

## Improving the Appointed Representative Regime

### CONTEXT AND SUMMARY

The Financial Conduct Authority (“FCA”) in conjunction with the Treasury Select Committee are consulting on changes to the Appointed Representative (“AR”) Regime with the aim of limiting its scope and reducing opportunities for abuse. The FCA are working closely with the Treasury to determine as to whether changes to the legislation to support the regime are required. A copy of the consultation paper can be accessed [here](#).

The FCA are also aware of the risk arising from regulatory hosting arrangements and business models where ARs are large in size relative to the principal and may introduce prudential requirements to reflect the harm posed to consumers and market participants.

Whilst the FCA recognise that there are great benefits of the regime, often fostering innovation and allowing market access at a competitive price, there has been a significant level of widespread harm to consumers and market participants in recent years. Where harm has occurred, this has largely been down to the lack of due diligence undertaken by principal firms and poor ongoing oversight and monitoring once operational.

### WHAT DO THE FCA WANT TO CHANGE?

- a. **Additional information on ARs and notification requirements for principals** - This will allow the FCA to identify potential risks more easily within principals and ARs. It will also help the FCA to better assess whether the principal has the expertise, systems, and

controls to effectively oversee its ARs.

- b. Clarifying and strengthening the responsibilities and expectations of principals** in the FCA's rules and providing additional guidance for principals on their responsibilities.

## TIMELINE

- The Consultation closes on the 3<sup>rd</sup> of March 2022
- The Policy Statement and Final Rules expected H1 2022

## PROPOSED CHANGES TO NOTIFICATION AND INFORMATION REQUIREMENTS

The current AR notification process only requires the submission of the AR's name and contact details, its legal status, date of the appointment, whether it is an IAR, and the general financial market in which the AR operates.

The FCA are proposing to require principals to provide additional information and details on their ARs, including:

- the AR's business – primary reason for becoming an AR, regulated vs non-regulated activities, services & products, types of clients i.e., retail, or not, whether the AR is part of a group;
- the AR's revenue – revenue generated from regulated and non-regulated activities, nature of service arrangement between AR and Principal;
- Financial projections for newly incorporated ARs;
- Management accounts for existing/actively trading ARs; and
- complaints against the AR.

The FCA are also considering the inclusion of the regulated activities undertaken by the AR to be listed on the FCA register.

## NOTIFICATION/REPORTING TIMEFRAMES

The FCA also proposes the following notification / reporting timeframes:

- Appointment of AR notification to be submitted at least 60 days before commencement/ appointment of business;
- Changes to an AR's details or activities to be submitted within 10 days of changes occurring; and
- Potential for annual verification of AR details to be submitted within 60 days of the AR's accounting reference date.

## RESPONSIBILITIES OF PRINCIPAL FIRMS AND THE FCA'S EXPECTATIONS

The FCA will make clear the standards principals need to meet for their ARs, ensuring effective oversight of ARs and enabling principals to better identify where there are issues that require action. Principals must review their own internal systems, procedures, and resources to ensure prudent and effective oversight.

**Sufficient resources** for principals in which resources includes risk, audit and compliance functions, organisational structures (such as reporting lines). When the FCA refer to resources, it means the people, processes, technology, facilities, and information needed to effectively oversee the AR's activities.

**Monitoring the growth of AR's** to ensure that principals are still enabled to effectively oversee the AR's business in instances where the size/volume of the AR's regulated business increases significantly in a short period of time, the senior management turnover at the AR is unusually high, staff turnover at the AR across all staff members involved in carrying on regulated activities for which the principal is ultimately responsible, is unusually high.

**The Self-Assessment Document** – Principal firms will have to produce an annual self-assessment outlining the systems and controls that are in place to effectively monitor the activity of their AR's which must be readily available for inspection by the FCA.

## THE REGULATORY HOSTING MODEL

The FCA are particularly concerned by the Regulatory Hosting Model which is seeing increasing harm to market participants where Principal firms are overlooking their regulatory responsibilities. Within the regulatory hosting model, the FCA are aware of the increasing popularity of the investment manager secondment arrangement whereby AR individuals are seconded into regulated firms to undertake investment management activities.

**Limiting the size of AR's** - Only firms of up to a certain size could conduct regulated activities as ARs, whereas larger firms would need to apply to be directly authorised by the FCA. Alternatively, the FCA could limit the size of an AR relative to the size of the principal.

**Require specific FCA regulatory hosting consent** - require firms that are already providing or want to provide regulatory hosting services to get the FCA's consent to do so.

**Limited the range and scope of activities an AR can undertake** - make regulatory hosts focus on specific areas, sectors and products.

**Additional requirements for regulatory hosting firms** - a requirement would aim to ensure that firms operating these riskier business models have appropriate process and measures to ensure effective oversight. E.g., require these principals to have a certain ratio of staff involved in risk management and oversight of the AR in relation to the number of ARs and their size, and / or require them to hold more capital to better align with the potential harm from its ARs.

**Prudential requirements** – based on the information collected from the AR consultation, the FCA may look at introducing additional prudential standards to ensure greater consistency across all regime.

## IMPACT FOR FIRMS

If you are an AR or a principal firm, you should be assessing the potential changes to the AR regime

and seeing how it will impact your existing arrangements.

## HOW CAN NEWGATE ASSIST?

Newgate's experienced team of Consultants will be able to advise you on the impact of the proposed changes on your AR arrangements.

Newgate operates the Gateway system which sets out an online compliance framework to enable principal and AR firms to meet their regulatory obligations. Call us for a demo today.



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Newgate has an unrivalled combination of experienced professionals, many of whom are ex-regulators.

Our customer focused approach seeks to provide appropriate, pragmatic and flexible solutions to our clients helping them to meet both the regulator's rules but also the spirit, principles and culture of the regulatory regime.

We look to build long-term relationships with our customers helping to encourage business growth, productivity and innovation. Our proactive approach is tailored to each customer's needs changing to meet those needs as the customer progresses and develops.

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