

## Chapter 12

# Appointed representatives

## 12.2 Introduction

### What is an appointed representative?

12.2.1

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- (1) Under section 19 of the Act (The general prohibition), no *person* may carry on a *regulated activity* in the *United Kingdom*, or purport to do so, unless he is an *authorised person*, or he is an *exempt person* in relation to that activity.
- (2) A *person* will be an *exempt person* if he satisfies the conditions in section 39(1) of the Act, *guidance* on which is given in ■ SUP 12.2.2 G. A *person* who is exempt as a result of satisfying these conditions is referred to in the Act as an *appointed representative*.
- (3) If an *appointed representative* is also a *tied agent* or a *MiFID optional exemption appointed representative* he must also satisfy the condition in section 39(1A) of the Act in order to be an *exempt person*. See ■ SUP 12.4.12 G and ■ SUP 12.4.13G for *guidance* on that condition, ■ SUP 12.2.16 G for more general *guidance* about *tied agents*. and ■ SUP 12.2.17G for *guidance* about *MiFID optional exemption appointed representatives*.
- (3A) If an *appointed representative* is also a *structured deposit appointed representative* he must also satisfy the condition in section 39(1AA) of the Act in order to be an *exempt person*. See ■ SUP 12.4.12G and ■ SUP 12.4.13G for *guidance* on that condition and ■ SUP 12.2.18G for *guidance* about *structured deposit appointed representatives*.
- (4) If an *appointed representative* has entered into a contract with an *MCD credit intermediary* and is a *person* to whom section 39(1BA) of the Act applies, they must also satisfy the conditions in section 39(1BB) of the Act to be an *exempt person*. See ■ SUP 12.4.10C G for *guidance* on those conditions.

12.2.2

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- (1) A *person* (other than a *firm* with only a *limited permission*) must satisfy the conditions in section 39(1) of the Act to become an *appointed representative*. These are that:
  - (a) the *person* must not be an *authorised person*, that is, he must not have *permission* under the Act to carry on any *regulated activity* in his own right (section 39(1) of the Act);
  - (b) the *person* must have entered into a contract with an *authorised person*, referred to in the Act as the '*principal*', which:
    - (i) permits or requires him to carry on business of a description prescribed in the *Appointed Representatives Regulations* (section 39(1)(a)(i) of the Act) (see ■ SUP 12.2.7 G); and

- (ii) complies with any requirements that may be prescribed in the *Appointed Representatives Regulations* (section 39(1)(a)(ii) of the Act) (see ■ SUP 12.5.2 G (1)); and
  - (c) the *principal* must have accepted responsibility, in writing, for the authorised activities of the *person* in carrying on the whole, or part, of the business specified in the contract.
- (2) The *appointed representative* is an *exempt person* in relation to any *regulated activity* comprised in the carrying on of the business for which his *principal* has accepted responsibility.

**Appointed representatives with limited permission to carry on certain credit activities**

12.2.2A G

- (1) Under sections 20(1) and (1A) of the Act (Authorised persons acting without permission), if an *authorised person* carries on a *regulated activity* in the *United Kingdom*, or purports to do so, otherwise than in accordance with his *permission*, he is to be taken to have contravened a requirement imposed by the *FCA* (in the case of a *FCA-authorized person*) or the *FCA* and the *PRA* (in the case of a *PRA-authorized person*).
- (2) In addition, under section 23(1A) of the Act (Contravention of the general prohibition or section 20(1) or (1A)), an *authorised person* is guilty of an offence if he carries on a credit-related regulated activity in the *United Kingdom*, or purports to do so, otherwise than in accordance with his *permission*. For these purposes, *entering into a regulated credit agreement as lender*, exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement and *debt collecting* are credit-related regulated activities, except in so far as the activity relates to an agreement under which the obligation of the *borrower* to repay is secured on land (see the Financial Services and Markets Act 2000 (Consumer Credit) (Designated Activities) Order 2014).
- (3) Section 39(1D) of the Act provides, however, that sections 20(1) and (1A) and 23(1A) of the Act do not apply:
  - (a) to an *authorised person* with only a *limited permission*;
  - (b) in relation to the carrying on by him of a *regulated activity* which is not one to which his *limited permission* relates;
 if the conditions in section 39(1C) of the Act are met. *Guidance* on these conditions is given at ■ SUP 12.2.2B G. A *firm* carrying on a *regulated activity* in circumstances where, as a result of section 39(1D) of the Act, sections 20(1) and (1A) and 23(1A) of the Act do not apply is also referred to as an *appointed representative*.

