HM Treasury

The Appointed Representatives regime:

Call for evidence

December 2021

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This publication is available at: www.gov.uk/official-documents.

Any enquiries regarding this publication should be sent to us at public.enquiries@hmtreasury.gov.uk

ISBN:

PU:

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Chapter 1
Introduction

1.1 An Appointed Representative (AR) is a firm[1] or person who carries on a regulated activity or activities under the responsibility of an authorised financial services firm. An authorised firm which appoints representatives in this way is referred to as a 'principal'. In appointing an AR, the principal assumes responsibility for the regulated activities carried on by the AR that have been agreed with the AR in a written contract.

1.2 The AR regime can provide benefits to both consumers and financial services providers. The regime can serve as a proportionate and cost-effective way for firms to comply with regulation, allowing a broader range of providers to enter the marketplace than would be the case if authorisation was the only way to access financial services markets. In doing so, the AR regime can support greater competition and innovation.

1.3 The AR regime is a longstanding and widely used feature of UK financial services regulation. It was first established in 1986 for investment services activity, before being adapted and applied to a broader range of financial services activity through the Financial Services and Markets Act 2000 ("FSMA"). The regulatory regime around ARs is intended to provide a proportionate regulatory approach which ensures that principal firms maintain effective systems and controls for overseeing the regulated activities which ARs undertake. The regulatory approach also aims to ensure that consumers of financial services provided through ARs are not disadvantaged or exposed to additional risk relative to consumers who deal directly with authorised firms.

1.4 The regulatory framework for ARs puts responsibility on the principal to ensure its ARs are carrying on regulated activities with a sufficient level of competence and are meeting relevant regulatory requirements. FSMA gives broad rule-making powers to the Financial Conduct Authority (FCA) to impose binding regulatory requirements on authorised persons, including principal firms.

1.5 Since the regime began in 1986, the use of ARs has increased and spread across much of the financial services sector. There are now around 40,000 ARs operating under around 3,600 principal firms. When introducing FSMA, the government of the time acknowledged that the regime's use was becoming more widespread than just the appointment of AR salespersons,

[1] "Firm" in this document is used for plain English purposes and refers to any for-profit business entity, rather than the definition given in the FCA Handbook.

for whom it was originally intended. But use of the AR regime has continued to evolve with ARs now involved in very diverse business models.

1.6 As AR business models have continued to evolve, recent work by the FCA has identified risks to the safe operation of the AR regime. The FCA has identified evidence of detriment arising from certain aspects of the regime and has brought forward a consultation paper with proposals to address these detriments to the extent possible within their existing rule making powers.

1.7 This Call for Evidence, issued in parallel with the FCA's consultation paper, is designed as an information gathering exercise on how market participants use the AR regime and how effectively the regime works in practice. The government wants to ensure it has a full and up-to-date understanding of how the AR regime is currently used. The Call for Evidence is also designed to gather views on potential challenges to the safe operation of the AR regime and possible future reforms that might be considered to address those challenges. The government's view is that more evidence is required before it can decide whether legislative reform, in addition to the rule changes the FCA proposes to make, is necessary.

Related Government and FCA work

1.8 The government announced this Call for Evidence in its response to the Treasury Select Committee's (TSC) '*Lessons from Greensill Capital'* inquiry[2]. The TSC's report stated, *"It appears that the appointed representatives regime may be being used for purposes which are well beyond those for which it was originally designed."* The report recommended that *"The FCA and HM Treasury should consider reforms to the appointed representatives regime, with a view to limiting its scope and reducing opportunities for abuse of the system".* While use of the AR regime has not been identified as a factor in the failure of Greensill Capital, the Committee's inquiry serves to highlight the diverse business models that ARs are now involved in, and the government welcomes the Committee's recommendation to consider reforms to the regime, including whether legislative reforms are necessary to prevent opportunities for abuse of the system.

1.9 When considering the nature of potential reforms, the government is continuing to work closely with the FCA, who earlier this year made changes to some rules affecting the AR regime[3]. At the same time as this Call for Evidence is published, the FCA is issuing a consultation on further rule changes it can make to improve the principal oversight of ARs. The government will take into account the views gathered through the FCA's consultation as well as the material collected through the FCA's upcoming data request to firms that use ARs.[4]

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[2] Treasury Committee's 'Lessons from Greensill Capital' inquiry

[3] Changes made in FCA PS21/7 and PS21/8

[4] Where any data is confidential, this will only be shared to HM Treasury in accordance with the legal gateways set out in FSMA.

Chapter 2

The Current Appointed Representatives (AR) Regime

2.1 This chapter explains what the AR regime is and sets out the policy rationale for permitting ARs to carry on regulated financial services activities. The chapter also summarises how ARs are currently used in the UK financial services sector. Use of the AR regime has evolved significantly over time and so one of the purposes of this Call for Evidence is to ensure that the government has a complete understanding of the role of ARs in the provision of financial services. The government invites respondents to submit views on the business models which involve the AR regime, including the benefits these business models may bring to the providers and consumers of UK financial services.

Context – History and policy aim of the AR regime

2.2 An AR is a firm or person who carries on a regulated activity, or activities, under the responsibility, of an authorised financial services firm. An authorised firm which appoints representatives in this way is referred to as a 'principal'. The AR does not need to seek authorisation from the FCA to carry on these regulated activities, and in appointing an AR, the principal assumes responsibility for the regulated activities carried on by the AR that have been agreed with the AR in a written contract. The principal firm is responsible for ensuring the AR complies with FCA rules.

2.3 The regulatory concept of ARs was introduced by section 44 of the Financial Services Act 1986 ("the 1986 Act"). This provision allowed a person to engage in regulated 'investment business' (limited accordingly to giving financial advice and effecting sales) on behalf of an authorised firm without themselves having to be authorised. The purpose was to enable unauthorised persons, such as self-employed sales agents of life insurers, to distribute products to consumers under the responsibility of the principal which they represented without themselves requiring authorisation. The policy aim was to ensure that consumers who purchased financial services products through representatives were protected by regulation in the same way as they would be if they had purchased products directly from an authorised firm. The 1986 Act was intended to make an authorised financial institution responsible for its self-employed representatives to the same extent as if they were employees of the firm.

2.4 In 2000, FSMA brought together the various regulatory regimes for UK financial services into one overarching regulatory framework to be operationalised by one statutory regulator: the Financial Services Authority

(FSA). Much of the regulatory approach for 'investment business' established by the 1986 Act was preserved in FSMA and applied to financial services activity more generally. This included the AR provisions, which are now set out in section 39 of FSMA. While FSMA preserved the overall approach of the AR exemption, there are important differences. The 1986 Act provided for a much more limited range of activities which an AR could carry on under the exemption, and the AR was expressly required to carry on any of those activities on behalf of its principal or another person. FSMA applies the exemption to a broader range of regulated activities and does not require those activities to be carried on in relation to the principal or anybody else. In contrast to the 1986 Act therefore, FSMA enables an AR to carry on a range of regulated activities relatively independently from its principal, provided the principal has accepted responsibility for those activities of the AR.

2.5 In preserving the AR regime as part of FSMA, the government of the time acknowledged that use of ARs had developed to include purposes other than the appointment of salespersons. The government did not seek to prohibit the wider use of ARs but gave the regulator (then the FSA) broad rule-making powers in respect of authorised firms, which includes principals, to ensure that ARs were used appropriately. The FSA's responsibility for regulating the use of ARs now sits with the Financial Conduct Authority (FCA). The current regulatory regime for ARs, including the role of the FCA, is explained in Chapter 3.

