

APPOINTED REPRESENTATIVES INSTRUMENT 2004

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers);
 - (3) section 157(1) (Guidance);
 - (4) section 213 (The compensation scheme);
 - (5) section 214 (General); and
 - (6) section 395 (The Authority’s procedures).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force as follows:

Annex	Commencement date
A	30 June 2004
B	30 June 2004
C	31 October 2004
D	14 January 2005

Amendments relating to multiple principals of appointed representatives for investment business

- D. The Supervision manual is amended in accordance with Annex A to this instrument.
- E. The Dispute resolution: Complaints sourcebook, the Compensation sourcebook and the Collective Investment Schemes sourcebook are amended in accordance with Annex B to this instrument.

Amendments to the Supervision manual and the Glossary relating to regulation of mortgages and long-term care insurance

- F. The Supervision manual and the Glossary are amended in accordance with Annex C to this instrument.

Amendments to the Supervision manual, the Decision making manual and the Glossary relating to regulation of insurance mediation

G. The Supervision manual, Decision making manual and the Glossary are amended in accordance with Annex D to this instrument.

Citation

H. This instrument may be cited as the Appointed Representatives Instrument 2004.

By Order of the Board
15 January 2004

Amended by Addendum
9 August 2004

Annex A

Amendments to the Supervision manual relating to multiple principals of appointed representatives for investment business coming into force on 30 June 2004

In this Annex, underlining indicates new text and striking through indicates deleted text.

SUP Transitional provisions, Table 2

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
...					
9	...				
<u>9A*</u>	<u>SUP 12.5</u>	<u>R</u>	<u>A firm conducting designated investment business need not amend its written contract with an appointed representative (appointed before 15 January 2004) to take account of amendments to SUP 12.5 coming into force between 30 June 2004 and 30 June 2005, until 30 June 2005 or the date on which the contract is next updated (whichever is earlier).</u>	<u>From 30 June 2004 until 30 June 2005, that is, 12 months.</u>	<u>Commencement, and as amended with effect from 30 June 2004</u>
...					

...

12.1 Application and purpose

Application

- 12.1.1 R
- (1) This chapter applies to a *firm* ~~with permission to carry on designated investment business and~~ which is considering appointing, has decided to appoint or has appointed an *appointed representative*.
 - (2) ~~The rules, and guidance on rules, in this~~ This chapter ~~do~~ does not apply to a *UCITS qualifier*.

...

* see Addendum p33

12.2.2 G ...

Who can be an appointed representative?

12.2.3G ...

Can an appointed representative have more than one principal?

12.2.4 G The *Act* and the *Appointed Representatives Regulations* do not prevent an *appointed representative* from acting for more than one *principal*.
However, SUP 12.5.6A R (Prohibition of multiple principals for certain activities) prevents this for particular kinds of business.

12.2.5 G ...

What is a "network"?

12.2.6 G (1) ~~An appointed representative may be appointed by any firm with permission to carry on designated investment business of the type described in SUP 12.2.7G(1), including a provider firm or an independent intermediary.~~

(2) An *independent intermediary* is referred to as a 'network' if it appoints five or more *appointed representatives* or if it appoints less than five *appointed representatives* which have, between them, twenty-six or more *financial advisers*.

...

What is an introducer appointed representative?

12.2.8 G (1) An *introducer appointed representative* is an *appointed representative* appointed by a *firm* whose scope of appointment must, under SUP 12.5.7 R, be limited to:

(a) effecting introductions ~~between customers and to the firm~~ or other members of the *firm's marketing group*; and

(b) distributing *non-real time financial promotions which relate to products or services available from or through the firm approved by the firm* or other members of the *firm's marketing group* or the producer of an *adopted packaged product*.

(2) The permitted scope of appointment of an *introducer appointed representative* does not include in particular:

(a) arranging (bringing about) deals in investments; or

(b) advising on investments or other activity that might reasonably lead a *customer* to believe that he had received

advice on investments or that the *introducer appointed representative* is permitted to give *advice on investments*.

(3) An introducer appointed representative may have more than one principal, but will need a contract with each principal.

(4) The approved persons regime does not apply to an introducer appointed representative (see SUP 10.1.16R).

12.2.9 G

(4) To become an *introducer appointed representative*, a person must meet the conditions in the *Act* to become an *appointed representative* (see SUP 12.2.2G).

~~(2) In considering the appointment of a person as an *introducer appointed representative*, a firm should have regard to the requirements in SUP 12.5.7R. In particular, these requirements mean that the *introducer appointed representative* cannot be an *appointed representative* for a member of another *marketing group*.~~

12.2.10 G

All rules in SUP 12 apply in relation to *introducer appointed representatives* except for:

(1) ~~SUP 12.4.2R, SUP 12.4.5B R and SUP 12.4.5C R~~, on the appointment of *appointed representatives*, which is replaced by SUP 12.4.6R; ~~and~~

(2) ~~SUP 12.5.5R SUP 12.5.6A R~~ on required contract terms, which is replaced by SUP 12.5.7R; ~~and~~

~~(3) SUP 12.9.1R(4) (Record keeping).~~

...

12.2.14 G

(1) A *representative* is an individual who is appointed by a *firm* or by an *appointed representative of that firm*, to carry out on, in the course of *designated investment business*, either or both any of the following activities in (1)(a) to (c):

~~(a) advising customers on the merits of packaged products offered by that firm (or any other provider firm within the same marketing group);~~

~~(b) arranging (bringing about) deals in investments in relation to such products.~~

(a) advising on investments;

(b) arranging (bringing about) deals in investments;

(c) dealing in investments as agent.

- (2) If a *provider firm* appoints an *appointed representative* who is an individual in (1), that *appointed representative* will also be a *representative*. The individual ~~must~~ may need to be approved to perform the *investment adviser function* or the *customer trading function* or both, and possibly also the *sole trader function* (see SUP 12.6.8G and SUP 12.6.9G). In these circumstances, in addition to complying with the requirements of SUP 12 and other regulatory requirements, the *firm* should ensure that the *rules* for *representatives* in COB 5 (Advising and selling) are complied with.

