

Chapter 12

Appointed representatives



12.6 Continuing obligations of firms with appointed representatives or FCA registered tied agents

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*.

12.6.1-A **G** Where **■ SUP 12.6.1R** applies, the circumstances in which it is likely to be appropriate to terminate the contract include, but are not limited to, where:

- (1) there are issues with the *appointed representative* which have not been resolved satisfactorily or within a reasonable period of time. This may include where the *appointed representative* has agreed to resolve known issues but it has not met the *firm's* standards or expectations for remediation or where the *firm* considers the proposed remediation would risk it breaching applicable *rules*;
- (2) the *appointed representative* is unable to satisfactorily explain unusually high rates of senior management turnover;
- (3) the *principal* becomes aware that the *appointed representative* is carrying on *regulated activities* in breach of the *general prohibition* or (if the *appointed representative* is a *firm* with a *limited permission*) in breach of section 20(1) or (1A) of the *Act*;
- (4) the *appointed representative* is found to have intentionally misled *clients* or potential *clients* in any way; or
- (5) any of the *appointed representative's* senior management with responsibility for, or involvement in, activities carried on within the scope of the *appointed representative's* appointment are dismissed on the basis of gross misconduct.

12.6.1-B **G** **■ SUP 12 Annex 7G** contains a flowchart to assist *firms* in determining whether a particular matter is more properly addressed through remediation or termination.

Monitoring: tied agents; appointed representatives carrying on MCD credit intermediation activity

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 derived from *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 derived from 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.

Appointed representative’s financial position

12.6.2 **G** A firm is required to review the financial position of its *appointed representatives* (other than its *introducer appointed representatives*) at least annually (■ SUP 12.6A.2R). An appropriately experienced *person* (for example, a financial accountant) should carry out these checks in support of the *firm’s* obligation in ■ SUP 12.6A.2R.

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 **G** 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 **R**

- (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) [deleted]

- (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) ■ CASS 7.13.3R and ■ CASS 7.13.12R.

12.6.5A G When complying with ■ CASS 7.13.3R and ■ CASS 7.13.12R, *firms'* attention is drawn to ■ CASS 7.13.34 R and ■ CASS 7.13.35 G.

Appointed representatives performing functions or tasks for principals

12.6.5B G

- (1) Where a *firm* delegates functions or tasks to an *appointed representative*, it should apply appropriate safeguards including, but not limited to:
 - (a) ensuring that the delegation does not represent a conflict of interest; and
 - (b) applying enhanced monitoring to the delegated task or function.
- (2) A *firm* should also refer, where applicable, to ■ SYSC 3.2.3G.

Regulated activities and investment services outside the scope of appointment

12.6.6 R 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*.

12.6.6A G In determining what are reasonable steps for the purposes of ■ SUP 12.6.6R, a *firm* should have regard to the *guidance* at ■ SUP 12.4.4GG.

Senior management responsibility for appointed representatives

12.6.7 G 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 **G** ■ SUP 10A applies certain *controlled functions* to an *appointed representative* of a *firm*. In the case of an *appointed representative* that also has a *limited permission*, ■ SUP 10C may apply in addition to ■ SUP 10A.

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 5.1.5ADG).

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) *TC*,

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

12.6.11-A 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 FCA registered tied agents

12.6.15 R

If a *MiFID investment firm* appoints an *FCA registered 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 *FCA registered 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:

12

- (1) monitor the activities of the *appointed representative* to ensure that the *firm* complies with those obligations which implemented 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*.

12.6.15B **G** In **■** SUP 12.6.15AR(1), the obligations which implemented 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 derived from article 3(2) of *MiFID*; and
- (2) in the case of a *firm* appointing a *structured deposit appointed representative*, those requirements which are derived from article 1(4) of *MiFID*.

The certification regime

12.6.16 **G** **■** 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*.