

Chapter 12

Appointed representatives

12.6A Assessment of compliance

Purpose

12.6A.1

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- (1) ■ SUP 12.4.2R imposes continuing obligations on a *firm* that has appointed an *appointed representative*. This includes to ensure on reasonable grounds that the *person* is suitable to act in the capacity of an *appointed representative* and that the *firm* has adequate controls and resources to oversee the *person's* activities. ■ SUP 12.4.6R imposes similar obligations in relation to *introducer appointed representatives*.
- (2) ■ SUP 12.6.1R requires a *firm* to act where it has reasonable grounds to believe that the conditions referred to in (1) are not, or are not likely to be, satisfied in relation to any *appointed representative*.
- (3) Without prejudice to these continuing requirements, the *rules* in this section require:
 - (a) a *firm* to undertake a specific review (referred to in this section as the 'annual review') of certain aspects of its arrangements with *appointed representatives* (other than *introducer appointed representatives*) on at least an annual basis; and
 - (b) the *governing body* of a *firm* to:
 - (i) review and approve at least once every 12 *months* a written record of the *firm's* assessment of how it is meeting the requirements in this chapter (referred to in this section as the 'self-assessment *document*'); and
 - (ii) agree the *firm's* response to any material issues identified.
- (4) The assessment in (3)(b) applies in relation to *introducer appointed representatives* to the extent that the *rules* in this chapter apply to arrangements with *introducer appointed representatives*.

Annual review

12.6A.2

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At least once every 12 *months*, a *firm* must specifically review in respect of each of the *firm's appointed representatives* (other than its *introducer appointed representatives*):

- (1) whether the *appointed representative* is solvent and otherwise suitable for the purposes of ■ SUP 12.4.2R(2)(a) and ■ SUP 12.4.2R(2)(b);
- (2) the fitness and propriety of the *controllers, directors, partners, proprietors and managers* of the *appointed representative* and, in

particular, their ability to carry out the *regulated activities* for which the *firm* has accepted responsibility; and

- (3) the adequacy of the *firm's* controls over, and resources for monitoring and enforcing compliance of, the *appointed representative* for the purposes of ■ SUP 12.4.2R(3)(a) and ■ SUP 12.4.2R(3)(b).

12.6A.3 **R** In addition to the annual review required by ■ SUP 12.6A.2R, a *firm* must carry out a review of the matters in ■ SUP 12.6A.2R in relation to an *appointed representative* where:

- (1) the *appointed representative* changes its business model (including its target market);
- (2) the scope of the *appointed representative's* appointment is expanded to include one or more additional *regulated activities*;
- (3) the *appointed representative* changes any of its senior management in a particular role with responsibility for, or being involved with, the activities being carried on within the scope of its appointment more than once in a 12-month period;
- (4) the *appointed representative* is appointed by an additional *principal*; or
- (5) the *firm* identifies a significant increase in the number of *complaints* it receives about the *appointed representative*.

12.6A.4 **R** (1) A *firm* must maintain a written record of each review undertaken for the purposes of ■ SUP 12.6A.2R or ■ SUP 12.6A.3R.

(2) The written record required by (1) must be retained for at least 6 years.

12.6A.5 **G** (1) In carrying out, and documenting, each review required by ■ SUP 12.6A.2R or ■ SUP 12.6A.3R, a *firm*:

- (a) should have regard to the *guidance* on assessing the matters covered by the review in ■ SUP 12.4;
- (b) may focus on any changes from the previous such review undertaken in relation to the relevant *appointed representative* and cross-refer, where appropriate, to previous reviews.

(2) A *firm* may determine the most appropriate way in which to undertake and *document* each review required by ■ SUP 12.6A.2R or ■ SUP 12.6A.3R. Each review should be undertaken by one or more individuals at the *firm* with an appropriate level of knowledge and experience.

(3) A *firm* should ensure that any significant issues which arise as a result of a review undertaken for the purposes of ■ SUP 12.6A.2R or ■ SUP 12.6A.3R are escalated for consideration by its *governing body*, where appropriate, in particular in so far as those issues give rise to risks of harm to *consumers* or market integrity (see also ■ SUP 12.6A.7G(1)(c)).

Self-assessment

12.6A.6 **R**

- (1) At least once every 12 *months*, the *governing body* of a *firm* must:
 - (a) review and approve a written record (its 'self-assessment *document*'):
 - (i) of the way in which the *firm* complies with the requirements in this chapter (■ SUP 12); and
 - (ii) that identifies any material deficiencies in, or concerns in relation to, such compliance; and
 - (b) agree the steps to be taken to address the matters in (1)(a)(ii).
- (2) The self-assessment *document* must include any concerns arising from the most recent reviews undertaken in relation to each of the *firm's appointed representatives* for the purposes of ■ SUP 12.6A.2R or ■ SUP 12.6A.3R.

12.6A.7 **G**

- (1) The self-assessment *document* should include, as appropriate, the *firm's* current assessment of:
 - (a) the effectiveness of the *firm's* arrangements for overseeing its *appointed representatives*;
 - (b) the adequacy of the *firm's* controls and resources for the purposes of ■ SUP 12.4.2R(3);
 - (c) the *firm's* assessment of the risk of harm to consumers or market integrity arising from its *appointed representatives'* activities or business (■ SUP 12.4.2R(5));
 - (d) the outcome of any re-assessment of the continuing adequacy of the *firm's* controls and resources for the purposes of ■ SUP 12.4.4FG; and
 - (e) the methodologies used to assess and verify the *firm's* compliance with the requirements.
- (2) In respect of any *introducer appointed representatives*, the self-assessment *document* should include, as appropriate, those matters in (1) which are relevant to *introducer appointed representatives* (including those matters specified in ■ SUP 12.6A.7G(1)(a), ■ SUP 12.6A.7G(1)(c) and ■ SUP 12.6A.7G(1)(d)).

12.6A.8 **R**

A *firm* must retain a copy of each self-assessment *document* approved by the *governing body* of the *firm* for at least 6 years from the date of approval.

12.6A.9 **G**

- (1) While the self-assessment *document* must be approved by the *governing body* each year (■ SUP 12.6A.6R), it is not expected that the *firm* creates a new *document* each year.
- (2) A *firm* that has appointed more than one *appointed representative* need only maintain a single self-assessment *document* covering all of its *appointed representative* relationships.

12.6A.10 **G**

While the self-assessment *document* need only be approved by the *governing body* once a year, *firms* are reminded that the senior management

of a *firm* is responsible for the control and monitoring of the *firm's appointed representatives* (■ SUP 12.6.7G). Notwithstanding the requirements of this section, a *firm* should ensure that any issues relating to its *appointed representatives* are escalated for consideration by its *governing body* where appropriate, in addition to the annual approval of the self-assessment *document*, in particular in so far as those issues give rise to risks of harm to *consumers* or market integrity.