2.6 The government believes that the AR regime remains a necessary and beneficial element of the UK's regulatory system. The government's policy aims for the AR regime, and for its review of the regime, can be summarised today as follows:

- to enable authorised firms to appoint representatives which can carry on regulated financial services activities for purposes which help to increase competition, foster innovation and enhance the consumer experience
- to provide a proportionate regulatory regime which ensures that authorised persons maintain effective systems and controls for overseeing the regulated activities which ARs undertake
- to ensure that consumers of financial services provided through ARs are not disadvantaged or exposed to additional risk relative to consumers who deal directly with authorised firms

Uses of the Regime

2.7 The use of ARs by authorised UK financial services firms is extensive. There are currently c. 40,000 ARs operating under c. 3,600 principal firms in a wide range of financial services markets. At present, the highest numbers of ARs are in the retail lending (c. 16,200 ARs) and general insurance and protection (c. 13,500) sectors. The number of ARs varies significantly from firm-to-firm. Some firms have hundreds, or thousands, of ARs whereas

others have only a few or, most commonly, just one. Currently just over half of all principals have just one AR.

2.8 Use of the AR regime varies by sector, but broadly can be categorised into the following groups.

Introducer Appointed Representatives (IARs)

2.9 A basic use of the regime is where small, often independent, traders known as Introducer ARs[1] carry on activities solely for the purpose of promoting, and introducing consumers to, their principal (or other members of the principal's group). There are currently over 16,000 IAR relationships across the financial services sector.

2.10 IARs allow users the ability to signpost their customers to financial products that may be complementary to their own product. For example, a dental practitioner may act as an IAR to inform a customer about dental insurance options offered by an authorised insurance firm.

2.11 The government's view is that there are clear benefits which flow from permitting non-authorised persons to introduce consumers to financial services products in this way. Enabling consumers to be signposted to services which may be relevant to them can help improve outcomes for consumers. In the example above, a consumer may be in a better position to manage their dental care if they take out a suitable dental insurance plan. IARs can also provide financial service firms with additional channels through which to reach customers. The consumer experience is thus enhanced, and authorised firms can maximise their marketing opportunities. Requiring IARs to themselves be authorised would be disproportionate and would undoubtedly deter many businesses from referring their customers to relevant financial services products. In this circumstance, the principal firm will usually have the size and relevant sector expertise to ensure that an IAR is introducing its principal's products to consumers in ways which are not misleading.

Smaller ARs

2.12 A second use of the AR model is by small, often independent, traders whose primary business involves regulated activity.

2.13 This type of arrangement can often occur between an AR and principal whose primary market of operations is the same, for example a mortgage broker acting as an AR for a credit institution which provides mortgages.

2.14 The government views this type of use as closest to the original intention of the AR regime. Consumers benefit from a broader distribution network which can add value to the customer experience. For instance, a mortgage broker can access a wide range of different products on the customer's behalf and also provide financial advice on which products may suit the

[1] IARs are recognised the same as other ARs in FSMA, but are recognised differently in the FCA Handbook

customer's circumstances. Accessing financial services products through the distribution networks provided by ARs should retain the regulatory protection of buying directly from an authorised firm, and smaller service providers are able to operate in their primary market of interest under the supervision of their principal.

Sharing regulatory permissions within a corporate group

2.15 Where there is a corporate group and more than one entity in the group is intended to carry on regulated financial services activities, it may be more efficient and cost effective for only one member of the group to be authorised. The authorised firm can then enable other members of the corporate group to engage in regulated activities by appointing those other group entities as ARs. The legal relationship that exists between a group of companies may help support the principal in establishing controls for adequate regulatory oversight of ARs within the same group. The group relationship may also mean that the principal and its group ARs are involved in sufficiently similar areas of business, in which case the principal should have the requisite expertise to oversee the activities of the group's ARs. Provided that the principal has adequate oversight of the ARs within the group, there will clearly be cost benefits to the group in only having to seek one authorisation. The FCA will also be able to regulate the group's regulated activities more efficiently by supervising just one member of the group.

Larger ARs using the regime to extend their business range

2.16 Another use of the regime is where larger businesses, often involved in multiple markets, act as ARs to offer additional products or access new markets. These firms often operate similarly to smaller ARs, in that they sell on financial services products designed and administered by an authorised firm.

2.17 This is how the AR regime can often be used in the consumer credit market, with firms operating as ARs to offer credit broking activities alongside their products. For example, a department store chain may become an AR to introduce or signpost a customer to credit offered by an authorised lender to support the purchase of their household products. Another example would be travel companies, which may become an AR of an authorised insurance provider in order to provide travel insurance plans alongside their holiday packages.

2.18 The government views this use of the AR regime as offering numerous benefits to consumers, not least the convenience of allowing customers to access tailored consumer credit products through retailers which can help spread the cost of their purchases. In a similar way to IARs and smaller ARs, this enhances customer experience whilst giving authorised firms an additional route to offer their products to consumers at the point at which they may need them.

Regulatory Hosting

2.19 The "regulatory hosting" model is a use of the AR regime where, rather than carrying on any substantive element of a regulated activity itself, the regulated business of the authorised firm, i.e. the principal, involves making its permissions available for use by its ARs. These types of principal often have many AR relationships, and this service to the ARs is commonly marketed as an additional service alongside other compliance support services.

2.20 In this model the principal's ARs are generally all independent, unconnected businesses, in some cases they are operating in different markets. This contrasts with the more traditional AR network model, where the ARs and principal typically share a common commercial objective and operate in a particular sector.

2.21 In recent years the number of firms providing regulatory hosting services has grown significantly, most notably in wholesale capital markets. In that context, an authorised firm may gain permission to undertake trading activities, but then rather than engage in these activities itself, a regulatory host makes that regulatory permission available to be used by its ARs. The ARs benefit from cost effective market entry, as they will not have been required to go through the authorisation process, and ongoing cost-effective regulatory compliance, as they will not be supervised by the FCA and will not need to meet the FCA's Threshold Conditions.

2.22 Some principals use the regulatory hosting model to provide a "regulatory incubator" service. This allows unauthorised firms to trial new regulated services before incurring the cost of applying for authorisation, or the ongoing cost of supervision by the FCA. Where used appropriately, this incubator model can help firms to understand the regulatory environment and compliance needs before going on to apply for FCA authorisation. This can help support effective competition and innovation, and the incubator model has been particularly valuable in the Fintech sector, where the UK has become a market leader.

Benefits of the Regime

2.23 The descriptions above of the key business models which rely on ARs give a view on how those models can provide benefits to consumers and financial services providers. In general, the key benefits of the AR regime can be summarised as follows:

- proportionate and cost effective: for many firms, both principals and ARs, the regime provides a cost-effective way to lawfully undertake certain regulated activities. The costs of authorisation and direct supervision might otherwise be transferred to consumers
- supports effective competition: it allows additional and more diverse providers to perform permitted regulated activities without FCA

authorisation. This allows more participants to enter financial markets and therefore supports effective competition

- innovation: some firms use the AR model to trial new services and propositions. Some principals operate a 'regulatory incubator model' to support firms by helping them understand the regulatory environment and supervisory demands on them before they apply for FCA authorisation
- robust monitoring mechanisms: when discharging their responsibilities effectively, principals can provide high quality oversight and robust monitoring of their ARs ensuring good outcomes for consumers and financial services markets

Key questions

For users of the AR regime, whether principals or ARs: do you find the regime effective and beneficial to your business operations? Explaining your answers in the context of your business model would be helpful.

