



Governance and Professionalism Policy
FCA
12 Endeavour Square
London
E20 1JN

By email

28 February 2022

Dear Sir/Madam,

FCA Practitioner Panel Response to CP21/34: Improving the Appointed Representatives (AR) Regime

The Panel is of course supportive of the premise of the changes in this consultation, namely to ensure that principal firms appropriately oversee their appointed representatives. However, we encourage the FCA to reflect on the amount of time that will be required to make system and process changes to comply effectively. There are more detailed points below on this issue but a key example to note is the data the FCA suggests principals collate on revenues which will be a potentially significant change for the industry.

Reduction in regulatory control

The paper itself acknowledges the benefits of the AR regime for the regulator given that it does not have the resources to oversee additional directly regulated (DR) firms. However, one potential unintended consequence of amending the oversight requirements in the manner described is that from the adviser's perspective it increases the level of 'interference' from the principal and could thus result in additional advisers becoming directly regulated which would have the effect of undermining the regulatory control rather than strengthening it.

Different business sizes

The paper does not sufficiently acknowledge that different sized ARs may warrant different levels of oversight rather than a one-size-fits-all approach. This is not in line with standard industry practices where a £50k sole trader is overseen in a different manner to a 200 adviser AR firm.

Compensation

The paper includes a section on the benefits of the existing regime but does not highlight that a greater proportion of ARs vs. DRs contributes towards controlling compensation cost. Often DR firms do not have the resources to cover compensation. No meaningful action has been taken to increase capital requirements for DRs despite it being discussed for some time and we would encourage the FCA to reflect on this further (although we acknowledge this is now under consultation).

Balance of harms

The paper highlights a number of harms which have arisen as a result of the existing regime but does not articulate whether these harms are worse than those which arise from DR firms.

Terminology

The paper defines the term 'regulatory hosting' for the first time, which it argues is a key driver in the FCA's belief that these changes are required. We encourage the FCA to reflect on this definition in more detail and ensure it is appropriately distinguished from the definition of a more traditional 'network' construct. This reflection may highlight areas where the proposed rule changes as a result of the harm that has been identified are less applicable and could be more specifically targeted at the 'regulatory hosting' model.

Guidance

There are a number of enhancements of which we would be supportive where companion guidance would help the industry to implement the changes on a consistent and complaint basis and we'd welcome this if the FCA were to publish it.

We have attached detailed proposals and associated commentary to this letter and would be happy to discuss these further if required.

Yours faithfully,

[signed]

Paul Feeney
Chair, FCA Practitioner Panel

Appendix – detailed comments on the proposals

Theme	Proposal	Commentary
Notifications and information requirements	Provide more information on their ARs and the business they conduct (inc. AR revenue from regulated and non-regulated sources, complaints, financial relationship between principal and AR)	The reporting burden on all firms is already significant – but it won't be unexpected (noting regulator's comments in its business plan to be more data driven). We know MI is key to supervision and so we're supportive, but we'd encourage the regulator to think of ways it can introduce such requirements in the most smart and efficient manner so that the burden on firms is as small as possible. An appropriate lead time for compliance will be important given the potentially time-consuming nature of the required technical changes.
	Include on the FS Register more detail about what the firm is and isn't permitted to do	Agree in principle, but the new Register was designed to be consumer friendly, simple, and straightforward. While we are supportive of the changes it may be valuable to conduct some consumer testing to ensure these changes are not implemented in a manner which impacts the useability of the Register.
Responsibilities of Principals and FCA's expectations	Oversee ARs to the same level as own employees with supporting regulatory guidance	Potentially better policy stance to ensure there is a shift from AR as customer, to customer of AR as customer. This could be something along the lines of expecting principals to supervise ARs to ensure the end customer receives a fair outcome – managing the conflict between AR retention (revenue) and customers. It is perhaps relevant to acknowledge that there are key distinctions between the relationship a firm has with its own employees and ARs. This naturally impacts both the level of transparency one can obtain and the levers one has to enforce action.
	Enhance existing rules on Fit and Proper assessments including guidance on how principals should be overseeing F&P on an ongoing basis	Supportive of this.
	New annual review obligation and clarifying expectations in relation to ongoing supervision	Supportive but important for this to be proportionate here – agree firms should be effectively overseeing ARs, but the nature of each AR firm will be different. Propose that a more proportionate approach would be to require firms to risk assess their ARs and their supervisory cycle should reflect the size, nature and risk of the individual business.

Theme	Proposal	Commentary
	Make updates to reflect the expectation that firms should have systems and controls in place to detect potential harm early	Supportive of this proposal.
	Give principals more info about when they should terminate an AR arrangement and how the firm should support such an event	Supportive of this – but useful to see additional guidance.
	Require principals to proactively assess risk of harm for ARs before appointment and on an ongoing basis	Supportive of this – linked to earlier comments on annual reviews, this risk assessment could determine the level of supervision a firm might apply to its AR.
	Strengthen requirements in relation to sufficient resources	Supportive of this – designed to ensure principals have adequate resources to oversee their AR populations.
	Set out how principals should consider AR growth	As this is about giving guidance re trigger points to review the arrangement with an AR where that firm is growing in size, and the ability to terminate the arrangement if the principal no longer feels it has the resources to oversee the AR, we are supportive.
	Governing bodies to review and approve an annual self-assessment	It would be helpful to have more information on what the regulator thinks the board should be self-assessing against.