Governance & Professionalism Policy
Financial Conduct Authority
12 Endeavour Square
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By email: cp21-34@fca.org.uk

3 March 2022

Dear Governance & Professionalism Policy team

RE: CP21/34 Improving the Appointed Representative regime

Introduction

We are writing on behalf of the British Private Equity and Venture Capital Association ("BVCA"), which is the industry body and public policy advocate for the private equity and venture capital industry in the UK. With a membership of over 750 firms, we represent the vast majority of all UK-based private equity and venture capital firms, as well as their professional advisers and investors. Between 2016 and 2020, BVCA members invested over £47bn into around 3,500 UK businesses, in sectors across the UK economy ranging from heavy infrastructure to emerging technology. Companies backed by private equity and venture capital currently employ over 1.1m people in the UK and 90% of the businesses our members invest in are small and medium-sized businesses.

We welcome the opportunity to provide our feedback on improving the Appointed Representatives (AR) regime.

Summary and key comments

The BVCA believes the AR regime provides a valuable and flexible alternative to full authorisation for UK firms. BVCA members use ARs in a variety of situations and wish to see the regime retained and strengthened. We support measures that would improve the existing regime and enhance consumer protection and are generally supportive of the FCA's proposals. However, it is important that changes to the regime do not reduce its advantages, for both consumers and industry, without a commensurate increase in protections. The proposals will increase the burden on principals, which will increase the costs of the regime and in turn is likely to be passed on to consumers. These increased burdens and costs must be proportionate and achieve the FCA's consumer protection objective. We have highlighted in our response where we consider that the proposals would adversely affect the benefits of the regime without a corresponding increase in consumer protection.

BVCA answers to consultation questions

We have only responded to consultation questions on which our members have specific views.

1. Do you agree with our proposal to require principals to provide more information on the business of their ARs conduct?

Generally we agree that the information that the FCA proposals will require principals to provide is sensible. However, we question the need for principals to provide information about the scale of non-regulated business in the first year following appointment of the AR. It is not clear what purpose would

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be served by providing such information, and it would require the AR to provide the principal with information about business for which the principal is not responsible.

As a general comment, we would also suggest that the proposals would benefit from express guidance that firms may apply risk-based proportionality. In particular, ARs are often used in intra-group situations: where the AR is part of the same corporate group as its principal. In these circumstances, principals have greater awareness and oversight over the activity of their ARs. Therefore, detailed information gathering and reporting would be unnecessary and we believe that principals should be permitted to provide more limited or less detailed information. In addition to the information regarding ARs, this proportionate approach should also apply to the annual assessment, the 'reasonable steps' and the adequate resources, for example.

2. Do you agree with the reporting timeframes we propose for reporting?

We are particularly concerned that the requirement for the principal to provide information 60 calendar days before the appointment takes effect will adversely affect the flexibility of the AR regime. One of the advantages of the existing regime is that an AR can be appointed relatively quickly, particularly when compared to seeking full authorisation. This can be important in various circumstances, particularly where speed to market is critical – for example, in the context of a new business such as a university spin-out, or a carve-out transaction involving an asset purchase where the business being acquired involves the conduct of regulated activities. It is also important in the context of fast-growth start-ups, who use the AR regime for its speed when compared with direct authorisation. A mandated minimum notice period for these businesses will prolong the time they incur running costs while being unable to operate. Extending this period increases the capital intensity of early stage fintech start-ups and reduces the likelihood of new products making it to market, in turn damaging consumer choice. Requiring 60 calendar days' notice will create a significant delay in the appointment of an AR compared with the current regime, thereby damaging the competitiveness of the UK as a jurisdiction to locate or grow young businesses.

We note that the CP suggests that the FCA will require 60 calendar days in order to assess whether the principal has carried out appropriate due diligence, put oversight arrangements in place and considered the financial solvency and suitability of the AR. This suggests that the FCA intends to undertake a more extensive assessment of AR appointments prior to such appointments taking effect. Such pre-appointment assessments will impose a significant burden on the FCA, and we believe unnecessary prior to the appointment of the AR. It is a central tenet of the AR regime that the principal has regulatory obligations in relation to the appointment of ARs, and we would suggest that the FCA could assess whether the principal is complying with these obligations as part of its supervisory processes rather than undertaking an assessment each time an AR is appointed.

If there is a 60 calendar day notification requirement then we would urge the FCA to ensure that other regulatory processes which are often tied to the appointment of an AR are aligned to this timeframe. In particular, firms often experience a significant delay in receiving approvals for the approved person(s) that are appointed to ARs.

Related to this we are concerned that the FCA could in practice seek to extend the 60 day period (or whatever period is chosen) through late allocation of case officers, asking questions about the application, etc. This would introduce further timing uncertainty and delay.

If any additional checks are to take place they should not interfere with the process of taking on new ARs.

3. Do you have any suggestions on how the potential burden, particularly for firms with many ARs, of providing this information to us could be managed?

We would suggest that the FCA consider whether all the information requested is really required for an assessment of the risks presented by the AR (for example, information about the AR's non-regulated activities). As set out above, we also think it would be helpful to introduce an express recognition of proportionality for intra-group AR appointments.

4. Do you agree with our proposals to verify the details of their ARs?

Yes. Our members already check and update AR details on a periodic and ad hoc basis.

5. Do you agree with our proposal to include details on the nature of regulated activities of each AR that a principal takes responsibility for on the AR register?

Yes. We think it is sensible for the Financial Services Register to include a public record of the regulated activities an AR is able to undertake under the responsibility of the principal firm.

6. Do you agree with our proposal to require principals to provide complaints data on their ARs?

Yes.

7. Do you agree with our proposal to require principals to provide revenue information for their ARs?

We question whether principals should be required to provide information about the ARs' revenues from non-regulated activities. By definition these are not activities for which the principal is responsible. The proposals could require an AR to provide commercially confidential information to a principal about business activities which are unrelated to the principal. If the FCA is concerned to understand the scale of the AR's overall activities, then it could require the principal to provide the annual accounts of the AR, for example.

8. Do you agree with our proposal to require principals to notify us if they provide or intend to provide regulatory hosting services?

We do not think it is unreasonable that firms providing, or intending to provide, regulatory hosting services should have to notify the FCA.

20. What do you consider are the harms and benefits in the regulatory hosting model? It would be helpful to set out your views on whether principals providing regulatory hosting services can exercise adequate oversight over their ARs and be commercially viable, and if so how.

We consider that regulatory hosting can provide a valuable service as either a prelude, or an alternative, to full authorisation. It provides an option for start-up businesses to commence regulated activities without having to wait the 6 – 12 months that a full authorisation process can take. In principle, we think the regulatory hosting model, where an authorised firm, comprising individuals with appropriate regulatory and compliance expertise, is responsible for overseeing the activities of the AR, is capable of delivering a flexible alternative to full authorisation without undue consumer detriment.

We agree with the FCA that the resources of the regulatory principal and its ability to exercise adequate oversight are key to ensuring the regime provides appropriate consumer protections. If the FCA's rules set out its expectations in terms of the standard of oversight and the adequacy of resources to exercise that oversight, then we consider that the FCA should be able to monitor and assess firms that provide regulatory hosting to ensure that their senior management, resources and systems and controls are appropriate and adequate. Providing a regulatory hosting service could be treated as a particular category of AR arrangement, which is made subject to additional requirements. The FCA could require that firms seek specific approval from it prior to commencing regulatory hosting services, and the FCA could use its

powers to, for example, limit the number or type of ARs which an authorised firm is permitted to host to ensure that the principal's resources are appropriate for the number of ARs it has.

Yours sincerely,

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