

Chapter 12

Appointed representatives



12.1 Application and purpose

General application

- 12.1.1 **R** (1) This chapter applies to a *firm* which is considering appointing, has decided to appoint or has appointed an *appointed representative*.
- (1A) This chapter applies to a *MiFID investment firm* which is considering appointing, has decided to appoint or has appointed an *FCA registered tied agent*.
- (1B) This chapter applies to a *CBTL firm* other than a *CBTL lender* which is considering appointing, has decided to appoint or has appointed an *appointed representative* in relation to *CBTL business* as it does to a *firm*.
- (2) [deleted]
- (3) [deleted]

Territorial application: compatibility with EU law

- 12.1.1A **R** (1) [deleted]
- (2) [deleted]

12.1.1B **G** [deleted]

12.1.1C **G** [deleted]

Interaction of SUP 12 and other modules in relation to MiFID business

- 12.1.1D **G** In addition to those rules in **SUP 12** relating to the *MiFID business of appointed representatives and tied agents*, there are other obligations derived from *MiFID* in the *Handbook* relevant to the knowledge and competence of *tied agents* and related compliance obligations (see **SYSC 5.1, TC and FIT** (in respect of *appointed representatives that are approved persons*)). These provisions are subject to the territorial application requirements in their respective chapters.

Territorial application: Gibraltar

12.1.1E **G** This chapter applies to a *Gibraltar-based firm* which is considering appointing, has decided to appoint or has appointed an *appointed representative* in accordance with the general application of this chapter.

Purpose

12.1.2 **G** This chapter gives *guidance* to a *firm*, which is considering appointing an *appointed representative*, on how the provisions of section 39 of the Act (Exemption of appointed representatives) work. For example, it gives *guidance* on the conditions that must be satisfied for a *person* to be appointed as an *appointed representative*. It also gives *guidance* to a *firm* on the implications, for the *firm* itself, of appointing an *appointed representative*.

12.1.3 **G** The chapter also sets out the *FCA's rules*, and *guidance* on these *rules*, that apply to a *firm* before it appoints, when it appoints and when it has appointed an *appointed representative*. The main purpose of these *rules* is to place responsibility on a *firm* for seeking to ensure that:

- (1) its *appointed representatives* are fit and proper to deal with *clients* in its name; and
- (2) *clients* dealing with its *appointed representatives* are afforded the same level of protection as if they had dealt with the *firm* itself.

12.1.4 **G** The *FCA's* website includes information about becoming and appointing an *appointed representative*. This information can be found at <https://www.fca.org.uk/firms/appointed-representatives-principals>.

12.1.5 **G** This chapter also sets out:

- (1) *guidance* about section 39A of the Act, which is relevant to a *MiFID investment firm* that is considering appointing an *FCA registered tied agent*; and
- (2) the *FCA's rules*, and *guidance* on those *rules*, in relation to the appointment of:
 - (a) an *FCA registered tied agent* by a *MiFID investment firm*;
 - (b) a *MiFID optional exemption appointed representative*; and
 - (c) a *structured deposit appointed representative*.

12.2 Introduction

What is an appointed representative?

12.2.1

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- (1) Under section 19 of the Act (The general prohibition), no *person* may carry on a *regulated activity* in the *United Kingdom*, or purport to do so, unless he is an *authorised person*, or he is an *exempt person* in relation to that activity.
- (2) A *person* will be an *exempt person* if he satisfies the conditions in section 39(1) of the Act, *guidance* on which is given in ■ SUP 12.2.2 G. A *person* who is exempt as a result of satisfying these conditions is referred to in the Act as an *appointed representative*.
- (3) If an *appointed representative* is also a *tied agent* or a *MiFID optional exemption appointed representative* he must also satisfy the condition in section 39(1A) of the Act in order to be an *exempt person*. See ■ SUP 12.4.12 G and ■ SUP 12.4.13G for *guidance* on that condition, ■ SUP 12.2.16 G for more general *guidance* about *tied agents*. and ■ SUP 12.2.17G for *guidance* about *MiFID optional exemption appointed representatives*.
- (3A) If an *appointed representative* is also a *structured deposit appointed representative* he must also satisfy the condition in section 39(1AA) of the Act in order to be an *exempt person*. See ■ SUP 12.4.12G and ■ SUP 12.4.13G for *guidance* on that condition and ■ SUP 12.2.18G for *guidance* about *structured deposit appointed representatives*.
- (4) If an *appointed representative* has entered into a contract with an *MCD credit intermediary* and is a *person* to whom section 39(1BA) of the Act applies, they must also satisfy the conditions in section 39(1BB) of the Act to be an *exempt person*. See ■ SUP 12.4.10C G for *guidance* on those conditions.

12.2.2

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- (1) A *person* (other than a *firm* with only a *limited permission*) must satisfy the conditions in section 39(1) of the Act to become an *appointed representative*. These are that:
 - (a) the *person* must not be an *authorised person*, that is, he must not have *permission* under the Act to carry on any *regulated activity* in his own right (section 39(1) of the Act);
 - (b) the *person* must have entered into a contract with an *authorised person*, referred to in the Act as the '*principal*', which:
 - (i) permits or requires him to carry on business of a description prescribed in the *Appointed Representatives Regulations* (section 39(1)(a)(i) of the Act) (see ■ SUP 12.2.7 G); and

- (ii) complies with any requirements that may be prescribed in the *Appointed Representatives Regulations* (section 39(1)(a)(ii) of the Act) (see ■ SUP 12.5.2 G (1)); and
- (c) the *principal* must have accepted responsibility, in writing, for the authorised activities of the *person* in carrying on the whole, or part, of the business specified in the contract.

(2) The *appointed representative* is an *exempt person* in relation to any *regulated activity* comprised in the carrying on of the business for which his *principal* has accepted responsibility.

Appointed representatives with limited permission to carry on certain credit activities

12.2.2A

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- (1) Under sections 20(1) and (1A) of the Act (Authorised persons acting without permission), if an *authorised person* carries on a *regulated activity* in the *United Kingdom*, or purports to do so, otherwise than in accordance with his *permission*, he is to be taken to have contravened a requirement imposed by the *FCA* (in the case of a *FCA-authorized person*) or the *FCA* and the *PRA* (in the case of a *PRA-authorized person*).
- (2) In addition, under section 23(1A) of the Act (Contravention of the general prohibition or section 20(1) or (1A)), an *authorised person* is guilty of an offence if he carries on a credit-related regulated activity in the *United Kingdom*, or purports to do so, otherwise than in accordance with his *permission*. For these purposes, *entering into a regulated credit agreement as lender*, exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement and *debt collecting* are credit-related regulated activities, except in so far as the activity relates to an agreement under which the obligation of the *borrower* to repay is secured on land (see the Financial Services and Markets Act 2000 (Consumer Credit) (Designated Activities) Order 2014).
- (3) Section 39(1D) of the Act provides, however, that sections 20(1) and (1A) and 23(1A) of the Act do not apply:
 - (a) to an *authorised person* with only a *limited permission*;
 - (b) in relation to the carrying on by him of a *regulated activity* which is not one to which his *limited permission* relates;
 if the conditions in section 39(1C) of the Act are met. *Guidance* on these conditions is given at ■ SUP 12.2.2B G. A *firm* carrying on a *regulated activity* in circumstances where, as a result of section 39(1D) of the Act, sections 20(1) and (1A) and 23(1A) of the Act do not apply is also referred to as an *appointed representative*.

12.2.2B

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- (1) A *firm* must satisfy the conditions in section 39(1C) of the Act to become an *appointed representative*. These are that:
 - (a) the *firm* must have only a *limited permission* (section 39(1C)(a) of the Act);
 - (b) the *firm* must have entered into a contract with another *authorised person*, referred to in the Act as the '*principal*', which:

- (i) permits or requires him to carry on business of a description prescribed in the Appointed Representatives Regulations (section 39(1C)(b)(i) of the Act) (see ■ SUP 12.2.7 G); and
- (ii) complies with any requirements that may be prescribed in the *Appointed Representatives Regulations* (section 39(1C)(b)(ii) of the Act); and
- (c) the *principal* must have accepted responsibility, in writing, for the authorised activities of the *firm* in carrying on the whole, or part, of the business specified in the contract.

(2) The *appointed representative* is not subject to sections 20(1) or (1A) or 23(1A) of the Act in relation to the carrying on of the *regulated activity* which is comprised in the business for which his *principal* has accepted responsibility and for which he does not have *limited permission*.

Who can be an appointed representative?

12.2.3 **G** As long as the conditions in section 39 of the Act are satisfied, any *person*, other than an *authorised person* (unless he has only a *limited permission*), may become an *appointed representative*, including a *body corporate*, a *partnership* or an individual in business on his own account. However, an *appointed representative* cannot be an *authorised person* under the Act unless he has only a *limited permission*. A *person* cannot be exempt for some *regulated activities* and *authorised* for others. An *appointed representative* with a *limited permission* is not an *exempt person*, but he may carry on the *regulated activity* comprised in the business for which his principal has accepted responsibility without being taken to have contravened a requirement imposed on him by the FCA or PRA or committing an offence, even though the activity is not covered by his *limited permission*.

Can an appointed representative have more than one principal?

12.2.4 **G** The Act and the *Appointed Representatives Regulations* do not prevent an *appointed representative* from acting for more than one *principal*. However, ■ SUP 12.5.6A R (Prohibition of multiple principals for certain activities) prevents this for particular kinds of business.

12.2.5 **G** [deleted]

What is a "network"?

12.2.6 **G** A *firm* is referred to as a 'network' if it appoints five or more *appointed representatives* (not counting *introducer appointed representatives*) or if it appoints fewer than five *appointed representatives* (again, not counting *introducer appointed representatives*) which have, between them, twenty-six or more *representatives*. However, a *network* does not include:

- (a) a *product provider*;
- (b) a *firm* which markets the *packaged products* of a *product provider* in the same *group* as the *firm* and which does so other than by selecting products from the whole market;

- (c) an *insurer* in relation to a *non-investment insurance contract*; or
- (d) a *home finance provider*.

Business for which an appointed representative is exempt

12.2.7

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- (1) The *Appointed Representatives Regulations* are made by the Treasury under sections 39(1), (1C) and (1E) of the Act. These regulations describe, among other things, the business for which an *appointed representative* may be exempt or to which sections 20(1) and (1A) and 23(1A) of the Act may not apply, which is business which comprises any of:
- (a) *dealing in investments as agent* (article 21 of the *Regulated Activities Order*) where the transaction relates to:
 - (i) a *pure protection contract* (but only where the contract is not a *long-term care insurance contract*) or *general insurance contract*; or
 - (ii) a *funeral plan contract*;
 - (aa) *bidding in emissions auctions* (article 24A of the *Regulated Activities Order*) where that activity does not consist either of *dealing on own account* or the *execution of orders* on behalf of clients;
 - (b) *arranging (bringing about) deals in investments* (article 25(1) of the *Regulated Activities Order*) (that is in summary, deals in a *designated investment* (other than a *P2P agreement*), *structured deposit*, *funeral plan contract*, *pure protection contract*, *general insurance contract* or right to or interest in a funeral plan);
 - (c) *making arrangements with a view to transactions in investments* (article 25(2) of the *Regulated Activities Order*) (that is in summary, transactions in a *designated investment* (other than a *P2P agreement*), *structured deposit*, *funeral plan contract*, *pure protection contract*, *general insurance contract* or right to or interest in a funeral plan);
 - (d) *arranging (bringing about) a home finance transaction* (articles 25A(1), 25A(2A), 25B(1) and 25C(1) of the *Regulated Activities Order*);
 - (e) *making arrangements with a view to a home finance transaction* (articles 25A(2), 25B(2) and 25C(2) of the *Regulated Activities Order*);
 - (ea) *credit broking* (article 36A of the *Regulated Activities Order*);
 - (eb) *operating an electronic system in relation to lending* (article 36H of the *Regulated Activities Order*);
 - (f) *assisting in the administration and performance of a contract of insurance* (article 39A of the *Regulated Activities Order*);
 - (fa) *debt adjusting* (article 39D of the *Regulated Activities Order*);
 - (fb) *debt counselling* (article 39E of the *Regulated Activities Order*);
 - (fc) *debt collecting* (article 39F of the *Regulated Activities Order*);
 - (fd) *debt administration* (article 39G of the *Regulated Activities Order*);

