Chapter 12

Appointed representatives
12.1 Application and purpose

General application

12.1.1 R
(1) This chapter applies to a firm which is considering appointing, has decided to appoint or has appointed an appointed representative.

(1A) This chapter applies to a UK MiFID investment firm which is considering appointing, has decided to appoint or has appointed an EEA tied agent.

(1B) This chapter applies to a CBTL firm other than a CBTL lender which is considering appointing, has decided to appoint or has appointed an appointed representative in relation to CBTL business as it does to a firm.

(2) This chapter does not apply to a UCITS qualifier.

(3) This chapter does not apply in relation to a tied agent acting on behalf of an EEA MiFID investment firm unless that tied agent is established in the UK.

Territorial application: compatibility with EU law

12.1.1A R
(1) The territorial scope of SUP 12 is modified to the extent necessary to be compatible with EU law (see SUP 12.1.1BG and 12.1.1CG for guidance on this).

(2) This rule overrides every other rule in this chapter.

12.1.1B G
For a UK MiFID investment firm, in our view, rules in this chapter that are within the scope of MiFID apply to its MiFID business carried on from an establishment in the United Kingdom or another EEA State.

[Note: articles 34(1) and 35(1) and (8) of MiFID]

12.1.1C G
For an EEA MiFID investment firm, in our view, rules in this chapter that are within the scope of MiFID apply only to its MiFID business to the extent they relate to the knowledge and competence of one or more of its UK tied agents. An EEA MiFID investment firm should complete the Appointed representative appointment form in SUP 12 Annex 3R when appointing a UK tied agent to carry on MiFID business on its behalf.

[Note: article 29(3) of MiFID]
Interaction of SUP 12 and other modules in relation to MiFID business

12.1.1D In addition to those rules in SUP 12 relating to the MiFID business of appointed representatives and tied agents, there are other MiFID obligations in the Handbook relevant to the knowledge and competence of tied agents and related compliance obligations (see SYSC 5.1, TC and FIT (in respect of appointed representatives that are approved persons)). These provisions are subject to the territorial application requirements in their respective chapters.

Purpose

12.1.2 This chapter gives guidance to a firm, which is considering appointing an appointed representative, on how the provisions of section 39 of the Act (Exemption of appointed representatives) work. For example, it gives guidance on the conditions that must be satisfied for a person to be appointed as an appointed representative. It also gives guidance to a firm on the implications, for the firm itself, of appointing an appointed representative.

12.1.3 The chapter also sets out the FCA’s rules, and guidance on these rules, that apply to a firm before it appoints, when it appoints and when it has appointed an appointed representative. The main purpose of these rules is to place responsibility on a firm for seeking to ensure that:

(1) its appointed representatives are fit and proper to deal with clients in its name; and

(2) clients dealing with its appointed representatives are afforded the same level of protection as if they had dealt with the firm itself.

12.1.4 The FCA’s website includes information about becoming and appointing an appointed representative. This information can be found at https://www.fca.org.uk/firms/appointed-representatives-principals.

12.1.5 This chapter also sets out:

(1) guidance about section 39A of the Act, which is relevant to a UK MiFID investment firm that is considering appointing an FCA registered tied agent; and

(2) the FCA’s rules, and guidance on those rules, in relation to the appointment of:

(a) an EEA tied agent by a UK MiFID investment firm;

(b) a MiFID optional exemption appointed representative; and

(c) a structured deposit appointed representative.
12.2 Introduction

What is an appointed representative?

(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. 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 12.4.12G and SUP 12.4.13G for guidance on that condition, 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 conditions 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 for guidance on those conditions.

(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 12.2.7G); 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-authorised person) or the FCA and the PRA (in the case of a PRA-authorised 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?

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?

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.

What is a "network"?

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

(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 a pure protection contract (but only where the contract is not a long-term care insurance contract) or general insurance 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 in (a) to (h) or (ja) or (jb); 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;

(b) providing advice to clients or potential clients in relation to the placing of financial instruments.

(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?

(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 he had received basic advice or advice on investments or on home finance transactions or that the introducer appointed representative is permitted to give basic advice or give personal recommendations on investments or on home finance transactions.

(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 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 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; and

(3) SUP 12.9.1 R (4) (Record keeping).

12.2.11 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 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]

12.2.16 G

**What is a tied agent?**

(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*:

   (a) established in the UK; or
   
   (b) established in another EEA State and appointed by a UK MiFID investment firm.
(4) A tied agent appointed by a firm to carry on investment services and activities or ancillary services on its behalf may not provide cross border services or establish a branch in another EEA State in its own right. This is because tied agents do not have passporting rights. The tied agent of a MiFID investment firm may, however, provide cross border services or establish a branch in another EEA State by availing itself of the appointing firm's passport. MiFID investment firms may also appoint tied agents established in different EEA States.

(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. If such a tied agent is appointed by a UK MiFID investment firm it will be an EEA tied agent. EEA tied agents are either FCA registered tied agents or EEA registered tied agents.

(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) Under MiFID, a tied agent must be registered with the competent authority of the EEA State in which it is established. A UK MiFID investment firm 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 tied agent established in such an EEA State, the tied agent must be registered with the FCA. Such an EEA tied agent is referred to in the Handbook as an FCA registered tied agent.

(8) If a UK MiFID investment firm appoints a tied agent established in an EEA State other than the UK, the tied agent must be registered with the competent authority of the EEA State in which it is established. Such an EEA tied agent is referred to in the Handbook as an EEA registered tied agent.

What is a MiFID optional exemption appointed representative?

(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 UK tied agents appointed by UK firms also apply to a firm that appoints a MiFID optional exemption appointed representative.

What is a structured deposit appointed representative?

(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
(1) Deposits (and not any of the activities within article 4(1)(29) of MiFID), 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 UK tied agents appointed by UK firms also apply to a firm that appoints a structured deposit appointed representative.
12.3 What responsibility does a firm have for its appointed representatives or EEA tied agents?

Responsibility for appointed representatives

12.3.1 In determining whether a firm has complied with:

1. any provision in or under the Act such as any Principle or other rule; or

2. any provision in Part 3 of the MCD Order; or

3. any qualifying EU provision specified, or of a description specified, for the purpose of section 39(4) of the Act by the Treasury by order,

going on the business for which the firm has accepted responsibility will be treated as having been done or omitted to be done by the firm (section 39(4) of the Act and article 17 of the MCD Order).

12.3.2 The firm is responsible, to the same extent as if it had expressly permitted it, for anything the appointed representative does or omits to do as respects the business for which the firm has accepted responsibility (section 39(3) of the Act and article 17 of the MCD Order).

12.3.3 In determining whether the firm has committed any offence, however, the knowledge or intentions of an appointed representative are not attributable to the firm, unless in all the circumstances it is reasonable for them to be attributed to it (section 39(6) of the Act).

12.3.4 SYSC 6.1.1 R requires a MiFID investment firm and a credit firm to ensure the compliance of its appointed representative with obligations under the regulatory system. The concept of a relevant person in SYSC includes an officer or employee of a tied agent.

Responsibility for EEA tied agents

12.3.5 A UK MiFID investment firm must not appoint an EEA registered tied agent or allow such an agent to continue to act for it unless it accepts or has
accepted responsibility in writing for the agent’s activities in acting as its EEA registered tied agent.

[Note: paragraph 1 of article 29(2) of MiFID]

12.3.6 G The effect of section 39A(6)(b) of the Act is to prohibit a UK MiFID investment firm from appointing an FCA registered tied agent unless it has accepted responsibility in writing for the agent’s activities in acting as a tied agent.
12.4 What must a firm do when it appoints an appointed representative or an EEA tied agent?

The permission that the firm needs

12.4.1 [deleted]

12.4.1A The effect of sections 20 (Authorised persons acting without permission) and 39(4) (Exemption of appointed representatives) of the Act is that the regulated activities covered by an appointed representative's appointment need to:

1. fall within the scope of the principal's permission; or
2. be excluded from being regulated activities when carried on by the principal, for example because:
   (a) they fall within article 28 of the Regulated Activities Order (Arranging transactions to which the arranger is a party);
   (b) they constitute CBTL business and the principal is a CBTL firm; or
   (c) the principal is appropriately authorised (see article 53(1A) of the Regulated Activities Order).

12.4.1B In relation to CBTL business only a CBTL firm which is a firm can appoint an appointed representative.