Are there any other types of use of the AR regime we have not described above? In this case, please describe the business model and the types of fafirms (or groups, where relevant) that use the AR regime.

For multinational firms that use the regime to access UK financial services markets – how do you access these markets in other countries?

Do you think the diverse use of ARs across different sub-sectors and business models has been a beneficial evolution of the regime? Do you have any concerns with any of the ways in which the AR regime is currently used?

Chapter 3

Regulation of the AR regime

3.1 This chapter explains how the AR regime is regulated. It sets out the split of regulatory responsibilities between HM Treasury and the FCA; how regulatory requirements apply to principal firms and their ARs; and what happens when the use of an AR breaches those requirements. The chapter seeks views about the effectiveness of the current regulatory approach to ARs for different types of regime use.

Split of regulatory responsibilities

HM Treasury responsibility: legislation establishing the AR regime

3.2 HM Treasury has overall responsibility for financial services policy, including the legislative framework for the regulation of financial services. The legislative framework for the regulation of ARs is set out in section 39 of FSMA and in the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001, SI 2001/1217 (as amended) ("the AR Regulations"). The scope of the AR regime is broad. It permits any authorised person to appoint a non-authorised person to act as a representative in carrying on a wide range of regulated financial services activities.

3.3 Section 19 of FSMA sets out the 'general prohibition'. This provides that no person may carry on a regulated financial services activity in the UK unless they are authorised or exempt. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO), made pursuant to powers provided in section 22 of FSMA, specifies the financial services activities which are subject to regulation. In order to undertake a regulated activity, a firm must generally be authorised by the FCA or, in the case of banks, credit unions and certain insurers and investment firms, by the Prudential Regulation Authority (PRA). Breach of the general prohibition is a criminal offence under section 23 of FSMA.

3.4 FSMA provides for several exemptions to the general prohibition. One of these exemptions is for the ARs of authorised persons, as set out in section 39 of FSMA. Section 39 permits authorised persons to appoint non-authorised persons to carry on certain regulated activities, for which they accept regulatory responsibility. The legislation refers to the appointing authorised firm as the "principal".

3.5 Section 39 confers on HM Treasury a power to make regulations for two purposes: to prescribe regulated activities which ARs may carry on; and to

prescribe requirements relating to the agreements which define the relationship between principals and ARs.

3.6 For an AR to be exempt from the general prohibition, section 39(1) requires a contractual agreement to be in place under which the principal accepts responsibility for the AR in writing. The contract can only permit the AR to carry on business of a prescribed description in line with the AR Regulations, which specifies the regulated activities an AR can carry on. A principal can only permit its AR to carry on regulated activities for which the principal itself has obtained a permission from the FCA, as provided for under Part 4A of FSMA.

3.7 In appointing an AR, a principal assumes full responsibility (including for any liabilities that might arise) for ensuring that the AR is fit and proper and complies with all relevant regulatory requirements. Section 39(3) of FSMA states: "The principal of an appointed representative is responsible, to the same extent as if he had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which he has accepted responsibility".

3.8 For the purposes of section 39 of FSMA, a principal is not responsible for the actions of its AR if the AR is carrying on regulated activities beyond those which are covered by the agreement between principal and AR. Since the exemption from the general prohibition for ARs is established by reference to the existence of a contract between principal and AR which meets prescribed requirements, principal liability also has the potential to fall away (possibly without the principal, AR and consumer being aware) if there is a technical fault in the contract. In either case, if the AR's activity exceeds the scope of the exemption, or the agreement is not effective to trigger the exemption at all, the AR may breach the general prohibition and may incur criminal liability.

FCA responsibility: the detailed standards for, and supervision of, principal firms

3.9 Central to FSMA, and the model of regulation introduced by that Act, is the setting of regulatory standards by expert, independent regulators that work within an overall policy framework set by ministers and Parliament. The model maximises the use of expertise in the policy making process by allowing regulators with day-to-day experience of supervising financial services firms to bring that real-world experience into the design of regulatory standards. Ministers and Parliament have set out in legislation the AR model that allows non-authorised persons to carry on certain regulated activities without breaching the general prohibition, as explained above, and the task of setting the detailed requirements that ensure the regime operates safely and effectively falls to the FCA.

3.10 FSMA grants broad rule-making powers to the financial services regulators which can be used to set binding regulatory requirements in respect of authorised persons. For the FCA, this power is set out in section 137A of FSMA. As principals are authorised persons, the FCA has used this power to

implement general principles and detailed rules, set out in the FCA Handbook, which apply to principals when appointing and overseeing ARs. These require that a principal must effectively oversee its ARs and must ensure that it has the appropriate governance arrangements, effective risk frameworks, internal controls and adequate resources which are necessary to do so. Please see the FCA Handbook for a fuller explanation of the rules that apply to principal firms.

3.11 The FCA has statutory powers to fine and discipline principals for breaches of its principles and rules (sections 205 and 206 of FSMA). Generally, any losses suffered by a private person as a result of a breach of FCA rules (as set out in the FCA Handbook) are actionable against an authorised person as a breach of statutory duty, as provided for in section 138D(2) of FSMA, as supplemented by the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001, SI 2001/2256 ("Rights of Action Regulations").

3.12 It is important to note that the FCA is responsible for the regulation and supervision of principal firms and does not have a direct regulatory relationship with the ARs themselves. In general, the FCA is only granted rulemaking and enforcement powers in respect of authorised persons, which does not include ARs.

The regulatory obligations of the Principal

3.13 The principal is responsible for ensuring its ARs meet the FCA's requirements. There must be a written agreement between the principal and the AR that documents the arrangement between them.

3.14 Before appointing an AR, FCA rules require that principals must undertake sufficient checks on the AR to ensure they are financially stable and otherwise suitable to act in the capacity of an AR. Principals must notify the FCA of any ARs they appoint, and, if anyone in their AR is carrying out a 'controlled function' under the Approved Persons Regime, the principal must submit the application for the individuals to be approved by the FCA, after the principal has already assessed the individual's fitness and propriety.

3.15 Once they have appointed an AR, principals are accountable for the regulated activities carried on by the AR that have been agreed within the written contract. This includes ensuring that the AR complies with relevant regulatory requirements when carrying on such activities.

The AR's obligations

3.16 While the FCA does not authorise or supervise ARs carrying on regulated financial services activities under the section 39 exemption, ARs need to understand and comply with the regulatory requirements for the regulated activities they are engaged in.

3.17 ARs must also allow the principal access to its staff, premises, and records so the principal can carry out the necessary oversight and monitoring of the AR's business, according to FCA rules.

Do you think the above discussion provides an accurate explanation of the current AR regulatory regime? Are there any other elements to the regulatory regime which are important to consider?