- (g) *arranging safeguarding and administration of assets* (part of article 40 of the *Regulated Activities Order*);
 - (h) giving *basic advice on a stakeholder product* (article 52B of the *Regulated Activities Order*);
 - (i) *advising on investments (except P2P agreements)* (article 53(1) to (1D) of the *Regulated Activities Order*) (that is in summary, advising on any *designated investment* (other than a *P2P agreement*), *structured deposit*, *funeral plan contract*, *pure protection contract*, *general insurance contract* or right to or interest in a funeral plan);
 - (ia) *advising on P2P agreements* (article 53(2) of the *Regulated Activities Order*);
 - (j) *advising on a home finance transaction* (articles 53A, 53B and 53C of the *Regulated Activities Order*);
 - (ja) *entering into a regulated credit agreement as lender or exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement* (article 60B of the *Regulated Activities Order*) when carried on in relation to a *credit agreement* under which the *credit* is provided free of interest and without any other charges;
 - (jaa) *advising on regulated credit agreements for the acquisition of land* (article 53DA of the *Regulated Activities Order*);
 - (jab) *advising on conversion or transfer of pension benefits* (article 53E of the *Regulated Activities Order*);
 - (jb) *entering into a regulated consumer hire agreement as owner or exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement* (article 60N of the *Regulated Activities Order*);
 - (k) *agreeing to carry on a regulated activity* (article 64 of the *Regulated Activities Order*) where the *regulated activity* is one of those specified in Regulation 2(1)(d) of the *Appointed Representatives Regulations*; and
 - (l) *providing credit information services* (article 89A of the *Regulated Activities Order*).
- (2) If the *appointed representative* is also a *tied agent*, the business for which the *appointed representative* may be exempt includes the following additional activities:
- (a) placing *financial instruments* or *structured deposits*;
 - (b) providing advice to *clients* or potential *clients* in relation to the placing of *financial instruments* or *structured deposits*.
- (3) [deleted]
- (4) *Regulated claims management activity* is not a type of business for which an *appointed representative* may be exempt.

What is an introducer appointed representative?

- 12.2.8 **G** (1) An *introducer appointed representative* is an *appointed representative* appointed by a *firm* whose scope of appointment must, under ■ SUP 12.5.7 R, be limited to:
- (a) effecting introductions to the *firm* or other members of the *firm's group*; and
 - (b) distributing *non-real time financial promotions* which relate to products or services available from or through the *firm* or other members of the *firm's group*.
- (2) The permitted scope of appointment of an *introducer appointed representative* does not include in particular:
- (a) dealing in investments as agent; or
 - (b) *arranging (bringing about) deals in investments* or *arranging (bringing about) regulated mortgage contracts*; or
 - (c) *assisting in the administration and performance of a contract of insurance*; or
 - (d) *advising on investments, giving basic advice on a stakeholder product advising on a home finance transaction, advising on regulated credit agreements for the acquisition of land, or other activity that might reasonably lead a customer to believe that they had received, or that the introducer appointed representative is permitted to provide, one of those services.*
- (3) An *introducer appointed representative* may have more than one *principal*, but will need a contract with each *principal*.
- (4) The *approved persons* regime does not apply to an *introducer appointed representative* (see ■ SUP 10A.1.15 R).
- 12.2.9 **G** To become an *introducer appointed representative*, a person must meet the conditions in the *Act* to become an *appointed representative* (see ■ SUP 12.2.2 G).
- 12.2.10 **G** All *rules* in ■ SUP 12 apply in relation to *introducer appointed representatives* except for:
- (1) ■ SUP 12.4.2 R, ■ SUP 12.4.5B R and ■ SUP 12.4.5C, on the appointment of *appointed representatives*, which are replaced by ■ SUP 12.4.6 R;
 - (2) ■ SUP 12.5.6A R on required contract terms, which is replaced by ■ SUP 12.5.7 R;
 - (2A) ■ SUP 12.6A.2R to ■ SUP 12.6A.4R; and
 - (3) ■ SUP 12.9.1 R (4) (Record keeping).
- 12.2.11 **G** If an *introducer appointed representative* is an individual in business on his own, then he will also be an *introducer* (see ■ SUP 12.2.13 G). This has certain implications in *COBS*.

Introducers and representatives: what do these terms mean and what is the relationship with an appointed representative?

12.2.12 **G** A firm or its appointed representative may appoint or employ individuals to act as *introducers* or *representatives* in respect of *designated investment business*.

12.2.13 **G**

(1) An *introducer* is an individual appointed by a firm or by an appointed representative of such a firm to carry out, in the course of *designated investment business*, either or both of the following activities:

(a) effecting introductions;

(b) distributing *non-real time financial promotions*.

(2) An *introducer* is not an *exempt person* under section 39 of the Act (unless he is also an *introducer appointed representative*) and hence cannot benefit from the exemption to carry on *regulated activities* in his own right. As a result, an *introducer* that is not an *introducer appointed representative* works in the name of his firm or the firm's appointed representative but he does not fall within the scope of the *approved persons* regime as he does not, as such, perform a *controlled function*.

12.2.14 **G**

(1) A *representative* is an individual who is appointed by a firm or an appointed representative, to carry on any of the activities in (1)(a) to (c):

(a) *advising on investments*;

(b) *arranging (bringing about) deals in investments*;

(c) *dealing in investments as agent*.

(2) If a firm appoints an appointed representative who is an individual in (1), that appointed representative will also be a representative. The individual may need to be approved to perform the *customer function*, (see ■ SUP 12.6.8 G and ■ SUP 12.6.9 G). In these circumstances, in addition to complying with the requirements of ■ SUP 12 and other regulatory requirements, the firm should ensure that the rules for representatives in ■ COBS 6 (Information about the firm, its services and remuneration) are complied with.

12.2.15 **G** [deleted]

What is a tied agent?

12.2.16 **G**

(1) A *tied agent* is a person who acts for and under the responsibility of a *MiFID investment firm* (or a *third country investment firm*) in respect of *MiFID business* (or the *equivalent business of the third country investment firm*). Most *tied agents* appointed by firms are also *appointed representatives*.

(2) Unless otherwise provided, this chapter applies to a firm that appoints a *tied agent* that is an *appointed representative* in the same way as it applies to the appointment of any other *appointed representative*.

- (3) This chapter sets out the provisions which apply to *tied agents* appointed by a *MiFID investment firm*.
- (4) [deleted]
- (5) A *tied agent* will not be an *appointed representative* if it does not and is not likely to conduct any business as a *tied agent* in the *UK*. Such a *tied agent* will be an *FCA registered tied agent*.
- (6) This chapter only applies to a *firm* that appoints a *tied agent* that is not an *appointed representative* where it expressly refers to *tied agents*.
- (7) A *MiFID investment firm* may may appoint a *tied agent* established in the *UK* but that does not, and is not likely to, conduct any business as a *tied agent* in the *UK*. That must be registered with the *FCA*. Such a *tied agent* is referred to in the *Handbook* as an *FCA registered tied agent*.
- (8) [deleted]

What is a MiFID optional exemption appointed representative?

12.2.17

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- (1) A *MiFID optional exemption appointed representative* is a *person* who acts for and under the responsibility of a *MiFID optional exemption firm*. Such *appointed representatives* are not also *tied agents* since they do not act on behalf of a *MiFID investment firm* in respect of *MiFID business*.
- (2) Unless otherwise provided, this chapter applies to a *firm* that appoints a *MiFID optional exemption appointed representative* in the same way as it applies to the appointment of any other *appointed representative*.
- (3) The *rules* in this chapter which apply with respect to *tied agents* appointed by *firms* also apply to a *firm* that appoints a *MiFID optional exemption appointed representative*.

What is a structured deposit appointed representative?

12.2.18

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- (1) If a *MiFID investment firm* or a *third country investment firm* appoints a *person* to act under its full and unconditional responsibility but only for the purpose of selling, or advising *clients* in relation to, *structured deposits* (and not any of the activities within section 39(7) of the *Act*), that *person* will not be a *tied agent* in respect of that activity.
- (2) Unless otherwise provided, this chapter applies to a *firm* that appoints a *structured deposit appointed representative* in the same way as it applies to the appointment of any other *appointed representative*.
- (3) The *rules* in this chapter which apply with respect to *tied agents* appointed by *firms* also apply to a *firm* that appoints a *structured deposit appointed representative*.

12.3 What responsibility does a firm have for its appointed representatives or FCA registered tied agents?

Responsibility for appointed representatives

- 12.3.1** **G** 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 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*).
- 12.3.2** **G** 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*).
- 12.3.3** **G** 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*).
- 12.3.4** **G** ■ 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 FCA registered tied agents

12.3.5

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[deleted]

12.3.6

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The effect of section 39A(6)(b) of the *Act* is to prohibit a *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*.



12.4 What must a firm do when it appoints an appointed representative or an FCA registered tied agent?

The permission that the firm needs

- 12.4.1 **R** [deleted]
- 12.4.1A **G** The effect of sections 20 (Authorised persons acting without permission) and 39(4) (Exemption of appointed representatives) of the *Act* is that the *regulated activities* covered by an *appointed representative's* appointment need to:
- (1) fall within the scope of the *principal's permission*; or
 - (2) be excluded from being *regulated activities* when carried on by the *principal*, for example because:
 - (a) they fall within article 28 of the *Regulated Activities Order* (Arranging transactions to which the arranger is a party);
 - (b) they constitute *CBTL business* and the *principal* is a *CBTL firm*; or
 - (c) the *principal* is appropriately authorised (see article 53(1A) of the *Regulated Activities Order*).
- 12.4.1B **G** In relation to *CBTL business* only a *CBTL firm* which is a *firm* can appoint an *appointed representative*.
- 12.4.1C **G** Where the *principal* is appropriately authorised for the purposes of article 53(1A) of the *Regulated Activities Order* (and so does not need *permission* to provide *non-personal recommendation advice*), the terms of the *appointed representative's* appointment will still need to cover their business in carrying on *non-personal recommendation advice*. This is because an *appointed representative* providing *non-personal recommendation advice* will only be exempt from the *general prohibition* if the *principal* has accepted responsibility in writing for the *appointed representative* in carrying on such business. An *appointed representative* is not exempt from the general prohibition simply because the *principal* is appropriately authorised for the purposes of article 53(1A) of the *Regulated Activities Order* (see also ■ PERG 8.24.1AG (Advising on investments)).

Appointment of an appointed representative (other than an introducer appointed representative)

12.4.2 **R** Before a *firm* appoints a *person* as an *appointed representative* (other than an *introducer appointed representative*) and on a continuing basis, it must establish on reasonable grounds that:

- (1) the appointment does not prevent the *firm* from satisfying and continuing to satisfy the *threshold conditions*;
- (2) the *person*:
 - (a) is solvent;
 - (b) is otherwise suitable to act for the *firm* in that capacity; and
 - (c) has no *close links* which would be likely to prevent the effective supervision of the *person* by the *firm*;
- (3) the *firm* has adequate:
 - (a) controls over the *person's regulated activities* for which the *firm* has responsibility (see **SYSC 3.1** or **SYSC 4.1**); and
 - (b) resources to monitor and enforce compliance by the *person* with the relevant requirements applying to the *regulated activities* for which the *firm* is responsible and with which the *person* is required to comply under its contract with the *firm* (see **SUP 12.5.3 G (2)**);
- (4) the *firm* is ready and organised to comply with the other applicable requirements contained or referred to in this chapter; and
- (5) the *person's* activities do not, or would not, result in undue risk of harm to *consumers* or market integrity.

12.4.2A **R** [deleted] [*Editor's note*: This provision now appears at SUP 12.4.4HR.]

