

## 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.

		<b>Monitoring: tied agents; appointed representatives carrying on MCD credit intermediation activity</b>
12.6.1A	R	<p>A firm that is a <i>principal</i> of a <i>tied agent</i> that is an <i>appointed representative</i> must monitor the activities of that <i>tied agent</i> so as to ensure the <i>firm</i> complies with obligations derived from <i>MiFID</i> (or equivalent obligations relating to the <i>equivalent business of a third country investment firm</i>) when acting through that <i>tied agent</i>.</p> <p>[Note: paragraph 3 of article 29(2) of <i>MiFID</i>]</p>
12.6.1B	R	<p>A firm that is a <i>principal</i> of an <i>appointed representative</i> that carries on <i>MCD credit intermediation activity</i> must monitor the activities of that <i>appointed representative</i> to ensure compliance with obligations derived from the <i>MCD</i> (including those in <i>MCOB</i> and <i>TC</i>).</p> <p>[Note: article 31(3) of the <i>MCD</i>]</p>
12.6.1C	G	<p>■ SUP 12.6.1B R requires a <i>firm</i> to which that <i>rule</i> applies to monitor the knowledge and competence of the <i>appointed representative</i> that carries on <i>MCD credit intermediation activity</i> and its staff.</p>
		<b>Appointed representative’s financial position</b>
12.6.2	G	<p>A <i>firm</i> is required to review the financial position of its <i>appointed representatives</i> (other than its <i>introducer appointed representatives</i>) at least annually (■ SUP 12.6A.2R). An appropriately experienced <i>person</i> (for example, a financial accountant) should carry out these checks in support of the <i>firm’s</i> obligation in ■ SUP 12.6A.2R.</p>
12.6.3	G	<p>Consideration should be given, among other things, to the impact on the <i>appointed representative’s</i> financial position of any debts owed to, or by, the <i>appointed representative</i>. Indicators that an <i>appointed representative</i> 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 <i>commission</i>.</p>
12.6.4	G	<p>A <i>firm</i> should look into any concerns that may arise at any time about an <i>appointed representative’s</i> 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.</p>
		<b>Appointed representatives not to hold client money</b>
12.6.5	R	<p>(1) A <i>firm</i> must not permit an <i>appointed representative</i> to hold <i>client money</i> unless the <i>firm</i> is an <i>insurance intermediary</i> acting in accordance with ■ CASS 5.5.18 R to ■ CASS 5.5.23 R (which include provision for periodic segregation and reconciliation).</p> <p>(2) The <i>firm</i> must take reasonable steps to ensure that if <i>client money</i> is received by the <i>appointed representative</i>, it is paid into a <i>client bank account</i> of the <i>firm</i>, or forwarded to the <i>firm</i>, in accordance with :</p> <p>(a) [deleted]</p>

