

Alert | Litigation



August 2022

FCA Publishes Final Rules for Reform of the Appointed Representative Sector

Go-To Guide:

- Significant reform to the UK Appointed Representative regime.
- The rules focus on Principals and require greater oversight of Appointed Representatives and more information to be provided to the FCA.
- The rules take effect from December 2022.

Context

The UK Appointed Representative Regime (ARR) enables certain businesses – Appointed Representatives (ARs) – to conduct UK-regulated activities without having to be authorised by the Financial Conduct Authority (FCA). Instead, a fully authorised firm (a Principal) accepts responsibility for the AR’s actions and compliance with regulatory requirements. This has proven a popular arrangement, especially for startups and smaller businesses. According to the FCA there are currently around 40,000 ARs with 3,600 Principals.

However, the FCA is concerned that ARs are a disproportionate source of UK conduct risk. For example, a high proportion of Financial Services Compensation Scheme (FSCS) pay-outs relate to ARs or Principals (61% or £1.1bn in the period 2018 to 2019). Principals also receive significantly more complaints per £1m of revenue than non-Principals.

In late 2021 the FCA consulted on significant reforms to the regime (see our summary of the consultation here: [GT Alert, Dec. 13, 2021](#)). These focused primarily on increasing the supervisory responsibility of Principals and increasing the amount of information provided to the FCA and the public about AR activities.

Whilst not the subject of this alert, the FCA's reform of the ARR was given added impetus by the failure of Greensill Capital, which was itself an AR. In its report into Greensill Capital, the Treasury reinforced the need for reform.

New rules

The FCA has now published its new rules, which will take effect on 8 December 2022. The policy statement can be found here: [policy statement](#). The rules add supervisory responsibilities for Principals and focus on new requirements for Principals to provide information to the FCA. Taken together, this is a significant suite of reforms from the FCA that all Principals must consider in the months ahead.

The new information requirements include:

- (i) Principals must provide 30 days' advance notification of an AR appointment taking effect.
- (ii) Principals must provide additional information to the FCA about the AR and its relationship with the AR (where Principals have existing ARs the relevant data will be gathered in due course by the FCA using its statutory powers). This includes:
 - a. why the Principal is appointing an AR and the nature of the activities to be performed by the AR (whether or not regulated),
 - b. the likely range of the revenue for the AR in the first 12 months after appointment so the FCA can assess whether the AR is too big for the Principal to handle, and actual revenue,
 - c. whether the AR deals with retail clients and the number of complaints received annually pertaining to regulated activities, and
 - d. whether there will be secondments of individuals from the AR to the Principal.
- (iii) Principals will be required to notify the FCA if they intend to act as "regulatory hosts", such as regulatory incubators that provide a compliance umbrella for other firms in sectors different from their own. Despite consideration, secondment arrangements whereby secondees conduct investment management business have not been prohibited.
- (iv) Surprisingly, the FCA opted not to enhance the level of information provided to customers through the Financial Services Register, on the basis that it would be unlikely to influence consumer decision making.

The new supervisory responsibilities include:

- (i) Principals must assess on an ongoing basis whether their AR's activities do not generate a risk of "undue harm" to consumers or market integrity. This broad requirement will be supported by guidance.

- (ii) Principals are expected to oversee individuals at ARs to the same standards as if the ARs were directly employed by the Principal.
- (iii) Principals must conduct and document an annual self-assessment of its ability to oversee its ARs in a compliant fashion, and this must be signed off by the Principal's governing body.
- (iv) Whilst the Senior Managers and Certification Regime (SMCR) will not apply to ARs, Principals will have to conduct an annual assessment of the "fitness and propriety" of senior managers and controllers of ARs. However, this assessment will not have to take place at the board level as was originally proposed.
- (v) Principals will have to assess the financial position of the AR annually and the Principal's ability to exercise oversight and conduct more regular or ad hoc assessments if there are any changes in circumstances or risk profile of the AR. This assessment will not have to take place at the board level either.
- (vi) New guidance will be provided concerning the reasonable steps Principals must take to ensure the AR's activities stay within the parameters of their appointment.
- (vii) A requirement for contracts between Principals and ARs to include a clause allowing the Principal to terminate if it believes the size of the AR prevents it exercising effective oversight. Principals will be required to take reasonable steps to ensure that any wind-down of an AR is conducted responsibly and in an orderly way.

Practical steps and implementation

As noted, the new rules and requirements will take effect from 8 December 2022. Many of the new rules additionally benefit from a transitional period that will run from that date; this includes the requirements for annual self-assessments.

All firms that have Principals should engage with the new requirements and consider what changes will need to be made to comply and to ensure that compliance is adequately documented. Some Principals may find they have too little information about their AR's business and individuals; proper management information will be key.

Some Principals may not be able to withstand the increased regulatory burden and costs associated with the change in requirements. Once the rules are in force the FCA may subject Principals to enhanced scrutiny and potentially even Enforcement.

Author

This GT Alert was prepared by:

- **Matt Hancock** | +44 (0) 203.349.8700 | Matthew.Hancock@gtlaw.com

Albany. Amsterdam. Atlanta. Austin. Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany. Houston. Las Vegas. London.* Long Island. Los Angeles. Mexico City.+ Miami. Milan.* Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Francisco. Seoul.∞ Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv.^ Tokyo.* Warsaw.- Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ↯Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. *Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ⚡Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimbengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by GREENBERG TRAURIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAURIG Nowakowska-Zimoch Wysokiński sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2022 Greenberg Traurig, LLP. All rights reserved.*