CLEVELAND & CO™
External in-house counsel

Appointed Representatives Regime

Background

The Financial Conduct Authority's ("**FCA**") changes for Appointed Representatives ("**AR**") have been implemented to ensure that the UK's financial sector remains compliant and transparent. The new rules ("**New Rules**") came into effect on 8 December 2022. The AR regime is set in primary legislation and allows unauthorised firms to engage in regulated activities without having to be authorised by the FCA. The New Rules act to:

- enhance oversight of ARs
- impose greater obligations on ARs to minimise risk and misconduct;
- disclose additional notifications and information to the FCA

Summary

The New Rules aim to enhance the AR regime through new requirements and guidance. As a result, the FCA expect to get better and more timely data on ARs and principals, and identify potential risks and necessary target interventions. The FCA divided the requirements into two topics:

1. Information and Notification
2. Responsibilities of Principals and Expectations

ARs Additional Data and Notification

To better understand the firm's business model and potential risks to market integrity and consumers, the FCA sent principal firms a mandatory Section 165 data request asking for more information about their ARs, as listed below. This should be received by the FCA by **28 February 2023.** Existing principals will have until **30 November 2023** for their first annual reviews of ARs and annual self-assessments.

- principal explanation of the primary reason for the AR appointment;
- the nature of the regulated activity AR is permitted to carry on;
- if the AR will conduct any non-regulated activities, and which;
- if the AR will provide services to retail clients;
- if the AR was previously an AR of a different principal and the reason for termination;
- if the AR is part of a group and the name of the parent undertaking;
- if any individual from the AR will be seconded to the principal to carry on portfolio management and/or dealing activities and the rationale for such arrangement;
- estimated revenue from regulated and unregulated activities in the first year of appointment;
- the nature of the financial arrangement between principal and AR;
- annual submission of revenue data for each of their ARs;
- data in revenue from regulated activities and financial non-regulated activities;
- data on revenue from non-financial non-regulated activities (reported in bands);
- checks and notification of changes of AR details on the Register;
- annual complaint data for all principals' ARs.

For the Introducer Appointed Representative (IARs), the FCA is requiring significantly less data than "full" ARs due to their limited scope and lower potential risk. These could be challenging for principal and AR firms as it may not come in an easy reporting format to comply with the notification requirements and timeline proposed by the FCA.

For notifications, the FCA established that firms would have to notify within 10 business days of any significant change planned with the AR. For new appointments, 30 calendar days' notice is required and for changes in regulated activities, at least 10 calendar days' notice before the change takes effect is required. Revenues and Complaint data should be submitted within 60 business days after the principal's ARD.

Principal Responsibilities and Expectations

To enhance and clarify the expectation and responsibilities of principal firms and ensure effective oversight of ARs, the FCA has included the following requirements:

1

Principal responsibilities for their ARs

- ensuring that delegated functions or tasks do not represent a conflict of interest and are subject to enhanced monitoring;
- considering guidance on how to practically assess senior management at ARs;
- considering guidance on what the FCA consider 'reasonable steps' to be.

2

Effectively overseeing ARs

- ensuring their controls and resources are adequate at all times (if inadequate, they should notify the FCA and if not resolved, postpone or terminate the appointment);
- re-assess if their controls and resources remain adequate and review contractual relationship in case of rapid growth;
- have systems and controls in place to oversee the AR as if they were an individual directly employed by the principal; ensure the appointed AR and their activities do not or will not result in an undue risk of harm to consumers or market integrity;
- conduct a review of each AR at least every 12 months to assess senior management ability, financial position, and adequacy of controls and resources to oversee the AR; and arrange on-going oversight to the AR.

3

Termination of AR contract and winding down

- ensuring that delegated functions or tasks do not represent a conflict of interest and are subject to enhanced monitoring;
- considering guidance on how to practically assess senior management at ARs;
- considering guidance on what the FCA consider 'reasonable steps' to be.

4

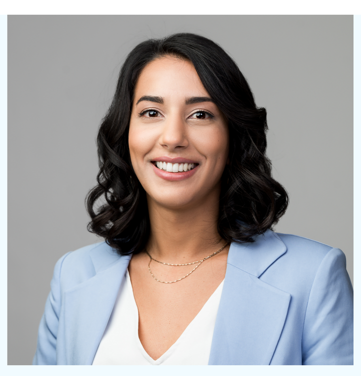
Effectively overseeing ARs

- ensuring their controls and resources are adequate at all times (if inadequate, they should notify the FCA and if not resolved, postpone or terminate the appointment);
- re-assess if their controls and resources remain adequate and review contractual relationship in case of rapid growth;
- have systems and controls in place to oversee the AR as if they were an individual directly employed by the principal; ensure the appointed AR and their activities do not or will not result in an undue risk of harm to consumers or market integrity;
- conduct a review of each AR at least every 12 months to assess senior management ability, financial position, and adequacy of controls and resources to oversee the AR; and arrange on-going oversight to the AR.

Next Steps

The firms affected by the New Rules will need to take the necessary steps to ensure compliance, including gathering information from existing ARs, assessing any potential gaps, engaging ARs with the compliance requirements, integrating the regulatory oversight in the governance framework and senior management accountability, updating all necessary internal policies, and amending the AR agreements.

At Cleveland & Co, we can provide legal advice on how the changes will affect your business. We will also provide guidance on how to prepare the relevant documents and updating your agreements with ARs.



If you need any help or further information, please contact Leela Fair:

Leela Fair - Managing Director, General Counsel EMEA
+44 7412 502985
lfair@cleveland-co.com

https://cleveland-co.com/
https://uk.linkedin.com/company/cleveland-co