

APPOINTED REPRESENTATIVE MODEL

SOFTBANK, DAVID CAMERON AND THE APPOINTED REPRESENTATIVE MODEL

There has been considerable fallout from the Greensill scandal. Examples include SoftBank's £500m loss on their Vision Fund and David Cameron's unsuccessful attempts to seek funding from the Treasury, to name a couple. One of the effects that received less press attention is the questions it has raised regarding the Appointed Representative (AR) model.

The FCA and the Treasury recently published papers looking at the AR model through a different lens following the Greensill collapse. Combined, these reports instigated a review process which considers what changes may be needed to ensure the AR model operates safely and how to manage exposures in the future.

BIRTH OF APPOINTED REPRESENTATIVES

Before we digest the contents of the review, it's worth pausing to recap on how the AR model works and the original aim of the model. ARs were first introduced by the Finance Services Act 1986. The key concept was to allow unregulated individuals to act under the responsibility of a regulated entity (principal firm) without having to be authorised themselves. The FSMA 2000 continued these developments allowing ARs to undertake their business activities independent of their principal firm, instead of being required to be connected to the principal firm. The model allowed smaller companies a faster route to market and to escape the monetary and management time costs of direct authorisation from the FCA. This initial rationale therefore sought to boost innovation and benefit consumers by offering greater choice from regulated entities. This during a period where the financial services sector became a key segment of the UK economy.

Overall, the model has broadly worked in its aims. One such example is allowing car dealers to act as credit brokers and

sell add-on general insurance products. This has improved competition in the market for consumers which is a great positive. However, like with most rule changes, there have been some unintended consequences as certain sections of the model have grown far beyond the original intent of the FCA.

REGULATORY HOSTING SERVICES

The AR model has given rise to Regulatory Hosting companies, created specifically to provide regulatory oversight services to ARs. Prudent approaches by some have seen companies specifically limit the number of ARs they hold or only consider ARs within their core specialism. However, there is concern from both the FCA and companies in the sector that the current framework has allowed some companies to act irresponsibly. Unfortunately, this has led to instances of significant harm for consumers, particularly those classified as retail investors, and has also meant that those companies exercising care and prudence have found themselves under the same FCA spotlight

PROTEAN RISK

Protean continue to advise several clients in this sector as a specialist, boutique insurance broker for FCA regulated businesses. Many of our clients welcome the intention of the FCA to curb bad practices and limit significant harm to consumers. However, there is concern that reform could be disproportionate, stifle the positives of the AR model in facilitating innovation and broader access to financial services, and unfairly penalise principal firms that do operate with integrity and diligence.

We tailor our market presentation for each client to give a clear, detailed picture of the business to insurers and challenge holistic regulatory concerns with a thorough understanding of the client's risk profile. Now more than ever, it is essential to engage with an expert broker that adopts a bespoke approach and seeks to work with the insurance market to dissipate concerns they may have in relation to the wider sector.

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FINDINGS OF THE REPORT

The FCA reports that their supervision work has found some regulatory hosting platforms were, "applying too little resources to overseeing ARs" and displayed a "lack of skills and experience" in the different markets in which the ARs operate and lack of appropriate systems and controls in place to enable principals to effectively oversee their AR. Figures in the report also show that some regulatory hosting companies have on average more complaints and more FCA supervisory cases against them than other principals, though the proportion of these that lead to valid claims is undetermined.

Further to the above, the FCA has put forward potential proposals that seek to reduce the potential for harm. These include:

- Prohibit the engagement of ARs which operate businesses which are materially distinct from that of the principal
- Limit the maximum size of ARs before requiring them to become fully authorised in their own right and require the FCA's specific consent to provide regulatory hosting services or to have larger ARs than the principal
- Limit the range or scope of regulated activities that regulatory hosts can oversee and / or the number of ARs they can have
- Require principals that provide these services to meet additional requirements to those that apply to other principals
- Require firms that want to provide regulatory hosting services to notify the FCA of this intention before beginning to provide these services
- Require principals to regularly review the relative size/scale of business carried on by their ARs and consider whether it remains appropriate.

The report does raise the possibility of banning the use of regulatory hosting services. This would be somewhat of a lurch, and it will be important for the FCA to ensure it does not tar all entities in this space with the same brush. Improving the oversight of some of the regulatory hosting platforms is certainly necessary to improve outcomes to consumers from both a choice and quality perspective. It is worth remembering, however, that the intentions of the AR model have largely been positive in introducing much needed competition to the market. This is particularly apt at a time where innovation must be encouraged in the current economic conditions.