12.4.1C Where the principal is appropriately authorised for the purposes of article 53(1A) of the Regulated Activities Order (and so does not need permission to provide non-personal recommendation advice), the terms of the appointed representative's appointment will still need to cover their business in carrying on non-personal recommendation advice. This is because an appointed representative providing non-personal recommendation advice will only be exempt from the general prohibition if the principal has accepted responsibility in writing for the appointed representative in carrying on such business. An appointed representative is not exempt from the general prohibition simply because the principal is appropriately authorised for the purposes of article 53(1A) of the Regulated Activities Order (see also PERG 8.24.1AG (Advising on investments)).
Appointment of an appointed representative (other than an introducer appointed representative)

Before a firm appoints a person as an appointed representative (other than an introducer appointed representative) and on a continuing basis, it must establish on reasonable grounds that:

1. the appointment does not prevent the firm from satisfying and continuing to satisfy the threshold conditions;

2. the person:
   - is solvent;
   - is otherwise suitable to act for the firm in that capacity; and
   - has no close links which would be likely to prevent the effective supervision of the person by the firm;

3. the firm has adequate:
   - controls over the person’s regulated activities for which the firm has responsibility (see SYSC 3.1 or SYSC 4.1); and
   - resources to monitor and enforce compliance by the person with the relevant requirements applying to the regulated activities for which the firm is responsible and with which the person is required to comply under its contract with the firm (see SUP 12.5.3 G (2)); and

4. the firm is ready and organised to comply with the other applicable requirements contained or referred to in this chapter.

12.4.2A

1. A firm must ensure that:
   - (a) a tied agent that is an appointed representative;
   - (b) or a MiFID optional exemption appointed representative; or
   - (c) a structured deposit appointed representative,
   is of sufficiently good repute and that it possesses appropriate general, commercial and professional knowledge and competence so as to be able to communicate accurately all relevant information regarding the proposed service to the client or potential client. This does not limit a firm’s obligations under SUP 12.4.2R.

2. A firm must ensure that its tied agent or MiFID optional exemption appointed representative also possesses appropriate general, commercial and professional knowledge and competence so as to be able to deliver the investment service or ancillary service for which the firm has accepted responsibility.

   [Note: paragraphs 2 and 3 of article 29(3) of MiFID]

12.4.2B

1. A firm to which SUP 12.4.2AR applies should also have regard to SYSC 5.1 (Skills, knowledge and expertise). The requirements of the Training and Competence sourcebook (TC) and guidance in the Fit and Proper Test for Employees and Senior Personnel (FIT) may also be relevant.
(2) ESMA has issued guidelines for MiFID investment firms specifying the criteria for the assessment of knowledge and competence. These guidelines are relevant to tied agents (see SYSC 5.1.5ADG).

12.4.3 In assessing, under SUP 12.4.2 R(2)(a) and (b), whether an appointed representative or prospective appointed representative is solvent and otherwise suitable, a firm should determine, among other matters, whether the person is likely to be adversely influenced by its financial position in the conduct of the business for which the firm is responsible. This might arise, for example, if the person has cashflow problems and is not able to service its debts. Guidance for firms on assessing the financial position of an appointed representative or prospective appointed representative is given in SUP 12 Annex 1.

12.4.4 In assessing, under SUP 12.4.2 R(2)(b), whether an appointed representative or prospective appointed representative is otherwise suitable to act for the firm in that capacity, a firm should consider:

(1) whether the person is fit and proper; guidance on the information that firms should take reasonable steps to obtain and verify is given in SUP 12 Annex 2; and

(2) the fitness and propriety (including good character and competence) and financial standing of the controllers, directors, partners, proprietors and managers of the person; firms seeking guidance on the information which they should take reasonable steps to obtain and verify should refer to FIT and the questions in the relevant Form A (Application to perform controlled functions under the approved person regime) in SUP 10A Annex 4.

12.4.5 In determining, under SUP 12.4.2 R(2)(c), whether an appointed representative or prospective appointed representative has any close links which would be likely to prevent the firm’s effective supervision, a firm should consider the guidance to threshold condition 2C or 3B as applicable in COND 2.3.

Appointment representative who may be appointed by other principals

12.4.5A If a firm proposes to appoint an appointed representative, but not to prohibit its appointment by any other principals (see SUP 12.5.2 G(3)), the firm should, in particular:

(1) require, in the contract, that the appointed representative notifies the firm about other principals (see SUP 12.5.5 R(3)) and

(2) unless the appointed representative is an introducer appointed representative:

(a) take reasonable steps to check whether the appointed representative is already appointed by one or more other principals and, if it is, contact those other principals; such steps should include asking the appointed representative and checking the Financial Services Register;
Section 12.4: What must a firm do when it appoints an appointed representative or an EEA tied agent?

(b) if there are any other principals, agree arrangements with the other principals (see SUP 12.4.5B R) ; and

(c) establish effective systems and controls for ensuring that the appointed representative complies with all contractual restrictions imposed, including those relating to multiple principals under the Appointed Representatives Regulations and under SUP 12.5.6A R (see SUP 12.6.11A R).

Multiple principals

12.4.5B R

(1) A firm must not appoint a person as its appointed representative until it has entered into a written agreement (a "multiple principal agreement") with every other principal the person may have; but this does not apply to the appointment of an introducer appointed representative nor does it require an agreement with another principal which has appointed a person as an introducer appointed representative.

(2) A firm must not unreasonably decline to enter into a multiple principal agreement with any principal of his appointed representative unless the firm is relying on a prohibition on the appointed representative from representing any other firms (or is seeking to impose such a prohibition) as permitted by article 3 of the Appointed Representative Regulations.

(3) A multiple principal agreement must contain all the provisions which are necessary or desirable to:

   (a) set out the relationship between the principals of that appointed representative; and

   (b) protect the interests of clients;

   including the matters set out in SUP 12.4.5C.

Multiple principal agreement

<table>
<thead>
<tr>
<th>Matter</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Scope of appointment</td>
<td>The scope of appointment given by each principal to the appointed representative.</td>
</tr>
<tr>
<td>2. Complaints handling</td>
<td>The identity of the principal which will be the point of contact for a complaint from a client (referred to as the &quot;lead-principal&quot; in SUP 12.4.5D G to SUP 12.4.5E G).</td>
</tr>
<tr>
<td></td>
<td>An agreement that each principal will co-operate with each other principal in resolving a complaint from a client in relation to the appointed representative's conduct.</td>
</tr>
<tr>
<td></td>
<td>The arrangements for complaints handling, including arrangements for resolving disputes between the principals in relation to their liability to a client in respect of a complaint and arrangements for dealing with referrals to the Financial Ombudsman Service.</td>
</tr>
<tr>
<td>3. Financial promotions</td>
<td>The arrangements for approving financial promotion.</td>
</tr>
</tbody>
</table>
## SUP 12: Appointed representatives

### Section 12.4: What must a firm do when it appoints an appointed representative or an EEA tied agent?

<table>
<thead>
<tr>
<th>Matter</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. Control and monitoring</td>
<td>The arrangements for the control and monitoring of the activities of the appointed representative (see in particular SUP 12.6.6 R (Regulated activities and investment services outside the scope of appointment) and SUP 12.6.7 G (Senior management responsibility for appointed representatives)).</td>
</tr>
<tr>
<td>5. Approved person status</td>
<td>The arrangements for making applications for approved person status (see SUP 10A and SUP 10C (Approved persons) and the corresponding PRA requirements).</td>
</tr>
<tr>
<td>6. Training and competence</td>
<td>The arrangements for training and competence (see TO).</td>
</tr>
<tr>
<td>7. Co-operation</td>
<td>The arrangements for co-operation over any other issues which may arise from the multiple appointments, including issues which may damage the interests of clients dealing with the appointed representative and administrative issues.</td>
</tr>
<tr>
<td></td>
<td>An agreement by each principal to take reasonable steps to ensure that it does not cause the appointed representative or any of its other principals to be in breach of their obligations to each other or under the regulatory system.</td>
</tr>
<tr>
<td>8. Sharing information</td>
<td>The arrangements for sharing information on matters relevant to the matters covered under the multiple principal agreement and each principal’s obligations under SUP 12.6 (Continuing obligations of firms with appointed representatives).</td>
</tr>
<tr>
<td></td>
<td>An agreement that each principal will notify each other principal of any information which is materially relevant to the multiple principal agreement.</td>
</tr>
</tbody>
</table>

### 12.4.5D

One effect of the multiple principal agreement is to introduce a ‘lead-principal’ concept in relation to complaints handling for the benefit of the client. For example, where the client has been given advice by an appointed representative who has two principals, and the advice could have led to a transaction being arranged with either principal, the client will know that he may pursue his complaint with (but not necessarily against) one of the principals. Whether he later decides to refer his complaint to the Financial Ombudsman Service, and if so, against which principal, will depend on the circumstances.

### 12.4.5E

1. Under the relevant provisions in COBS, ICOBS and MCOB, the customer will receive details of how to complain to the appointed representative and, when a product is purchased, details of the complaints procedure for the product provider, insurer or home finance provider.

2. Under DISP 1.2.1 R, a firm must among other things, supply summary details of its internal process for dealing promptly and fairly with complaints to the customer when it receives a complaint. In complying with DISP 1.2.1 R, a firm should ensure that the “lead-principal” is clearly identified in the procedures.
Section 12.4 : What must a firm do when it appoints an appointed representative or an EEA tied agent?

(3) The complaints procedure should also explain that the customer has a choice of whether to contact the appointed representative, the "lead-principal" or the product provider, insurer or home finance provider and that the "lead-principal" will be the appropriate point of contact where the customer does not wish to complain about a specific product or is unsure who to contact.

