



# Front of mind

## Joanne Davis

### Improving the Appointed Representatives regime

George Harbottle of Auxillias examines the details and action points in the FCA's Consultation Paper CP21/34\*\*\* December 2021



**T**he Authorised Representative (“AR”) regime originally implemented to allow self-employed representatives to engage in regulated activities without having to be authorised.

It has evolved to include a wider range of business models across sectors and markets.

The FCA has proposed changes to reduce potential harm and ensure that the regime delivers good outcomes for consumers and markets.

The FCA's proposals:

- require principals to provide additional and more timely information on their ARs and how these are overseen, and
- clarify and strengthen the responsibilities and expectations of principals.

The FCA clarifies: “While the AR regime has benefits, including encouraging effective competition and providing

market access, we are taking action to mitigate the risk of harms arising.

“Through analysis of our existing data on principals, on average principals generate 50 to 400pct more complaints and supervisory cases than non-principals across all sectors where this model operates. This shows that there are more issues arising from principals and ARs than from other directly authorised firms.”

The two main areas for change are:

- Additional information on ARs and notification requirements for principals
- Clarifying and strengthening the responsibilities and expectations of principals in the rules and providing additional guidance for principals on their responsibilities, and the FCA's expectations of how they should act and oversee their ARs

Additionally, the FCA is also planning to re-simplify the structure of SUP 12 where possible.

#### What additional information is required?

- The nature of the regulated activities the principal will permit the AR to undertake (primary and secondary markets in which the AR will undertake regulated activity)
- Non-regulated business of the AR. This includes:
  - The nature of the non-regulated business (financial services products or services, non-financial products and services)
  - The proportion of the non-regulated activities compared to the regulated activities in the first year following the appointment
- Whether the AR will provide services to retail clients.
- Whether the AR was previously an AR of a different principal, and if so, why the AR is now intending to operate under a new principal.
- Whether the AR is part of a group. If so, provide the name of the parent undertaking.
- Whether any individuals from the AR will be seconded or contracted to the principal firm to carry on portfolio management and / or dealing activities, and if so explain the rationale for entering into such an arrangement.
- Information about the nature of the financial arrangements between the principal and the AR such as what fees or commission are paid.
- Anticipated revenue from regulated

and non-regulated activity during the first year of appointment.

## What are the reporting time frames?

At least sixty calendar days before the appointment takes effect.

Reporting significant changes: At least ten calendar days before the change takes effect.

## Verification of AR details

- Check the accuracy of their details on an annual basis.
- Confirm where details remain accurate.
- Report changes.

## Further proposals:

Extend the requirement to cover the details of firms' ARs, including the activities the principal permits them to conduct. Any changes are notified using the appropriate form set out in SUP 12 and in accordance with SUP 16.10.4R.

Information about the nature of the regulated activities the AR carries on, for which the principal takes responsibility, is included in the Register. The Register currently does not state which regulated activities an AR is permitted to undertake. It currently links each AR entry to their principal's entry on the Register. As the principal may have several permissions, not all of which have been permitted for the AR to use, this is potentially misleading for consumers.

## Changes to complaints data

Require principals to submit complaints data by AR.

Firms would be required to submit data on complaints against their ARs on an annual basis, using a new AR reporting form (SUP 12 Annex 6R).

## Revenue information

Require principals to submit revenue data for each of their ARs, from both regulated and non-regulated activities. For revenue from non-regulated activities, the FCA proposes that this should be split between revenue from non-regulated financial activity and non-financial activity.

Principals would not be required to provide revenue data on non-regulated

activities of their IARs. This is because the scope of the regulated activities IARs are permitted to conduct is limited and their main business is more likely to be non-regulated. Firms would not be required to provide revenue data in relation to the non-regulated activities of their IARs.

## Existing ARs

Principals provide this information annually based on their Accounting Reference Date ("ARD"), with thirty working days in which to submit the return.

Principals will report this using a new AR reporting form (SUP 12 Annex 6R).

A transitional period for existing ARs, so that principals provide this information for the first full year of data following the rules coming into effect.

## New ARs

Where the data is available, the FCA requires the principal to provide actual figures (for example, for non-regulated business, or if regulated business was conducted under a different principal).

If the data is not available, particularly when a new AR is set-up and there are no revenues yet, provide a projection of the annual income of the AR (both regulated and non-regulated) at the point of appointment.

For new appointments this information is provided to the FCA using the amended 'Add an appointed representative or tied agent' form.

New and to accompanying guidance is SUP 12.4.4CG

To help principals identify and assess the types of harm, this guidance includes:

- Considerations of the number of customers the AR has, or likely would have, and whether the target market/ customer base includes customers in vulnerable circumstances who may be at greater risk of harm if things go wrong.
- Financial loss to the AR's customers, for example if the AR were to fail.
- Risks to the principal, for example if the AR were to generate a high volume of complaints.
- Substitutability of the AR's services. For example, if the AR's customers would be able to quickly and easily find another provider for their needs were the AR to fail.
- The potential for reputational

damage, which could harm the AR's customers.

- Whether there are any concerns with the AR's business model/strategy or governance arrangements, for example, its senior management.
- The ability of the principal's arrangements to effectively identify and manage risks in compliance with existing obligations in SYSC.

The FCA clarifies: "If a principal identifies an undue risk of harm from an AR's activities during the assessment process it should take steps, in accordance with SUP 12.6.1R, to rectify the matter or otherwise terminate its relationship with the AR.

"Where the assessment has taken place before the AR has been appointed, the principal may choose not to appoint the AR or it may make appropriate resolution of the risk a condition of entering into a contractual agreement with the AR. In some cases, the principal may have to strengthen its own compliance oversight arrangements and controls to accommodate ARs which it considers carry a higher risk of harm.

"Where the principal decides to terminate its relationship with the AR, it should also consider how it will help the AR wind down (in line with the proposed rule on this at SUP 12.8.3R)."

## In summary

The FCA feels these proposed changes will strengthen Consumer protection as ARs will be less likely to engage in mis-selling and providing products which are not right for a consumer. Consumers will benefit from the additional information about the type of regulated business that ARs are able to undertake on behalf of principals. This will also help inform an understanding of the potential availability of access to the Ombudsman.

The FCA will seek feedback on the proposals by 3 March 2022. ■

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