

## Chapter 10A

# FCA Approved Persons in Appointed Representatives



## 10A.10 Customer-dealing functions

### Introduction

**10A.10.1** **R** ■ SUP 10A.10 applies with respect to activities carried on from an establishment maintained by the *appointed representative* or its *principal* in the *United Kingdom*.

**10A.10.2** **G** Without ■ SUP 10A.10.1 R, the description of the *customer function* would extend to this function wherever it was performed. The effect of ■ SUP 10A.10.1 R is that the description is limited, in relation to *regulated activities* with an overseas element, in a manner which is broadly consistent with the scope of conduct of business regulation.

**10A.10.3** **G** The *customer function* has to do with giving advice on, *dealing* and arranging deals in and *managing investments*; it has no application to banking business such as deposit taking and lending, nor to *general insurance business* or *credit-related regulated activity*.

### The basic rule about the customer function

**10A.10.4** **R** The *customer function* is one which comes within the definition of a *customer-dealing function*.

**10A.10.5** **R** The customer-dealing function, in relation to an *appointed representative* ("A"), means a function that will involve the *person* performing it in dealing with:

- (1) customers of A; or
- (2) property of customers of A;

**10A.10.5A** **R** In ■ SUP 10A.10.5R, customer, in relation to an *appointed representative*, means a *person* who is using, or who is or may be contemplating using, any of the services provided by the *appointed representative*.

**10A.10.5B** **G** A function is not included in the *customer function* unless it also meets the requirements of ■ SUP 10A.3.1R (Provisions related to the Act).

**10A.10.6** **G** The *FCA* interprets the phrase "dealing with" as including having contact with customers and extending beyond "dealing" as used in the phrase

“dealing in investments”. “Dealing in” is used in Schedule 2 to the Act to describe in general terms the *regulated activities* which are specified in Part II of the *Regulated Activities Order*.

### Customer function (CF 30)

10A.10.7 **R** The *customer function* is the function of:

- (1) *advising on investments* other than a *non-investment insurance contract* or a *funeral plan* (but not where this is *advising on investments* in the course of carrying on the activity of giving *basic advice* on a *stakeholder product*) and performing other functions related to this such as *dealing* and *arranging*;
- (2) giving advice to *clients* solely in connection with *corporate finance business* and performing other functions related to this;
- (3) giving advice or performing related activities in connection with *pension transfers, pension conversions or pension opt-outs* for *retail clients*;
- (4) giving advice to a *person* to become, or continue or cease to be, a member of a particular Lloyd's syndicate;
- (5) *dealing*, as principal or as agent, and *arranging (bringing about) deals in investments* other than a *non-investment insurance contract* with, for, or in connection with *customers* where the *dealing* or *arranging deals* is governed by ■ COBS 11 (Dealing and managing);
- (6) [deleted]
- (7) in relation to *bidding in emissions auctions*, acting as a 'bidder's representative' within the meaning of subparagraph 3 of article 6(3) of the *auction regulation*.

10A.10.8 **R** The *customer function* does not extend to an individual who is performing the functions in ■ SUP 10A.10.7R (1) to ■ SUP 10A.10.7R (2) or ■ SUP 10A.10.7R (5) to ■ (7) and who is based overseas and who, in a 12-month period, spends no more than 30 days in the *United Kingdom* to the extent that he is appropriately supervised by a *person* approved for this function.

10A.10.9 **G** The FCA would expect an individual from overseas to be accompanied on a visit to a *customer*. ■ TC 2.1.9 R (2) (where it applies) provides that the *firm* will have to be satisfied that the individual has at least three years of up-to-date, relevant experience obtained outside the *United Kingdom*. However, the remaining provisions of ■ TC 2.1.9 R (2) are disapplied in these circumstances (except for an individual who gives advice to *retail clients* on *retail investment products*, gives advice on *P2P agreements* to *retail clients* or is a *broker fund adviser*). The effect of this is that such individuals need not attain the relevant regulatory module of an appropriate qualification (see ■ TC 2.1.9 R (2)).

10A.10.10 **G** The *customer function* in ■ SUP 10A.10.7R (5) does not extend to the individual who, on the instructions of the *customer*, simply inputs the *customer's*

instructions into an automatic execution system where no discretion is or may be exercised by the individual performing the activity. Nor does it extend to merely introducing a *customer* to a *firm* or distributing advertisements.

- 10A.10.11** **G** An individual may *advise on investments* prior to being assessed as competent in accordance with the *rules* in the Senior Management Arrangements, Systems and Controls sourcebook (*SYSC*) and, where relevant, the Training and Competence sourcebook (*TC*). The *firm* should record when that *person* subsequently becomes competent.