(4) In other words, where the customer, has a doubt who to complain to the "lead-principal" is to be the point of contact for all complaints arising out of the activities of the appointed representative.

12.4.5F When considering the provisions for complaints handling (see ■SUP 12.4.5C(2)) firms should consider the use of a mediation clause. If a complaint is made by a client, principals which are unable to resolve a dispute about liability to the client should consider all quick and effective ways of resolving the dispute, including referring the matter to the Financial Ombudsman Service and mediation.

12.4.5G It is for the principals to consider in each case whether it would be appropriate to show the multiple principal agreement to their appointed representative, or in some circumstances make their appointed representative a party to it.

Appointment of an introducer appointed representative

12.4.6 Before a firm appoints a person as an introducer appointed representative, and on a continuing basis, it must take reasonable care to ensure that:

(1) the person is suitable to act for the firm in that capacity (having regard, in particular, to other persons connected with the person who will be, or who are, directly responsible for its activities); and

(2) the firm is ready and organised to comply with the other applicable requirements contained or referred to in this chapter.

12.4.7 In assessing, under ■SUP 12.4.6 R(1), whether an introducer appointed representative or prospective introducer appointed representative is otherwise suitable to act for the firm in that capacity, the firm should determine whether the introducer appointed representative and those persons who will be, or who are, directly responsible for its activities are of sufficiently good reputation and otherwise fit and proper for that appointment. The firm should, as a minimum, verify the identity of a prospective introducer appointed representative and relevant persons but need not carry out the more extensive due diligence required for the appointment of an appointed representative under ■SUP 12.4.2 R.

12.4.8 If a firm has doubts that a prospective introducer appointed representative or other person is of sufficiently good reputation and otherwise fit and proper, the FCA will expect it to resolve those doubts before appointing the prospective introducer appointed representative. For example, if a firm is aware that a person’s previous appointment as an introducer appointed representative or representative was terminated, it should take reasonable
steps to find out the reasons for the termination and the extent to which those reasons reflect on the person concerned.

### Good repute

12.4.8A **R**

Before a firm appoints a person as an appointed representative to carry on insurance distribution activity, it must in relation to insurance distribution activity ensure that the person will comply on appointment, and will continue to comply with, the provisions of MIPRU SYSC 28.3 (Good repute) as if the appointed representative were a firm.

[Note: article 10(3) of the IDD]

12.4.8AA **R**

A firm that has appointed an appointed representative to carry on insurance distribution activity must ensure that the appointed representative:

1. establishes, maintains and keeps appropriate records to demonstrate compliance with SYSC 28.3 (Good repute); and

2. provides the name of the person responsible for the record-keeping requirement in (1) to the firm.

### Knowledge and ability requirements

12.4.8AB **G**

SYSC 28.1 (Minimum knowledge and ability requirements for carrying out insurance distribution activities), SYSC 28.2 (Knowledge and ability requirements) and SYSC 28.4 (Record-keeping requirements) apply in relation to a firm’s relevant employees. This includes its appointed representatives and their employees.

[Note: articles 10(1), 10(2) and last paragraph of article 10(8) of the IDD]

12.4.8B **G**

[deleted]

### Close links

12.4.8C **R**

Before a firm appoints an appointed representative who does not already appear on the Financial Services Register (“A”) to carry on insurance distribution activity, it must obtain from A the following information:

1. the identities of shareholders or members, whether natural or legal persons, that have a holding in A that exceeds 10% and the amount of those holdings;

2. the identities of persons who have close links with A; and

3. that those holdings or close links do not prevent the effective supervision of A by the firm.

[Note: article 3(6) of the IDD]

12.4.9 **G**

(1) An appointed representative must not commence an insurance distribution activity until they are included on the Financial Services Register as carrying on such activities (see SUP 12.5.2 G (3)).
(2) If an appointed representative’s scope of appointment is to include an insurance distribution activity, the principal must notify the FCA of the appointment before the appointed representative commences that activity (see SUP 12.7.1 R (1)).

(3) As an exception, pre-notification is not required if the appointed representative is already included on the Financial Services Register as carrying on insurance distribution activities in another capacity (for example, as the appointed representative of another principal).

12.4.10

(1) The FCA has the power to decide not to include on the Financial Services Register (or to remove from the Financial Services Register) an appointed representative whose scope of appointment includes an insurance distribution activity, if it appears to the FCA that he is not a fit and proper person to carry on those activities (article 95 of the Regulated Activities Order).

(2) If the FCA proposes to use the power in (1), it must give the appointed representative a warning notice. If the FCA decides to proceed with its proposal, it must give the appointed representative a decision notice. The procedures followed by the FCA in relation to the giving of warning notices and decision notices are set out in DEPP 2.

(3) An appointed representative may apply to the FCA for a determination of the kind referred to in (1) to be revoked. If the FCA proposes to refuse the application, it must give the appointed representative a warning notice, and if the FCA decides to proceed with the refusal, it must give the appointed representative a decision notice.

Appointed representative carrying on MCD credit intermediation activity

Before a firm appoints a person as an appointed representative to carry on an MCD credit intermediation activity, it must ensure that the person has, and will maintain on a continuing basis after appointment, professional indemnity insurance in accordance with the rules applicable to MCD credit intermediaries. A firm will satisfy this requirement if:

(1) the appointed representative has professional indemnity insurance which satisfies the rules in MIPRU 3.2 applicable to the activities of the appointed representative, as if the appointed representative were an MCD credit intermediary;

(2) professional indemnity insurance which would satisfy the requirements of SUP 12.4.10AR (1) is provided by the firm; or

(3) the appointed representative holds a comparable guarantee (as understood by reference to MIPRU 3.1.1R (3)(b)) provided by the firm.

[Note: article 31(2) of the MCD]

12.4.10B

(1) Before a firm appoints a person as an appointed representative to carry on MCD credit intermediation activity and on a continuing basis after appointment, it must, in relation to such activities, ensure that:
(a) if the appointed representative is an individual, the individual:
   (i) has not been convicted of any serious criminal offences linked to crimes against property or other crimes related to financial activities (other than spent convictions under the Rehabilitation of Offenders Act 1974 or any other national equivalent); and
   (ii) has not been adjudged bankrupt (unless the bankruptcy has been discharged);
under the law of any part of the United Kingdom or under the law of a country or territory outside the United Kingdom; and
   (iii) possesses the appropriate level of knowledge and competence under the rules in TC applicable to the activities of the appointed representative;
(b) if the appointed representative is a body corporate, the members of the board of the appointed representative, and persons performing equivalent tasks:
   (i) have not been convicted of any serious criminal offences linked to crimes against property or other crimes related to financial activities (other than spent convictions under the Rehabilitation of Offenders Act 1974 or any other national equivalent); and
   (ii) have not been adjudged bankrupt (unless the bankruptcy has been discharged);
under the law of any part of the United Kingdom or under the law of a country or territory outside the United Kingdom; and
   (iii) possess the appropriate level of knowledge and competence under the rules in TC applicable to the activities of the appointed representative.

[Note: article 31(2) of the MCD]

12.4.10C

(1) If an appointed representative’s scope of appointment is to include MCD credit intermediation activity, the principal must notify the FCA of the appointment before the appointed representative commences that activity (see SUP 12.7.1 R (1)).

(2) An appointed representative must not commence an MCD credit intermediation activity until they are included on the Financial Services Register.

(3) If an appointed representative’s scope of appointment is to include MCD credit intermediation activity, the Act provides that that appointed representative’s principal may not be a tied MCD credit intermediary.

Appointment of an FCA registered tied agent

12.4.11

If a UK MiFID investment firm appoints an FCA registered tied agent, SUP 12.4.2 R and SUP 12.4.2A R apply to that firm as though the FCA registered tied agent were an appointed representative.
Tied agents

1. A tied agent that is an appointed representative may not start to act as a tied agent until it is included on the applicable register (section 39(1A) of the Act). If the tied agent is established in the UK, the register maintained by the FCA is the applicable register for these purposes. If the tied agent is established in another EEA State, the applicable register is that maintained by the competent authority in the EEA State in which the tied agent is established.

2. A UK MiFID investment firm that appoints an FCA registered tied agent who is not registered with the FCA will, subject to certain conditions, be taken to have contravened a requirement imposed on it by or under the Act (see section 39A(6)(c) and (d) of the Act).

3. A UK MiFID investment firm that appoints an EEA registered tied agent will be required to register that agent with the competent authority of the EEA State in which it is established. This requirement will be imposed by the rules of that EEA State.

4. If the tied agent is not established in the UK and is appointed by an EEA MiFID investment firm, it cannot commence acting as a tied agent until it is included on the public register of tied agents in the EEA State in which it is established.

5. If an appointed representative’s scope of appointment is to include acting as a tied agent, the principal must notify the FCA of the appointment before the appointed representative starts acting as such (see SUP 12.7.7R (1A)).

6. A tied agent can only act as such for one MiFID investment firm or third country investment firm (see SUP 12.5.6A R (1A)).