...

The permission that the firm needs

~~12.4.1 R A firm may only appoint an appointed representative to carry on regulated activities on its behalf if the firm has permission to carry on those regulated activities. [Deleted]~~

12.4.1A G The effect of sections 20 (Authorised persons acting without permission) and 39(4) (Exemption of appointed representatives) of the Act is that the regulated activities covered by an appointed representative's appointment need to:

- (1) fall within the scope of the principal's permission; or
- (2) be excluded from being regulated activities when carried on by the principal, for example because they fall within article 28 of the Regulated Activities Order (Arranging transactions to which the arranger is a party).

Appointment of an appointed representative (other than an introducer appointed representative)

12.4.2 R Before a *firm* appoints a *person* as an *appointed representative* (other than an *introducer appointed representative*) and on a continuing basis, it must take reasonable care to ensure that:

- (1) ...
- (2) the *person*:
- (a) ...
 - (b) ...
 - (c) ... ; ~~and~~
- (3) the *firm* has adequate:
- (a) ...
 - (b) ... ; and
- (4) the *firm* is ready and organised to comply with the other applicable requirements contained or referred to in this chapter.

...

Appointment representative who may be appointed by other principals

12.4.5A G If a *firm* proposes to appoint an *appointed representative*, but not to prohibit its appointment by any other *principals* (see SUP 12.5.2G(3)), the *firm* should, in particular:

- (1) require, in the contract, that the *appointed representative* notifies the *firm* about other *principals* (see SUP 12.5.5R(3)); and
- (2) unless the *appointed representative* is an *introducer appointed representative*:
 - (a) take reasonable steps to check whether the *appointed representative* is already appointed by one or more other *principals* and, if it is, contact those other *principals*; such steps should include asking the *appointed representative* and checking the *Register*;
 - (b) if there are any other *principals*, agree arrangements with the other *principals* (see SUP 12.4.5B R); and
 - (c) establish effective systems and controls for ensuring that the *appointed representative* complies with all contractual restrictions imposed, including those relating to multiple *principals* under the *Appointed Representatives Regulations* and under SUP 12.5.6A R (see SUP 12.6.11A R).

Multiple principals

12.4.5B R (1) A *firm* must not appoint a *person* as its *appointed representative* until it has entered into a written agreement (a “multiple principal agreement”) with every other *principal* the *person* may have; but this does not apply to the appointment of an *introducer appointed representative* nor does it require an agreement with another *principal* which has appointed a *person* as an *introducer appointed representative*.

(2) A *firm* must not unreasonably decline to enter into a multiple principal agreement with any *principal* of his *appointed representative* unless the *firm* is relying on a prohibition on the *appointed representative* from representing any other *firms* (or is seeking to impose such a prohibition) as permitted by article 3 of the *Appointed Representative Regulations*.

(3) A multiple principal agreement must contain all the provisions which are necessary or desirable to:

- (a) set out the relationship between the *principals* of that *appointed representative*; and
- (b) protect the interests of *clients*;

including the matters set out in SUP 12.4.5C R.

12.4.5C R Table: Multiple principal agreement

	<u>Matter</u>	<u>Explanation</u>
1.	<u>Scope of appointment</u>	<u>The scope of appointment given by each <i>principal</i> to the <i>appointed representative</i>.</u>
2.	<u>Complaints handling</u>	<u>The identity of the <i>principal</i> which will be the point of contact for a complaint from a <i>client</i> (referred to as the “lead-principal” in <u>SUP 12.4.5D G</u> to <u>SUP 12.4.5E G</u>).</u> <u>An agreement that each <i>principal</i> will co-operate with each other <i>principal</i> in resolving a complaint from a <i>client</i> in relation to the <i>appointed representative’s</i> conduct.</u> <u>The arrangements for complaints handling, including arrangements for resolving disputes between the <i>principals</i> in relation to their liability to a <i>client</i> in respect of a complaint and arrangements for dealing with referrals to the <i>Financial Ombudsman Service</i>.</u>
3.	<u>Financial promotions</u>	<u>The arrangements for <i>approving financial promotions</i>.</u>
4.	<u>Control and monitoring</u>	<u>The arrangements for the control and monitoring of the activities of the <i>appointed representative</i> (see in particular <u>SUP 12.6.6R</u> (Regulated activities and investment services outside the scope of appointment) and <u>SUP 12.6.7G</u> (Senior management responsibility for appointed representatives)).</u>
5.	<u>Approved person status</u>	<u>The arrangements for making applications for <i>approved person</i> status (see <u>SUP 10</u> (Approved persons)).</u>
6.	<u>Training and competence</u>	<u>The arrangements for training and competence (see <u>TC</u>).</u>
7.	<u>Co-operation</u>	<u>The arrangements for co-operation over any other issues which may arise from the multiple appointments, including issues which may damage the interests of <i>clients</i> dealing with the <i>appointed representative</i> and administrative issues.</u> <u>An agreement by each <i>principal</i> to take reasonable steps to ensure that it does not cause the <i>appointed representative</i> or any of its other <i>principals</i> to be in breach of their obligations to each other or under the <i>regulatory system</i>.</u>
8.	<u>Sharing information</u>	<u>The arrangements for sharing information on matters relevant to the matters covered under the multiple principal agreement and each <i>principal’s</i> obligations under <u>SUP 12.6</u> (Continuing obligations of firms with appointed representatives).</u> <u>An agreement that each <i>principal</i> will notify each other <i>principal</i> of any information which is materially relevant to the multiple principal agreement.</u>

12.4.5D G One effect of the multiple principal agreement is to introduce a ‘lead-principal’ concept in relation to complaints handling for the benefit of the *client*. For example, where the *client* has been given advice by an *appointed representative* who has two *principals*, and the advice could have led to a transaction being arranged with either *principal*, the *client* will know that he may pursue his complaint with (but not necessarily against) one of the *principals*. Whether he later decides to refer his complaint to the *Financial Ombudsman Service*, and if so, against which *principal*, will depend on the circumstances.