Evaluating the current regulatory regime

3.18 The government's policy aims for the AR regime can be summarised as follows:

- to enable authorised firms to appoint representatives which can carry on regulated financial services activities for purposes which help to increase competition, foster innovation, and enhance the consumer experience.
- to provide a proportionate regulatory regime which ensures that authorised persons maintain effective systems and controls for overseeing the regulated activities which ARs undertake
- to ensure that consumers of financial services provided through ARs are not disadvantaged or exposed to additional risk relative to consumers who deal directly with authorised firms

3.19 The challenge in evaluating the current AR regime and assessing whether the above policy aims are being met is that the regime is now applied to very diverse business models. The following discussion therefore identifies general challenges and risks of the current AR regime and then examines these in relation to each of the key business models outlined in Chapter 2.

Do you think these policy aims are the right ones for the AR regime?

3.20 Permitting ARs to carry on a range of regulated activities without being directly authorised limits the regulatory burdens on the financial services sector and brings a range of other benefits (summarised in 2.23). Using the power conferred on it by Section 39 of FSMA, HM Treasury has made the AR Regulations to prescribe the regulated activities an AR may be permitted to carry on. The AR Regulations permit a principal to appoint an AR to carry on any business comprising the regulated activity of arranging deals in certain investments, as specified by Article 25 of the RAO; arranging for the safeguarding and administration of assets, as specified by Article 40 of the RAO; or advising on investments, as specified in Article 53 of the RAO. This represents a broad range of regulated financial services activities. In prescribing the regulated activities which an AR may carry on, HM Treasury has judged those activities to carry a level of risk for which the AR regime is a proportionate regulatory response. ARs are able to carry on regulated activities without the need to go through the process of becoming authorised and are not subject to direct supervision by the FCA. Instead, the AR's principal assumes responsibility for monitoring the AR and ensuring its compliance with relevant regulatory requirements. This minimising of regulatory burdens is desirable, as long as this approach does not undermine high regulatory standards or result in poorer outcomes for consumers. A key question, therefore, in evaluating the AR regime is whether the regulatory

approach is effective in ensuring principal firms take appropriate responsibility for their ARs so that they comply with all relevant regulatory requirements and safeguards. The regime may face a number of general challenges in making sure that principals can and do provide adequate oversight of their ARs.

The fitness of principal firms

3.21 One such challenge is that principal firms need to have adequate controls and resources in place in order to provide effective oversight of their ARs. Where the business of a principal is closely related to the regulated activity being carried on by an AR, a principal can be expected to have a level of expertise needed for adequate oversight. For example, a credit institution which provides mortgages should have sufficient expertise to oversee a mortgage broker acting as an AR, as the principal should be well placed to ensure the AR is selling and advising on the principal's mortgage products in ways which meet regulatory standards that the principal itself needs to comply with. In this example, you would also expect the principal to have sufficient resource to provide effective oversight. A credit institution would be expected to be a much larger concern than a mortgage broker and the principal should be well placed to allocate sufficient resource to oversight of its AR.

3.22 However, this oversight relationship may be more challenging where the AR is carrying on regulated business which is less closely related to that of the principal. Although the FCA rules require principals to ensure they can suitably oversee their ARs, such a principal may not have all the relevant resources available to fully understand the business model of the AR and how to meet all relevant regulatory rules. And where an AR is a larger, more complex business, the principal will face a more substantial demand on its resources to ensure the AR is complying with regulatory rules. Similarly, where a principal has responsibility for a large network of ARs, it may find itself resource-challenged to adequately oversee every AR in its network.

FCA's ability to ensure proper regulatory oversight by principals

3.23 The role of the FCA must also be examined in evaluating the regime. While the FCA does not directly regulate and supervise ARs, it is responsible for regulating and supervising principal firms to ensure they are exercising proper oversight of their ARs. An important question is whether the FCA has the regulatory tools it needs to ensure principal firms are meeting their responsibilities in all circumstances. The FCA has broad rule-making powers in respect of principal firms and is therefore able to specify comprehensive regulatory requirements that principals must comply with when overseeing their ARs. The FCA also has the full range of FSMA enforcement powers and sanctions that it can apply when principals breach these requirements.

3.24 But to avoid poor outcomes for consumers, the regime must also be effective at preventing breaches in the first place. The current regime does

not expressly empower the FCA to scrutinise an authorised firm's fitness to act as a principal before the firm appoints ARs. While principals must notify the FCA when ARs are appointed, FSMA does not contain a requirement for the FCA to approve these appointments (though certain controlled functions within ARs must be approved by the FCA under the Approved Persons Regime – details of which can be found in the FCA handbook).

3.25 The FCA can take supervisory action against a principal when it becomes apparent that its AR is not complying with regulatory rules, but this runs the risk that supervisory action comes too late to prevent detriment to consumers. An important question for this review, therefore, is whether the FCA should have additional tools which would enable more of a prevention-based regulatory approach.

The scope of a principal's responsibility for its ARs

3.26 Section 39 requires appointment of an AR to be based on a contractual agreement which sets out the regulated activities the AR is permitted to carry on and for which the principal assumes regulatory responsibility. Any regulated activity carried on by the AR which falls outside of this agreement will not be exempt and will likely breach the general prohibition. FSMA only holds the principal responsible for that business for which it has accepted responsibility in its agreement with the AR. This is a feature of the AR exemption which may have an impact on whether a consumer may be disadvantaged in dealing with an AR.

3.27 There is a risk that an AR engages in activity which is not permitted by its agreement with the principal, intentionally or unintentionally. There is a material risk that this is not detected until detriment is caused to the consumer. The consumer may then be disadvantaged as there may then be no means of redress against the principal firm. In particular, this may mean that the Financial Ombudsman Service is not able to consider a complaint in relation to the activity (see below).

The role of the Financial Ombudsman Service and FSCS

The Financial Ombudsman Service

3.28 The Financial Ombudsman Service was established under FSMA as an independent entity and scheme to resolve individual disputes between financial services firms and their customers as an alternative to the courts. It is free to access and considers complaints by consumers regarding financial services that their financial service provider has been unable to resolve or which have not been resolved to the consumer's satisfaction. Consumers can access the Financial Ombudsman Service for complaints about a range of financial products and services, including:

- bank accounts, payments and cards
- payment protection insurance (PPI)

- home, car, travel and other types of insurance
- loans and other credit, like car finance
- debt collection and repayment problems
- mortgages
- financial advice, investments and pensions

3.29 The Financial Ombudsman Service is responsible for settling complaints between consumers and businesses that provide financial services. For complaints they uphold, the Financial Ombudsman Service may tell businesses to correct their mistake (for example, reinstating an insurance policy that was unfairly cancelled), or in some cases may tell the business to pay their customers compensation.

3.30 The Financial Ombudsman Service does not issue fines or investigate whether firms are following rules set by the FCA. Its primary role is to make unbiased determinations in complaints between consumers and service providers. Whilst the Financial Ombudsman Service is independent of the FCA and determines complaints accordingly, it is required to disclose information to the FCA if, in its opinion, it has information that would, or might, be of assistance in advancing one or more of the FCA's operational objectives.

3.31 The Financial Ombudsman Service can generally help with complaints about most kinds of financial products and services provided in or from the UK, if those products involve regulated activities.

Coverage of ARs by the Financial Ombudsman Service

3.32 Currently, if a consumer has a complaint about an AR, consumers are covered by the Financial Ombudsman Service when the complaint concerns activity undertaken by the AR that was included in the written agreement with the principal.