MiFID optional exemption appointed representatives and structured deposit appointed representatives

1. A MiFID optional exemption appointed representative or a structured deposit appointed representative may not start to act as such until it is included on the Financial Services Register (sections 39(1A) and 39(1AA) of the Act).

2. A firm must notify the FCA of the appointment of a MiFID optional exemption appointed representative or a structured deposit appointed representative before such appointed representative starts acting in that capacity (SUP 12.7.1R).
12.5 Contracts: required terms

Required contract terms for all appointed representatives

12.5.1 The Appointed Representatives Regulations include, among other things, the prescribed requirements applying to contracts between firms and appointed representatives for the purposes of section 39(1)(a)(ii) of the Act.

12.5.2 (1) Regulations 3(1) and (2) of the Appointed Representatives Regulations make it a requirement that the contract between the firm and the appointed representative (unless it prohibits the appointed representative from representing other counterparties) contains a provision enabling the firm to:

(a) impose such a prohibition; or

(b) impose restrictions as to the other counterparties which the appointed representative may represent, or as to the types of investment in relation to which the appointed representative may represent other counterparties.

(1A) The requirement described in paragraph (1) does not apply if the firm is an EEA MiFID investment firm.

(2) Under the Appointed Representatives Regulations, an appointed representative is treated as representing other counterparties if, broadly, it:

(a) makes arrangements (within article 25 of the Regulated Activities Order) for persons to enter into investment transactions with other counterparties; or

(b) arranges the safeguarding and administration of assets by other counterparties; or

(c) gives advice (within article 53(1) of the Regulated Activities Order (Advising on investments)) on the merits of entering into investment transactions with other counterparties;

(d) assists in the administration and performance of a contract of insurance (article 39A of the Regulated Activities Order);

where an "investment transaction" means a transaction to buy, sell, subscribe for or underwrite a security or a relevant investment (that is, a designated investment (other than a P2P agreement), structured deposit (where applicable), funeral plan contract, pure protection contract, general insurance contract or right to or interest in a funeral plan; or

(e) arranges:
(i) for persons to enter (or with a view to persons entering) as customers into home finance transactions (or as plan providers in the case of a home reversion plan) with other counterparties;

(ii) for a person to vary a home finance transaction entered into by a person as customer (or as plan provider in the case of a home reversion plan) before 31 October 2004 (in the case of a legacy CCA mortgage contract), or on or after 31 October 2004 (in the case of any other regulated mortgage contract) or 6 April 2007 (in all other cases) with other counterparties;

(f) gives advice (within articles 53A, 53B or 53C of the Regulated Activities Order) on the merits of:

(i) persons entering as customers into home finance transactions (or as plan provider in the case of a home reversion plan) with other counterparties;

(ii) persons varying home finance transactions entered into by them as customer (or as plan provider in the case of a home reversion plan) before 31 October 2004 (in the case of a legacy CCA mortgage contract), or on or after 31 October 2004 (in the case of any other regulated mortgage contract) or 6 April 2007 (in all other cases) with other counterparties;

(g) giving basic advice on a stakeholder product;

(h) effects introductions (within article 36A (Credit broking) of the Regulated Activities Order) of individuals to other counterparties;

(i) facilitates persons becoming the lender and borrower under an article 36H agreement (within the meaning of the Regulated Activities Order) on behalf of other counterparties;

(ia) facilitates a person assuming the rights of the lender under an article 36H agreement (within the meaning of the Regulated Activities Order) by assignment or operation of law on behalf of other counterparties;

(j) carries on any of the other activities specified in article 36H(3) of the Regulated Activities Order on behalf of other counterparties in the course of, or in connection with, facilitation mentioned in (i) or (ia) by the appointed representative or its principal;

(ja) gives advice (within article 53(2) of the Regulated Activities Order) on the merits of:

(i) a person entering into a ‘relevant article 36H agreement’ (within the meaning of the Appointed Representatives Regulations) as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law; or

(ii) a person providing instructions to a P2P platform operator with a view to entering into a ‘relevant article 36H agreement’ as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law, where the instructions involve:

(A) accepting particular parameters for the terms of the agreement presented by a P2P platform operator; or
(B) choosing between options governing the parameters of the terms of the agreement presented by a P2P platform operator; or

(C) specifying the parameters of the terms of the agreement by other means; or

(iii) a person enforcing or exercising the lender’s rights under a ‘relevant article 36H agreement’; or

(iv) a person assigning rights under a ‘relevant article 36H agreement’;

on behalf of other counterparties;

(k) takes steps (within article 39D (Debt adjusting) of the Regulated Activities Order) on behalf of other counterparties;

(l) gives advice to a borrower (within article 39E (Debt-counselling) of the Regulated Activities Order) on behalf of other counterparties;

(m) takes steps (within article 39F (Debt-collecting) of the Regulated Activities Order) to procure the payment of debts on behalf of other counterparties;

(n) performs duties (within article 39G (Debt administration) of the Regulated Activities Order) under, or exercises or enforces rights under, an agreement on behalf of other counterparties;

(na) gives advice (within article 53E of the Regulated Activities Order (Advising on conversion or transfer of pension benefits)) on behalf of other counterparties;

(o) enters into regulated credit agreement or exercises or has the right to exercise the lender’s rights and duties under such agreements (within article 60B (Regulated credit agreements) of the Regulated Activities Order) on behalf of other counterparties;

(p) enters into regulated consumer hire agreements or exercises, or has the right to exercise, the owner’s rights and duties under such agreements (within article 60N (Regulated consumer hire agreements) of the Regulated Activities Order) on behalf of other counterparties;

(q) takes steps on behalf of, or gives advice to, an individual in relation to the taking of any steps (in circumstances constituting the carrying on of providing credit information services) on behalf of other counterparties.

(3) If the scope of appointment covers, in relation to a contract of insurance, dealing in investments as agent, arranging, assisting in the administration and performance of a contract of insurance or advising on investments, regulation 3(4) of the Appointed Representatives Regulations makes it a requirement that the contract between the firm and the appointed representative contains a provision providing that the appointed representative is not permitted or required to carry on such business unless included in the Financial Services Register as carrying on insurance distribution activities.
12.5.2A  If:

(1) a UK MiFID investment firm or a third country investment firm appoints an appointed representative that is a tied agent or a MiFID optional exemption appointed representative, regulation 3(6) of the Appointed Representatives Regulations requires the contract between the firm and the appointed representative to contain a provision that the representative is only permitted to provide the services and carry on the activities referred to in article 4(1)(29) of MiFID while entered on the Register.

(2) a firm appoints an appointed representative that is a structured deposit appointed representative, regulation 3(6) of the Appointed Representatives Regulations requires the contract between the firm and the appointed representative to contain a provision that the representative is only permitted to sell, or advise clients on, structured deposits while entered on the Register.

12.5.3  (Subject to SUP 12.5.3AG) a firm should satisfy itself that the terms of the contract with its appointed representative (including an introducer appointed representative):

(1) are designed to enable the firm to comply properly with any limitations or requirements on its own permission;

(2) require the appointed representative to cooperate with the FCA as described in SUP 2.3.4 G (Information gathering by the FCA on its own initiative: cooperation by firms) and give access to its premises, as described in SUP 2.3.5 R (2); and

(3) require the appointed representative to give the firm's auditors the same rights as are provided by section 341 of the Act.

12.5.3A  To the extent that the appointment of the appointed representative includes CBTL business, a firm should satisfy itself that the terms of the contract with its appointed representative:

(1) are designed to enable the firm to comply properly with any direction issued or imposed under article 19 of the MCD Order; and

(2) require the appointed representative to deal with the FCA in an open and co-operative manner and give access to its premises, as set out in SUP 2.3.4G and SUP 2.3.5R(2), as applied by SUP 2.1.2AG.

12.5.4  A firm should have the ability to terminate the contract with its appointed representative in the circumstances in SUP 12.6.1 R (2). However, such a termination provision should not be automatic (see SUP 12.8.3 R (1)).

12.5.5  A firm must ensure that its written contract with each of its appointed representatives:

(1) complies with the requirements prescribed in regulation 3 of the Appointed Representatives Regulations (see SUP 12.5.2 G);
(2) requires the appointed representative to comply, and to ensure that any persons who provide services to the appointed representative under a contract of services or a contract for service comply, with the relevant requirements in or under the Act (including the rules) that apply to the activities which it carries on as appointed representative of the firm;

(2A) (where the scope of appointment of the appointed representative includes CBTL business) requires the appointed representative to comply, and to ensure that any persons who provide services to the appointed representative under a contract for service comply, with the requirements of and arising under Part 3 of the MCD Order; and

(3) (unless the written contract prohibits appointments by other principals) requires the appointed representative to notify the firm:

(a) that it is seeking appointment as an appointed representative of another person, who the person is and the business for which the other person will accept responsibility;

(b) (as soon as possible) of any change in the business notified under (a); and

(c) (as soon as possible) of the termination of any such appointment.