- 12.4.5E G (1) Under the relevant Advising and Selling chapters of *COB*, *ICOB* and *MCOB*, the *customer* will receive details of how to complain to the *appointed representative* and, when a product is purchased, details of the complaints procedure for the *product provider*, *insurer* or *mortgage lender*.
- (2) Under *DISP* 1.2.9R, a *firm* must among other things, supply a copy of its internal complaint handling procedures to the *customer* when it receives a complaint. In complying with *DISP* 1.2.9R, a *firm* should ensure that the "lead-principal" is clearly identified in the procedures.
- (3) The complaints procedure should also explain that the *customer* has a choice of whether to contact the *appointed representative*, the "lead-principal" or the *product provider*, *insurer* or *mortgage lender* and that the "lead-principal" will be the appropriate point of contact where the *customer* does not wish to complain about a specific product or is unsure who to contact.
- (4) In other words, where the *customer* has a doubt who to complain to the "lead-principal" is to be the point of contact for all complaints arising out of the activities of the *appointed representative*.

12.4.5F G When considering the provisions for complaints handling (see *SUP* 12.4.5C R(2)) *firms* should consider the use of a mediation clause. If a complaint is made by a *client*, *principals* which are unable to resolve a dispute about liability to the *client* should consider all quick and effective ways of resolving the dispute, including referring the matter to the *Financial Ombudsman Service* and mediation.

12.4.5G G It is for the *principals* to consider in each case whether it would be appropriate to show the multiple principal agreement to their *appointed representative*, or in some circumstances make their *appointed representative* a party to it.

Appointment of an introducer appointed representative

12.4.6 R Before a *firm* appoints a *person* as an *introducer appointed representative*, and on a continuing basis, it must take reasonable care to ensure that:

- (1) the *person* is suitable to act for the *firm* in that capacity (having regard, in particular, to other *persons* connected with the *person* who will be, or who are, directly responsible for its activities); ;
and
- (2) the *firm* is ready and organised to comply with the other applicable requirements contained or referred to in this chapter.

...

12.5.4 G ...

~~Required contract terms for an appointed representative (other than an introducer appointed representative)~~

12.5.5 R

~~A firm must ensure that its written contract with each of its appointed representatives (other than introducer appointed representatives):~~

- ~~(1) complies with the requirements prescribed in regulation 3 of the Appointed Representatives Regulations (see SUP 12.5.2G); and~~
- ~~(2) requires the appointed representative to comply with, and to ensure that any persons who provide services to the appointed representative under a contract of services or a contract for service comply, with the relevant requirements in or under the Act (including the rules) that apply to the activities which it carries on as appointed representative of the firm - ; and~~
- ~~(3) (unless the written contract prohibits appointments by other principals) requires the appointed representative to notify the firm:
 - ~~(a) that it is seeking appointment as an appointed representative of another person, who the person is and the business for which the other person will accept responsibility;~~
 - ~~(b) (as soon as possible) of any change in the business notified under (a); and~~
 - ~~(c) (as soon as possible) of the termination of any such appointment.~~~~

...

12.5.6 G

...

Prohibition of multiple principals for certain activities

12.5.6A R

- (1) A firm must ensure that, if appointing an appointed representative (other than an introducer appointed representative), to carry on any designated investment business for private customers, its written contract prohibits the appointed representative from carrying on any of those specified activities as an appointed representative for another firm.
- (2) As an exception to (1), if the firm is a long-term insurer or an operator of a UCITS scheme, it may permit an appointed representative to carry on designated investment business as the appointed representative of one or more other firms provided that:
 - (a) each of those other firms is a long-term insurer or an operator of a UCITS scheme;

- (b) the first *firm* and each of those other *firms* is a member of the same group; “group” means for this purpose a group of *bodies corporate* all having the same *holding company* including the *holding company*; and
- (c) the scope of each appointment does not overlap, as to both activities and *investments*.

12.5.6B G The effect of SUP 12.5.6A R(1) is that, in relation to *designated investment business with private customers*, *appointed representatives* are restricted to one *principal*.

Required contract terms for an introducer appointed representative

12.5.7 R ~~A *firm* must ensure that its written contract with each of its *introducer appointed representatives* prohibits the *introducer appointed representative* from~~ limits the scope of the appointment to:

~~(1) in relation to a *designated investment* or *designated investment business*~~

~~(a 1) effecting an introduction between a *customer* and a *person* other than to the *firm* or another *other* members of the *firm’s marketing group*; and~~

~~(b 2) distributing *non-real time financial promotions* which relate to products or services available from or through the *firm-approved* by a *person* other than the *firm* or another members of the *firm’s marketing group* or the producer of an *adopted packaged product*; and~~

~~(2) carrying on any *regulated activity* on behalf of any *person* other than the *firm* or another member of the *firm’s marketing group*.~~

...

12.6.11 G ...

Compliance by an appointed representative with the contract

12.6.11A R A *firm* must take reasonable steps to establish and maintain effective systems and controls for ensuring that each of its *appointed representatives* complies with those terms of its contract which are imposed under the requirements contained or referred to in SUP 12.5 (Contracts: required terms).

~~Additional obligations for introducer appointed representatives~~

12.6.12 R ~~A *firm* must take reasonable steps to ensure that each of its *introducer appointed representatives*:~~

- (1) ~~does not, in relation to a *designated investment* or *designated investment business*:~~
 - (a) ~~effect an introduction between a *customer* and a *person* other than the *firm* or another member of the *firm's marketing group*; and~~
 - (b) ~~distribute *non-real time financial promotions* approved by a *person* other than the *firm* or another member of the *firm's marketing group* or the producer of an *adopted packaged product*; and~~
- (2) ~~does not carry on any *regulated activity* on behalf of any *person* other than the *firm* or another member of the *firm's marketing group*. [Deleted]~~

...

