Preparing for Brexit: EEA Firms

UK Temporary Permissions Regime ("TPR")

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The UK FCA and PRA propose to implement the TPR if the UK leaves the European Union on 29 March 2019 without an implementation (or transitional) period, to ensure that EEA firms currently operating under an incoming passport (either from a UK branch or on a cross-border services basis into the UK) can continue to carry out regulated activities in the UK until they receive new direct authorisation by the UK regulators. An additional regime to address contractual continuity (the financial services contracts regime) is currently being consulted on by the FCA, and will be covered in a separate HSF briefing.

Notification process

- To make use of the TPR, firms need to notify the FCA (and PRA if relevant) via Connect before 29 March 2019 that they intend to apply for UK authorisation. Fund managers will also need to notify the FCA of which passported funds they wish to continue to market in the UK, also using Connect. Failure to do so will mean that the firm or fund will not be able to use the TPR. (If incoming EEA firms have already submitted an application for UK authorisation, they will automatically be entered into the TPR).
- After exit day, firms who have notified the regulators (**TP Firms**) will be allocated a "landing slot" within which they must submit an application for full UK authorisation. The current proposal is 3 month slots.

Which rules apply to TP Firms?

- The aim of the TPR is to preserve the compliance status quo as far as possible.

Solo-regulated firms (FCA only)

- TP Firms will need to comply with:
  - all FCA rules currently applicable to them;
  - all FCA rules which implement a requirement of an EU directive and which are currently reserved to a TP Firm's home state responsibility. But the FCA intends to accept "substituted compliance" – if firms can demonstrate that they continue to comply with equivalent home state rules for UK business, they will be deemed to comply with FCA rules; and
  - certain additional rules which the UK regulators believe are necessary to provide consumer protections, or which relate to funding costs of UK regulation.

Dual-regulated firms (FCA and PRA)

- Additional PRA rules will apply to dual-regulated TP Firms.
- TP Firms with a UK branch will be required to comply with the same rules that apply to other third country (non-EEA) firms with UK branches.
- TP Firms without a branch (i.e. providing cross-border services only) will be subject to a more limited set of rules, i.e.:
  - PRA rules which already apply to third country firms without a UK branch;
  - certain FSCS rules; and
  - certain SMCR requirements which apply to third country firms' branches (with certain proposed amendments).

TPR timeline for firms*

7 January 2019
FCA opened notification portal on Connect

28 March 2019
Final date to submit TPR notification

29 March 2019
Brexit day and commencement of TPR (if no deal)
TP Firms will be allocated a "landing slot" during which a full application for UK authorisation will need to be submitted

October – December 2019
Expected timing for first landing slots

January – March 2021
Expected timing for final landing slots

March 2022
End of TPR
From this point, TP Firms will either need to have obtained UK authorisation or cease regulated activities in the UK (unless there is an available exemption)

* Although the full timeline for funds in the TPR is not yet available, notifications for entry into the TPR must be submitted pre-29 March 2019

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Which firms and funds can use the regime?

- EEA firms, including credit institutions, investment firms, consumer credit firms, insurers, insurance intermediaries, electronic money institutions, payment institutions and registered account information service providers passporting into the UK before exit day
- Treaty firms which qualify for authorisation before exit day
- EEA-domiciled UCITS and AIFs currently marketed in the UK

Funds – application of the TPR

- Managers of EEA-domiciled UCITS and AIFs which are marketed in the UK will need to notify the FCA that they want temporary permission to continue marketing those EEA-domiciled funds to investors in the UK on the same as basis as before exit day.
- The notification will need to be done via Connect, and the window will close before 29 March 2019.
- Funds marketed under a temporary permission will be subject to the same UK rules that applied to them before Brexit date.
- The FCA will not supervise the compliance of the fund or fund manager with rules in its home state.
- However, managers relying on the TPR will not be able to:
    - add any new funds to those already in the TPR (**except** new sub-funds of EEA UCITS that are in the TPR on exit day);
    - add new sub-funds to umbrella schemes in the TPR; or
    - change or extend the category of customer to be marketed to in the UK.

TPR **NOT** AVAILABLE FOR CREDIT RATING AGENCIES, TRADE REPOSITORIES AND DATA REPORTING SERVICES

GIBRALTAR-BASED FIRMS PASSPORTING INTO THE UK CAN CONTINUE TO OPERATE AS THEY DO NOW

Next steps for entering the TPR

- Ensure your UK FS Register (passport and any top-permission) entry is accurate and up-to-date for the activities will be carried out post-Brexit
- Notify the FCA via Connect by 28 March 2019
- Undertake gap analysis of applicable FCA (and if applicable PRA) rules to prepare for UK compliance

10 January 2019

This briefing has been based on the FCA and PRA consultation papers on the TPR. The final rules may be subject to change. The FCA and PRA regularly publish updates on the TPR. For more information, see their respective webpages available at: www.fca.org.uk/brexit/temporary-permissions-regime and www.bankofengland.co.uk/eu-withdrawal/temporary-permissions-regime

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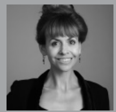

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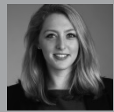

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