12.5.6

(1) If the appointed representative is appointed to give advice on investments to retail clients concerning packaged products, the firm should also satisfy itself that the contract requires compliance with the rules in COBS 6 or COBS 6.1ZA (Information about the firm, its services and remuneration).

(2) The contractual requirements in SUP 12.5.5 R should extend to:

(a) the activities of the appointed representative, if the appointed representative is an individual; and

(b) the activities of the employees of, representatives and introducers appointed by, the appointed representative.

Prohibition of multiple principals for certain activities

12.5.6A

(1) A firm must ensure that, if appointing an appointed representative (other than an introducer appointed representative), to carry on any of the following regulated activities, its written contract prohibits the appointed representative from carrying on any of the specified activities as an appointed representative for another firm:

(a) any designated investment business for retail clients: the prohibition must cover all designated investment business for retail clients;

(b) any regulated mortgage activities (other than in relation to lifetime mortgages): the prohibition must cover all regulated mortgage activities (other than lifetime mortgages);

(c) any regulated mortgage activities in relation to lifetime mortgages: the prohibition must cover all lifetime mortgages;

(d) any reversion activities: the prohibition must cover all reversion activities;
(e) any home purchase activities: the prohibition must cover all home purchase activities.

(1A) If the appointed representative is a tied agent, the prohibition must prevent the appointed representative acting as a tied agent for any other MiFID investment firm or third country investment firm.

(1B) In relation to any MCD credit intermediation activity, the prohibition must prevent the appointed representative acting as an appointed representative in respect of MCD credit intermediation activity for any other firm.

(2) As an exception to (1), if the firm is a long-term insurer or an operator of a UCITS scheme, it may permit an appointed representative to carry on designated investment business as the appointed representative of one or more other firms provided that:

(a) each of those other firms is a long-term insurer or an operator of a UCITS scheme;

(b) the first firm and each of those other firms is a member of the same group; “group” means for this purpose a group of bodies corporate all having the same holding company including the holding company; and

(c) the scope of each appointment does not overlap, as to both activities and investments.

[Note: articles 4(1)(29) and 29(1) of MiFID]

12.5.6B

(1) The effect of SUP 12.5.6A R (1)(a) is that, in relation to designated investment business with retail clients, appointed representatives are restricted to one principal.

(1A) The effect of SUP 12.5.6A R (1A) is that tied agents are restricted to one principal when acting as such. A tied agent who has a MiFID investment firm or a third country investment firm as a principal may have other principals who are not MiFID investment firms or third country investment firms.

(2) The effect of the rule prohibiting multiple principals for certain activities is that, in relation to home finance activities, appointed representatives are restricted to having four principals: one for regulated mortgage contracts other than lifetime mortgages, one for lifetime mortgages, one for home reversion plans and one for home purchase plans. However, if any of the business of the appointed representative involves MCD credit intermediation activity, the appointed representative is restricted to having one principal in relation to that business.

12.5.6C

As SUP 12.5.6A R does not apply to non-investment insurance contracts, there are no restrictions on the number of principals an appointed representative may have in relation to those contracts.
Required contract terms for an introducer appointed representative

12.5.7 R A firm must ensure that its written contract with each of its introducer appointed representatives limits the scope of the appointment to:

(1) effecting introductions to the firm or other members of the firm’s group; and

(2) 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.

Required contract terms for EEA tied agents

12.5.8 R If a UK MiFID investment firm appoints an EEA tied agent, § SUP 12.5.6A R (1A) applies to that firm as though the EEA tied agent were an appointed representative.

[Note: articles 4(1)(29) and 29(1) of MiFID]

Required contract terms for FCA registered tied agents

12.5.9 C Under section 39A(6)(a) of the Act a UK MiFID investment firm must ensure that the contract it uses to appoint an FCA registered tied agent complies with the requirements that would apply under the Appointed Representatives Regulations if it were appointing an appointed representative.

Required contract terms for appointed representatives of MCD credit intermediaries

12.5.10 R A firm must ensure that, if appointing an appointed representative to carry on MCD credit intermediation activity, its written contract requires the appointed representative to provide such evidence to the FCA as to the knowledge and competence of the staff of the appointed representative, as the FCA may require from time to time.

[Note: article 9(4) of the MCD]

Required contract terms for appointed representatives carrying on insurance distribution activity

12.5.11 R A firm must ensure that, if appointing an appointed representative to carry on insurance distribution activity, its written contract requires the appointed representative to inform the firm of any change to the information obtained by the firm from the appointed representative in accordance with § SUP 12.4.8CR.

[Note: second paragraph of article 3(6) of the IDD]
12.6 Continuing obligations of firms with appointed representatives or EEA tied agents

Suitability etc. of appointed representatives

12.6.1 R If at any time a firm has reasonable grounds to believe that the conditions in SUP 12.4.2 R, SUP 12.4.6 R or SUP 12.4.8A R (as applicable) are not satisfied, or are likely not to be satisfied, in relation to any of its appointed representatives, the firm must:

(1) take immediate steps to rectify the matter; or

(2) terminate its contract with the appointed representative.

12.6.1A R A firm that is a principal of a tied agent that is an appointed representative must monitor the activities of that tied agent so as to ensure the firm complies with obligations imposed under MiFID (or equivalent obligations relating to the equivalent business of a third country investment firm) when acting through that tied agent.

[Note: paragraph 3 of article 29(2) of MiFID]

12.6.1B R A firm that is a principal of an appointed representative that carries on MCD credit intermediation activity must monitor the activities of that appointed representative to ensure compliance with obligations imposed under the MCD (including those in MCOB and TC).

[Note: article 31(3) of the MCD]

12.6.1C G SUP 12.6.1B R requires a firm to which that rule applies to monitor the knowledge and competence of the appointed representative that carries on MCD credit intermediation activity and its staff.

12.6.2 G The FCA would normally expect a firm to carry out a check on its appointed representative’s financial position every year (more often, if necessary) and to review critically the information obtained. An appropriately experienced person (for example, a financial accountant) should carry out these checks.

12.6.3 G Consideration should be given, among other things, to the impact on the appointed representative’s financial position of any debts owed to, or by, the appointed representative. Indicators that an appointed representative is experiencing financial problems may include failure to adhere to repayment
schedules for any debts, failure to meet any other financial commitments or requests for advances of commission.

12.6.4 A firm should look into any concerns that may arise at any time about an appointed representative’s financial standing and take the necessary action. The necessary action may include, for example, increased monitoring or, if appropriate, suspension or termination of the appointment.

Appointed representatives not to hold client money

12.6.5 (1) A firm must not permit an appointed representative to hold client money unless the firm is an insurance intermediary acting in accordance with CASS 5.5.18 R to CASS 5.5.23 R (which include provision for periodic segregation and reconciliation).

(2) The firm must take reasonable steps to ensure that if client money is received by the appointed representative, it is paid into a client bank account of the firm, or forwarded to the firm, in accordance with:

(a) CASS 4.3.15 R to CASS 4.3.17 R; or

(b) CASS 5.5.18 R to CASS 5.5.21 R unless acting in accordance with CASS 5.5.23 R (Periodic segregation and reconciliation); or

(c) the MiFID client money segregation requirements.

12.6.5A When complying with the MiFID client money segregation requirements, firms’ attention is drawn to CASS 7.13.34 R and CASS 7.13.35 G.

Regulated activities and investment services outside the scope of appointment

12.6.6 A firm must take reasonable steps to ensure that each of its appointed representatives:

(1) does not carry on regulated activities in breach of the general prohibition in section 19 of the Act or (if the appointed representative is a firm with a limited permission) in breach of section 20(1) or (1A) of the Act; and

(2) carries on the regulated activities for which the firm has accepted responsibility in a way which is, and is held out as being, clearly distinct from any of the appointed representative’s other business:

(a) which is performed as an appointed representative of another firm or in accordance with a limited permission; or

(b) which:

(i) is, or is held out as being, primarily for the purposes of investment or obtaining credit, or obtaining insurance cover; and

(ii) is not a regulated activity.
Senior management responsibility for appointed representatives

12.6.7 The senior management of a firm should be aware that the activities of appointed representatives are an integral part of the business that they manage. The responsibility for the control and monitoring of the activities of appointed representatives rests with the senior management of the firm.

Obligations of firms under the approved persons and senior managers regime

12.6.8 (1) Some of the controlled functions, as set out in §SUP 10A.4.1 R, apply to an appointed representative of a firm, other than an introducer appointed representative, just as they apply to a firm (see §SUP 10A.1.15 R). These are the governing functions and the customer function. In the case of an appointed representative that also has a limited permission, an FCA required function may apply to it. As explained in §SUP 10A.1.16 R and §SUP 10A.3.2 G respectively:

(a) the effect of §SUP 10A.1.15 R is that the directors (or their equivalent) and senior managers (or their equivalent) of an appointed representative, other than an introducer appointed representative, must also be approved under section 59 of the Act for the performance of certain controlled functions;

(b) although the customer function applies to an appointed representative, the descriptions of the functions themselves do not extend to home finance mediation activity, insurance distribution activity or credit-related regulated activity;

(ba) if an appointed representative also has a limited permission:

(i) the apportionment and oversight function applies to it in relation to the carrying on of the regulated activity for which it has limited permission, unless it is a not-for-profit debt advice body;

(ii) if it is a not-for-profit debt advice body and a CASS large debt management firm, the CASS operational oversight function applies in relation to the carrying on of debt management activity; and

(c) sections 59(1) and 59(2) of the Act (Approval for particular arrangements) provide that approval is necessary in respect of a controlled function which is performed under an arrangement entered into by a firm, or its contractors (typically an appointed representative), in relation to a regulated activity.

