



CUMMINGS PEPPERDINE ON THE FCA MOVES ON APPOINTED REPRESENTATIVE ARRANGEMENTS

INTRODUCTION

The FCA has had appointed representative (“AR”) arrangements in its sights for a while now, and it won’t surprise anyone to know that in light of Greensill Capital its gaze has intensified. Indeed, the House of Commons Treasury Committee recommended reforming the appointed representative regime in the light of its investigation.

The FCA has now published a consultation paper (CP21/34) on improving the appointed representatives regime and it makes illuminating reading.

It is clear that the FCA regards some arrangements as causing a wide range of harm across all the sectors where firms have appointed representatives. Often this arises because the principals firm has not conducted full due diligence before taking on appointed representatives, but it is also an on-going issue. The FCA refers to inadequate oversight and control after an appointed representative has been appointed.

HM Treasury is also involved in sorting out this area of regulation. At the same time as the FCA published CP21/34, it published a call for evidence on how market participants use the appointed representative regime, how effectively it works in practice and possible future reforms.

CUMMINGS PEPPERDINE

+44 7734 057 327

Green Park House, 15 Stratton Street,
London W1J 8LQ

www.cummingspepperdine.com

You can add your experience to the process by replying to both the FCA and HM Treasury before 3 March 2022.

For more information on the AR regime, have a look at our publications page: cumingspepperdine.com/publications/

FCA CP21/34 – KEY POINTS

An alarming figure from the FCA is its evidence that, on average, principals of ARs cause 50% to 400% more supervisory cases than non-principals. This appears to back up the FCA's previous identification of significant shortcomings in principals' understanding of their regulatory responsibilities, including insufficient oversight of ARs and inadequate controls over the regulated activities for which they had accepted responsibility.

Changes for principal firms

The FCA is asking for feedback on the following two main areas of change in relation to principal firms:

- increased information – the FCA is considering requiring principals to provide additional information on ARs and imposing more notification requirements for principals. The aim is to allow the FCA to identify potential risks and assess whether a principal has the expertise, systems and controls to effectively oversee its ARs. Areas on which the new information gathering regime will focus include:
 - details about each AR's business;
 - details of the AR activities for which the principal takes responsibility;
 - complaints data on ARs; and
 - revenue information on ARs.
- increased education – the FCA wants to enhance and clarify its expectations of principals and their responsibilities by making clear what standards principals need to meet, including ensuring effective oversight to better identify where there are issues that require action. Areas on which the new education proposals relate to include:

- clarifying principals' responsibilities for their AR and the FCA's expectations;
- ensuring principals oversee ARs effectively;
- terminating contracts with ARs and winding-down business; and
- requiring principals to prepare a self-assessment document demonstrating their compliance with aspects of the FCA's appointed representative policy, which may be submitted to their FCA supervisor.

Changes for ARs to mitigate risks

As well as looking at the actions of the principal firm, the FCA is also consulting on the role of the AR. The areas in which it is considering making changes, and in which it asks for feedback, are:

- conduct of activities risk – can the risk of hosting arrangements be reduced by moving from the current model, where the principal oversees the use of its permissions by ARs rather than carrying out the activity itself?
- size based risk – what is the risk when ARs are large in size, relative to their principal and might potential harm be reduced setting limits on AR arrangements
- geographic risk - what is the risk when ARs are based overseas.
- financial repercussions – could new or strengthened prudential standards be used to reflect the harm posed to consumers and markets by firms with business models that include ARs.

HM TREASURY – KEY POINTS

HM Treasury has identified key potential areas of reform which would lead to legislative changes. These include:

- changing the scope of the appointed representative regime in section 39 of FSMA, including the activities that ARs may carry out;
- enhancing the role of the FCA to allow it to scrutinise a principal's ability to provide effective oversight before an AR is appointed, which may require a specific permission to be granted;

- placing more regulatory obligations on appointed representatives to understand and comply with FCA rules. One example is extending the Senior Managers and Certification Regime to ARs; and
- extending the remit of the Financial Ombudsman Service so that it can investigate complaints involving the activity of ARs.

The Cummings Pepperdine Online Training Programme, including sections focussing on the FCA moves on Appointed Representative Arrangements, has been designed by a specialist board of compliance consultants, solicitors, chartered accountants, tax advisors and regulatory consultants. We believe that we are the only firm which offers training created by this range of qualified advisors.

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claire.cummings@cummingspepperdine.com
serena.joseph@cummingspepperdine.com
samantha.fitter@cummingspepperdine.com
nigel.tobin@cummingspepperdine.com
PA@cummingspepperdine.com

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