12.8 Termination of a relationship with an appointed representative

Notification of termination or prohibited amendment of the contract

12.8.1 R If either the *firm* or the *appointed representative* notifies the other that it proposes to terminate a the contract of appointment or to amend it so that it no longer meets the requirements ~~prescribed in the *Appointed Representative Regulations* (see *SUP 12.5.2G*) and, in the case of an *introducer appointed representative*, *SUP 12.5.7R* contained or referred to in *SUP 12.5* (Contracts: required terms), the *firm* must:~~

...

...

Steps to be taken on termination or prohibited amendment of the contract

12.8.3 R If a contract with an *appointed representative* is terminated, or if it is amended in a way which gives rise to a requirement to notify under *SUP 12.8.1R*, a *firm* must take all reasonable steps to ensure that:

- (1) ...
- (2) ...; ~~and~~
- (3) ... ; and
- (4) all the other *principals* of the *appointed representative* of which the *firm* is aware are notified.

...

12.9 Record keeping

12.9.1 R A *firm* must make the following records on each of its *appointed representatives*:

- (1) ...
- (2) ...; ~~and~~
- (3) ...; and
- (4) any arrangements agreed with other *principals* under SUP 12.4.5B R (Multiple principals).

...

Schedule 1
Record keeping requirements G

3 Table:

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>SUP</i> 4.3.17R(3)	...			
<i>SUP</i> 12.9.1R <i>SUP</i> 12.9.2R	<i>Appointed representatives</i>	(1) (4) <u>arrangements agreed with other <i>principals</i> under <i>SUP</i> 12.4.5B R</u>
...				

Annex B

Amendments to the Dispute resolution: Complaints sourcebook, Compensation sourcebook and the Collective Investment Schemes sourcebook relating to multiple principals for investment business coming into force on 30 June 2004

In this Annex, underlining indicates new text and striking through indicates deleted text.

Amendments to the Dispute resolution: Complaints sourcebook

2.6.5 G Complaints about acts or omissions by a *firm* include complaints about acts or omissions in respect of activities for which the *firm* is responsible (~~that is the activities~~ including business of their any appointed representatives for which the *firm* has accepted responsibility).

Amendments to the Compensation sourcebook

9.2.2 R The *FSCS* may postpone paying compensation if:

- (1) in the case of a *claim* against a *relevant person* who is an *appointed representative*, the *FSCS* considers that the claimant should make and pursue an application for compensation against the *appointed representative's relevant principal*; or

Amendments to the Collective Investment Schemes sourcebook

16.2.4 G (1) Independence ~~and polarisation~~: the *FSA* considers that independence will need to be specifically appraised in the event of a proposal by the *depository* to ~~become an appointed representative of~~ enter into any arrangement with the *ICVC* or any corporate *director* of it by which the *depository* might agree to act on an exclusive (or near exclusive) basis, or for a *director* to become an *appointed representative* of enter into a similar arrangement with the *depository*.

(2) ...

(3) ...

...

16.3.2 G (1) ...

...

- (8) Independence ~~and polarisation~~: The *FSA* considers that independence will need to be specifically appraised in the event of a proposal by the *trustee* or *manager* (or any of either's *associates*) to enter into any arrangement with ~~become an appointed representative of~~ the other by which either party might agree to act on an exclusive (or near exclusive) basis in relation to the marketing of packaged products. ~~The status of a "tied agent" will~~

~~mean that the trustee of an AUT is prohibited by contract from procuring or endeavouring to procure persons to enter into investment agreements (or certain kinds of investment agreements including those relating to AUTs) with persons other than the manager.~~

- (9) If such a ~~tie~~ relationship should be contemplated, then arrangements may need to be put in to place to satisfy the FSA that the necessary independence is preserved. The FSA would therefore expect to be consulted in advance of such proposal.

Annex C

Amendments to the Supervision manual and the Glossary relating to mortgages and long-term care insurance coming into force on 31 October 2004

In this Annex, underlining indicates new text and striking through indicates deleted text.

Amendments to the Supervision manual

- 12.2.7 G (1) The *Appointed Representatives Regulations* are made by the Treasury under section 39(1) of the *Act*. These regulations describe, among other things, the business for which an *appointed representative* may be exempt, which is business which comprises any of:
- (a) arranging (bringing about) deals in investments (article 25(1) of the *Regulated Activities Order*) (that is in summary, deals in a designated investment, funeral plan contract or right to or interest in a funeral plan); ~~or~~
 - (b) making arrangements with a view to transactions in investments (article 25(2) of the *Regulated Activities Order*) where the arrangements are for or with a view to transactions relating to securities or contractually based investments (that is in summary, transactions in a designated investment, funeral plan contract or right to or interest in a funeral plan);
 - (c) arranging (bringing about) regulated mortgage contracts (article 25A(1) of the *Regulated Activities Order*);
 - (d) making arrangements with a view to regulated mortgage contracts (article 25A(2) of the *Regulated Activities Order*);
 - (~~b~~ e) *arranging safeguarding and administration of assets* (part of article 40 of the *Regulated Activities Order*);
 - (~~e~~ f) advising on investments (article 53 of the *Regulated Activities Order*) (that is in summary, on any designated investment, funeral plan contract or right to or interest in a funeral plan);
~~and~~
 - (g) advising on regulated mortgage contracts (article 53A of the *Regulated Activities Order*); and
 - (~~d~~ h) *agreeing to carry on a regulated activity* (article 64 of the *Regulated Activities Order*) where the *regulated activity* is one of those in (a) to (e g).
- ...
- 12.2.8 G (1) ...

- (2) The permitted scope of appointment of an *introducer appointed representative* does not include in particular:
- (a) arranging (bringing about) deals in investments or arranging (bringing about) regulated mortgage contracts; or
 - (b) advising on investments, advising on regulated mortgage contracts or other activity that might reasonably lead a *customer* to believe that he had received *advice on investments or on regulated mortgage contracts* or that the *introducer appointed representative* is permitted to give *advice on investments or on regulated mortgage contracts*.
- (3) ...

...