(2) The approved persons regime applies differently to an appointed representative whose scope of appointment includes insurance distribution activity in relation to non-investment insurance contracts or credit-related regulated activity but no other regulated activity and whose principal purpose is to carry on activities other than regulated activities. These appointed representatives need only one person performing one of the governing functions. This means that only one director (or equivalent) of these appointed representatives must be approved under section 59 of the Act for the performance of the director function, the chief executive function, the partner function or the director of unincorporated association function, whichever is the most appropriate (see §SUP 10A.1.16 R).
(3) The approved persons regime does not apply in relation to CBTL business carried on by CBTL firms.

(4) The approved persons regime for SMCR firms is in SUP 10C (FCA senior managers regime for approved persons in SMCR firms), rather than SUP 10A. However, SUP 10A still applies to approved persons of appointed representatives of SMCR firms (see SUP 10A.1.16BR to SUP 10A.1.16DG and SUP 10C.1.8G for more about this).

12.6.9 G Firms should be aware that, under the approved persons regime, the firm is responsible for submitting applications to the FCA for the approval as an approved person of:

(1) any individual who performs a controlled function and who is an appointed representative; and

(2) any person who performs a controlled function under an arrangement entered into by any of the firm's appointed representatives.

Applications for approval should be submitted as early as possible since a person may not perform a controlled function if he has not been approved by the FCA (see SUP 10A.13.1 G).

Obligations of firms under the training and competence rules

12.6.10 G (1) The rules and guidance relating to training and competence in SYSC 3 and SYSC 5 and in TC for a firm carrying on retail business extend to any employee of the firm in respect of whom the relevant rules apply.

(2) The specific knowledge and ability requirements in SYSC 28.2 and TC 4.2 for a firm with Part 4A permission to carry on insurance distribution activities apply to a relevant employee (as defined in SYSC 28.1.2R and TC 4.2.3R) of the firm.

(3) For the purposes of (1) and (2), an employee or a relevant employee of a firm includes an individual who is:

(a) an appointed representative of a firm; and

(b) employed or appointed by an appointed representative of a firm (whether under a contract of service or for services) in connection with the business of the appointed representative for which the firm has accepted responsibility.

12.6.10A G A firm that is a principal of a tied agent should also refer to the guidelines for MiFID investment firms issued by ESMA specifying criteria for the assessment of knowledge and competence (see SYSC 5.1.SADG).

12.6.11 G A firm should take reasonable care to ensure that:

(1) it has satisfied:

(a) SYSC 3 or SYSC 4 to 9 and where applicable, SYSC 28.2; and
(b) 

(2) its appointed representative has adequate arrangements in respect of training and competence, which meet the requirements in SYSC and TC.

12.6.11A R

A CBTL firm must take reasonable care to ensure that:

(1) individuals who are its appointed representatives; and

(2) individuals who are employed or appointed by appointed representatives (whether under a contract of service or for services);

who act in connection with the CBTL business of the appointed representative for which the CBTL firm has accepted responsibility satisfy the knowledge and competence requirements set out in paragraph 3 of Schedule 2 to the MCD Order.

Compliance by an appointed representative with the contract

12.6.11A R

A firm must take reasonable steps to establish and maintain effective systems and controls for ensuring that each of its appointed representatives complies with those terms of its contract which are imposed under the requirements contained or referred to in SUP 12.5 (Contracts: required times).

12.6.12 R [Deleted]

Continuing obligations of firms with tied agents

12.6.13 R

A firm must ensure that its tied agent discloses the capacity in which he is acting and the firm he is representing when contacting a client or potential client or before dealing with a client or potential client.

[Note: paragraph 1 of article 29(2) of MiFID]

12.6.14 R

A firm must take adequate measures in order to avoid any negative impact of the activities of its tied agent not covered by the scope of MiFID (or relating to the equivalent business of a third country investment firm) could have on the activities carried out by the tied agent on behalf of the firm.

[Note: paragraph 1 of article 29(4) of MiFID]

Continuing obligations of firms with EEA tied agents

12.6.15 R

If a UK MiFID investment firm appoints an EEA tied agent, SUP 12.6.1 R, SUP 12.6.1A R, SUP 12.6.5 R and SUP 12.6.11A R apply to that firm as though the EEA tied agent were an appointed representative.

Continuing obligations of firms with MiFID optional exemption appointed representatives or structured deposit appointed representatives

12.6.15A R

If a firm appoints a MiFID optional exemption appointed representative or a structured deposit appointed representative, that firm must:

(1) monitor the activities of the appointed representative to ensure that the firm complies with those obligations which implement provisions of MiFID and to which it is subject when acting through its appointed representative;
(2) ensure that its appointed representative discloses the capacity in which it is acting and the firm it is representing when contacting a client or potential client or before dealing with a client or potential client; and

(3) take adequate measures to avoid any negative impact that the activities of its appointed representative not covered by the scope of MiFID could have on the activities carried out by the appointed representative on behalf of the firm.

In SUP 12.6.15AR(1), the obligations which implement relevant provisions of MiFID to which a firm is subject include:

(1) in the case of a MiFID optional exemption firm appointing a MiFID optional exemption appointed representative, those conduct requirements which are imposed pursuant to article 3(2) of MiFID; and

(2) in the case of a firm appointing a structured deposit appointed representative, those requirements which are imposed pursuant to article 1(4) of MiFID.

The certification regime

SYSC 27.4.2G explains the application of the certification regime in SYSC 5.2 to appointed representatives of SMCR firms. The certification regime does not apply to firms that are not SMCR firms.
12.7 Notification requirements

Notification of appointment of an appointed representative

12.7.1 This rule applies to a firm which intends to appoint:

(a) an appointed representative to carry on insurance distribution activities; or
(b) a tied agent; or
(c) an appointed representative to carry on MCD credit intermediation activity; or
(d) a MiFID optional exemption appointed representative; or
(e) a structured deposit appointed representative.

12.7.1A A firm other than:

(a) a credit union; or
(b) a firm which intends to appoint, or has appointed, an appointed representative to carry on only credit-related regulated activity;

must submit the form in SUP 12 Annex 3 via online submission at the FCA’s website at http://www.fca.org.uk or any of the methods set out in SUP 15.7.4R to SUP 15.7.5AR (Method of notification).

12.7.2 A credit union or a firm which intends to appoint, or has appointed, an appointed representative to carry on only credit-related regulated activity must submit the form in SUP 12 Annex 3 R in the way set out in SUP 15.7.4 R to SUP 15.7.9 G (Form and method of notification).

12.7.3 Where a firm is obliged to submit an application online under 1), if the FCA’s information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a firm must submit the form in SUP 12 Annex 3 R in the way set out in SUP 15.7.4 R to SUP 15.7.9 G (Form and method of notification).
A firm’s notice under SUP 12.7.1 R should give details of the appointed representative and the regulated activities which the firm is, or intends to, carry on through the appointed representative, including:

1. the name of the firm’s new appointed representative (if the appointed representative is a body corporate, this is its registered name);

2. any trading name under which the firm’s new appointed representative carries on a regulated activity in that capacity;

3. a description of the regulated activities which the appointed representative is permitted or required to carry on and for which the firm has accepted responsibility;

4. any restrictions imposed on the regulated activities for which the firm has accepted responsibility; and

5. where the appointed representative is not an individual, the name of the individuals who are responsible for the management of the business carried on by the appointed representative so far as it relates to insurance distribution activity.

A firm need not notify the FCA of any restrictions imposed on the regulated activities for which the firm has accepted responsibility (under SUP 12.7.2 G (4)) if the firm accepts responsibility for the unrestricted scope of the regulated activities.

Where a notification is linked to an application for approval under section 59 of the Act (Approval for particular arrangements), see SUP 10A.13.7 G.

To contact the FCA’s Contact Centre with appointed representatives enquiries:

1. telephone 0300 500 0597; fax 020 7066 0017; or

2. write to: Customer Contact Centre, The Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN; or

3. email firm.queries@fca.org.uk.

[deleted]
Notification of changes in information given to the FCA

(1) If:

(a) (i) the scope of appointment of an appointed representative is extended to cover insurance distribution activities for the first time; and

(ii) the appointed representative is not included on the Financial Services Register as carrying on insurance distribution activities in another capacity; or

(b) the scope of appointment of an appointed representative ceases to include insurance distribution activity;

the appointed representative’s principal must give written notice to the FCA of that change before the appointed representative begins to carry on insurance distribution activities under the contract (see ■ SUP 12.4) or as soon as the scope of appointment of the appointed representative ceases to include insurance distribution activities.