		<p>(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</p> <p>(c) ■ CASS 7.13.3R and ■ CASS 7.13.12R.</p>
12.6.5A	G	When complying with ■ CASS 7.13.3R and ■ CASS 7.13.12R, <i>firms'</i> attention is drawn to ■ CASS 7.13.34 R and ■ CASS 7.13.35 G.
		<b>Appointed representatives performing functions or tasks for principals</b>
12.6.5B	G	<p>(1) Where a <i>firm</i> delegates functions or tasks to an <i>appointed representative</i>, it should apply appropriate safeguards including, but not limited to:</p> <p>(a) ensuring that the delegation does not represent a conflict of interest; and</p> <p>(b) applying enhanced monitoring to the delegated task or function.</p> <p>(2) A <i>firm</i> should also refer, where applicable, to ■ SYSC 3.2.3G.</p>
		<b>Regulated activities and investment services outside the scope of appointment</b>
12.6.6	R	<p>A <i>firm</i> must take reasonable steps to ensure that each of its <i>appointed representatives</i>:</p> <p>(1) does not carry on <i>regulated activities</i> in breach of the <i>general prohibition</i> in section 19 of the <i>Act</i> or (if the <i>appointed representative</i> is a <i>firm</i> with a <i>limited permission</i>) in breach of section 20(1) or (1A) of the <i>Act</i>; and</p> <p>(2) carries on the <i>regulated activities</i> for which the <i>firm</i> has accepted responsibility in a way which is, and is held out as being, clearly distinct from any of the <i>appointed representative's</i> other business:</p> <p>(a) which is performed as an <i>appointed representative</i> of another <i>firm</i> or in accordance with a <i>limited permission</i>; or</p> <p>(b) which:</p> <p>(i) is, or is held out as being, primarily for the purposes of investment or obtaining credit, or obtaining insurance cover; and</p> <p>(ii) is not a <i>regulated activity</i>.</p>
12.6.6A	G	In determining what are reasonable steps for the purposes of ■ SUP 12.6.6R, a <i>firm</i> should have regard to the <i>guidance</i> at ■ SUP 12.4.4GG.
		<b>Senior management responsibility for appointed representatives</b>
12.6.7	G	The senior management of a <i>firm</i> should be aware that the activities of <i>appointed representatives</i> are an integral part of the business that they manage. The responsibility for the control and monitoring of the activities of <i>appointed representatives</i> rests with the senior management of the <i>firm</i> .

**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 <i>appointed representative</i> has adequate arrangements in respect of training and competence, which meet the requirements in SYSC and TC.
12.6.11-A	R	<p>A <i>CBTL firm</i> must take reasonable care to ensure that:</p> <p>(1) individuals who are its <i>appointed representatives</i>; and</p> <p>(2) individuals who are employed or appointed by <i>appointed representatives</i> (whether under a contract of service or for services);</p> <p>who act in connection with the <i>CBTL business</i> of the <i>appointed representative</i> for which the <i>CBTL firm</i> has accepted responsibility satisfy the knowledge and competence requirements set out in paragraph 3 of Schedule 2 to the <i>MCD Order</i>.</p>
12.6.11A	R	<p><b>Compliance by an appointed representative with the contract</b></p> <p>A <i>firm</i> must take reasonable steps to establish and maintain effective systems and controls for ensuring that each of its <i>appointed representatives</i> complies with those terms of its contract which are imposed under the requirements contained or referred to in ■ SUP 12.5 (Contracts: required times).</p>
12.6.12	R	[Deleted]
12.6.13	R	<p><b>Continuing obligations of firms with tied agents</b></p> <p>A <i>firm</i> must ensure that its <i>tied agent</i> discloses the capacity in which he is acting and the <i>firm</i> he is representing when contacting a <i>client</i> or potential <i>client</i> or before dealing with a <i>client</i> or potential <i>client</i>.</p> <p>[Note: paragraph 1 of article 29(2) of <i>MiFID</i>]</p>
12.6.14	R	<p>A <i>firm</i> must take adequate measures in order to avoid any negative impact of the activities of its <i>tied agent</i> not covered by the scope of <i>MiFID</i> (or relating to the <i>equivalent business of a third country investment firm</i>) could have on the activities carried out by the <i>tied agent</i> on behalf of the <i>firm</i>.</p> <p>[Note: paragraph 1 of article 29(4) of <i>MiFID</i>]</p>
12.6.15	R	<p><b>Continuing obligations of firms with FCA registered tied agents</b></p> <p>If a <i>MiFID investment firm</i> appoints an <i>FCA registered tied agent</i>, ■ SUP 12.6.1 R, ■ SUP 12.6.1A R, ■ SUP 12.6.5 R and ■ SUP 12.6.11A R apply to that <i>firm</i> as though the <i>FCA registered tied agent</i> were an <i>appointed representative</i>.</p>
12.6.15A	R	<p><b>Continuing obligations of firms with MiFID optional exemption appointed representatives or structured deposit appointed representatives</b></p> <p>If a <i>firm</i> appoints a <i>MiFID optional exemption appointed representative</i> or a <i>structured deposit appointed representative</i>, that <i>firm</i> must:</p>

- (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*.