12.4.7 G

In assessing, under SUP 12.4.6R, whether an *introducer appointed representative* or prospective *introducer appointed representative* is otherwise suitable to act for the *firm* in that capacity, the *firm* should determine whether ~~it~~ the *introducer appointed representative* and those *persons* who will be, or who are, directly responsible for its activities are of sufficiently good reputation and otherwise fit and proper for that appointment. The *firm* should, as a minimum, verify the identity of a prospective *introducer appointed representative* and relevant *persons* but need not carry out the more extensive due diligence required for the appointment of an *appointed representative* under SUP 12.4.2R.

...

12.5.2 G

- (1) Regulations 3(1) to (3) of the *Appointed Representatives Regulations* makes it a requirement that the contract between the *firm* and the *appointed representative* (unless it prohibits the *appointed representative* from representing other counterparties) contains a provision enabling the *firm* to:
- ...
- (2) Under the *Appointed Representative Regulations*, an *appointed representative* is treated as representing other counterparties if, broadly, it:
- (a) makes arrangements (within article 25 of the *Regulated Activities Order* (Arranging deals in investments)) for *persons* to enter into investment transactions with other counterparties; or
 - (b) *arranges the safeguarding and administration of assets* by other counterparties; or

- (c) gives advice (within article 53 of the *Regulated Activities Order (Advising on investments)*) on the merits of entering into investment transactions with other counterparties;

where an "investment transaction" means a transaction to *buy, sell, subscribe for or underwrite a security, or a contractually based investment or long-term care insurance;* or

- (d) arranges:

(i) for persons to enter (or with a view to persons entering) as borrowers into regulated mortgage contracts with other counterparties; or

(ii) for a person to vary a regulated mortgage contract entered into by a person as borrower on or after 31 October 2004 with other counterparties; or

- (e) gives advice (within article 53 of the *Regulated Activities Order (Advising on investments)*) on the merits of:

(i) persons entering as borrowers into regulated mortgage contracts with other counterparties; or

(ii) persons varying regulated mortgage contracts entered into by them as borrower on or after 31 October 2004 with other counterparties.

...

Prohibition of multiple principals for certain activities

12.5.6A R

- (1) A firm must ensure that, if appointing an *appointed representative* (other than an *introducer appointed representative*), to carry on any *designated investment business for private customers* of the following regulated activities, its written contract prohibits the *appointed representative* from carrying on any of ~~these~~ the specified activities as an *appointed representative* for another firm:

(a) any designated investment business for private customers: the prohibition must cover all designated investment business for private customers;

(b) any regulated mortgage activities (other than in relation to lifetime mortgages): the prohibition must cover all regulated mortgage activities (other than lifetime mortgages);

(c) any regulated mortgage activities in relation to lifetime mortgages: the prohibition must cover all lifetime mortgages.

12.5.6B G (1) The effect of SUP 12.5.6A R(1)(a) is that, in relation to *designated investment business* with *private customers*, *appointed representatives* are restricted to one *principal*.

(2) The effect of SUP 12.5.6A R(1)(b) and (1)(c) is that, in relation to *regulated mortgage activities* with *customers*, *appointed representatives* are restricted to having two *principals*: one for *regulated mortgage contracts* and one for *lifetime mortgages*.

...

12.6.5 R ...

Regulated activities and investment services outside the scope of appointment

12.6.6 R A *firm* must take reasonable steps to ensure that each of its *appointed representatives*:

(1) ...

(2) carries on the *regulated activities* for which the *firm* has accepted responsibility in a way which is, and is held out as being, clearly distinct from any of the *appointed representative's* other business:

(a) ...

(b) which:

(i) is, or is held out as being, primarily for the purposes of investment or obtaining credit; and

(ii) is not a *regulated activity*.

...

Obligations of firms under the approved persons regime

12.6.8G (1) Some of the *controlled functions*, as set out in SUP 10.4.1R, apply to an *appointed representative* of a *firm*, other than an *introducer appointed representative*, just as they apply to a *firm* (see SUP 10.1.16R). These are the *governing functions* and the *customer functions* (other than the *investment management function*) such as, for example, CF21, the *investment adviser function*. As explained in SUP 10.1.17G(1), SUP 10.1.17G(2) and SUP 10.3.2G respectively:

(4 a) the effect of SUP 10.1.16R is that the *directors* (or their equivalent) and *senior managers* (or their equivalent) of an *appointed representative*, other than an *introducer appointed representative*, must also be approved under

section 59 of the *Act* for the performance of certain *controlled functions*;

(b) although the *customer functions* (other than the *investment manager function*) apply to an *appointed representative*, the descriptions of the functions themselves do not extend to *mortgage mediation activity*; and

(c) sections 59(1) and 59(2) of the *Act* (Approval for particular arrangements) provide that approval is necessary in respect of a *controlled function* which is performed under an *arrangement* entered into by a *firm*, or its contractors (typically an *appointed representative*), in relation to a *regulated activity*.

...

Schedule 2
Notification requirements

2 Table:

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...
SUP 12.8.1R	<i>Appointed representatives</i> - termination of appointment	(1) ... (2) ... (3) ...	Either the <i>firm</i> or the <i>appointed representative</i> notifying the other that it proposes to terminate a <u>the contract of appointment</u> or to amend it so that it no longer meets the requirements in the <u><i>Appointed Representatives Regulations</i> contained in or referred to in SUP 12.5.</u> Also, in the case of an <i>introducer appointed representative</i>, if the contract no longer meets the requirements of SUP 12.5.7 R, namely that the contract prohibits the <i>introducer</i> from: (1) in relation to a <i>designated investment or designated investment business</i> : (a) effecting an introduction between a <i>customer</i> and a <i>person</i>	...

			<p>other than the <i>firm</i> or another member of the <i>firm's marketing group</i>; and</p> <p>(b) distributing non-real-time financial promotions approved by a person other than the <i>firm</i> or another member of the <i>firm's marketing group</i> or the producer of an <i>adopted packaged product</i>; and</p> <p>(2) carrying on any regulated activity on behalf of any person other than the <i>firm</i> or another member of the <i>firm's marketing group</i>.</p>	
...