(1A) If:

(a) (i) the scope of appointment changes such that the appointed representative acts as a tied agent, MiFID optional exemption appointed representative or structured deposit appointed representative for the first time; and

(ii) the appointed representative is not included on the Financial Services Register; or

(b) the appointed representative ceases to act as a tied agent, MiFID optional exemption appointed representative or structured deposit appointed representative;

the appointed representative’s principal must give written notice to the FCA of that change before the appointed representative begins to act as a tied agent, MiFID optional exemption appointed representative or structured deposit appointed representative (see ■ SUP 12.4) or as soon as the appointed representative ceases to act as a tied agent, MiFID optional exemption appointed representative or structured deposit appointed representative.

(1B) If:

(a) (i) the scope of appointment of an appointed representative is extended to cover MCD credit intermediation activity for the first time; and

(ii) the appointed representative is not included on the Financial Services Register; or

(b) the scope of appointment of an appointed representative ceases to include MCD credit intermediation activity;

the appointed representative’s principal must give written notice to the FCA of that change before the appointed representative begins to carry on MCD credit intermediation activity under the contract (see ■ SUP 12.4), or as soon as the scope of appointment of the appointed representative ceases to include MCD credit intermediation activity.

[Note: article 31(4) of the MCD]
(2) Where there is a change in any of the information provided to the FCA under SUP 12.7.1 R or SUP 12.7.7 R (1A), a firm must complete and submit to the FCA the form in SUP 12 Annex 4 R (Appointed representative or tied agent – change details) within ten business days of that change being made or, if later, as soon as the firm becomes aware of the change. The Appointed representative or tied agent – change details form must state that the information has changed.

(3) [deleted]

[Note: See SUP 12.7.8A R regarding the method of submission for the form in SUP 12 Annex 4 R.]

Notification of changes in conditions of appointment

12.7.8 R

(1) As soon as a firm has reasonable grounds to believe that any of the conditions in SUP 12.4.2 R, SUP 12.4.6 R, SUP 12.4.8A R, SUP 12.4.10A R or SUP 12.4.10B R (as applicable) are not satisfied, or are likely not to be satisfied, in relation to any of its appointed representatives, it must complete and submit to the FCA the form in SUP 12 Annex 4 R (Appointed representative notification form), in accordance with the instructions on the form.

(2) In its notification under SUP 12.7.8 R (1), the firm must state either:

(a) the steps it proposes to take to rectify the matter; or

(b) the date of termination of its contract with the appointed representative (see SUP 12.8).

(3) [deleted]

Method of submission of the form in SUP 12 Annex 4 R

12.7.8A R

(1) Subject to (2A), a firm other than a credit union must submit the form as set out in SUP 12 Annex 4 R online at http://www.fca.org.uk using the FCA’s online notification and application system.

(2) A credit union must submit the form in SUP 12 Annex 4 R in the way set out in SUP 15.7.4 R to SUP 15.7.9 G (Form and method of notification).

(2A) If the notification:

(a) relates to an appointed representative whose scope of appointment covers only credit-related regulated activity; or

(b) is of a change to the scope of appointment of an appointed representative to add or remove credit-related regulated activity;

the firm must submit the form in SUP 12 Annex 4 in the way set out in SUP 15.7.4 R to SUP 15.7.9 G (Form and method of notification).

(3) Where a firm is obliged to submit an application online under (1), if the FCA’s information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a firm must submit the form in
SUP 12 : Appointed representatives

Section 12.7 : Notification requirements

SUP 12 Annex 4 R in the way set out in SUP 15.7.4 R to SUP 15.7.9 G (Form and method of notification).

[Note: See SUP 12.7.10 G to SUP 12.7.11 G regarding notification in the event of online failure.]

Notifications relating to EEA tied agents

12.7.9 R If a UK MiFID investment firm appoints an EEA tied agent this section applies to that firm as though the EEA tied agent were an appointed representative.

Submission in the event of failure of FCA information technology systems

12.7.10 G If the FCA’s information technology systems fail and online submission is unavailable for 24 hours or more, the FCA will endeavour to publish a notice on its website confirming that online submission is unavailable and that firms, other than credit unions, should use the alternative methods of submission set out in SUP 12.7.1AR (3) and SUP 12.7.8AR (3) (as appropriate), and SUP 15.7.4 R to SUP 15.7.9 G, addressing applications for the attention of the Approved Persons, Passporting andMutuals Team.

12.7.11 G Where SUP 12.7.1AR (3) or SUP 12.7.8AR (3) apply to a firm, GEN 1.3.2 R (Emergency) does not apply.
12.8 Termination of a relationship with an appointed representative or EEA tied agent

Notification of termination or prohibited amendment of the contract

12.8.1 If either the firm or the appointed representative notifies the other that it proposes to terminate the contract of appointment or to amend it so that it no longer meets the requirements contained or referred to in SUP 12.5 (Contracts: required terms), the firm must:

(1) complete and submit to the FCA the form in SUP 12 Annex 5 R (Appointed representative termination form) in accordance with the instructions on the form and no more than ten business days after the date of the decision to terminate or so amend the contract or, if later, as soon as it becomes aware that the contract is to be or has been terminated or amended.

(2) [deleted]

(3) [deleted]

(4) [deleted]

12.8.1A Subject to (2A), a firm other than a credit union must submit any notification under SUP 12.8.1 R (1) in the form set out in SUP 12 Annex 5 R, online at www.fca.org.uk using the FCA’s online notification and application system.

(2) A credit union must submit any notification under SUP 12.8.1 R (1) in the form set out in SUP 12 Annex 5 R and in the way set out in SUP 15.7.4 R to SUP 15.7.9 G (Form and method of notification).

(2A) A firm must submit any notification under SUP 12.8.1 R (1) that relates to an appointed representative whose scope of appointment covers only credit-related regulated activity in the form set out in SUP 12 Annex 5 and in the way set out in SUP 15.7.4 R to SUP 15.7.9 G (Form and method of notification).

(3) Where a firm is obliged to submit a notification online under (1), if the FCA’s information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a firm must submit any notification in the form set out in SUP 12 Annex 5 R and in the way set out in SUP 15.7.4 R to SUP 15.7.9 G (Form and method of notification).
12.8.1B | If the FCA’s information technology systems fail and online submission is unavailable for 24 hours or more, the FCA will endeavour to publish a notice on its website confirming that online submission is unavailable and that the alternative methods of submission set out in SUP 12.8.1AR(3) and SUP 15.7.4 R to SUP 15.7.9 G (Form and method of notification) should be used.

12.8.1C | Where SUP 12.8.1AR (3) applies to a firm, GEN 1.3.2 R (Emergency) does not apply.

12.8.2 | In assessing whether to terminate a relationship with an appointed representative, a firm should be aware that the notification rules in SUP 15 require notification to be made immediately to the FCA if certain events occur. Examples include a matter having a serious regulatory impact or involving an offence or a breach of any requirement imposed by the Act or by regulations or orders made under the Act by the Treasury.

Steps to be taken on termination or prohibited amendment of the contract

12.8.3 | If a contract with an appointed representative is terminated, or if it is amended in a way which gives rise to a requirement to notify under SUP 12.8.1 R, a firm must take all reasonable steps to ensure that:

(1) if the termination is by the firm, the appointed representative is notified in writing before, or if not possible, immediately on, the termination of the contract and informed that it will no longer be an exempt person for the purpose of the Act because of the contract with the firm;

(2) outstanding regulated activities and obligations to customers are properly completed and fulfilled either by itself or another of its appointed representatives;

(3) where appropriate, clients are informed of any relevant changes; and

(4) all the other principals of the appointed representative of which the firm are aware are notified.

Notification of approved persons on termination

12.8.4 | The firm is responsible for notifying the FCA of any approved person who no longer performs a controlled function under an arrangement entered into by a firm or its appointed representative (see SUP 10A.3 and SUP 10C.3).

Removal of an appointed representative from the Register

12.8.5 | The FCA has the power to remove from the Financial Services Register an appointed representative, whose scope of appointment covers insurance distribution activities (see SUP 12.4.9 G and SUP 12.4.10 G).
Termination of a UK MiFID investment firm's relationship with an EEA tied agent

12.8.6 If a UK MiFID investment firm has appointed an EEA tied agent this section applies to that firm as though the EEA tied agent were an appointed representative.
12.9 Record keeping

A firm must make the following records on each of its appointed representatives:

1. the appointed representative's name;
2. a copy of the original contract with the appointed representative and any subsequent amendments to it (including details of any restrictions placed on the activities which the appointed representative may carry on);
3. the date and reason for terminating or amending its contract with the appointed representative, whenever such termination or amendment gives rise to a requirement to notify under SUP 12.8.1 R; and
4. any arrangements agreed with other principals under SUP 12.4.5B R (Multiple principals).