12.4.2B **G** [deleted] [*Editor's note*: This provision now appears at SUP 12.4.4IG.]

Guidance on the appointment of an appointed representative

12.4.2C **G** **SUP 12.4.2R** applies before a *firm* appoints a *person* as an *appointed representative* and on a continuing basis thereafter. References in this *guidance* to an *appointed representative* should therefore be read as also referring to a prospective *appointed representative* where appropriate.

12.4.3 **G** In assessing, under **SUP 12.4.2 R(2)(a)** and (b), whether an *appointed representative* is solvent and otherwise suitable, a *firm* should determine, among other matters, whether the *person* is likely to be adversely influenced by its financial position in the conduct of the business for which the *firm* is responsible. This might arise, for example, if the *person* has cashflow problems and is not able to service its debts. *Guidance* for *firms* on assessing the financial position of an *appointed representative* is given in **SUP 12 Annex 1**.

- 12.4.4 **G** In assessing, under **■ SUP 12.4.2 R (2)(b)**, whether an *appointed representative* is otherwise suitable to act for the *firm* in that capacity, a *firm* should consider:
- (1) whether the *person* is fit and proper; *guidance* on the information that *firms* should take reasonable steps to obtain and verify is given in **■ SUP 12 Annex 2**;
 - (2) the fitness and propriety (including good character) and financial standing of the *controllers, directors, partners, proprietors and managers of the person*; *firms* seeking *guidance* on the information which they should take reasonable steps to obtain and verify should refer to *FIT* and the questions in the relevant Form A (Application to perform controlled functions under the approved person regime) in **■ SUP 10A Annex 4**; and
 - (3) the competence and capabilities of relevant *directors, partners, proprietors and managers of the person*, including whether they have:
 - (a) appropriate experience, knowledge, skills and training in relation to the activities and business carried out, or to be carried out, on behalf of the *firm*; and
 - (b) the necessary time to properly perform the tasks and functions for which they are, or will be, responsible.
- 12.4.4A **G** In considering the competence and capabilities of relevant *individuals, firms* should note that other provisions, including **■ SYSC 3.1** (Systems and controls) and **■ SYSC 5.1** (Skills, knowledge and expertise), the requirements of the Training and Competence sourcebook (*TC*) and *guidance* in the Fit and Proper test for Employees and Senior Personnel sourcebook (*FIT*) may also be relevant. See also **■ SUP 12.6.10G**.
- 12.4.4B **G** In assessing whether the *firm* has adequate controls and resources for the purposes of **■ SUP 12.4.2R(3)(a)** and **■ SUP 12.4.2R(3)(b)**, a *firm* should consider whether these:
- are commensurate to:
 - (a) the size or potential size of the *appointed representative*; and
 - (b) the nature of the *regulated activities* for which the *firm* has, or proposes to have, responsibility;
 - enable the *firm* to effectively manage conflicts of interest;
 - allow the *firm* to maintain effective oversight of the *appointed representative*;
 - enable the *firm* to identify and remediate any issues arising at the *appointed representative*; and
 - enable the *firm* to maintain a level of oversight of the *appointed representative's regulated activities* equivalent to that which would be, and ought reasonably to be, applied if:

- (a) those activities were carried on by the *firm* in a principal capacity; and
 - (b) all *individuals* engaged in those activities were employees of the *firm*,
- (and see also *Principle 3*, ■ COND 2.5.6G(1) and ■ (1A) and ■ SUP 12.6.11G).

12.4.4C

G

In assessing, under ■ SUP 12.4.2R(5), whether an *appointed representative's* activities or proposed activities give rise to an undue risk of harm, a *firm* should consider, without limitation:

- (1) the nature of the risks associated with the *person's* appointment and activities or proposed activities having regard to, amongst other things, the *person's*:
 - (a) business model;
 - (b) (as applicable) senior management and governance arrangements;
- (2) the likely impact on clients or potential *clients* were a relevant risk to crystallise having regard to, amongst other things:
 - (a) the number of *clients* with which the *person* is, or is likely be, dealing;
 - (b) whether the *clients* or potential *clients* with which the *person* is, or is likely to be, dealing include those in vulnerable circumstances who may be at greater risk of harm if things go wrong;
 - (c) the likely extent of any financial loss that *clients* may suffer;
- (3) the likely impact on the *firm* were a relevant risk to crystallise including, but not limited to, the impact of a significant volume of complaints relating to the *person's* activities;
- (4) the likely impact on the continuity of the provision of services to *clients* in the event of the *person's* failure;
- (5) the potential for reputational damage which could harm the *clients* with which the *person* deals, or is likely to deal; and
- (6) the ability of its own arrangements to effectively identify and manage those risks in compliance with its obligations in SYSC.

[*Editor's note*: The provision at SUP 12.4.4DG is moved from SUP 12.4.5G.]

12.4.4D

G

In determining, under ■ SUP 12.4.2R(2)(c), whether an *appointed representative* has any *close links* which would be likely to prevent the *firm's* effective supervision, a *firm* should consider the *guidance* to threshold condition 2C or 3B as applicable in ■ COND 2.3.

Practical considerations for assessment

12.4.4E

G

In undertaking the assessment required by ■ SUP 12.4.2R, a *firm* should:

- (1) ensure and verify that information provided by the *appointed representative*, either at entity-level or about relevant *individuals* (■ SUP 12.4.4G(2) and ■ (3)), is accurate, sufficiently detailed and up to date;
- (2) discuss any omissions or concerns proactively with relevant *individuals* at the *appointed representative*; and
- (3) ensure that it is made aware of any changes, including to relevant *individuals* at the *appointed representative*, which may affect the quality or integrity of the information provided.

Continuing obligations after appointment: controls and resources

12.4.4F

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■ SUP 12.4.2R applies on a continuing basis. In particular:

- (1) a *firm* should re-assess whether its controls and resources remain adequate for the purposes of ■ SUP 12.4.2R(3)(a) and ■ (b) if any of the following circumstances arise:
 - (a) the size or volume of the *appointed representative's* business involving *regulated activity* increases significantly in a short period of time;
 - (b) the *firm* identifies an unusually high rate of turnover at the *appointed representative* of:
 - (i) senior management; or
 - (ii) other staff of the *appointed representative* involved in carrying on the *regulated activities* for which the *firm* has accepted responsibility;
 the *firm* identifies a significant increase in the number of *complaints* it receives about the *appointed representative*;
- the *appointed representative* changes its business model (including target market); or
- a change is made to the scope of the *appointed representative's* appointment.
- SUP 12.6A.3R requires a *firm* to carry out a review, including of the adequacy of the *firm's* controls and resources, in any of the circumstances specified in that *rule*.

Practical steps to ensure effective oversight

12.4.4G

G

In order to comply with the various obligations in this chapter and having due regard to the nature of the *appointed representative's* activities and the risks associated with them, a *firm* should:

- (1) collect and scrutinise relevant management information and agree with its *appointed representative* how and when management information should be provided, the format it should take and the data it should capture;

- (2) analyse data provided by the *appointed representative* to identify emerging risks and issues;
- (3) closely monitor the delivery of the *appointed representative's* activities and business, within the scope of its appointment (for example, by reviewing call scripts or other materials provided by the *appointed representative* and organising regular meetings with them);
- (4) engage regularly with its *appointed representative*, whether through in-person meetings, telephone calls or email communication; and
- (5) establish clear processes for the escalation of issues, including service level agreements where necessary. This could include, for example, grading of issue severity based on impact and potential harm to *clients* and processes for remediation within defined timeframes. Where appropriate, such expectations should be included in the contract between the *firm* and the *appointed representative*.

[*Editor's note:* The provisions at SUP 12.4.4HR and SUP 12.4.4IG are not new text; they are moved from SUP 12.4.2AR and SUP 12.4.2BG respectively.]

Appointment of tied agents, MiFID optional exemption appointed representatives and structured deposit appointed representatives

12.4.4H **R**

- (1) A *firm* must ensure that:
 - (a) a *tied agent* that is an *appointed representative*; or
 - (b) a *MiFID optional exemption appointed representative*; or
 - (c) a *structured deposit appointed representative*,

is of sufficiently good repute and that it possesses appropriate general, commercial and professional knowledge and competence so as to be able to communicate accurately all relevant information regarding the proposed service to the *client* or potential *client*. This does not limit a *firm's* obligations under **■ SUP 12.4.2R**.
- (2) A *firm* must ensure that its *tied agent* or *MiFID optional exemption appointed representative* also possesses appropriate general, commercial and professional knowledge and competence so as to be able to deliver the *investment service* or *ancillary service* for which the *firm* has accepted responsibility.

[Note: paragraphs 2 and 3 of article 29(3) of *MiFID*]

12.4.4I **G**

- (1) A *firm* to which **■ SUP 12.4.4HR** applies should also have regard to **■ SYSC 5.1** (Skills, knowledge and expertise). The requirements of the Training and Competence sourcebook (*TC*) and *guidance* in the Fit and Proper test for Employees and Senior Personnel (*FIT*) may also be relevant.
- (2) *ESMA* has issued guidelines for *MiFID investment firms* specifying the criteria for the assessment of knowledge and competence. These guidelines are relevant to *tied agents* (see **■ SYSC 5.1.5ADG**).

12.4.5 **G** [deleted] [*Editor's note*: This provision now appears at SUP 12.4.4DG.]

Appointment representative who may be appointed by other principals

12.4.5A **G** If a *firm* proposes to appoint an *appointed representative*, but not to prohibit its appointment by any other *principals* (see ■ SUP 12.5.2 G (3)), the *firm* should, in particular:

- (1) require, in the contract, that the *appointed representative* notifies the *firm* about other *principals* (see ■ SUP 12.5.5 R (3)) and
- (2) unless the *appointed representative* is an *introducer appointed representative*:
 - (a) take reasonable steps to check whether the *appointed representative* is already appointed by one or more other *principals* and, if it is, contact those other *principals*; such steps should include asking the *appointed representative* and checking the *Financial Services Register*;
 - (b) if there are any other *principals*, agree arrangements with the other *principals* (see ■ SUP 12.4.5B R) ; and
 - (c) establish effective systems and controls for ensuring that the *appointed representative* complies with all contractual restrictions imposed, including those relating to multiple *principals* under the *Appointed Representatives Regulations* and under ■ SUP 12.5.6A R (see ■ SUP 12.6.11A R).

Multiple principals

12.4.5B **R** (1) A *firm* must not appoint a *person* as its *appointed representative* until it has entered into a written agreement (a "multiple principal agreement") with every other *principal* the *person* may have; but this does not apply to the appointment of an *introducer appointed representative* nor does it require an agreement with another *principal* which has appointed a *person* as an *introducer appointed representative*.

(2) A *firm* must not unreasonably decline to enter into a multiple principal agreement with any *principal* of his *appointed representative* unless the *firm* is relying on a prohibition on the *appointed representative* from representing any other *firms* (or is seeking to impose such a prohibition) as permitted by article 3 of the *Appointed Representative Regulations*.

(3) A multiple principal agreement must contain all the provisions which are necessary or desirable to:

- (a) set out the relationship between the *principals* of that *appointed representative*; and
- (b) protect the interests of *clients*;

including the matters set out in ■ SUP 12.4.5C.