Amendments to the Glossary

Amend the following definition as shown. Underlining indicates new text and striking through indicates deleted text.

designated investment a security or a contractually-based investment (other than a funeral plan contract and a right to or interest in a funeral plan contract), that is, any of the following investments, specified in Part III of the *Regulated Activities Order* (Specified Investments), and a long-term care insurance contract which is a pure protection contract:

(a) ...

...

(l) *rights to or interests in investments* in (a) to (k) (article 89) but not including rights to or interests in rights under a long-term care insurance contract which is a pure protection contract.

Annex D

Amendments to the Supervision manual, Decision making manual and the Glossary relating to insurance mediation coming into force on 14 January 2005

In this Annex, underlining indicates new text and striking through indicates deleted text.

Amendments to the Supervision manual

Business for which an appointed representative is exempt

- 12.2.7 G (1) The *Appointed Representatives Regulations* are made by the Treasury under section 39(1) of the *Act*. These regulations describe, among other things, the business for which an *appointed representative* may be exempt, which is business which comprises any of:
- (a) dealing in investments as agent (article 21 of the *Regulated Activities Order*) where the transaction relates to a *general insurance contract*;
 - (a b) *arranging (bringing about) deals in investments (article 25(1) of the *Regulated Activities Order*) (that is in summary, deals in a *designated investment, funeral plan contract, pure protection contract, general insurance contract* or right to or interest in a funeral plan);*
 - (b c) *making arrangements with a view to transactions in investments (article 25(2) of the *Regulated Activities Order*) (that is in summary, transactions in a *designated investment, funeral plan contract, pure protection contract, general insurance contract* or right to or interest in a funeral plan);*
 - (e d) *arranging (bringing about) regulated mortgage contracts (article 25A(1) of the *Regulated Activities Order*);*
 - (d e) *making arrangements with a view to regulated mortgage contracts (article 25A(2) of the *Regulated Activities Order*);*
 - (e f) assisting in the administration and performance of a contract of insurance (article 39A of the *Regulated Activities Order*) where the activity relates to a *general insurance contract*;
 - (e g) *arranging safeguarding and administration of assets (part of article 40 of the *Regulated Activities Order*);*
 - (f h) *advising on investments (article 53 of the *Regulated Activities Order*) (that is in summary, on any *designated investment, funeral plan contract pure protection contract, general insurance contract* or right to or interest in a funeral plan);*
and

- (g i) *advising on regulated mortgage contracts* (article 53A of the *Regulated Activities Order*); and
- (h j) *agreeing to carry on a regulated activity* (article 64 of the *Regulated Activities Order*) where the *regulated activity* is one of those in (a) to (e i).

...

12.2.8 G

- (1) ...
- (2) The permitted scope of appointment of an *introducer appointed representative* does not include in particular:
 - (a) *dealing in investments as agent*; or
 - (a b) *arranging (bringing about) deals in investments* or *arranging (bringing about) regulated mortgage contracts*; or
 - (c) *assisting in the administration and performance of a contract of insurance where the transaction relates to a general insurance contract*; or
 - (b d) *advising on investments, advising on regulated mortgage contracts* or other activity that might reasonably lead a *customer* to believe that he had received *advice on investments* or on *regulated mortgage contracts* or that the *introducer appointed representative* is permitted to give *advice on investments* or on *regulated mortgage contracts*.

...

...

Appointment of an appointed representative (other than an introducer appointed representative)

12.4.2 R

Before a *firm* appoints a *person* as an *appointed representative* (other than an *introducer appointed representative*) and on a continuing basis, it must ~~take reasonable care to ensure~~ establish on reasonable grounds that:

- (1) ...
- (2) the *person*:
 - (a) is solvent;
 - (b) is otherwise suitable to act for the *firm* in that capacity; and
 - (c) has no *close links* which would be likely to prevent the effective supervision of the *person* by the *firm*;

...

12.4.3 G In assessing, under *SUP* 12.4.2R(2)(a) and (b), whether an *appointed representative* or prospective *appointed representative* is solvent and otherwise suitable, a *firm* should determine, **among other matters, whether the person is likely to be adversely influenced by its financial position in the conduct of the business for which the firm is responsible.** This might arise, for example, if the *person* has cashflow problems and is not able to service its debts. Guidance for *firms* on assessing the financial position of an *appointed representative* or prospective *appointed representative* is given in *SUP* 12 Ann 1G.

...

12.4.4 G In assessing, under *SUP* 12.4.2R(2)(b), whether an *appointed representative* or prospective *appointed representative* is otherwise suitable to act for the *firm* in that capacity, a *firm* should consider:

...

...

12.4.7 G In assessing, under *SUP* 12.4.6R(1), whether an *introducer appointed representative* or prospective *introducer appointed representative* is otherwise suitable to act for the *firm* in that capacity, the *firm* should determine whether the *introducer appointed representative* and those *persons* who will be, or who are, directly responsible for its activities

...

12.4.8 G ...

Appointed representative carrying on insurance mediation

12.4.8A R Before a firm appoints a person as an appointed representative to carry on insurance mediation activity, it must in relation to insurance mediation activity ensure that the person will comply on appointment, and will continue to comply with, the provisions of PRU 9.1.8R and PRU 9.1.10R (Knowledge and ability, and good repute) as if the appointed representative were a firm.

12.4.8B G In assessing, under SUP 12.4.8A R, whether an appointed representative, or prospective appointed representative, has established the knowledge and ability requirements for persons within its management structure and for those directly involved in its insurance mediation activity, a firm should refer to TC.

12.4.9 G (1) An appointed representative must not commence an insurance mediation activity until he is included on the Register as carrying on such activities (see SUP 12.5.2G(3)).

(2) If an appointed representative's scope of appointment is to include an insurance mediation activity, the principal must notify the FSA of the appointment before the appointed representative commences that activity (see SUP 12.7.1R(1)).

(3) As an exception, pre-notification is not required if the appointed representative is already included on the Register as carrying on insurance mediation activities in another capacity (for example, as the appointed representative of another principal).