A firm must retain these records for at least three years from the date of termination or the amendment of the contract with the appointed representative other than in respect of tied agents when the records must be retained for a period of five years.

The firm should also satisfy itself that:

1. the appointed representative is making and retaining records in accordance with the relevant record keeping rules in the Handbook or, in relation to CBTL business, the record keeping requirements in or under Part 3 of the MCD Order, if these records are not maintained by the firm;
2. the appointed representative (other than an introducer appointed representative) is making and retaining records sufficient to disclose with reasonable accuracy the financial position of the business it carries on in its capacity as the firm's appointed representative; and
3. the firm has full access to the appointed representative's records under (1) and (2) and any other records relevant to the regulated activities that the appointed representative carries on in that capacity.

Firms are reminded that they should make and retain records in relation to any person who falls within the scope of the rules in TC or who performs a
controlled function under an arrangement entered into by a firm or by an appointed representative. See SUP 10A, SUP 10C and TC for the applicable record keeping rules.

Record keeping in relation to EEA tied agents

If a UK MiFID investment firm appoints an EEA tied agent this section applies to that firm as though the EEA tied agent were an appointed representative.
Guidance on steps a firm should take in assessing the financial position of an appointed representative (other than an introducer appointed representative). See SUP 12.4.3 G

1. The guidance in this annex applies to a firm which intends to appoint, or has appointed, an appointed representative (other than an introducer appointed representative).

2. All of the items in this annex should be applied, as appropriate, to an individual who is in business on his own.

3. Partners in partnerships (other than limited partners in limited liability partnerships) have joint and several unlimited liability. It follows that any assessment of the financial position of an appointed representative which is a partnership should take into account the final position of the individual partners as well as the partnership itself.

| Accounts | 1. Consider whether the type of accounts obtained is appropriate to the type of appointed representative (for example, companies should supply audited accounts prepared in accordance with Companies Act provisions while individuals in business on their own may only prepare unaudited accounts, for example, for submission to HM Revenue and Customs or their bankers).

   2. Consider whether the accounts have been prepared on a timely basis. Consider the content of the audit report, including all detail and explanations given, and any qualifications which it may contain. Investigate any concerns.

   3. If relevant, obtain the most recent management accounts to assess whether the appointed representative's financial position has changed materially since the most recent audited accounts.

   4. If audited accounts are not available, be more circumspect about the accounts as they have not been independently audited. If necessary, consider obtaining third party verification of material balances. |

| Unusual items/ recoverability of debts/ goodwill | 1. Investigate fully any unusual items - in particular any amounts outstanding with directors, partners, connected persons or associates and any guarantees.

   2. Consider whether any amounts due to the appointed representative would be recoverable; and whether the appointed representative would be in a position to pay any debts if it were required to do so at short notice.

   3. Any balance for goodwill should be ignored since this will normally represent a stream of potential future income which may not be forthcoming if the equity interest in the appointed representative were sold. |

| Financial stability/ cashflows | 1. Critically review the accounts to ensure that the appointed representative is financially stable. The review should take into account the overall position of the appointed representative and its cashflow.

   2. The review should also consider the nature of the appointed representative's assets and whether or not they are liquid and readily available to the appointed representative, if required. Investments in (for example) unquoted companies or property may be difficult to realise if there were a sudden need for cash. |

| Income/ financial | 1. Assess the overall financial pressures on the appointed representative and connected persons. Account should be taken of the full range of the appointed representative's activities (and not merely those activities in which the appointed representative will be acting |
for the firm. Careful consideration should be given to any debts arising out of previous activities within the financial services industry.

2. If relevant, review the accounts of any associates where there is a possibility that their performance - or any commitments entered into in respect of them - may affect the financial position of the appointed representative.

3. Establish whether the appointed representative's income is sufficient both to service any debts and to provide an acceptable level of income to the proprietors.

### Credit checks/dealings with government bodies

1. Undertake a credit reference check on the appointed representative itself (in the case of a company); on the partners (in the case of a partnership); or on the individual (in the case of a sole trader).

2. Ask the appointed representative whether it is up to date in its dealings with HM Revenue and Customs (etc).

### Forecasts

1. If relevant, obtain a forecast of the next year's figures and review it to ensure that the appointed representative is likely to remain in a satisfactory financial position. This is particularly important where a material change is expected in the appointed representative's operations; or where the appointed representative has only recently been established so that accounts are not available for the previous three complete financial years.

2. If the firm decides to appoint the appointed representative, the firm should keep the appointed representative's actual performance under close review so as to assess whether the forecasts were realistic and to enable any problems to be addressed.
Guidance on information firms should take reasonable steps to obtain to verify and to assess the fitness and propriety of an appointed representative (other than an introducer appointed representative). See ■ SUP 12.4.4 G (1).

1. The guidance in this annex applies to a firm which intends to appoint or has appointed an appointed representative (except an introducer appointed representative).

2. Items 1(c) and 1(d) in the following table will not be relevant in the case of an individual who is himself an appointed representative, unless, in the case of 1(d), the individual is in business on his own.

3. If the appointed representative is a partnership, the information a firm should obtain, having regard to SUP 12.4.4 G (1), is that contained in this annex on the basis that the information sought applies to each partner. When considering the fitness and propriety of each partner, having regard to SUP 12.4.4 G (1), information a firm should obtain will also include information in this annex. Therefore, a firm may wish to assess the fitness and propriety of partners as suggested in SUP 12.4.4 G (2) and then consider if any additional information is recommended under this annex.

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<tr>
<th>(1)</th>
<th>Information about the appointed representative</th>
<th>(a) Name</th>
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<tr>
<td></td>
<td>Address, and, where applicable and different, address of the registered office and the principal place of business</td>
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<td></td>
<td>full name of every director, senior manager and controller</td>
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<td>accounts (see SUP 12 Annex 1) for the last three complete financial years</td>
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<td>Disciplinary proceedings</td>
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<td>whether the appointed representative has ever been publicly censored, disciplined, suspended or expelled by the FCA, another regulator, a clearing house, an exchange, a professional body, or a government body or agency;</td>
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<td>whether the appointed representative is currently the subject of any disciplinary proceedings by a body referred to in (i) above or is aware that such proceedings are pending;</td>
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<td></td>
<td>whether the appointed representative has ever been the subject of a formal investigation under the powers in the Companies Acts 1985 to 2006; and</td>
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<td></td>
<td>whether the appointed representative has had anything equivalent to (i) to (iii) above occur under relevant overseas provisions.</td>
<td></td>
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<tr>
<td>The appointed representative's professional reputation - continued</td>
<td>(b) Criminal or civil proceedings</td>
<td></td>
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<tr>
<td>Whether the appointed representative is a defendant in any current civil proceedings connected with professional activities in which an allegation of fraud or dishonesty is being made, the subject of any current criminal proceedings, or has been convicted of any criminal offence, either in the <strong>United Kingdom</strong> or overseas.</td>
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<td>(c) Insolvency, bankruptcy and winding up</td>
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<td>Whether the appointed representative has:</td>
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<tr>
<td>(i) been wound up or had a petition presented, or had a meeting called to consider a resolution, for winding it up; or</td>
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<td>(ii) in the case of a company, been the subject of an application to dissolve it or to strike it off the Register of Companies; or</td>
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<td>(iii) made, or proposed to make, a composition or voluntary arrangement with any one of more of its creditors; or</td>
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<td>(iv) had an administrator or trustee in bankruptcy appointed to it or had an application made for such an appointment; or</td>
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<td>(v) had a receiver appointed to it (whether an administrative receiver or a receiver appointed over particular property); or</td>
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<td>(vi) <strong>had an application for an interim order made against it under section 252 of the Insolvency Act 1986</strong> (or, in Northern Ireland, <strong>section 227 of the Insolvency (Northern Ireland) Order 1989</strong>); or</td>
<td></td>
<td></td>
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<tr>
<td>(vii) if it is a sole trader, been the subject of an application for a sequestration order or a petition for bankruptcy; or</td>
<td></td>
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<tr>
<td>(viii) ceased trading in circumstances in which any of its creditors did not receive full payment; or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(ix) had anything equivalent to (i) to (viii) above occur under relevant overseas law.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Appointed representative appointment form

This annex consists of only one form. Forms can be completed online now by visiting: www.fca.org.uk/firms/authorisation

The form can also be found through the following address: -

Add an appointed representative or tied agent form - www.fca.org.uk/firms/authorisation

SUP 12 Annex 3
Appointed representative or tied agent – change details

This annex consists of only one or more form. Forms can be completed online now by visiting: www.fca.org.uk/firms/authorisation

The form can also be found through the following address:

Appointed representative or tied agent – change details - SUP 12 Annex 4
Supplementary Guidance: Appointed representatives

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**Appointed representative termination form**

This annex consists of only one or more forms. Forms can be completed online now by visiting: [www.fca.org.uk/firms/authorisation](http://www.fca.org.uk/firms/authorisation)

The forms are also to be found through the following address:

*Appointed representative termination form - SUP 12 Annex 5*