

## Chapter 10A

# FCA Approved Persons in Appointed Representatives

10A



10A.6 FCA governing functions

Introduction

- 10A.6.1
- G
- (1) Every *appointed representative* will have one or more *persons* responsible for directing its affairs. These *persons* will be performing the *FCA governing functions* and will be required to be *FCA-approved persons* unless the application provisions in ■ SUP 10A.1, or the particular description of an *FCA controlled function*, provide otherwise. For example, each *director* of a *company* incorporated under the Companies Acts will perform an *FCA governing function*.

(2) [deleted]

(3) [deleted]

- 10A.6.2
- G
- A *sole trader* does not fall within the description of the *governing functions*.

- 10A.6.2A
- G
- [deleted]

- 10A.6.3
- R
- [deleted]

- 10A.6.4
- G
- [deleted]

- 10A.6.5
- G
- [deleted]

- 10A.6.6
- G
- [deleted]

Director function (CF1)

- 10A.6.7
- R
- If an *appointed representative* is a *body corporate* (other than a *limited liability partnership*), the *director function* is the function of acting in the capacity of a *director* (other than *non-executive director*) of that *appointed representative*.

- 10A.6.8
- R
- (1) If an *appointed representative* is a *body corporate* (other than a *limited liability partnership*), the *director function* is also the function of acting in the capacity of a *person*:

		<div><div>(a) who is a <i>director</i>, partner, officer, member (if the <i>parent undertaking</i> or <i>holding company</i> is a <i>limited liability partnership</i>), <i>senior manager</i>, or employee of a <i>parent undertaking</i> or <i>holding company</i> of the <i>appointed representative</i>; and</div><div>(b) whose decisions or actions are regularly taken into account by the <i>governing body</i> of the <i>appointed representative</i>.</div></div> <div>(2) (1) does not apply if that <i>parent undertaking</i> or <i>holding company</i> has a <i>Part 4A permission</i> or is regulated by an <i>EEA regulator</i>.</div> <div>(3) (1) does not apply to the function falling into ■ SUP 10A.6.13 R (<i>non-executive director</i> of the <i>parent undertaking</i> or <i>holding company</i>).</div>
10A.6.9	G	[deleted]
10A.6.10	G	A <i>director</i> can be a <i>body corporate</i> and may accordingly require approval as an <i>FCA-approved person</i> in the same way as a <i>natural person</i> may require approval.
10A.6.11	G	[deleted]
10A.6.11A	R	[deleted]
		<b>Non-executive director function (CF2)</b>
10A.6.12	R	If a an <i>appointed representative</i> is a <i>body corporate</i> , the <i>non-executive director function</i> is the function of acting in the capacity of a <i>non-executive director</i> of that <i>appointed representative</i> .
10A.6.13	R	<div>(1) If an <i>appointed representative</i> is a <i>body corporate</i>, the <i>non-executive director function</i> is also the function of acting in the capacity of a <i>person</i>:<div><div>(a) who is a <i>non-executive director</i> of a <i>parent undertaking</i> or <i>holding company</i>; and</div><div>(b) whose decisions or actions are regularly taken into account by the <i>governing body</i> of the <i>appointed representative</i>.</div></div></div> <div>(2) However, (1) does not apply if that <i>parent undertaking</i> or <i>holding company</i> has a <i>Part 4A permission</i> or is regulated by an <i>EEA regulator</i>.</div>
10A.6.14	G	[deleted]
10A.6.15	G	[deleted]
10A.6.15A	R	[deleted]

10A.6.15B **R** [deleted]

10A.6.15C **G** [deleted]

**Guidance on persons in a parent undertaking or holding company exercising significant influence**

- 10A.6.16 **G**
- (1) The explanation in **■ SUP 10C.5B.2G** of the basis on which the *group entity senior manager function* is included as a *controlled function* for an *SMCR firm* is also relevant to the basis on which the *director function* and the *non-executive director function* are applied to persons who have a position with the *appointed representative's parent undertaking or holding company* under **■ SUP 10A.6.8 R** or **■ SUP 10A.6.13 R**.
  - (2) The guidance in **■ SUP 10C.5B.3G** to **■ SUP 10C.5B.5G** about when the *group entity senior manager function* applies to an *SMCR firm* is also relevant to when those who have a position with an *appointed representative's parent undertaking or holding company* may be performing a *controlled function* under **■ SUP 10A.6.8 R** or **■ SUP 10A.6.13 R**.