12.4.5C **R** **Multiple principal agreement**

	Matter	Explanation
1.	Scope of appointment	The scope of appointment given by each <i>principal</i> to the appointed representative.
2.	Complaints handling	The identity of the <i>principal</i> which will be the point of contact for a complaint from a <i>client</i> (referred to as the "lead-principal" in SUP 12.4.5D G to SUP 12.4.5E G).
		An agreement that each <i>principal</i> will co-operate with each other <i>principal</i> in resolving a complaint from a <i>client</i> in relation to the appointed representative's conduct.
		The arrangements for complaints handling, including arrangements for resolving disputes between the <i>principals</i> in relation to their liability to a <i>client</i> in respect of a complaint and arrangements for dealing with referrals to the <i>Financial Ombudsman Service</i> .
3.	<i>Financial promotions</i>	The arrangements for <i>approving financial promotion</i> .
4.	Control and monitoring	The arrangements for the control and monitoring of the activities of the appointed representative (see in particular SUP 12.6.6 R (Regulated activities and investment services outside the scope of appointment) and SUP 12.6.7 G (Senior management responsibility for appointed representatives)).
5.	<i>Approved person status</i>	The arrangements for making applications for <i>approved person status</i> (see SUP 10A and SUP 10C (Approved persons) and the corresponding <i>PRA</i> requirements).
6.	Training and competence	The arrangements for training and competence (see <i>TC</i>).
7.	Co-operation	The arrangements for co-operation over any other issues which may arise from the multiple appointments, including issues which may damage the interests of <i>clients</i> dealing with the appointed representative and administrative issues.
		An agreement by each <i>principal</i> to take reasonable steps to ensure that it does not cause the appointed representative or any of its other <i>principals</i> to be in breach of their obligations to each other or under the <i>regulatory system</i> .
8.	Sharing information	The arrangements for sharing information on matters relevant to the matters covered under the multiple principal agreement and each <i>principal's</i> obligations under SUP 12.6 (Continuing obligations of firms with appointed representatives) and SUP 12.6A (Assessment of compliance).
		An agreement that each <i>principal</i> will notify each other <i>principal</i> of any information which is materially relevant to the multiple principal agreement.

12.4.5D **G**

One effect of the multiple principal agreement is to introduce a 'lead-principal' concept in relation to complaints handling for the benefit of the *client*. For example, where the *client* has been given advice by an *appointed representative* who has two *principals*, and the advice could have led to a transaction being arranged with either *principal*, the *client* will know that he

may pursue his complaint with (but not necessarily against) one of the *principals*. Whether he later decides to refer his complaint to the *Financial Ombudsman Service*, and if so, against which *principal*, will depend on the circumstances.

12.4.5E

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- (1) Under the relevant provisions in *COBS*, *ICOBS* and *MCOB*, the *customer* will receive details of how to complain to the *appointed representative* and, when a product is purchased, details of the complaints procedure for the *product provider*, *insurer* or *home finance provider*.
- (2) Under ■ DISP 1.2.1 R, a *firm* must among other things, supply summary details of its internal process for dealing promptly and fairly with *complaints* to the *customer* when it receives a *complaint*. In complying with ■ DISP 1.2.1 R, a *firm* should ensure that the "lead-principal" is clearly identified in the procedures.
- (3) The complaints procedure should also explain that the *customer* has a choice of whether to contact the *appointed representative*, the "lead-principal" or the *product provider*, *insurer* or *home finance provider* and that the "lead-principal" will be the appropriate point of contact where the *customer* does not wish to complain about a specific product or is unsure who to contact.
- (4) In other words, where the *customer*, has a doubt who to complain to the "lead-principal" is to be the point of contact for all complaints arising out of the activities of the *appointed representative*.

12.4.5F

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When considering the provisions for complaints handling (see ■ SUP 12.4.5C(2)) *firms* should consider the use of a mediation clause. If a complaint is made by a *client*, *principals* which are unable to resolve a dispute about liability to the *client* should consider all quick and effective ways of resolving the dispute, including referring the matter to the *Financial Ombudsman Service* and mediation.

12.4.5G

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It is for the *principals* to consider in each case whether it would be appropriate to show the multiple principal agreement to their *appointed representative*, or in some circumstances make their *appointed representative* a party to it.

Appointment of an introducer appointed representative

12.4.6

R

Before a *firm* appoints a *person* as an *introducer appointed representative*, and on a continuing basis, it must take reasonable care to ensure that:

- (1) the *person* is suitable to act for the *firm* in that capacity (having regard, in particular, to other *persons* connected with the *person* who will be, or who are, directly responsible for its activities);
- (2) the *firm* is ready and organised to comply with the other applicable requirements contained or referred to in this chapter; and
- (3) the *person's* activities do not, or would not, result in undue risk of harm to *consumers* or market integrity.

12.4.7 G In assessing, under ■ SUP 12.4.6 R(1), whether an *introducer appointed representative* or prospective *introducer appointed representative* is otherwise suitable to act for the *firm* in that capacity, the *firm* should determine whether the *introducer appointed representative* and those *persons* who will be, or who are, directly responsible for its activities are of sufficiently good reputation and otherwise fit and proper for that appointment. The *firm* should, as a minimum, verify the identity of a prospective *introducer appointed representative* and relevant *persons* but need not carry out the more extensive due diligence required for the appointment of an *appointed representative* under ■ SUP 12.4.2 R.

12.4.7A G In complying with the requirements in ■ SUP 12.4.6R, a *firm* should also have regard, so far as relevant, to the *guidance* in ■ SUP 12.4.4BG, ■ SUP 12.4.4CG, ■ SUP 12.4.4FG and ■ SUP 12.4.4GG.

12.4.8 G If a *firm* has doubts that a prospective *introducer appointed representative* or other *person* is of sufficiently good reputation and otherwise fit and proper, the *FCA* will expect it to resolve those doubts before appointing the prospective *introducer appointed representative*. For example, if a *firm* is aware that a *person's* previous appointment as an *introducer appointed representative* or *representative* was terminated, it should take reasonable steps to find out the reasons for the termination and the extent to which those reasons reflect on the *person* concerned.

Good repute

12.4.8A R Before a *firm* appoints a *person* as an appointed representative to carry on *insurance distribution activity*, it must in relation to *insurance distribution activity* ensure that the *person* will comply on appointment, and will continue to comply with, the provisions of ■ SYSC 28.3 (Good repute) as if the *appointed representative* were a *firm*.

[Note: article 10(3) of the *IDD*]

12.4.8AA R A *firm* that has appointed an *appointed representative* to carry on *insurance distribution activity* must ensure that the *appointed representative*:

- (1) establishes, maintains and keeps appropriate records to demonstrate compliance with ■ SYSC 28.3 (Good repute); and
- (2) provides the name of the *person* responsible for the record-keeping requirement in (1) to the *firm*.

Knowledge and ability requirements

12.4.8AB G ■ SYSC 28.1 (Minimum knowledge and ability requirements for carrying out insurance distribution activities), ■ SYSC 28.2 (Knowledge and ability requirements) and ■ SYSC 28.4 (Record-keeping requirements) apply in relation to a *firm's* relevant employees. This includes its *appointed representatives* and their *employees*.

[Note: articles 10(1), 10(2) and last paragraph of article 10(8) of the *IDD*]

12.4.8B G [deleted]

Close links

12.4.8C **R** Before a *firm* appoints an *appointed representative* who does not already appear on the *Financial Services Register* ("A") to carry on *insurance distribution activity*, it must obtain from A the following information:

- (1) the identities of shareholders or members, whether natural or legal persons, that have a holding in A that exceeds 10% and the amount of those holdings;
- (2) the identities of *persons* who have *close links* with A; and
- (3) that those holdings or *close links* do not prevent the effective supervision of A by the *firm*.

[Note: article 3(6) of the *IDD*]

Inclusion on the Financial Services Register

12.4.9 **G** (1) An appointed representative must not commence an *insurance distribution activity* until they are included on the *Financial Services Register* as carrying on such activities (see **■ SUP 12.5.2 G (3)**).

(2) [deleted]

(3) [deleted]

12.4.10 **G** (1) The *FCA* has the power to decide not to include on the *Financial Services Register* (or to remove from the *Financial Services Register*) an appointed representative whose scope of appointment includes an *insurance distribution activity*, if it appears to the *FCA* that he is not a fit and proper *person* to carry on those activities (article 95 of the *Regulated Activities Order*).

(2) If the *FCA* proposes to use the power in (1), it must give the appointed representative a *warning notice*. If the *FCA* decides to proceed with its proposal, it must give the appointed representative a *decision notice*. The procedures followed by the *FCA* in relation to the giving of *warning notices* and *decision notices* are set out in **■ DEPP 2**.

(3) An appointed representative may apply to the *FCA* for a determination of the kind referred to in (1) to be revoked. If the *FCA* proposes to refuse the application, it must give the appointed representative a *warning notice*, and if the *FCA* decides to proceed with the refusal, it must give the appointed representative a *decision notice*.

Appointed representative carrying on MCD credit intermediation activity

12.4.10A **R** Before a *firm* appoints a *person* as an *appointed representative* to carry on an *MCD credit intermediation activity*, it must ensure that the *person* has, and will maintain on a continuing basis after appointment, professional indemnity insurance in accordance with the *rules* applicable to *MCD credit intermediaries*. A *firm* will satisfy this requirement if:

- (1) [deleted]
- (2) the *firm* has professional indemnity insurance in respect of claims for which the *firm* may be liable as a result of the conduct of its *appointed representative*, which satisfies the *rules* in ■ MIPRU 3.2; or
- (3) the *appointed representative* holds a comparable guarantee (as understood by reference to ■ MIPRU 3.1.1R (3)(b)) provided by the *firm*.

[Note: article 31(2) of the MCD]

12.4.10AA **G**

- (1) The effect of ■ SUP 12.4.10AR(2) is that a *firm* itself must take out and maintain professional indemnity insurance that covers claims for which it may be liable as a result of the conduct of its *appointed representatives* (in addition to the conduct of the *firm* and its *employees*). This approach is consistent with the requirement in ■ MIPRU 3.2.4R(1) and the responsibility of the *firm* for the conduct of all of its *appointed representatives* (■ MIPRU 3.2.6G).
- (2) In addition to the professional indemnity insurance that the *principal* must hold under ■ SUP 12.4.10AR(2), an *appointed representative* may take out, or have its own, professional indemnity insurance covering its activities to provide additional mitigation against the risk of harm to consumers, market integrity or itself.

12.4.10B **R**

- (1) Before a *firm* appoints a *person* as an *appointed representative* to carry on *MCD credit intermediation activity* and on a continuing basis after appointment, it must, in relation to such activities, ensure that:
 - (a) if the *appointed representative* is an *individual*, the *individual*:
 - (i) has not been convicted of any serious criminal offences linked to crimes against property or other crimes related to financial activities (other than spent convictions under the Rehabilitation of Offenders Act 1974 or any other national equivalent); and
 - (ii) has not been adjudged bankrupt (unless the bankruptcy has been discharged);

under the law of any part of the *United Kingdom* or under the law of a country or territory outside the *United Kingdom*; and

 - (iii) possesses the appropriate level of knowledge and competence under the *rules* in *TC* applicable to the activities of the *appointed representative*;
- (b) if the *appointed representative* is a *body corporate*, the members of the board of the *appointed representative*, and *persons* performing equivalent tasks:
 - (i) have not been convicted of any serious criminal offences linked to crimes against property or other crimes related to financial activities (other than spent convictions under the Rehabilitation of Offenders Act 1974 or any other national equivalent); and
 - (ii) have not been adjudged bankrupt (unless the bankruptcy has been discharged);

under the law of any part of the *United Kingdom* or under the law of a country or territory outside the *United Kingdom*; and

- (iii) possess the appropriate level of knowledge and competence under the *rules* in *TC* applicable to the activities of the *appointed representative*.

[Note: article 31(2) of the *MCD*]

12.4.10C G

- (1) [deleted]
- (2) An *appointed representative* must not commence an *MCD credit intermediation activity* until they are included on the *Financial Services Register*.
- (3) If an *appointed representative's* scope of appointment is to include *MCD credit intermediation activity*, the *Act* provides that that *appointed representative's principal* may not be a *tied MCD credit intermediary*.

Appointment of an FCA registered tied agent

12.4.11 R

If a *MiFID investment firm* appoints an *FCA registered tied agent*, ■ SUP 12.4.2 R and ■ SUP 12.4.4HR apply to that *firm* as though the *FCA registered tied agent* were an *appointed representative*.