12.4.10 G

(1) The FSA has the power to decide not to include on the Register (or to remove from the Register) an appointed representative whose scope of appointment includes an insurance mediation activity, if it appears to the FSA that he is not a fit and proper person to carry on those activities (article 95 of the Regulated Activities Order).

(2) If the FSA proposes to use the power in (1), it must give the appointed representative a warning notice. If the FSA decides to proceed with its proposal, it must give the appointed representative a decision notice. The procedures followed by the FSA in relation to the giving of warning notices and decision notices are set out in DEC 2.

(3) An appointed representative may apply to the FSA for a determination of the kind referred to in (1) to be revoked. If the FSA proposes to refuse the application, it must give the appointed representative a warning notice, and if the FSA decides to proceed with the refusal, it must give the appointed representative a decision notice.

...

12.5.2 G

...

(2) Under the Appointed Representative Regulations, an appointed representative is treated as representing other counterparties if, broadly, it:

...

(d) assists in the administration and performance of a contract of insurance (article 39A of the Regulated Activities Order) where the activity relates to a general insurance contract;

where an "investment transaction" means a transaction to buy, sell, subscribe for or underwrite a security or a contractually based investment-relevant investment (that is, a designated investment, funeral plan contract, pure protection contract, general insurance contract or right to or interest in a funeral plan- ; or

(e) arranges:

(i) ...

(ii) ...

(f) gives advice on the merits of:

(i) ...

(ii)...

(3) If the scope of appointment covers, in relation to a *contract of insurance, dealing in investments as agent, arranging, assisting in the administration and performance of a contract of insurance or advising on investments*, regulation 3(4) of the *Appointed Representatives Regulations* makes it a requirement that the contract between the *firm* and the *appointed representative* contains a provision providing that the *appointed representative* is not permitted or required to carry on such business unless he is included in the *Register* as carrying on *insurance mediation activities*.

...

12.5.6B G ...

12.5.6C G As SUP 12.5.6A R does not apply to *non-investment insurance contracts*, there are no restrictions on the number of *principals* an *appointed representative* may have in relation to those contracts.

...

12.6 Continuing obligations of firms with appointed representatives

Suitability etc. of appointed representatives

12.6.1R If at any time a *firm* has reasonable grounds to believe that the conditions in SUP 12.4.2R, ~~or~~ SUP 12.4.6R or SUP 12.4.8A R (as applicable) are not satisfied, or are likely not to be satisfied, in relation to any of its *appointed representatives*, the *firm* must:

...

Appointed representatives not to hold client money

12.6.5R (1) A *firm* must not permit an *appointed representative* to hold *client money* unless the *firm* is an *insurance intermediary* acting in accordance with CASS 5.5.18R to CASS 5.5.23R (which include provision for periodic segregation and reconciliation).

(2) The *firm* must take reasonable steps to ensure that if *client money* is received by the *appointed representative*, it is paid into a *client bank account* of the *firm*, or forwarded to the *firm*, in accordance with: ~~COB 9.3.49R to COB 9.3.51R.~~

(a) CASS 4.3.15R to CASS 4.3.17R; or

(b) CASS 5.5.18R to CASS 5.5.21R unless acting in accordance with CASS 5.5.23R (Periodic segregation and reconciliation).

Regulated activities and investment services outside the scope of appointment

12.6.6 R

A *firm* must take reasonable steps to ensure that each of its *appointed representatives*:

...

(2) carries on the *regulated activities* for which the *firm* has accepted responsibility in a way which is, and is held out as being, clearly distinct from any of the *appointed representative's* other business:

(a) ...

(b) which:

(i) is, or is held out as being, primarily for the purposes of investment or obtaining credit, or obtaining insurance cover; and

(ii)

...

Obligations of firms under the approved persons regime

12.6.8G

(1) ...

(a) ...

(b) although the *customer functions* (other than the *investment manager function*) apply to an *appointed representative*, the descriptions of the functions themselves do not extend to *insurance mediation activity* or *mortgage mediation activity*; and

(c) ...

(2) The *approved persons* regime applies differently to an *appointed representative* whose scope of appointment includes *insurance mediation activity* in relation to *non-investment insurance contracts* but no other *regulated activity* and whose principal purpose is to carry on activities other than *regulated activities*. These *appointed representatives* need only one person performing one of the *governing functions*. This means that only one *director* (or equivalent) of these *appointed representatives* must be approved under section 59 of the *Act* for the performance of the *director function*, the *chief executive function*, the *partner function* or the *director of unincorporated association function*, whichever is the most appropriate (see SUP 10.1.16A R and SUP 10.1.17G(3)).

...

12.7 Notification requirements

Notification of appointment of an appointed representative

- 12.7.1 R
- (1) A *firm* which appoints an *appointed representative* must give written notice of the appointment to the *FSA*;
- (a) if the appointment covers *insurance mediation activities* and the *appointed representative* is not included on the *Register* as carrying on such *activities* in another capacity before (see *SUP 12.4.9G*); or
- (b) (otherwise) not more than ten *business days* after ~~the date the appointment takes effect.~~ ;
- the *appointed representative* begins to carry on *regulated activities* under the contract.

(2) ...

...

12.7.2 G A *firm's* notice under *SUP 12.7.1R* should give details of the *appointed representative* and the *regulated activities* which the *firm* is, or intends to, carry on through the *appointed representative*, including:

(1) ...

...

(3) ...; and

(4) ...; and

(5) where the *appointed representative* is not an individual, the name of the individuals who are responsible for the management of the business carried on by the *appointed representative* so far as it relates to *insurance mediation activity*.

...

12.7.4G (1) *Firms* can obtain a standard notification form from either the *FSA* website at www.fsa.gov.uk or by post from the Corporate Authorisation Department Monitoring and Notifications Department.

~~(2) A *firm's* notice under *SUP 12.7.1R* should be returned to the Corporate Authorisations Division at the address below.~~

...