3.33 If an AR is undertaking activities that are outside the scope of the AR's agreement with its principal, or if there is a technical fault with the written contract, then this is likely to result in a breach of the general prohibition and consumers may find themselves without recourse to the Financial Ombudsman Service. This poses a risk to consumers in two respects. Firstly, the consumer is unlikely to be aware that the principal is allowed, under FSMA, to confer on the AR the right to conduct certain types of regulated financial services but also limit the scope of its own responsibility for such activities. Secondly, the consumer of an AR is unlikely to be aware of what the AR has agreed with its principal. If something goes wrong and a consumer suffers loss, the principal may seek to avoid responsibility by relying on a narrow reading of what its agreement with the AR covers. This regulatory approach, which depends to a significant extent on what is contained in the agreement between the AR and its principal, runs the risk that a consumer engages with an AR assuming they will be safeguarded by Financial Ombudsman Service if things go wrong, only to find later that this

safeguard is not available because of the terms of the AR's agreement with its principal.[1]

3.34 Where there is uncertainty about whether an AR / principal agreement covers an activity that is the subject of a complaint to the Financial Ombudsman Service, the Financial Ombudsman Service is faced with the difficult task of trying to understand exactly what the agreement covers before it can give a view on whether it has jurisdiction to determine the complaint. This represents a poor use of Financial Ombudsman Service resources and can make it much more difficult and time consuming for a consumer to seek redress.

The Financial Services Compensation Scheme (FSCS)

3.35 The Financial Services Compensation Scheme (FSCS) was created under FSMA and is the UK's statutory compensation fund. The FCA and Prudential Regulation Authority (PRA) have subsequently made rules which establish the scheme. The FSCS pays compensation, up to certain limits, to eligible customers of financial services firms that are unable or likely to be unable to pay claims against them. It is free for consumers to use and is independent.

3.36 The range of financial products covered by FSCS includes:

- banks and building societies
- pensions
- insurance
- Payment Protection Insurance
- credit unions
- mortgages
- investments
- debt management

3.37 The FSCS does not issue fines or investigate whether firms are following rules set by the FCA. The FSCS does pass information to the FCA when lawful to do so and necessary for the FCA to make decisions on whether firms have followed their rules.

Coverage of ARs by the FSCS

3.38 To be eligible for assistance from the FSCS where an AR fails, the consumer must establish a valid civil claim against the failed AR. The FSCS may postpone paying compensation to the consumer if it considers that the

[1] The difficulties surrounding the issue of interpretation of agreements and liability was considered by the Courts in Anderson v. Sense [2019] EWCA Civ 1395.

consumer should make and pursue an application for compensation against the live principal.

3.39 The FCA has recently made it clear in the compensation rules which deal with ARs (COMP 6.2.2AR), that where an AR fails, the FSCS may pay compensation whether or not the AR was acting within the scope of the business for which its principal had accepted responsibility.

Introducer ARs

3.40 IARs are small, often independent, traders that carry-on regulated activities solely for the purpose of introducing consumers to their principal or members of its group and distributing financial promotions.

3.41 The ability of IARs to introduce consumers to authorised principal firms seems to be a proportionate regulatory approach. Requiring authorisation for firms that do no more than suggest or recommend the services of a principal firm would not be proportionate. The risk to consumers of being introduced to a financial services firm in this way is relatively small. Any transactions the consumer enters into would still directly involve an authorised firm and would therefore be subject to all of the regulatory safeguards that entails, including direct supervision by the FCA. There would appear to be no disadvantage or exposure to additional risk for consumers that deal with IARs.

How appropriate and effective do you think the current regulatory approach is at ensuring the safe operation of IARs?

Small firms or salespeople that act as ARs

3.42 The government's understanding is that many of the individuals and smaller firms that act as ARs are essentially intermediating the sale of financial services products of authorised firms. In that case, a consumer will still be taking out financial services products which are designed and administered by an authorised firm, with the activity of the AR closely related to the activity of its principals. The activity of selling and advising on financial products can itself pose substantial risk, as mis-selling scandals of the past demonstrate. But, in this situation, an authorised firm should be well placed to ensure that its ARs are selling its products, or providing advice on those products, in ways which are appropriate and in line with relevant regulatory safeguards. The principal will have adequate expertise to ensure that its products are suitable for the consumers being sold to. As ARs used for this purpose are relatively small, the principal should have adequate resource and systems in place to ensure its ARs are subject to effective oversight.

3.43 If the risk of a principal having inadequate expertise or resource for oversight is relatively low, there is a further risk from these ARs which the current regime may be less effective at guarding against. While the principal is responsible for the selling activity that it has agreed its AR can carry out, the AR may be selling financial products which are not covered by that agreement. In such a situation, the principal may not be providing effective

oversight and it may not be responsible for the actions of the AR. As explained above, where this happens, a consumer may be left with less protection than if it had been dealing directly with an authorised firm. Activities of ARs which are not agreed with the principal are not exempt under section 39 and are likely to involve a breach of the FSMA general prohibition. A consumer in this situation may have no recourse to the Financial Ombudsman Service if things go wrong and may not be able to establish a claim against the principal.

How appropriate and effective do you think the current regulatory approach is at ensuring the safe operation of smaller ARs?

Larger, more complex ARs

3.44 In principle, the position of larger, more complex ARs, such as a high street store chain, is similar to that of smaller ARs as explained above. It is the government's understanding that such ARs are largely involved in intermediating the sale of financial services products that are designed and administered by authorised financial services firms, such as insurers or credit institutions. As with smaller ARs, principals should have the requisite expertise to ensure their own products are being sold through ARs in accordance with all of the relevant regulatory requirements. However, in practice, larger, more complex ARs might present more of a challenge to their principals. Firstly, while a principal may have a good understanding of its own products, overseeing how they are sold in conjunction with other products within a complex business model might stretch a principal's expertise. Secondly, principals may need very significant resource to effectively oversee such large ARs with complex business models and could conceivably find it challenging to maintain the level and adequacy of oversight required by the regulatory regime.

3.45 In addition to these challenges, the consequences of larger ARs failing to comply with relevant standards must be considered. Such ARs will be reaching a large number of financial services consumers. Many of these businesses will be acting as ARs to multiple principal firms. The impact of regulatory failure is therefore likely to be much more serious, and the possibility of undermining market integrity and consumer confidence much greater. This raises the question of whether it is appropriate and prudent for large businesses, involved in providing regulated financial services products to large numbers of consumers, to operate without being directly supervised by the FCA.

3.46 If an AR is large enough to be a major source of revenue for its principal, this could lead to a risk of creating a conflict of interest whereby the principal is less motivated to ensure its AR is complying with relevant standards or take swift action to address detriment when needed.

How appropriate and effective do you think the current regulatory approach is at ensuring the safe operation of larger, more complex ARs?

Regulatory hosts

3.47 This business model is perhaps furthest removed from the use of ARs originally envisaged when the AR regime was introduced. It may also raise the most substantial challenges to effective operation of the current regulatory approach. As with larger, more complex ARs, a principal acting as a regulatory host may face significant obstacles to the provision of effective oversight.

3.48 Two key elements of this business model may pose a risk to the provision of effective oversight of ARs. Firstly, this model may involve a principal firm that is not itself directly involved in carrying on the regulated activities of the ARs it is responsible for. This runs the risk that the principal may not have sufficient expertise in the activities it is responsible for overseeing in its ARs. Secondly, this business model relies on a large number of ARs being able to use the principal's regulatory permissions in order to be profitable. The large number of ARs involved may present a resource challenge to the principal in ensuring effective oversight. This challenge can be compounded where the ARs may be much larger, more complex, and offering a wider range of services than the principal itself. This raises the question as to whether it is appropriate for ARs whose principal is a regulatory host to be carrying on regulated activities without being directly authorised and without direct supervision by the FCA.