[Note: paragraphs 2 and 3 of article 29(3) of *MiFID*]

Tied agents

12.4.12 G

- (1) A *tied agent* that is an *appointed representative* may not start to act as a *tied agent* until it is included on the applicable register (section 39(1A) of the *Act*). The register maintained by the *FCA* is the applicable register for these purposes.
- (2) A *MiFID investment firm* that appoints an *FCA registered tied agent* who is not registered with the *FCA* will, subject to certain conditions, be taken to have contravened a requirement imposed on it by or under the *Act* (see section 39A(6)(c) and (d) of the *Act*).
- (3) [deleted]
- (4) [deleted]
- (5) [deleted]
- (6) A *tied agent* can only act as such for one *MiFID investment firm* or *third country investment firm* (see ■ SUP 12.5.6A R (1A)).

MiFID optional exemption appointed representatives and structured deposit appointed representatives

12.4.13 G

- (1) A *MiFID optional exemption appointed representative* or a *structured deposit appointed representative* may not start to act as such until it

is included on the *Financial Services Register* (sections 39(1A) and 39(1AA) of the Act).

(2) [deleted]

Reporting of information about Directory persons

12.4.14

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- (1) ■ SUP 16.26 (Reporting of information about Directory persons) requires an *SMCR firm* that has appointed an *appointed representative* to report information to the *FCA* in respect of any individual who is an *appointed representative Directory person*.
- (2) The *SMCR firm* should ensure that appropriate arrangements are in place so that the *SMCR firm* is able to report all relevant information about each such *appointed representative Directory person* to the *FCA* within the specified timeframes, in accordance with the requirements of ■ SUP 16.26 (Reporting of information about Directory persons).

12.5 Contracts: required terms

Required contract terms for all appointed representatives

- 12.5.1 **G** The *Appointed Representatives Regulations* include, among other things, the prescribed requirements applying to contracts between *firms* and *appointed representatives* for the purposes of section 39(1)(a)(ii) of the *Act*.
- 12.5.2 **G**
- (1) Regulations 3(1) and (2) of the *Appointed Representatives Regulations* make it a requirement that the contract between the *firm* and the *appointed representative* (unless it prohibits the *appointed representative* from representing other counterparties) contains a provision enabling the *firm* to:
 - (a) impose such a prohibition; or
 - (b) impose restrictions as to the other counterparties which the *appointed representative* may represent, or as to the types of *investment* in relation to which the *appointed representative* may represent other counterparties.
 - (1A) [deleted]
 - (2) Under the *Appointed Representatives Regulations*, an *appointed representative* is treated as representing other counterparties if, broadly, it:
 - (a) makes arrangements (within article 25 of the *Regulated Activities Order*) for *persons* to enter into investment transactions with other counterparties; or
 - (b) *arranges the safeguarding and administration of assets* by other counterparties; or
 - (c) gives advice (within article 53(1) of the *Regulated Activities Order* (Advising on investments)) on the merits of entering into investment transactions with other counterparties;
 - (d) *assists in the administration and performance of a contract of insurance* (article 39A of the *Regulated Activities Order*);

where an "investment transaction" means a transaction to *buy, sell, subscribe for or underwrite a security or a relevant investment* (that is, a *designated investment* (other than a *P2P agreement*), *structured deposit* (where applicable), *funeral plan contract, pure protection contract, general insurance contract* or right to or interest in a funeral plan; or
 - (e) *arranges:*

- (i) for *persons* to enter (or with a view to *persons* entering) as customers into *home finance transactions* (or as plan providers in the case of a *home reversion plan*) with other counterparties;
- (ii) for a *person* to vary a *home finance transaction* entered into by a *person* as customer (or as plan provider in the case of a *home reversion plan*) before 31 October 2004 (in the case of a *legacy CCA mortgage contract*), or on or after 31 October 2004 (in the case of any other *regulated mortgage contract*) or 6 April 2007 (in all other cases) with other counterparties;
- (f) gives advice (within articles 53A, 53B or 53C of the *Regulated Activities Order*) on the merits of:
 - (i) *persons* entering as customers into *home finance transactions* (or as plan provider in the case of a *home reversion plan*) with other counterparties;
 - (ii) *persons* varying *home finance transactions* entered into by them as customer (or as plan provider in the case of a *home reversion plan*) before 31 October 2004 (in the case of a *legacy CCA mortgage contract*), or on or after 31 October 2004 (in the case of any other *regulated mortgage contract*) or 6 April 2007 (in all other cases) with other counterparties;
- (g) giving *basic advice on a stakeholder product*;
- (h) effects introductions (within article 36A (Credit broking) of the *Regulated Activities Order*) of *individuals* to other counterparties;
- (i) facilitates *persons* becoming the *lender* and *borrower* under an article 36H agreement (within the meaning of the *Regulated Activities Order*) on behalf of other counterparties;
- (ia) facilitates a *person* assuming the rights of the *lender* under an article 36H agreement (within the meaning of the *Regulated Activities Order*) by assignment or operation of law on behalf of other counterparties;
- (j) carries on any of the other activities specified in article 36H(3) of the *Regulated Activities Order* on behalf of other counterparties in the course of, or in connection with, facilitation mentioned in (i) or (ia) by the *appointed representative* or its principal;
- (ja) gives advice (within article 53(2) of the *Regulated Activities Order*) on the merits of:
 - (i) a *person* entering into a 'relevant article 36H agreement' (within the meaning of the *Appointed Representatives Regulations*) as a *lender* or assuming the rights of a *lender* under such an agreement by assignment or operation of law; or
 - (ii) a *person* providing instructions to a *P2P platform operator* with a view to entering into a 'relevant article 36H agreement' as a *lender* or assuming the rights of a *lender* under such an agreement by assignment or operation of law, where the instructions involve:
 - (A) accepting particular parameters for the terms of the agreement presented by a *P2P platform operator*; or

- (B) choosing between options governing the parameters of the terms of the agreement presented by a *P2P platform operator*; or
 - (C) specifying the parameters of the terms of the agreement by other means; or
 - (iii) a *person* enforcing or exercising the *lender's* rights under a 'relevant article 36H agreement'; or
 - (iv) a *person* assigning rights under a 'relevant article 36H agreement';
on behalf of other counterparties;
 - (k) takes steps (within article 39D (Debt adjusting) of the *Regulated Activities Order*) on behalf of other counterparties;
 - (l) gives advice to a *borrower* (within article 39E (Debt-counselling) of the *Regulated Activities Order*) on behalf of other counterparties;
 - (m) takes steps (within article 39F (Debt-collecting) of the *Regulated Activities Order*) to procure the payment of debts on behalf of other counterparties;
 - (n) performs duties (within article 39G (Debt administration) of the *Regulated Activities Order*) under, or exercises or enforces rights under, an agreement on behalf of other counterparties;
 - (na) gives advice (within article 53E of the *Regulated Activities Order* (Advising on conversion or transfer of pension benefits)) on behalf of other counterparties;
 - (o) enters into *regulated credit agreement* or exercises or has the right to exercise the *lender's* rights and duties under such agreements (within article 60B (Regulated credit agreements) of the *Regulated Activities Order*) on behalf of other counterparties;
 - (p) enters into *regulated consumer hire agreements* or exercises, or has the right to exercise, the *owner's* rights and duties under such agreements (within article 60N (Regulated consumer hire agreements) of the *Regulated Activities Order*) on behalf of other counterparties;
 - (q) takes steps on behalf of, or gives advice to, an *individual* in relation to the taking of any steps (in circumstances constituting the carrying on of *providing credit information services*) on behalf of other counterparties.
- (3) If the scope of appointment covers, in relation to a *contract of insurance, dealing in investments as agent, arranging, assisting in the administration and performance of a contract of insurance or advising on investments*, regulation 3(4) of the *Appointed Representatives Regulations* makes it a requirement that the contract between the *firm* and the *appointed representative* contains a provision providing that the *appointed representative* is not permitted or required to carry on such business unless included in the *Financial Services Register* as carrying on *insurance distribution activities*.

12.5.2A

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[deleted] [Editor's note: This provision now appears at SUP 12.5.12G.]

- 12.5.3 **G** (Subject to **■ SUP 12.5.13G**) a *firm* should satisfy itself that the terms of the contract with its *appointed representative* (including an *introducer appointed representative*):
- (1) are designed to enable the *firm* to comply properly with any *limitations or requirements on its own permission*;
 - (2) require the *appointed representative* to cooperate with the *FCA* as described in **■ SUP 2.3.4 G** (Information gathering by the *FCA* on its own initiative: cooperation by firms) and give access to its premises, as described in **■ SUP 2.3.5 R (2)**;
 - (3) require the *appointed representative* to give the *firm's* auditors the same rights as are provided by section 341 of the *Act*; and
 - (4) require the *appointed representative* to provide the *firm* with such information as is necessary to enable the *firm* to comply with its obligations under this chapter (**■ SUP 12**), including, without limitation:
 - (a) as to any matters which might require the *firm* to undertake a review under **■ SUP 12.6A.3R**;
 - (b) to enable the *firm* to comply with its reporting and notification obligations in **■ SUP 12.7**.
- 12.5.3A **G** [deleted] [*Editor's note*: This provision now appears at SUP 12.5.13G.]
- 12.5.4 **G** A *firm* should have the ability to terminate the contract with its *appointed representative* in the circumstances in **■ SUP 12.6.1R(2)**. However, such a termination provision should not be automatic (see **■ SUP 12.8.3R(1)**). **■ SUP 12.5.5R(4)** also requires that the *firm* be able to terminate the contract in the event that the *firm* determines that it is no longer able to effectively oversee the activities of the *appointed representative*.
- 12.5.5 **R** A *firm* must ensure that its written contract with each of its *appointed representatives*:
- (1) complies with the requirements prescribed in regulation 3 of the *Appointed Representatives Regulations* (see **■ SUP 12.5.2 G**);
 - (2) requires the *appointed representative* to comply, and to ensure that any *persons* who provide services to the *appointed representative* under a contract of services or a contract for service comply, with the relevant requirements in or under the *Act* (including the *rules*) that apply to the activities which it carries on as *appointed representative* of the *firm*;
 - (2A) (where the scope of appointment of the *appointed representative* includes *CBTL business*) requires the *appointed representative* to comply, and to ensure that any *persons* who provide services to the *appointed representative* under a contract for service comply, with the requirements of and arising under Part 3 of the *MCD Order*;
 - (3) (unless the written contract prohibits appointments by other *principals*) requires the *appointed representative* to notify the *firm*:

- (a) that it is seeking appointment as an *appointed representative* of another *person*, who the *person* is and the business for which the other *person* will accept responsibility;
 - (b) (as soon as possible) of any change in the business notified under (a); and
 - (c) (as soon as possible) of the termination of any such appointment; and
- (4) enables the *firm* to terminate the contract in the event that the *firm* determines, pursuant to its continuing obligation in ■ SUP 12.4.2R, ■ SUP 12.4.6R or ■ SUP 12.4.8AR that it is no longer able to adequately oversee the activities of the *appointed representative*.

12.5.6

G

- (1) If the *appointed representative* is appointed to give *advice on investments* to *retail clients* concerning *packaged products*, the *firm* should also satisfy itself that the contract requires compliance with the *rules* in ■ COBS 6 or ■ COBS 6.1ZA (Information about the firm, its services and remuneration).
- (2) The contractual requirements in ■ SUP 12.5.5 R should extend to:
 - (a) the activities of the *appointed representative*, if the appointed representative is an individual; and
 - (b) the activities of the *employees of, representatives and introducers* appointed by, the *appointed representative*.

Prohibition of multiple principals for certain activities

12.5.6A

R

- (1) A *firm* must ensure that, if appointing an *appointed representative* (other than an *introducer appointed representative*), to carry on any of the following regulated activities, its written contract prohibits the *appointed representative* from carrying on any of the specified activities as an *appointed representative* for another *firm*:
 - (a) any *designated investment business for retail clients*: the prohibition must cover all *designated investment business for retail clients*;
 - (b) any *regulated mortgage activities* (other than in relation to *lifetime mortgages*): the prohibition must cover all regulated mortgage activities (other than *lifetime mortgages*);
 - (c) any *regulated mortgage activities* in relation to *lifetime mortgages*: the prohibition must cover all *lifetime mortgages*;
 - (d) any *reversion activities*: the prohibition must cover all *reversion activities*;
 - (e) any *home purchase activities*: the prohibition must cover all *home purchase activities*.
- (1A) If the *appointed representative* is a *tied agent*, the prohibition must prevent the *appointed representative* acting as a *tied agent* for any other *MiFID investment firm* or *third country investment firm*.
- (1B) In relation to any *MCD credit intermediation activity*, the prohibition must prevent the *appointed representative* acting as an *appointed*

representative in respect of MCD credit intermediation activity for any other firm.