Notification of changes in information given to the FSA

12.7.7 R

(1) If:

- (a) the scope of appointment of an appointed representative is extended to cover insurance mediation activities for the first time;
- (b) the appointed representative is not included on the Register as carrying on insurance mediation activities in another capacity; and
- (c) the scope of appointment of an appointed representative ceases to include insurance mediation activity;

the appointed representative's principal must give written notice to the FSA of that change before the appointed representative begins to carry on insurance mediation activities under the contract (see SUP 12.4.9G).

(+ 2) A firm must give written notice to the FSA of a any other change in any information provided to the FSA under SUP 12.7.1R, within ten *business days* of a the change being made or, if later, as soon as it becomes aware of the change. The notice must state the information that has changed.

(2 3) A firm's notification under (1) and (2) must be given to a member of or addressed for the attention of the Monitoring and Notifications Department ~~Corporate Authorisation department~~ at the address given in SUP 12.5.7R.

Notification of changes in conditions of appointment

12.7.8R

(1) A firm must give written notice to the FSA as soon as it has reasonable grounds to believe that any of the conditions in SUP 12.4.2R, ~~or SUP 12.4.6R~~ or SUP 12.4.8A R (as applicable) are not satisfied, or are likely not to be satisfied, in relation to any of its *appointed representatives*.

...

...

12.8.4 G

...

Removal of an appointed representative from the Register

12.8.5 G

The FSA has the power to remove from the Register an appointed representative, whose scope of appointment covers insurance mediation activities (see SUP 12.4.9G and SUP 12.4.10G).

...

Schedule 2
Notification requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
SUP 12.7.1R	<i>Appointed representatives</i>	...	A firm appointing an appointed representative	(1) (if the <u>appointment covers insurance mediation activities and the appointed representative is not included on the Register as carrying on such activities in another capacity</u>) before; or (2) (otherwise) <u>Ten business days after the appointment takes effect;</u> <u>the appointed representative begins to carry on regulated activities under the contract.</u>
SUP 12.7.7R(1)	<u>Appointed representatives - extension of scope of appointment to cover insurance mediation activities for the first time</u>	<u>That fact</u>	<u>Extension of scope of appointment to cover insurance mediation activities for the first time and the appointed representative is not included on the Register as carrying on insurance mediation activities in another capacity</u>	<u>Before the appointed representative begins to carry on insurance mediation activities under the contract</u>
SUP 12.7.7R(2)	<i>Appointed representatives - change in other informatio</i>	...	A change being made to the other information provided under SUP 12.7.1R or the firm	...

	n		becoming aware of the change	
SUP 12.7.8R	<i>Appointed representatives</i> belief that appointment conditions not met		The <i>firm</i> having reasonable grounds for believing that the conditions in <i>SUP 12.4.2R</i> , or <i>SUP 12.4.6R</i> or <i>SUP 12.4.8A R</i> are not being satisfied.	
...			...	

Amendments to the Decision making manual

DEC 2 Ann1 Statutory notice procedure: Warning notice and decision notice procedure

1 Table: List of warning notices and decision notices under the Act (other than Part VI) and certain other enactments

Note: Third party rights and access to *FSA* material apply to the powers listed in this table where indicated by an asterisk * (see *DEC 2.4*)

...
Paragraph 20 of schedule 5	When the <i>FSA</i> is proposing/deciding to use the disqualification powers under section 249(1)*	<i>ENF 17</i>	<i>RDC</i>
<u>Insurance Intermediaries Order reference</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Article 95(2)/(3)</u>	when the <i>FSA</i> is proposing/deciding not to include, or to remove, an <i>appointed representative</i> from the <i>Register</i> *	<i>SUP 12.4.10G</i>	<i>RDC</i>
<u>Article 95(7)/(8)</u>	when the <i>FSA</i> is proposing/deciding to refuse an application to revoke a determination not to include, or to remove, an <i>appointed representative</i> from the <i>Register</i> *	<i>SUP 12.4.10G</i>	<i>RDC</i>
Note 1: ...			
...			

...

4.1.4G The RDC has responsibility for *statutory notice decisions* and *statutory notice associated decisions* if the FSA proposes or takes any of the following actions:

(1) ...

...

(17) ...; ~~and~~

(18) ...; ~~and~~

(19) not to include, or to remove, an appointed representative from the Register, or to refuse an application to revoke such a determination.

Amendments to the Glossary

Insert the following new definition in the appropriate alphabetical position.

relevant investment (in accordance with article 3(1) of the *Regulated Activities Order* (Interpretation)):

- (a) a *contractually based investment*;
- (b) a *pure protection contract*;
- (c) a *general insurance contract*;
- (d) rights to or interests in an *investment* falling within (a).

Amend the following definition as shown. Underlining indicates new text and striking through indicated deleted text.

making arrangements with a view to transactions in investments the *regulated activity*, specified in article 25(2) of the *Regulated Activities Order*, which is in summary: making arrangements with a view to a *person* who participates in the arrangements *buying, selling*, subscribing for or underwriting any of the following *investments* (whether as principal or as agent):

- (a) a *designated investment*;
- (b) a *funeral plan contract*;
- (c) the *underwriting capacity of a Lloyd's syndicate*;
- (d) *membership of a Lloyd's syndicate*;
- (e) *rights to or interests in investments* in (b), (c) or (d);
- (f) a *pure protection contract*;
- (g) a *general insurance contract*.

ADDENDUM

APPOINTED REPRESENTATIVES INSTRUMENT 2004

Annex A of this instrument is amended by the substitution of 9B for 9A in column 1 of SUP Transitional provisions, Table 2. In this Addendum, underlining indicates new text and striking through indicates deleted text.

SUP Transitional provisions, Table 2

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
...					
9	...				
9A <u>B</u>	<i>SUP 12.5</i>	R	<i>A firm conducting designated investment business need not amend its written contract with an appointed representative (appointed before 15 January 2004) to take account of amendments to SUP 12.5 coming into force between 30 June 2004 and 30 June 2005, until 30 June 2005 or the date on which the contract is next updated (whichever is earlier).</i>	From 30 June 2004 until 30 June 2005, that is, 12 months.	<i>Commencement, and as amended with effect from 30 June 2004</i>
...					

...