3.49 As mentioned above, if an AR is large enough to be a major source of revenue for its principal, this could lead to a risk of creating a conflict of interest whereby the principal is less motivated to ensure its AR is complying with relevant standards or take swift action to address detriment when needed.

How appropriate and effective do you think the current regulatory approach is at ensuring the safe operation of the regulatory host model?

The scope of regulated activities an AR may carry on

3.50 As explained above in paragraph 3.19, HM Treasury has prescribed the regulated financial services activities that an AR may carry on, judging that those activities carry a level of risk which can be adequately managed by the AR regime. Some activities, for example the regulated activity of accepting deposits, were judged to carry a level of risk inappropriate for ARs and which therefore must be carried on by directly authorised firms only.

3.51 In light of the challenges to effective operation of the AR regime outlined above, and particularly in light of how those challenges may have altered over time as ARs have been used in a broader range of business models, it is right to review whether the range of prescribed activities for ARs remains appropriate. It will be important to consider whether any of the prescribed activities now carry a higher level of risk, allowing ARs into the marketplace for particular services without there being adequate protections for consumers or the integrity of markets when compared with directly authorised providers of those services.

Do you think the above discussion is an accurate reflection of the challenges to effective operation of the current AR regime? Are there other challenges to fair and effective operation of the regime which have not been identified here? Do you think these challenges are manageable under the current approach? Do you think the range of regulated activities an AR may carry on is appropriate?

Chapter 4
Potential Reforms

4.1 The previous chapters have explained what a financial services AR is and have set out the government's understanding of how ARs are currently used in the provision of UK financial services. Those chapters have also explained the history of the AR regime, the policy aims behind it and how the current regulatory regime operates. The purpose of this Call for Evidence is to review the appropriateness and effectiveness of the current regime to ensure it remains fit for purpose. To this end, chapter 3 discusses the challenges that the current regime may face and seeks views from respondents on whether these are the right issues to consider in evaluating the effectiveness of the regime.

4.2 Based on the challenges identified in chapter 3, this chapter outlines possible options for adapting the regulatory approach for ARs. It must be stressed that the government has not yet reached any conclusion on whether the regime needs reform beyond the regulatory rule changes that the FCA is currently proposing. As such, the possible options for reform do not represent government policy; they are set out here to help inform the policy debate about the current regime. It will be essential to gather evidence on the current use of ARs and views on how the current regime operates in practice before drawing any policy conclusions. Should the government conclude that reform is needed, proposals will be published for consultation in due course.

Why is the government reviewing the AR regime?

4.3 The government announced this Call for Evidence in its response to the TSC 'Lessons from Greensill Capital' inquiry. In doing so, the government welcomed the Committee's recommendation to consider reforms to the regime, including whether legislative reforms are necessary to prevent opportunities for abuse of the system.

4.4 The UK has had a regulatory regime for ARs operating since 1986. While the scope of that regime was adapted when it was incorporated into FSMA in 2001, the overall regulatory approach has remained much the same. During this time, use of the AR regime has developed considerably. As with any element of the UK's financial services regulatory regime, it is important to ensure that regulation keeps pace with market developments. When developing FSMA, the government acknowledged that the use of ARs had evolved beyond the relatively straightforward use of self-employed salespeople as distributors of financial services products. That evolution has

continued since FSMA, so it is right to assess whether the regulatory approach remains appropriate.

4.5 In particular, that evolution has led to the AR regime being used in diverse ways. The business models that involve ARs now include models so different in nature that they may give rise to very different regulatory risks. The government believes it is right to assess whether the current 'one-size-fits-all' regulatory approach continues to make sense, or whether an approach is needed which does more to take into account the different risks and regulatory challenges generated by the diverse business models which use the AR regime.

4.6 As with all aspects of UK financial services regulation, HM Treasury works closely with the financial services regulators to monitor market developments and identify emerging risks that may need to be addressed. Recent work by the FCA has shown that there may be increased risk of detriment to consumers and markets resulting from the many and varied ways in which the AR model is now employed. The FCA has identified evidence of potential detriment arising from the AR regime, including:

- ARs promoting, advising on and selling products which are not suitable or appropriate for consumers
- ARs publishing inadequate information which misleads customers, for example, incorrect information on AR websites
- detriment not being identified or acted on by principals
- ARs acting outside the scope of their appointment

4.7 Please see the FCA's consultation paper for full details of their findings.

Action being taken by the FCA

4.8 The FCA is using its existing regulatory powers to target supervisory action across sectors to address issues and detriment arising from the AR regime. It considers this will lead to principals and ARs which are competent, financially stable and ensure fair outcomes for consumers when selling products or giving advice. Also, where firms are applying for authorisation, the FCA is now scrutinising more closely any plans that firms may have to appoint ARs as part of the authorisation process. The FCA is funding this activity by the new annual levy on principals with ARs as set out in PS21/7, at £75 pa per IAR and £250 pa per AR.[2] To date, the FCA has used this additional resource to target, through enhanced supervisory and authorisations engagement, high-risk principals and risky business models across sectors.

4.9 Where detriment occurs, the FCA considers it is often because principals do not perform adequate due diligence before appointing an AR, and from poor ongoing control and oversight. To ensure its expectations are clear and to enable it to continue taking effective regulatory action in future, the FCA is now consulting on changes to its rules and guidance applying to principal

[2] FCA Regulated Fees and Levies 2021/22: including feedback on CP21/08 and 'made rules'

firms. These proposals include changes to information and notification requirements for principals, as well as changes to enhance and clarify the FCA's broader expectations of principals and their responsibilities in respect of ARs.

4.10 HM Treasury will monitor the outcome of the FCA's consultation to inform the overall review of the AR regime.

Considering broader reform of the AR regime

4.11 The government supports the measures proposed by the FCA, which will help to reduce the risk that an AR is not being properly supervised by its principal firm. The evidence which suggests there may be increased risk of detriment to consumers means that it is also right for the government to review the overall regulatory approach for ARs and their principals.

4.12 In reviewing the AR regime, the government believes that the overall policy rationale for permitting and regulating the use of ARs remains appropriate. The proportionate regulatory approach which enables unauthorised firms to carry on regulated activities as ARs continues to provide a range of benefits for consumers and financial services markets, as explained in Chapter 2. The government wants to preserve these benefits as long as the challenges and risks of this regulatory approach can be effectively managed.

4.13 While the FCA has broad powers with which to set the requirements that apply to principals, more fundamental reforms of the AR regime may require the government to propose amendments to legislation. In particular, there are four key elements to the regulatory approach which, should they need reform, would require changes to legislation. These are:

- the overall scope of the section 39 exemption, including the regulated activities which ARs are permitted to carry on
- the regulatory tools available to the FCA, should it be concluded that the FCA should be empowered to do more to prevent abuse of the AR regime
- whether more direct regulatory requirements should be placed on ARs in order to strengthen incentives for regulatory compliance and high standards of conduct
- the role of the Financial Ombudsman Service in relation to ARs and their principals where consumers have experienced detriment whilst dealing with an AR

4.14 Specific examples of reforms that might be made in these areas are set out below.

Changes to the scope of the AR regime

4.15 The current scope of the AR exemption (as set out in section 39 of FSMA) is broad. It permits any authorised person to appoint a non-authorised person

to act as a representative in carrying on a wide range of regulated financial services activities. The regulated activities which an AR may carry on are prescribed by HM Treasury in the AR Regulations.