- (2) As an exception to (1), if the firm is a long-term insurer or an operator of a UCITS scheme, it may permit an appointed representative to carry on designated investment business as the appointed representative of one or more other firms provided that:
 - (a) each of those other firms is a long-term insurer or an operator of a UCITS scheme;
 - (b) the first firm and each of those other firms is a member of the same group; "group" means for this purpose a group of bodies corporate all having the same holding company including the holding company; and
 - (c) the scope of each appointment does not overlap, as to both activities and investments.

[Note: articles 4(1)(29) and 29(1) of MiFID]

12.5.6B G

- (1) The effect of SUP 12.5.6A R(1)(a) is that, in relation to designated investment business with retail clients, appointed representatives are restricted to one principal.
- (1A) The effect of SUP 12.5.6A R(1A) is that tied agents are restricted to one principal when acting as such. A tied agent who has a MiFID investment firm or a third country investment firm as a principal may have other principals who are not MiFID investment firms or third country investment firms.
- (2) The effect of the rule prohibiting multiple principals for certain activities is that, in relation to home finance activities, appointed representatives are restricted to having four principals: one for regulated mortgage contracts other than lifetime mortgages, one for lifetime mortgages, one for home reversion plans and one for home purchase plans. However, if any of the business of the appointed representative involves MCD credit intermediation activity, the appointed representative is restricted to having one principal in relation to that business.

12.5.6C G

As SUP 12.5.6A R does not apply to non-investment insurance contracts, there are no restrictions on the number of principals an appointed representative may have in relation to those contracts.

Required contract terms for an introducer appointed representative

12.5.7 R

A firm must ensure that its written contract with each of its introducer appointed representatives limits the scope of the appointment to:

- (1) effecting introductions to the firm or other members of the firm's group; and
- (2) distributing non-real time financial promotions which relate to products or services available from or through the firm or other members of the firm's group.

12.5.8 **R** **Required contract terms for FCA registered tied agents**
 If a *MiFID investment firm* appoints an *FCA registered tied agent*,
 ■ SUP 12.5.6A R (1A) applies to that *firm* as though the *FCA registered tied agent* were an *appointed representative*.
 [Note: articles 4(1)(29) and 29(1) of *MiFID*]

12.5.9 **G** **Required contract terms for FCA registered tied agents**
 Under section 39A(6)(a) of the *Act* a *MiFID investment firm* must ensure that the contract it uses to appoint an *FCA registered tied agent* complies with the requirements that would apply under the *Appointed Representatives Regulations* if it were appointing an *appointed representative*.

12.5.10 **R** **Required contract terms for appointed representatives of MCD credit intermediaries**
 A *firm* must ensure that, if appointing an *appointed representative* to carry on *MCD credit intermediation activity*, its written contract requires the *appointed representative* to provide such evidence to the *FCA* as to the knowledge and competence of the staff of the *appointed representative*, as the *FCA* may require from time to time.
 [Note: article 9(4) of the *MCD*]

12.5.11 **R** **Required contract terms for appointed representatives carrying on insurance distribution activity**
 A *firm* must ensure that, if appointing an *appointed representative* to carry on *insurance distribution activity*, its written contract requires the *appointed representative* to inform the *firm* of any change to the information obtained by the *firm* from the *appointed representative* in accordance with
 ■ SUP 12.4.8CR.
 [Note: second paragraph of article 3(6) of the *IDD*]
 [Editor's note: The provisions at SUP 12.5.12G and SUP 12.5.13G are not new text; they are moved from SUP 12.5.2AG and SUP 12.5.3AG respectively.]

12.5.12 **G** **Required contract terms for tied agents, MiFID optional exemption appointed representatives and structured deposit appointed representatives**
 If:
 (1) a *MiFID investment firm* or a *third country investment firm* appoints an *appointed representative* that is a *tied agent* or a *MiFID optional exemption appointed representative*, regulation 3(6) of the *Appointed Representatives Regulations* requires the contract between the *firm* and the *appointed representative* to contain a provision that the representative is only permitted to provide the services and carry on the activities referred to in section 39(7) of the *Act* while entered on the Register;
 (2) a *firm* appoints an *appointed representative* that is a *structured deposit appointed representative*, regulation 3(6) of the *Appointed Representatives Regulations* requires the contract between the *firm*

and the *appointed representative* to contain a provision that the representative is only permitted to sell, or advise *clients* on, *structured deposits* while entered on the Register.

Required contract terms for appointed representatives engaging in CBTL business

12.5.13

G

To the extent that the appointment of the *appointed representative* includes *CBTL business*, a *firm* should satisfy itself that the terms of the contract with its *appointed representative*:

- (1) are designed to enable the *firm* to comply properly with any direction issued or imposed under article 19 of the *MCD Order*; and
- (2) require the *appointed representative* to deal with the *FCA* in an open and co-operative manner and give access to its premises, as set out in ■ SUP 2.3.4G and ■ SUP 2.3.5R(2), as applied by ■ SUP 2.1.2AG.



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*.

12.6A Assessment of compliance

Purpose

12.6A.1

G

- (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

R

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 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.



12.7 Notification and reporting requirements

Notification of appointment of an appointed representative.....

12.7.1 **R**

- (1) This *rule* applies to a *firm* which intends to appoint an *appointed representative* or *FCA registered tied agent*.
- (2) [deleted]
- (3) A *firm* to which this *rule* applies must complete and submit the form in ■ SUP 12 Annex 3 to be received by the *FCA* no later than 30 days before the commencement of *regulated activities* by the proposed *appointed representative*.
- (4) [deleted]

12.7.1A **R**

- (1) A *firm* other than:
 - (a) a *credit union*; or
 - (b) a *firm* which intends to appoint an *appointed representative* to carry on only *credit-related regulated activity*;
 must submit the form in ■ SUP 12 Annex 3 via online submission at the *FCA*'s website at <http://www.fca.org.uk> or any of the methods set out in ■ SUP 15.7.4R to ■ SUP 15.7.5AR (Method of notification).
- (2) A *credit union* or a *firm* which intends to appoint an *appointed representative* to carry on only *credit-related regulated activity* must submit the form in ■ SUP 12 Annex 3 R in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).
- (3) Where a *firm* is obliged to submit an application online under (1), if the *FCA*'s information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a *firm* must submit the form in ■ SUP 12 Annex 3 R in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).

[**Note:** See ■ SUP 12.7.10 G to ■ SUP 12.7.11 G regarding notification in the event of online failure.]

12.7.2 **G**

A *firm*'s notice under ■ SUP 12.7.1 R should give details of the proposed *appointed representative*, including:

- (1) the name of the *firm's new appointed representative* (if the *appointed representative* is a *body corporate*, this is its registered name);
- (2) any trading name under which the *firm's new appointed representative* carries on a *regulated activity* in that capacity;
- (2A) if the *appointed representative* is a company, its company registration number;
- (3) a description of the nature of the *regulated activities* which the *appointed representative* will be permitted or required to carry on and for which the *firm* intends to accept responsibility;
- (4) any restrictions imposed on the *regulated activities* for which the *firm* intends to accept responsibility;
- (5) where the appointed representative is not an individual, the name of the individuals who are responsible for the management of the business carried on by the appointed representative so far as it relates to *insurance distribution activity*;
- (6) where the *appointed representative* will carry on *insurance distribution activities*, the name of the individual to be named as the primary point of contact at the *appointed representative* on the *Financial Services Register*;
- (7) information on the nature of any non-*regulated activities* of the *appointed representative*;
- (8) any *group* of which the *appointed representative* is a part;
- (9) the principal reason for the appointment;
- (10) information about the financial relationship between the firm and the appointed representative;
- (11) an estimate of the expected level of revenue of the *appointed representative* during the first year of its appointment by reference to its *regulated activities* and non-*regulated activities*;
- (12) whether the *appointed representative* will provide services to *retail clients*;
- (13) whether it was previously the *appointed representative* of a different *principal*; and
- (14) information on any arrangements for seconding or contracting individuals from the *appointed representative* to the *principal* for the purposes of conducting portfolio management or *dealing* activities.

12.7.2A

G

A *firm's* notice under ■ SUP 12.7.1R relating to a proposed introducer *appointed representative* need not include those details specified in ■ SUP 12.7.2G(7), ■ SUP 12.7.2G(8), ■ SUP 12.7.2G(9), ■ SUP 12.7.2G(12), ■ SUP 12.7.2G(13) and ■ SUP 12.7.2G(14).

- 12.7.2B G A *firm* should only submit a notification pursuant to ■ SUP 12.7.1R having first established those matters in ■ SUP 12.4.2R or ■ SUP 12.4.6R, as applicable.

- 12.7.3 G A *firm* need not notify the *FCA* of any restrictions imposed on the *regulated activities* for which the *firm* has accepted responsibility (under ■ SUP 12.7.2 G (4)) if the *firm* accepts responsibility for the unrestricted scope of the *regulated activities*.

- 12.7.3A G Where a notification is linked to an application for approval under section 59 of the *Act* (Approval for particular arrangements), see ■ SUP 10A.13.7 G.

- 12.7.4 G
 - (1) [deleted]
 - (2) [deleted]

- 12.7.5 G To contact the *FCA*'s Supervision Hub with *appointed representatives* enquiries:
 - (1) telephone 0300 500 0597; fax 020 7066 0017; or
 - (2) write to: Supervision Hub, The Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN; or
 - (3) email firm.queries@fca.org.uk.

- 12.7.6 G [deleted]

Notification of appointed representatives undertaking regulated funeral plan activity

- 12.7.6A R
 - (1) A *firm* must notify the *FCA* in good time before:
 - (a) [deleted]
 - (b) the number of its *appointed representatives* appointed to carry on *regulated funeral plan activity* increases through a material threshold.
 - (2) A *firm* that has appointed one or more *appointed representatives* to carry on *regulated funeral plan activity* must notify the *FCA* in good time before it appoints an *appointed representative* to carry on any other *regulated activity* for the first time.

- 12.7.6B G The purpose of ■ SUP 12.7.6AR is to ensure that the *FCA* is notified when a *firm* diversifies its activities around *regulated funeral plan activities*. This may be because the *firm*:
 - (1) intends to appoint an *appointed representative* for the first time where the scope of business for which the *firm* will accept responsibility will include *regulated funeral plan activity*;
 - (2) is the *principal* to one or more *appointed representatives*:

- (a) and intends to expand the scope of business of one or more of those *appointed representatives* for which it accepts responsibility to include *regulated funeral plan activity*; or
- (b) in relation to which it has accepted responsibility for *regulated funeral plan activity* only and it intends to expand the scope of business of those, or new, *appointed representatives* for which it accepts responsibility beyond such activity.

12.7.6C R A firm must submit to the FCA within 80 *business days* of each calendar year end a list of those of its *appointed representatives* which:

- (1) undertake *regulated funeral plan activity*; and
- (2) are the subject of a multiple principal agreement (for the purposes of ■ SUP 12.4.5BR).

12.7.6D G (1) For the purposes of ■ SUP 12.7.6AR(1)(b), an increase through a material threshold should be understood as referring to an increase in the number of *appointed representatives* undertaking *regulated funeral plan activity*:

- (a) from fewer than 25 to 25 or more;
- (b) from fewer than 50 to 50 or more;
- (c) from fewer than 75 to 75 or more;
- (d) from fewer than 100 to 100 or more;
- (e) from fewer than 200 to 200 or more;
- (f) from fewer than 500 to 500 or more.

