (2) The conditions are that:
- (a) the scope of appointment of the *appointed representative* includes *insurance distribution activity* in relation to *non-investment insurance contracts* or *credit-related regulated activity*, but no other *regulated activity*; and
 - (b) the principal purpose of the *appointed representative* is to carry on activities other than *regulated activities*.

10A.1.16A **R**

(-1) The *customer function* is the only *controlled function* in this chapter that applies to an *appointed representative* that is an *SMCR firm* and has a *limited permission* to carry on a *regulated activity* prescribed for the purposes of section 39(1E)(a) of the *Act*.

(1) [deleted]

(2) The *customer function* applies to the *appointed representative* in relation to the carrying on of the *regulated activity*, for which it does not have *permission*, comprised in the business for which its *principal* has accepted responsibility.

10A.1.16B **R**

[deleted]

10A.1.16C **G**

Certain additional *controlled functions* apply to a *firm* in **■** SUP 10A.1.16AR under **■** SUP 10C (FCA senior managers regime for approved persons in SMCR firms).

Senior management functions

10A.1.16D **G**

(1) Under section 59(6A) of the *Act*, if the *FCA* is satisfied that, in relation to the carrying on of a *regulated activity* by an *SMCR firm*, a *controlled function* is a *senior management function*, the *FCA* must designate the function in its *rules* as a *senior management function*.

(2) Generally, the *FCA* does not think that a *person* performing a function in this chapter will have sufficient responsibility for managing the affairs of the *appointed representative's principal* (as opposed to managing the affairs of the *appointed representative* itself) to perform a *senior management function*.

(3) Therefore:

- (a) the *FCA* has not designated any of the functions in this chapter as a *senior management function*; and
- (b) none of the functions in this chapter are *designated senior management functions*.

- (4) ■ SUP 10C.1.8G (Appointed representatives) explains that it is unlikely that ■ SUP 10C (FCA senior managers regime for approved persons in *SMCR firms*) will apply to *approved persons* working in *appointed representatives* of an *SMCR firm* in addition to this chapter.

10A.1.17 **R** [deleted]

10A.1.18 **R** [deleted]

10A.1.19 **G** [deleted]

Insolvency practitioners

10A.1.20 **R** This chapter does not apply to a function performed by:

- (1) a *person* acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986; or
- (2) a *person* acting as a nominee in relation to a voluntary arrangement under Parts I (Company Voluntary Arrangements) and VIII (Individual Voluntary Arrangements) of the Insolvency Act 1986; or
- (3) a *person* acting as an insolvency practitioner within the meaning of Article 3 of the Insolvency (Northern Ireland) Order 1989; or
- (4) a *person* acting as a nominee in relation to a voluntary arrangement under Parts II (Company Voluntary Arrangements) and VIII (Individual Voluntary Arrangements) of the Insolvency (Northern Ireland) Order 1989.

10A.1.21 **G** [deleted]

10A.1.21A **G** [deleted]

10A.1.22 **R** [deleted]

10A.1.23 **G** [deleted]

10A.1.24 **G** [deleted]

10A.1.25 **R** [deleted]

10A.1.26 **R** [deleted]

10A.1.27 **G** [deleted]

10A

10A.1.28 **R** [deleted]

10A.1.29 **R** [deleted]

10A.1.30 **R** [deleted]

10A.1.31 **G** [deleted]

10A.1.32 **G** [deleted]

Obligations on firms

- 10A.1.33 **G**
- (1) The requirements in this chapter about notifications and applications are addressed to *firms*. This means they are addressed to the *appointed representative's principal*.
 - (2) If an *appointed representative* has more than one *principal*, the requirements in (1) are addressed to the *authorised approved person employer* of the *approved person* in question.

Gibraltar firms

- 10A.1.34 **R**
- (1) A *firm* that is a Gibraltar-based firm (as defined in ■ GEN 2.3 (General saving of the Handbook for Gibraltar)) is treated as an *EEA firm* for the purposes of this chapter.
 - (2) (1) is without prejudice to the generality of ■ GEN 2.3.