**Chief executive function (CF3)**

10A.6.17 **R** The *chief executive function* is the function of acting in the capacity of a *chief executive* of an *appointed representative*.

- 10A.6.18 **G** This function is having the responsibility, alone or jointly with one or more others, under the immediate authority of the *governing body*:
- (1) for the conduct of the whole of the business (or relevant activities); or
  - (2) in the case of a branch in the *United Kingdom* of a non-UK *appointed representative*, for the conduct of all of the activities subject to the *UK regulatory system*.

10A.6.19 **G** For a branch in the *United Kingdom* of a non-UK *appointed representative*, the *FCA* would not normally expect the overseas *chief executive* of the *appointed representative* as a whole to be *FCA*-approved for this function where there is a *senior manager* under them with specific responsibility for those activities of the branch which are subject to the *UK regulatory system*. In some circumstances, the *person* within the *appointed representative* responsible for *UK* operations may, if the function is likely to enable them to exercise significant influence over the branch, also perform the *chief executive function*.

10A.6.20 **G** A *person* performing the *chief executive function* may be a member of the *governing body* but need not be. If the chairman of the *governing body* is also the *chief executive*, he will be discharging this function. If the responsibility is divided between more than one *person* but not shared, there is no *person* exercising the *chief executive function*. But if that

		responsibility is discharged jointly by more than one <i>person</i> , each of those <i>persons</i> will be performing the <i>chief executive function</i> .
10A.6.21	G	Note that a <i>body corporate</i> may be a <i>chief executive</i> . If so, it will need to be approved to perform the <i>chief executive function</i> .
10A.6.22	G	[deleted]
		<b>Partner function (CF4)</b> .....
10A.6.23	R	<p>(1) If an <i>appointed representative</i> is a <i>partnership</i>, the <i>partner function</i> is the function of acting in the capacity of a <i>partner</i> in that <i>appointed representative</i>.</p> <p>(2) If the principal purpose of the <i>appointed representative</i> is to carry on one or more <i>regulated activities</i>, each <i>partner</i> performs the <i>partner function</i>.</p> <p>(3) If the principal purpose of the <i>appointed representative</i> is other than to carry on <i>regulated activities</i>:</p> <p>(a) a <i>partner</i> performs the <i>partner function</i> to the extent only that they have responsibility for a <i>regulated activity</i>; and</p> <p>(b) a <i>partner</i> in an <i>appointed representative</i> will be taken to have responsibility for each <i>regulated activity</i> except where the <i>partnership</i> has apportioned responsibility to another <i>partner</i> or group of <i>partners</i>.</p>
10A.6.24	G	[deleted]
10A.6.25	G	[deleted]
10A.6.26	R	If an <i>appointed representative</i> is a <i>limited liability partnership</i> , the <i>partner function</i> extends to the <i>appointed representative</i> as if the <i>appointed representative</i> were a <i>partnership</i> and a member of the <i>appointed representative</i> were a <i>partner</i> .
10A.6.27	R	If a <i>partnership</i> is registered under the Limited Partnership Act 1907, the <i>partner function</i> does not extend to any function performed by a limited partner.
10A.6.28	G	[deleted]
		<b>Director of unincorporated association function (CF5)</b> .....
10A.6.29	R	If an <i>appointed representative</i> is an unincorporated association, the <i>director of unincorporated association function</i> is the function of acting in the capacity of a <i>director</i> of the unincorporated association.

10A.6.30	<div>G</div>	[deleted]
10A.6.31	<div>R</div>	[deleted]
10A.6.32	<div>R</div>	[deleted]
10A.6.33	<div>G</div>	[deleted]
10A.6.34	<div>G</div>	[deleted]