(2) Any notification required by ■ SUP 12.7.6AR or ■ SUP 12.7.6CR is in addition to any notification required by any other *rule* in ■ SUP 12 (including the requirement to notify the FCA of the intention to appoint individual *appointed representatives* in ■ SUP 12.7.1R).

(3) A *firm* making a notification in accordance with ■ SUP 12.7.6AR or ■ SUP 12.7.6CR should consider the *guidance* in ■ SUP 15.7 on the form and method of notification.

Notification of changes in information given to the

12.7.7 R (1) [deleted] [*Editor's note*: This provision now appears at SUP 12.7.7AR.]

(1A) [deleted] [*Editor's note*: This provision now appears at SUP 12.7.7BR.]

(1B) [deleted] [*Editor's note*: This provision now appears at SUP 12.7.7CR.]

(2) Except where (4) applies, where there is a change in any of the information provided to the FCA under ■ SUP 12.7.1R, a *firm* must complete and submit to the FCA the form in ■ SUP 12 Annex 4R (Appointed representative or tied agent – change details) within ten *business days* of that change being made or, if later, as soon as the *firm* becomes aware of the change. The Appointed representative or tied agent – change details form must state that the information has changed.

- (3) [deleted]
- (4) A *firm* must complete and submit to the *FCA* the form in
 - SUP 12 Annex 4R (*Appointed representative or tied agent – change details*) at least 10 days before a change taking effect to the category of *regulated activities* which the *appointed representative* is permitted or required to carry on and for which the *firm* accepts responsibility.

[Note: See ■ SUP 12.7.8AR regarding the method of submission for the form in ■ SUP 12 Annex 4R.]

[Editor’s note: The provisions at SUP 12.7.7AR, SUP 12.7.7BR and SUP 12.7.7CR are not new text; they are moved from SUP 12.7.7R(1), (1A) and (1B) respectively.]

Notification of changes relating to insurance distribution activities

12.7.7A **R**

If:

- (1) (a) the scope of appointment of an *appointed representative* is extended to cover insurance distribution activities for the first time; and
 - (b) the *appointed representative* is not included on the *Financial Services Register* as carrying on *insurance distribution activities* in another capacity; or
- (2) the scope of appointment of an *appointed representative* ceases to include *insurance distribution activity*;
 the *appointed representative’s principal* must give written notice to the *FCA* of that change before the *appointed representative* begins to carry on *insurance distribution activities* under the contract (see ■ SUP 12.4) or as soon as the scope of appointment of the *appointed representative* ceases to include *insurance distribution activities*.

Notification of changes relating to tied agents, MiFID optional exemption appointed representatives and structured deposit appointed representatives

12.7.7B **R**

If:

- (1) (a) the scope of appointment changes such that the *appointed representative* acts as a *tied agent, MiFID optional exemption appointed representative or structured deposit appointed representative* for the first time; and
 - (b) the *appointed representative* is not included on the *Financial Services Register*; or
- (2) the *appointed representative* ceases to act as a *tied agent, MiFID optional exemption appointed representative or structured deposit appointed representative*;
 the *appointed representative’s principal* must give written notice to the *FCA* of that change before the *appointed representative* begins

to act as a *tied agent*, *MiFID optional exemption appointed representative* or *structured deposit appointed representative* (see ■ SUP 12.4) or as soon as the *appointed representative* ceases to act as a *tied agent*, *MiFID optional exemption appointed representative* or *structured deposit appointed representative*.

Notification of changes relating to MCD credit intermediation activity

12.7.7C **R**

If:

- (1) (a) the scope of appointment of an *appointed representative* is extended to cover *MCD credit intermediation activity* for the first time; and
 - (b) the *appointed representative* is not included on the *Financial Services Register*; or
- (2) the scope of appointment of an *appointed representative* ceases to include *MCD credit intermediation activity*;

the *appointed representative's principal* must give written notice to the *FCA* of that change before the *appointed representative* begins to carry on *MCD credit intermediation activity* under the contract (see ■ SUP 12.4), or as soon as the scope of appointment of the *appointed representative* ceases to include *MCD credit intermediation activity*.

[Note: article 31(4) of the *MCD*]

Notification of changes in conditions of appointment

12.7.8 **R**

- (1) As soon as a *firm* has reasonable grounds to believe that any of the conditions in ■ SUP 12.4.2 R, ■ SUP 12.4.6 R, ■ SUP 12.4.8A R, ■ SUP 12.4.10A R or ■ SUP 12.4.10B R (as applicable) are not satisfied, or are likely not to be satisfied, in relation to any of its *appointed representatives*, it must complete and submit to the *FCA* the form in ■ SUP 12 Annex 4 R (Appointed representative notification form), in accordance with the instructions on the form.
- (2) In its notification under ■ SUP 12.7.8 R (1), the *firm* must state either:
 - (a) the steps it proposes to take to rectify the matter; or
 - (b) the date of termination of its contract with the *appointed representative* (see ■ SUP 12.8).
- (3) [deleted]

Method of submission of the form in SUP 12 Annex 4R

12.7.8A **R**

- (1) Subject to (2A), a *firm* other than a *credit union* must submit the form as set out in ■ SUP 12 Annex 4 R online at <http://www.fca.org.uk> using the *FCA's online notification and application system*.
- (2) A *credit union* must submit the form in ■ SUP 12 Annex 4 R in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).

- (2A) If the notification:
- (a) relates to an *appointed representative* whose scope of appointment covers only *credit-related regulated activity*; or
 - (b) is of a change to the scope of appointment of an *appointed representative* to add or remove *credit-related regulated activity*;
- the *firm* must submit the form in ■ SUP 12 Annex 4 in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).
- (3) Where a *firm* is obliged to submit an application online under (1), if the *FCA's* information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a *firm* must submit the form in ■ SUP 12 Annex 4 R in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).

[Note: See ■ SUP 12.7.10 G to ■ SUP 12.7.11 G regarding notification in the event of online failure.]

Notifications relating to FCA registered tied agents

- 12.7.9 **R** If a *MiFID investment firm* appoints an *FCA registered tied agent* this section applies to that *firm* as though the *FCA registered tied agent* were an *appointed representative*.

Notification of intention to act as a regulatory host

- 12.7.9A **R**
- (1) A *firm* must notify the *FCA* if it intends to begin acting as a *regulatory host*.
 - (2) The notification in (1) must be received by the *FCA* at least 60 days before the *firm* begins offering services as a *regulatory host*.
- 12.7.9B **G**
- (1) Any notification required by ■ SUP 12.7.9AR is in addition to any notification required by any other *rule* in ■ SUP 12 (including the requirement to notify the *FCA* of an intention to appoint individual *appointed representatives* in ■ SUP 12.7.1R).
 - (2) A *firm* making a notification in accordance with ■ SUP 12.7.9AR should consider the *rules* and *guidance* in ■ SUP 15.7 on the form and method of notification.
 - (3) When providing the notification required by ■ SUP 12.7.9AR, a *firm* may include information about the service that it intends to offer.

Other notifications

- 12.7.9C **G**
- (1) A *firm* should also be aware that certain matters relating to *firms' appointed representatives* may require notification to be made to the *FCA* under the *notification rules* in ■ SUP 15 and *Principle 11*.
 - (2) In particular, ■ SUP 15.3.8G(2) sets out the *FCA's* expectation that a *firm* will notify the *FCA* in accordance with *Principle 11* in the event of a significant failure of the *firm's* systems and controls for overseeing its *appointed representatives*.

Complaints and revenue data reporting

- 12.7.9D **R** (1) This *rule* applies to a *firm* that has appointed one or more *appointed representatives*.
- (2) A *firm* must, once a year, submit the form in ■ SUP 12 Annex 6R (On-going reporting by principal firms on their appointed representatives) to the *FCA* including information on:
- (a) numbers of complaints relating to each of the *firm's appointed representatives*; and
- (b) revenue and remuneration attributed to each of the *firm's appointed representatives*.
- (3) The form in (2) must be submitted to the *FCA* within 60 *business days* of the *firm's accounting reference date* using the appropriate online systems accessible from the *FCA's* website.
- (4) A *firm* must submit the form in (2) in respect of each 12-month period to its *accounting reference date* in respect of which it has been a *principal* to one or more *appointed representatives* (whether or not it was a *principal* for the complete 12-month period).
- (5) In relation to an *appointed representative* with more than one *principal*, a *firm* need not report information about the *appointed representative's* revenue from non-regulated activities if it is not the 'lead-principal' (see ■ SUP 12.4.5DG).

- 12.7.9E **G** In complying with ■ SUP 12.7.9DR in relation to an *appointed representative* with more than one *principal*, a *firm* should only report information about the *appointed representative's* revenue from that *regulated activity* for which the *firm* has accepted responsibility

Submission in the event of failure of FCA information technology systems

- 12.7.10 **G** If the *FCA's* information technology systems fail and online submission is unavailable for 24 hours or more, the *FCA* will endeavour to publish a notice on its website confirming that online submission is unavailable and that *firms*, other than *credit unions*, should use the alternative methods of submission set out in ■ SUP 12.7.1AR (3) and ■ SUP 12.7.8AR (3) (as appropriate), and ■ SUP 15.7.4 R to ■ SUP 15.7.9 G, clearly marking applications as relating to *appointed representatives*.

- 12.7.11 **G** Where ■ SUP 12.7.1AR (3) or ■ SUP 12.7.8AR (3) apply to a *firm*, ■ GEN 1.3.2 R (Emergency) does not apply.



12.8 Termination of a relationship with an appointed representative or FCA registered tied agent

Notification of termination or prohibited amendment of the contract

12.8.1 **R** If either the *firm* or the *appointed representative* notifies the other that it proposes to terminate the contract of appointment or to amend it so that it no longer meets the requirements contained or referred to in **■ SUP 12.5** (Contracts: required terms), the *firm* must:

- (1) complete and submit to the *FCA* the form in **■ SUP 12 Annex 5 R** (Appointed representative termination form) in accordance with the instructions on the form and no more than ten *business days* after the date of the decision to terminate or so amend the contract or, if later, as soon as it becomes aware that the contract is to be or has been terminated or amended.
- (2) [deleted]
- (3) [deleted]
- (4) [deleted]

12.8.1A **R**

- (1) Subject to (2A), a *firm* other than a *credit union* must submit any notification under **■ SUP 12.8.1 R (1)** in the form set out in **■ SUP 12 Annex 5 R**, online at www.fca.org.uk using the *FCA's online notification and application system*.
- (2) A *credit union* must submit any notification under **■ SUP 12.8.1 R (1)** in the form set out in **■ SUP 12 Annex 5 R** and in the way set out in **■ SUP 15.7.4 R** to **■ SUP 15.7.9 G** (Form and method of notification).
- (2A) A *firm* must submit any notification under **■ SUP 12.8.1 R (1)** that relates to an *appointed representative* whose scope of appointment covers only *credit-related regulated activity* in the form set out in **■ SUP 12 Annex 5** and in the way set out in **■ SUP 15.7.4 R** to **■ SUP 15.7.9 G** (Form and method of notification).
- (3) Where a *firm* is obliged to submit a notification online under (1), if the *FCA's* information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a *firm* must submit any notification in the form set out in **■ SUP 12 Annex 5 R** and in the way set out in **■ SUP 15.7.4 R** to **■ SUP 15.7.9 G** (Form and method of notification).

12.8.1B G If the FCA's information technology systems fail and online submission is unavailable for 24 hours or more, the FCA will endeavour to publish a notice on its website confirming that online submission is unavailable and that the alternative methods of submission set out in SUP 12.8.1AR(3) and SUP 15.7.4 R to SUP 15.7.9 G (Form and method of notification) should be used.

12.8.1C G Where SUP 12.8.1AR (3) applies to a firm, GEN 1.3.2 R (Emergency) does not apply.

12.8.2 G In assessing whether to terminate a relationship with an appointed representative, a firm should have regard to the guidance in SUP 12.6.1-AG and be aware that the notification rules in SUP 15 require notification to be made immediately to the FCA if certain events occur. Examples include a matter having a serious regulatory impact or involving an offence or a breach of any requirement imposed by the Act or by regulations or orders made under the Act by the Treasury.