12.2.2B G

- (1) A *firm* must satisfy the conditions in section 39(1C) of the Act to become an *appointed representative*. These are that:
  - (a) the *firm* must have only a *limited permission* (section 39(1C)(a) of the Act);
  - (b) the *firm* must have entered into a contract with another *authorised person*, referred to in the Act as the '*principal*', which:

- (i) permits or requires him to carry on business of a description prescribed in the Appointed Representatives Regulations (section 39(1C)(b)(i) of the Act) (see ■ SUP 12.2.7 G); and
- (ii) complies with any requirements that may be prescribed in the *Appointed Representatives Regulations* (section 39(1C)(b)(ii) of the Act); and
- (c) the *principal* must have accepted responsibility, in writing, for the authorised activities of the *firm* in carrying on the whole, or part, of the business specified in the contract.

(2) The *appointed representative* is not subject to sections 20(1) or (1A) or 23(1A) of the Act in relation to the carrying on of the *regulated activity* which is comprised in the business for which his *principal* has accepted responsibility and for which he does not have *limited permission*.

### Who can be an appointed representative?

12.2.3 **G** As long as the conditions in section 39 of the Act are satisfied, any *person*, other than an *authorised person* (unless he has only a *limited permission*), may become an *appointed representative*, including a *body corporate*, a *partnership* or an individual in business on his own account. However, an *appointed representative* cannot be an *authorised person* under the Act unless he has only a *limited permission*. A *person* cannot be exempt for some *regulated activities* and *authorised* for others. An *appointed representative* with a *limited permission* is not an *exempt person*, but he may carry on the *regulated activity* comprised in the business for which his principal has accepted responsibility without being taken to have contravened a requirement imposed on him by the FCA or PRA or committing an offence, even though the activity is not covered by his *limited permission*.

### Can an appointed representative have more than one principal?

12.2.4 **G** The Act and the *Appointed Representatives Regulations* do not prevent an *appointed representative* from acting for more than one *principal*. However, ■ SUP 12.5.6A R (Prohibition of multiple principals for certain activities) prevents this for particular kinds of business.

12.2.5 **G** [deleted]

### What is a "network"?

12.2.6 **G** A *firm* is referred to as a '*network*' if it appoints five or more *appointed representatives* (not counting *introducer appointed representatives*) or if it appoints fewer than five *appointed representatives* (again, not counting *introducer appointed representatives*) which have, between them, twenty-six or more *representatives*. However, a *network* does not include:

- (a) a *product provider*;
- (b) a *firm* which markets the *packaged products* of a *product provider* in the same *group* as the *firm* and which does so other than by selecting products from the whole market;

- (c) an *insurer* in relation to a *non-investment insurance contract*; or
- (d) a *home finance provider*.

### Business for which an appointed representative is exempt

12.2.7

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- (1) The *Appointed Representatives Regulations* are made by the Treasury under sections 39(1), (1C) and (1E) of the Act. These regulations describe, among other things, the business for which an *appointed representative* may be exempt or to which sections 20(1) and (1A) and 23(1A) of the Act may not apply, which is business which comprises any of:
- (a) *dealing in investments as agent* (article 21 of the *Regulated Activities Order*) where the transaction relates to:
    - (i) a *pure protection contract* (but only where the contract is not a *long-term care insurance contract*) or *general insurance contract*; or
    - (ii) a *funeral plan contract*;
  - (aa) *bidding in emissions auctions* (article 24A of the *Regulated Activities Order*) where that activity does not consist either of *dealing on own account* or the *execution of orders* on behalf of clients;
  - (b) *arranging (bringing about) deals in investments* (article 25(1) of the *Regulated Activities Order*) (that is in summary, deals in a *designated investment* (other than a *P2P agreement*), *structured deposit*, *funeral plan contract*, *pure protection contract*, *general insurance contract* or right to or interest in a funeral plan);
  - (c) *making arrangements with a view to transactions in investments* (article 25(2) of the *Regulated Activities Order*) (that is in summary, transactions in a *designated investment* (other than a *P2P agreement*), *structured deposit*, *funeral plan contract*, *pure protection contract*, *general insurance contract* or right to or interest in a funeral plan);
  - (d) *arranging (bringing about) a home finance transaction* (articles 25A(1), 25A(2A), 25B(1) and 25C(1) of the *Regulated Activities Order*);
  - (e) *making arrangements with a view to a home finance transaction* (articles 25A(2), 25B(2) and 25C(2) of the *Regulated Activities Order*);
  - (ea) *credit broking* (article 36A of the *Regulated Activities Order*);
  - (eb) *operating an electronic system in relation to lending* (article 36H of the *Regulated Activities Order*);
  - (f) *assisting in the administration and performance of a contract of insurance* (article 39A of the *Regulated Activities Order*);
  - (fa) *debt adjusting* (article 39D of the *Regulated Activities Order*);
  - (fb) *debt counselling* (article 39E of the *Regulated Activities Order*);
  - (fc) *debt collecting* (article 39F of the *Regulated Activities Order*);
  - (fd) *debt administration* (article 39G of the *Regulated Activities Order*);