4.16 So far, evidence gathered by the FCA (and set out in their consultation paper) indicates that complaints related to ARs are more prevalent against firms operating in wholesale financial markets. If there was strong evidence to suggest that use of the AR regime to carry on a particular regulated activity was generating an unacceptable level of risk for consumers or market integrity, the government could consider prohibiting ARs from carrying on that activity or restricting certain activities to less complex business models or less risky products.

4.17 Amending the range of regulated activities covered by the AR exemption would represent a fundamental change to the scope of the AR regime. It is not a step the government would take without clear evidence of consumers being exposed to detriment or of a threat to market integrity. The market impact of such a change would also need to be carefully assessed before any proposal was taken forward.

4.18 In addition to the regulated activities which an AR may carry on, the scope of the section 39 exemption could be altered by specifying new conditions which would need to be met in order for the exemption to apply. For example, a size limit for ARs could be introduced. Setting a limit for the maximum size of an AR's business (which could involve absolute limits or limits in relation to the size of the principal) could be used to reduce the risk that a principal accepts responsibility for an AR in circumstances where it lacks the expertise or resource to provide proper oversight because its AR is too large.

4.19 A further example of specifying new conditions for the AR exemption would be a requirement for the principal to be carrying on the same regulated activities as its ARs. Such a condition would be aimed at ensuring the principal has sufficient expertise in the activities of its AR in order to provide adequate oversight.

Do you think changes to the scope of the section 39 exemption for ARs should be considered? If so, what changes do you think should be made? How might changes to scope affect ARs, principals and their consumers?

Enhancing the role of the FCA

4.20 A key feature of the AR regime is that any authorised firm is permitted to appoint ARs, with no further permission or approval needed from the FCA. As such, there is no opportunity for the FCA to scrutinise a principal's ability to provide effective oversight before the principal appoints an AR.

4.21 This could be addressed by introducing a 'principal permission' gateway, whereby authorised firms must gain a specific permission from the FCA before appointing ARs. This would provide a mechanism for the FCA to scrutinise a firm's fitness to act as principal, ensuring only those firms with the specific capabilities to be able to provide effective oversight can begin

appointing ARs. The FCA would be able to take into account the specific circumstances of a prospective principal, its business model, and the types of AR it plans to appoint in assessing a firm's fitness to act as a principal. A 'principal permission' would also provide increased supervisory flexibility to act proportionately to protect customers and markets from detriment, for example by allowing the FCA to vary or withdraw a principal's permission to appoint ARs.

4.22 Earlier this year, the government announced that it intends to introduce a similar regulatory gateway for authorised firms wishing to approve the financial promotions of unauthorised firms.

4.23 In addition, consideration could be given to enhancing the ability of the FCA to intervene more directly when problem ARs are identified. For example, the information gathering and investigation powers of the FCA set out in Part XI of FSMA could be extended to apply directly to ARs. Without having to work through a principal, the FCA could ensure prompt investigation of ARs that may be breaching regulatory requirements, resulting in quicker supervisory action where it is needed. However, this would need to be weighed carefully against the risk of undermining the purpose of the regime that the principal rather than the AR is authorised and regulated by the FCA, and the principal that assumes responsibility for the regulated activities carried on by their ARs.

What are your views on the FCA having greater ability to prevent poor oversight of ARs through the introduction of a 'principal permission'? Do you have views on other ways of enhancing the FCA's role in the regulation of principals and their ARs? What do you think would be the benefits and risks of enhancing the FCA's powers to regulate principals or ARs?

Changes to place more regulatory obligations on ARs

4.24 The current regulatory approach very much focuses on the principal's responsibility for the AR in relation to the agreed regulated activities the AR is permitted to carry on. As such, the FCA is empowered to make rules and guidance which apply to the principal, to supervise the principal's use of its ARs, and to take enforcement action against the principal if its ARs are not complying with FCA requirements.

4.25 Placing more regulatory obligations directly on the AR could strengthen the incentives for ARs to understand and comply with regulatory rules that serve to protect consumers and markets. For example, the Senior Managers and Certification Regime (SM&CR) which applies to authorised firms could, in some form, be extended to cover ARs.

4.26 The SM&CR aims to reduce detriment to consumers and strengthen market integrity by enabling firms and the financial services regulators to hold individuals in authorised firms to account. The regime was first applied to banks and then dual-regulated insurers. In December 2020 aspects of the regime were extended to all FCA solo-regulated firms. For authorised firms, the SM&CR has replaced the older, more limited accountability regime for

individuals called the Approved Persons Regime (APR) (which still applies to ARs).

4.27 ARs are not authorised firms so the SM&CR does not apply to individuals in ARs. While the APR applies to controlled functions in ARs, on the whole, ARs are not subject to the same extent of regulatory requirements designed to hold individual employees to account or to requirements directly applicable to staff aimed at fostering high standards of conduct.

4.28 This can be regarded as consistent with the current regulatory approach which focuses on the responsibility of the principal for ensuring that ARs comply with all relevant regulatory requirements. Individual senior managers in the principal firm are expected to take responsibility for the regulatory compliance of the principal's ARs and can be held accountable for the regulatory breaches of those ARs.

4.29 A central aim of the SM&CR is to encourage high standards of conduct at all levels within a financial services firm. In addition to the requirements that apply to senior managers, the regime therefore includes: a certification process operated by the firm to ensure the fitness of staff that perform a range of important roles, including roles which have the potential to cause significant detriment to consumers; and rules of conduct (enforceable by the regulator) which apply to all employees of authorised firms. These standards do not apply to the staff of ARs. As an example of what this means in practice, a mortgage advisor of an authorised firm is a certified role subject to regular, rigorous fitness and propriety assessments by the firm. No such requirements apply to an AR mortgage advisor.

4.30 There may be arguments in favour of applying SM&CR rules of conduct to the staff of ARs, not least that it would result in a consistent standard of conduct for all employees of firms carrying on regulated financial services activities. This could raise standards of fitness and propriety in AR firms, helping to reduce the risk of detriment to consumers. SM&CR conduct rules could be applied to ARs with principals being obliged to ensure those rules are complied with, or the FCA could be given responsibility for directly enforcing compliance with conduct rules in AR firms. The latter approach would facilitate more direct and decisive intervention by the regulator once the poor conduct of an AR has been identified.

4.31 The challenge of applying more regulatory requirements directly to ARs, including any extension of the SM&CR, is that it risks reducing the benefits of the AR regime and potentially confusing the lines of responsibility with respect to the activities / conduct of ARs. The more ARs are subject to direct regulation, the more their position will resemble that of authorised firms. Increased regulatory burdens will reduce the advantages of operating as an AR. This may encourage some ARs to seek authorisation, increasing demands on the FCA, while other ARs may exit the market, reducing competition and opportunities for innovation. Any direct extension of regulatory requirements to ARs would need rigorous assessment of the resulting regulatory burdens and their impact on AR behaviour.

