Chapter 12

Appointed representatives
### 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 R

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 Appointed representatives not to hold client money

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.

#### 12.6.5 Appointed representatives not to hold client money

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 Regulated activities and investment services outside the scope of appointment

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**.

#### 12.6.6 Regulated activities and investment services outside the scope of appointment

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 designated senior management function may apply to it and § SUP 10C may apply in addition to § SUP 10A.

(2) [deleted]

(3) [deleted]

(4) [deleted]

12.6.9

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

(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  
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  
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  
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  
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  
[Deleted]

Continuing obligations of firms with tied agents

12.6.13  
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  
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.

12.6.15B G 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

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.