- (g) *arranging safeguarding and administration of assets* (part of article 40 of the *Regulated Activities Order*);
  - (h) giving *basic advice on a stakeholder product* (article 52B of the *Regulated Activities Order*);
  - (i) *advising on investments (except P2P agreements)* (article 53(1) to (1D) of the *Regulated Activities Order*) (that is in summary, advising on any *designated investment* (other than a *P2P agreement*), *structured deposit*, *funeral plan contract*, *pure protection contract*, *general insurance contract* or right to or interest in a funeral plan);
  - (ia) *advising on P2P agreements* (article 53(2) of the *Regulated Activities Order*);
  - (j) *advising on a home finance transaction* (articles 53A, 53B and 53C of the *Regulated Activities Order*);
  - (ja) *entering into a regulated credit agreement as lender or exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement* (article 60B of the *Regulated Activities Order*) when carried on in relation to a *credit agreement* under which the *credit* is provided free of interest and without any other charges;
  - (jaa) *advising on regulated credit agreements for the acquisition of land* (article 53DA of the *Regulated Activities Order*);
  - (jab) *advising on conversion or transfer of pension benefits* (article 53E of the *Regulated Activities Order*);
  - (jb) *entering into a regulated consumer hire agreement as owner or exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement* (article 60N of the *Regulated Activities Order*);
  - (k) *agreeing to carry on a regulated activity* (article 64 of the *Regulated Activities Order*) where the *regulated activity* is one of those specified in Regulation 2(1)(d) of the *Appointed Representatives Regulations*; and
  - (l) *providing credit information services* (article 89A of the *Regulated Activities Order*).
- (2) If the *appointed representative* is also a *tied agent*, the business for which the *appointed representative* may be exempt includes the following additional activities:
- (a) placing *financial instruments* or *structured deposits*;
  - (b) providing advice to *clients* or potential *clients* in relation to the placing of *financial instruments* or *structured deposits*.
- (3) [deleted]
- (4) *Regulated claims management activity* is not a type of business for which an *appointed representative* may be exempt.

**What is an introducer appointed representative?**

- 12.2.8 **G** (1) An *introducer appointed representative* is an *appointed representative* appointed by a *firm* whose scope of appointment must, under ■ SUP 12.5.7 R, be limited to:
- (a) effecting introductions to the *firm* or other members of the *firm's group*; and
  - (b) distributing *non-real time financial promotions* which relate to products or services available from or through the *firm* or other members of the *firm's group*.
- (2) The permitted scope of appointment of an *introducer appointed representative* does not include in particular:
- (a) dealing in investments as agent; or
  - (b) *arranging (bringing about) deals in investments* or *arranging (bringing about) regulated mortgage contracts*; or
  - (c) *assisting in the administration and performance of a contract of insurance*; or
  - (d) *advising on investments, giving basic advice on a stakeholder product advising on a home finance transaction, advising on regulated credit agreements for the acquisition of land, or other activity that might reasonably lead a customer to believe that they had received, or that the introducer appointed representative is permitted to provide, one of those services.*
- (3) An *introducer appointed representative* may have more than one *principal*, but will need a contract with each *principal*.
- (4) The *approved persons* regime does not apply to an *introducer appointed representative* (see ■ SUP 10A.1.15 R).
- 12.2.9 **G** To become an *introducer appointed representative*, a person must meet the conditions in the Act to become an *appointed representative* (see ■ SUP 12.2.2 G).
- 12.2.10 **G** All rules in ■ SUP 12 apply in relation to *introducer appointed representatives* except for:
- (1) ■ SUP 12.4.2 R, ■ SUP 12.4.5B R and ■ SUP 12.4.5C, on the appointment of *appointed representatives*, which are replaced by ■ SUP 12.4.6 R;
  - (2) ■ SUP 12.5.6A R on required contract terms, which is replaced by ■ SUP 12.5.7 R;
  - (2A) ■ SUP 12.6A.2R to ■ SUP 12.6A.4R; and
  - (3) ■ SUP 12.9.1 R (4) (Record keeping).
- 12.2.11 **G** If an *introducer appointed representative* is an individual in business on his own, then he will also be an *introducer* (see ■ SUP 12.2.13 G). This has certain implications in COBS.