What do you think would be the benefits and risks of applying more regulatory requirements directly to ARs? Are there particular requirements that you think should be applied directly to ARs?

If, in particular, the SM&CR was to be applied to ARs in some form:

a) *What changes, if any, should be made? It would be helpful to refer to the different elements of the SM&CR (which are set out in SYS23 of the FCA Handbook) in your answer.*

b) *Should there be a differential approach, with some ARs subject to more or fewer requirements than others? If so, which business models should be subject to more or fewer requirements? Who should oversee these requirements: the principal or the FCA?*

c) *What should the relationship between the principal and AR be when assessing the conduct standards of employees at an AR? For example, should the principal be ultimately responsible for deciding the fitness and propriety of an employee at an AR, or only for reviewing policies and procedures for determining fitness and propriety?*

Extending the ability of the Financial Ombudsman Service to investigate complaints involving the activity of ARs

4.32 The Financial Ombudsman Service is a core element of the UK's financial services consumer protection regime. The free to access and impartial resolution service is available to consumers that have complaints regarding regulated financial services activities that their financial service provider has been unable to resolve or have not been resolved to the consumer's satisfaction. As explained in Chapter 3, the Financial Ombudsman Service can consider consumer complaints where they relate to a regulated activity undertaken by an AR that was included in the written agreement between the AR and its principal. However, if an AR is undertaking regulated activities that are outside the scope of the AR's agreement with its principal, consumers may find that the Financial Ombudsman Service is unable to investigate their complaint. This can include circumstances where there has been a technical failure to appoint an AR correctly, for example where the agreement between AR and principal does not contain one of the prescribed requirements.

4.33 Whilst principals are responsible for taking reasonable steps to ensure their ARs only act within the bounds of their exemption and the principal's failure to do so may well cause consumers to suffer detriment, it wouldn't ordinarily be practical or realistic for the consumer to bring a claim or complaint against a principal for breach of that duty. This is because the consumer is unlikely to know how the principal and AR supervisory relationship was structured and would often face difficulty in establishing that their loss was a consequence of the principal failing to discharge its supervisory responsibility.

4.34 The section 39 exemption for ARs could be amended so that a principal is responsible for all of an AR's regulated activities, even if the appointment is

invalid. This would enable the Financial Ombudsman Service to investigate complaints relating to the regulated activity of an AR and provide redress against the principal, regardless of whether or how the AR's activity is covered in its agreement with the principal. There may be strong arguments for making this change. Consumers are unlikely to be aware of the distinction between an AR and an authorised firm. A consumer is even less likely to be aware of the importance of a regulated activity being within the scope of an agreement between an AR and its principal. Consumers may reasonably expect the same level of protection when dealing with an AR as they would have when dealing with an authorised firm. Amending section 39 in this way would make Financial Ombudsman Service coverage easier to understand and should result in better outcomes for consumers.

Do you think there is a case for extending the ability of the Financial Ombudsman Service to investigate complaints involving the activity of ARs? What do you think the benefits and risks of this approach might be? Would this change affect how ARs are used by their principals?

Chapter 5

Responding to this call for evidence

5.1 This call for evidence will remain open for three months, closing on 3 March 2022. We are inviting stakeholders to provide responses to the questions set out above and share their views on how the AR regime is currently operating in the financial services sector, and the nature of any potential reforms required.

Who should respond?

5.2 A wide range of stakeholders will be interested in the important issues presented in this document. Responses are welcome from authorised financial services firms, ARs or any firm connected with a business model which may involve use of the AR regime. But the government also recognises the importance of getting views from other respondents. In particular, views are welcome from respondents who may have views on how the position of consumers, or the integrity of financial services markets may be affected by use of the AR regime.

How to submit responses

5.3 Please submit your responses to appointedreps@hmtreasury.gov.uk or post to:

Financial Services Strategy

HM Treasury

1 Horse Guards Road

SW1A 2HQ

HM Treasury Appointed Representatives Call for Evidence: Processing of Personal Data

5.5 This notice sets out how HM Treasury will use your personal data for the purposes of the Appointed Representatives call for evidence and explains your rights under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA).

Your data (Data Subject Categories)

5.6 The personal information relates to you as either a member of the public, parliamentarians, and representatives of organisations or companies.

The data we collect (Data Categories)

5.7 Information may include your name, address, email address, job title, and employer of the correspondent, as well as your opinions. It is possible that you will volunteer additional identifying information about themselves or third parties.

Legal basis of processing

5.8 The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in HM Treasury. For the purpose of this consultation the task is consulting on departmental policies or proposals or obtaining opinion data in order to develop good effective government policies.

Special categories data

5.9 Any of the categories of special category data may be processed if such data is volunteered by the respondent.

Legal basis for processing special category data

5.10 Where special category data is volunteered by you (the data subject), the legal basis relied upon for processing it is: the processing is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department.

5.11 This function is consulting on departmental policies or proposals, or obtaining opinion data, to develop good effective policies.

Purpose

5.12 The personal information is processed for the purpose of obtaining the opinions of members of the public and representatives of organisations and

companies, about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest.

Who we share your responses with

5.13 Information provided in response to a consultation may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004 (EIR).

5.14 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.

5.15 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.

5.16 Where someone submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place.

5.17 Where information about respondents is not published, it may be shared with officials within other public bodies involved in this consultation process to assist us in developing the policies to which it relates. Examples of these public bodies appear at: https://www.gov.uk/government/organisations.

5.18 As the personal information is stored on our IT infrastructure, it will be accessible to our IT contractor, NTT. NTT will only process this data for our purposes and in fulfilment with the contractual obligations they have with us.

How long we will hold your data (Retention)

5.19 Personal information in responses to consultations will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.

5.20 Personal information in responses that is not published will be retained for three calendar years after the consultation has concluded.

Your rights

- You have the right to request information about how your personal data are processed and to request a copy of that personal data

- You have the right to request that any inaccuracies in your personal data are rectified without delay.
- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.
- You have the right, in certain circumstances (for example, where accuracy is contested), to request that the processing of your personal data is restricted.
- You have the right to object to the processing of your personal data where it is processed for direct marketing purposes.
- You have the right to data portability, which allows your data to be copied or transferred from one IT environment to another.

How to submit a Data Subject Access Request (DSAR)

5.21 To request access to personal data that HM Treasury holds about you, contact:

HM Treasury Data Protection Unit

G11 Orange

1 Horse Guards Road

London

SW1A 2HQ

dsar@hmtreasury.gov.uk

Complaints

5.22 If you have any concerns about the use of your personal data, please contact us via this mailbox: privacy@hmtreasury.gov.uk.

5.23 If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, the UK's independent regulator for data protection. The Information Commissioner can be contacted at:

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

0303 123 1113

casework@ico.org.uk

5.24 Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Contact details

5.25 The data controller for any personal data collected as part of this consultation is HM Treasury, the contact details for which are:

HM Treasury

1 Horse Guards Road

London

SW1A 2HQ

London

020 7270 5000

public.enquiries@hmtreasury.gov.uk

5.26 The contact details for HM Treasury's Data Protection Officer (DPO) are:

The Data Protection Officer

Corporate Governance and Risk Assurance Team

Area 2/15

1 Horse Guards Road

London

SW1A 2HQ

London

privacy@hmtreasury.gov.uk

HM Treasury contacts

This document can be downloaded from www.gov.uk

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

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SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gov.uk