Chapter 12

Appointed representatives
12.3 What responsibility does a firm have for its appointed representatives or EEA tied agents?

Responsibility for appointed representatives

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,

anything that an appointed representative has done or omitted to do as respects 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).

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 in carrying on the business for which the firm has accepted responsibility (section 39(3) of the Act and article 17 of the MCD Order).

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).

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

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 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.