Steps to be taken on termination or prohibited amendment of the contract

12.8.3 R If a contract with an appointed representative is terminated, or if it is amended in a way which gives rise to a requirement to notify under SUP 12.8.1R, a firm must take all reasonable steps to ensure that:

- (1) if the termination is by the firm, the appointed representative is notified in writing before, or if not possible, immediately on, the termination of the contract and informed that it will no longer be an exempt person for the purpose of the Act because of the contract with the firm;
(2) outstanding regulated activities and obligations to customers are properly completed and fulfilled either by itself or another of its appointed representatives;
(3) where appropriate, clients are informed of any relevant changes;
(4) all the other principals of the appointed representative of which the firm is aware are notified; and
(5) if the termination results in the wind down of relevant business, this is, or will be, undertaken in an orderly way.

Notification of approved persons on termination

12.8.4 G The firm is responsible for notifying the FCA of any approved person who no longer performs a controlled function under an arrangement entered into by a firm or its appointed representative (see SUP 10A.3 and SUP 10C.3).

Removal of an appointed representative from the Register

12.8.5 G The FCA has the power to remove from the Financial Services Register an appointed representative, whose scope of appointment covers insurance distribution activities (see SUP 12.4.9 G and SUP 12.4.10 G).

Termination of a MiFID investment firm's relationship with an FCA registered tied agent

12.8.6

R

If a *MiFID investment firm* has appointed an *FCA registered tied agent* this section applies to that firm as though the *FCA registered tied agent* were an *appointed representative*.

12.9 Record keeping

- 12.9.1** **R** A *firm* must make the following records on each of its *appointed representatives*:
- (1) the *appointed representative's* name;
 - (2) a copy of the original contract with the *appointed representative* and any subsequent amendments to it (including details of any restrictions placed on the activities which the *appointed representative* may carry on);
 - (3) the date and reason for terminating or amending its contract with the *appointed representative*, whenever such termination or amendment gives rise to a requirement to notify under ■ SUP 12.8.1 R; and
 - (4) any arrangements agreed with other *principals* under ■ SUP 12.4.5B R (Multiple principals).
- 12.9.2** **R** A *firm* must retain these records for at least three years from the date of termination or the amendment of the contract with the *appointed representative* other than in respect of *tiered agents* when the records must be retained for a period of five years.
- 12.9.2A** **G** ■ SUP 12.6A also contains *rules* on maintaining records of a *firm's* self-assessment *documents* and of reviews undertaken by a *firm's governing body* of *appointed representative* arrangements.
- 12.9.3** **G** The *firm* should also satisfy itself that:
- (1) the *appointed representative* is making and retaining records in accordance with the relevant record keeping *rules* in the *Handbook* or, in relation to *CBTL business*, the record keeping requirements in or under Part 3 of the *MCD Order*, if these records are not maintained by the *firm*;
 - (2) the *appointed representative* (other than an *introducer appointed representative*) is making and retaining records sufficient to disclose with reasonable accuracy the financial position of the business it carries on in its capacity as the *firm's appointed representative*; and

(3) the *firm* has full access to the *appointed representative's* records under (1) and (2) and any other records relevant to the *regulated activities* that the *appointed representative* carries on in that capacity.

12.9.4

G

Firms are reminded that they should make and retain records in relation to any person who falls within the scope of the *rules* in *TC* or who performs a *controlled function* under an *arrangement* entered into by a *firm* or by an *appointed representative*. See ■ SUP 10A, ■ SUP 10C and *TC* for the applicable record keeping *rules*.

Record keeping in relation to FCA registered tied agents

12.9.5

R

If a *MiFID investment firm* appoints an *FCA registered tied agent* this section applies to that firm as though the *FCA registered tied agent* were an appointed representative.

Guidance on steps a firm should take in assessing the financial position of an appointed representative (other than an introducer appointed representative). See ■ SUP 12.4.3 G

1.	The <i>guidance</i> in this annex applies to a <i>firm</i> which intends to appoint, or has appointed, an appointed representative (other than an <i>introducer appointed representative</i>).
2.	All of the items in this annex should be applied, as appropriate, to an individual who is in business on his own.
3.	<i>Partners</i> in <i>partnerships</i> (other than limited partners in <i>limited liability partnerships</i>) have joint and several unlimited liability. It follows that any assessment of the financial position of an appointed representative which is a <i>partnership</i> should take into account the final position of the individual <i>partners</i> as well as the <i>partnership</i> itself.
Accounts	<p>1. Consider whether the type of accounts obtained is appropriate to the type of appointed representative (for example, <i>companies</i> should supply audited accounts prepared in accordance with Companies Act provisions while individuals in business on their own may only prepare unaudited accounts, for example, for submission to HM Revenue and Customs or their bankers).</p> <p>2. Consider whether the accounts have been prepared on a timely basis. Consider the content of the audit report, including all detail and explanations given, and any qualifications which it may contain. Investigate any concerns.</p> <p>3. If relevant, obtain the most recent management accounts to assess whether the appointed representative's financial position has changed materially since the most recent audited accounts.</p> <p>4. If audited accounts are not available, be more circumspect about the accounts as they have not been independently audited. If necessary, consider obtaining third party verification of material balances.</p>
Un-usual items/ recoverability of debts/ goodwill	<p>1. Investigate fully any unusual items - in particular any amounts outstanding with <i>directors, partners, connected persons</i> or <i>associates</i> and any guarantees.</p> <p>2. Consider whether any amounts due to the appointed representative would be recoverable; and whether the appointed representative would be in a position to pay any debts if it were required to do so at short notice.</p> <p>3. Any balance for goodwill should be ignored since this will normally represent a stream of potential future income which may not be forthcoming if the equity interest in the appointed representative were sold.</p>
Financial stability/ cashflows	<p>1. Critically review the accounts to ensure that the appointed representative is financially stable. The review should take into account the overall position of the appointed representative and its cashflow.</p> <p>2. The review should also consider the nature of the appointed representative's assets and whether or not they are liquid and readily available to the appointed representative, if required. <i>Investments</i> in (for example) unquoted <i>companies</i> or <i>property</i> may be difficult to realise if there were a sudden need for <i>cash</i>.</p>
In- come / finan-	1. Assess the overall financial pressures on the appointed representative and <i>connected persons</i> . Account should be taken of the full range of the appointed representative's activities (and not merely those activities in which the appointed representative will be acting

<p>cial pressures</p>	<p>for the <i>firm</i>). Careful consideration should be given to any debts arising out of previous activities within the financial services industry.</p> <p>2. If relevant, review the accounts of any <i>associates</i> where there is a possibility that their performance - or any commitments entered into in respect of them - may affect the financial position of the appointed representative.</p> <p>3. Establish whether the appointed representative's income is sufficient both to service any debts and to provide an acceptable level of income to the proprietors.</p>
<p>Credit checks/ dealings gov-ern-ment bodies</p>	<p>1. Undertake a <i>credit</i> reference check on the appointed representative itself (in the case of a <i>company</i>); on the <i>partners</i> (in the case of a partnership); or on the individual (in the case of a <i>sole trader</i>).</p> <p>2. Ask the appointed representative whether it is up to date in its dealings with HM Revenue and Customs (etc).</p>
<p>Forecasts</p>	<p>1. If relevant, obtain a forecast of the next year's figures and review it to ensure that the appointed representative is likely to remain in a satisfactory financial position. This is particularly important where a material change is expected in the appointed representative's operations; or where the appointed representative has only recently been established so that accounts are not available for the previous three complete financial years.</p> <p>2. If the <i>firm</i> decides to appoint the appointed representative, the <i>firm</i> should keep the appointed representative's actual performance under close review so as to assess whether the forecasts were realistic and to enable any problems to be addressed.</p>

Guidance on information firms should take reasonable steps to obtain to verify and to assess the fitness and propriety of an appointed representative (other than an introducer appointed representative). See

■ SUP 12.4.4 G (1).

2.

1. The *guidance* in this annex applies to a *firm* which intends to appoint or has appointed an appointed representative (except an introducer appointed representative).
2. Items 1(c) and 1(d) in the following table will not be relevant in the case of an individual who is himself an appointed representative, unless, in the case of 1(d), the individual is in business on his own.
3. If the appointed representative is a *partnership*, the information a *firm* should obtain, having regard to SUP 12.4.4 G (1), is that contained in this annex on the basis that the information sought applies to each *partner*. When considering the fitness and propriety of each *partner*, having regard to SUP 12.4.4 G (1), information a firm should obtain will also include information in this annex. Therefore, a *firm* may wish to assess the fitness and propriety of *partners* as suggested in SUP 12.4.4 G (2) and then consider if any additional information is recommended under this annex.

(1)	Information about the appointed representative	(a)	Name
	The appointed representative's professional reputation	(a)	Disciplinary proceedings
		(b)	Address, and, where applicable and different, address of the registered office and the principal place of business
		(c)	full name of every <i>director</i> , senior manager and <i>controller</i>
		(d)	accounts (see SUP 12 Annex 1) for the last three complete financial years
		(i)	whether the appointed representative has ever been publicly censured, disciplined, suspended or expelled by the <i>FCA</i> , another regulator, a <i>clearing house</i> , an exchange, a professional body, or a government body or agency;
		(ii)	whether the appointed representative is currently the subject of any disciplinary proceedings by a body referred to in (i) above or is aware that such proceedings are pending;
		(iii)	whether the appointed representative has ever been the subject of a formal investigation under the powers in the Companies Acts 1985 to 2006; and
		(iv)	whether the appointed representative has had anything equivalent to (i) to (iii) above occur under relevant overseas provisions.

	<p>The appointed representative's professional reputation - continued</p>	<p>(b)</p> <p>(c)</p>	<p>Criminal or civil proceedings</p> <p>Whether the appointed representative is a defendant in any current civil proceedings connected with professional activities in which an allegation of fraud or dishonesty is being made, the subject of any current criminal proceedings, or has been convicted of any criminal offence, either in the <i>United Kingdom</i> or overseas.</p> <p>Insolvency, bankruptcy and winding up</p> <p>Whether the appointed representative has:</p> <ul style="list-style-type: none"> (i) been wound up or had a petition presented, or had a meeting called to consider a resolution, for winding it up; or (ii) in the case of a company, been the subject of an application to dissolve it or to strike it off the Register of Companies; or (iii) made, or proposed to make, a composition or voluntary arrangement with any one of more of its creditors; or (iv) had an administrator or trustee in bankruptcy appointed to it or had an application made for such an appointment; or (v) had a receiver appointed to it (whether an administrative receiver or a receiver appointed over particular property); or (vi) had an application for an interim order made against it under section 252 of the Insolvency Act 1986 (or, in Northern Ireland, section 227 of the Insolvency (Northern Ireland) Order 1989); or (vii) if it is a <i>sole trader</i>, been the subject of an application for a sequestration order or a petition for bankruptcy; or (viii) ceased trading in circumstances in which any of its creditors did not receive full payment; or (ix) had anything equivalent to (i) to (viii) above occur under relevant overseas law.
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Appointed representative appointment form

This annex consists of only one form. Forms can be completed online now by visiting: www.fca.org.uk/firms/authorisation

The form can also be found through the following address: -

Add an appointed representative or tied agent form - SUP 12 Annex 3

Appointed representative or tied agent – change details

This annex consists of only one or more form. Forms can be completed online now by visiting:
www.fca.org.uk/firms/authorisation

The form can also to be found through the following address:

Appointed representative or tied agent – change details - SUP 12 Annex 4

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Appointed representative termination form

This annex consists of only one or more forms. Forms can be completed online now by visiting:
www.fca.org.uk/firms/authorisation

The forms are also to be found through the following address:

Appointed representative termination form - SUP 12 Annex 5

**On-going reporting by principal firms on their appointed
representatives**

On-going reporting by principal firms on their appointed representatives

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Guidance on steps to be taken where relevant conditions are not satisfied