**Introducers and representatives: what do these terms mean and what is the relationship with an appointed representative?**

- 12.2.12 G A *firm* or its *appointed representative* may appoint or employ individuals to act as *introducers* or *representatives* in respect of *designated investment business*.
- 12.2.13 G
  - (1) An *introducer* is an individual appointed by a *firm* or by an *appointed representative* of such a *firm* to carry out, in the course of *designated investment business*, either or both of the following activities:
    - (a) effecting introductions;
    - (b) distributing *non-real time financial promotions*.
  - (2) An *introducer* is not an *exempt person* under section 39 of the *Act* (unless he is also an *introducer appointed representative*) and hence cannot benefit from the exemption to carry on *regulated activities* in his own right. As a result, an *introducer* that is not an *introducer appointed representative* works in the name of his *firm* or the *firm's appointed representative* but he does not fall within the scope of the *approved persons* regime as he does not, as such, perform a *controlled function*.
- 12.2.14 G
  - (1) A *representative* is an individual who is appointed by a *firm* or an *appointed representative*, to carry on any of the activities in (1)(a) to (c):
    - (a) *advising on investments*;
    - (b) *arranging (bringing about) deals in investments*;
    - (c) *dealing in investments as agent*.
  - (2) If a *firm* appoints an *appointed representative* who is an individual in (1), that *appointed representative* will also be a *representative*. The individual may need to be approved to perform the *customer function*, (see ■ SUP 12.6.8 G and ■ SUP 12.6.9 G). In these circumstances, in addition to complying with the requirements of ■ SUP 12 and other regulatory requirements, the *firm* should ensure that the *rules* for *representatives* in ■ COBS 6 (Information about the firm, its services and remuneration) are complied with.
- 12.2.15 G [deleted]

**What is a tied agent?**

- 12.2.16 G
  - (1) 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 *firms* are also *appointed representatives*.
  - (2) Unless otherwise provided, this chapter applies to a *firm* that appoints a *tied agent* that is an *appointed representative* in the same way as it applies to the appointment of any other *appointed representative*.



- (3) This chapter sets out the provisions which apply to *tied agents* appointed by a *MiFID investment firm*.
- (4) [deleted]
- (5) A *tied agent* will not be an *appointed representative* if it does not and is not likely to conduct any business as a *tied agent* in the *UK*. Such a *tied agent* will be an *FCA registered tied agent*.
- (6) This chapter only applies to a *firm* that appoints a *tied agent* that is not an *appointed representative* where it expressly refers to *tied agents*.
- (7) A *MiFID investment firm* may may appoint a *tied agent* established in the *UK* but that does not, and is not likely to, conduct any business as a *tied agent* in the *UK*. That must be registered with the *FCA*. Such a *tied agent* is referred to in the *Handbook* as an *FCA registered tied agent*.
- (8) [deleted]

**What is a MiFID optional exemption appointed representative?**

12.2.17

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- (1) A *MiFID optional exemption appointed representative* is a *person* who acts for and under the responsibility of a *MiFID optional exemption firm*. Such *appointed representatives* are not also *tied agents* since they do not act on behalf of a *MiFID investment firm* in respect of *MiFID business*.
- (2) Unless otherwise provided, this chapter applies to a *firm* that appoints a *MiFID optional exemption appointed representative* in the same way as it applies to the appointment of any other *appointed representative*.
- (3) The *rules* in this chapter which apply with respect to *tied agents* appointed by *firms* also apply to a *firm* that appoints a *MiFID optional exemption appointed representative*.

**What is a structured deposit appointed representative?**

12.2.18

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- (1) If a *MiFID investment firm* or a *third country investment firm* appoints a *person* to act under its full and unconditional responsibility but only for the purpose of selling, or advising *clients* in relation to, *structured deposits* (and not any of the activities within section 39(7) of the *Act*), that *person* will not be a *tied agent* in respect of that activity.
- (2) Unless otherwise provided, this chapter applies to a *firm* that appoints a *structured deposit appointed representative* in the same way as it applies to the appointment of any other *appointed representative*.
- (3) The *rules* in this chapter which apply with respect to *tied agents* appointed by *firms* also apply to a *firm* that appoints a *structured deposit appointed representative*.