



April 2019

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Brexit — The Temporary Permissions Regime (“TPR”) — A Reminder

Of relevance to

All firms marketing EEA domiciled funds in the UK

In the event of a no-deal Brexit, reciprocal market access would no longer be available through the passporting arrangements between the EU and the UK for firms and investment funds. The UK would become a ‘third-country’ and EEA-based firms might need to seek authorisation in the UK to continue to access the UK market. Additionally, EEA-domiciled investment funds would need to seek recognition in the UK to continue to be marketed here.

Funds that will be able to use the TPR are:

- EEA-domiciled UCITS funds that have been recognised under FSMA s.264 to market to all investors in the UK;
- EEA-domiciled AIFs which are entitled to be marketed to professional investors in the UK under Regulations 49 or 50 of the Alternative Investment Fund Managers Regulations 2013, following receipt by the FCA of a regulator’s notice or following approval by the FCA, where required;
- EuVECA and EuSEF which immediately before exit day have been notified to the FCA for marketing in the UK in line with Article 16(1) of the EuVECA Regulation or Article 17(1) of the EuSEF Regulation; and
- ELTIF which are entitled to be marketed to all investors, or to professional investors only, in line with the notification procedures for AIFs described above.

Should firms market EEA domiciled funds as outlined above in the UK, in order to be able to continue to do this following a no-deal Brexit, notifications via the Connect system need to be made to the FCA.

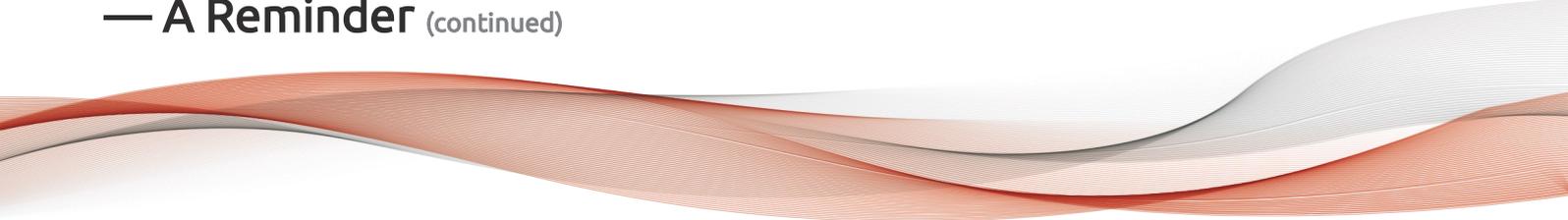
As of the 3rd April, the FCA have advised that the notifications should be made by the close of business on 11 April 2019.

For the avoidance of doubt, the following funds can continue to market in the UK and do not need to use the TPR:

- UK authorised funds — (i.e. UCITS schemes, non-UCITS retail schemes and qualified investor schemes);
- funds marketing in the UK using certain exemptions in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 or the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001;
- non-EEA AIFs marketed in the UK through private placement, including certain feeder funds dedicated to a non-EEA master AIF;

continued on next page

Brexit — The Temporary Permissions Regime (“TPR”) — A Reminder (continued)



- AIFs which have received individual recognition from the FCA under FSMA s.272, giving them the right to market to all investors in the UK; and
- closed-ended investment companies whose securities are officially listed or admitted to trading on a regulated UK market.

Brexit — FCA Statement on share trading obligations

Of relevance to
All Firms

Useful links

[fca.org.uk/news/statements/fca-statement-share-trading-obligations](https://www.fca.org.uk/news/statements/fca-statement-share-trading-obligations)

The FCA has issued the following statement in response to ESMA's statement of share trading obligations under MiFID II:

"The EU MiFID II and on-shored UK MiFID regimes both have share trading obligations ("STOs") which mandate investment firms to trade certain shares on regulated markets, multilateral trading facilities, systematic internalisers or third-country trading venues assessed as equivalent by the EU and UK respectively.

ESMA has today published its expectations for the STO in the EU in the event of a no-deal Brexit and in the absence of an equivalence decision in respect of the UK by the European Commission (EC).

The statement from ESMA has made clear that the EU's STO will apply to all shares traded on EU27 trading venues that are shares of firms incorporated in the EU (EU ISINs), and of companies incorporated in the UK (GB ISINs) where these companies' shares are 'liquid' in the EU. This means EU banks, funds and asset managers will not be able to trade these GB or EU ISIN shares in the UK, even where the UK is the home listing of the British or EU company.

ESMA's stated goal has been to provide as much certainty as possible and to mitigate potential adverse effects of a trading obligation in these circumstances.

Whilst the FCA acknowledges that clarifying the application of the STO in the event of a no-deal Brexit will help to provide certainty, we believe that only a comprehensive and coordinated approach can provide the necessary certainty to market actors. Without this approach, it will not be possible to address the issues of conflicting obligations applying to the same instruments. Where this is the case, firms may be limited to trading certain shares only in either the UK or the EU or in some cases be caught by overlapping obligations.

The onshoring of EU legislation in preparation for Brexit means that the UK will, as well as the EU, have an STO. Applying the same approach as ESMA to the scope of the UK STO would, based on current trading data, mean there would be a large degree of overlap between the UK and EU obligations.

This has the potential to cause disruption to market participants and issuers of shares based in both the UK and the EU, in terms of access to liquidity and could result in detriment for client best execution. We therefore urge further dialogue on this issue in order to minimise risks of disruption in the interests of orderly markets.

The FCA stands ready to engage constructively with ESMA and other European authorities to achieve this".

<https://www.fca.org.uk/news/statements/fca-statement-share-trading-obligations>

Brexit — PRA and FCA agree Memorandum of Understanding with the European Banking Authority

Of relevance to
All firms

Useful links

[fca.org.uk/news/press-releases/pr-a-and-fca-agree-memorandum-understanding-mou-eba](https://www.fca.org.uk/news/press-releases/pr-a-and-fca-agree-memorandum-understanding-mou-eba)

The Prudential Regulation Authority, the Financial Conduct Authority (FCA) and European Banking Authority (EBA) have announced that they have agreed a template Memorandum of Understanding (MoU). The template sets out the expectations for supervisory cooperation and information-sharing arrangements between UK and EU/EEA national authorities.

Following agreement on the template, the UK authorities and EU/EEA national authorities intend to move swiftly to sign bilateral MoUs. These bilateral MoUs will allow uninterrupted information-sharing and supervisory cooperation in the event of a no-deal scenario

Andrew Bailey, Chief Executive of the FCA, said:

“The bilateral MoUs will ensure that there will be no interruption in exchange of supervisory information in the event of a no-deal exit from the EU. It sends a clear signal of the determination of the UK and EU authorities to work together. The MoUs build on years of continued working, and will ensure these can carry on if they UK leaves the EU without an agreement. We are encouraged by the approach of the EBA on this vitally important matter.”

The MoUs will only take effect in the event of a no-deal scenario.

<https://www.fca.org.uk/news/press-releases/pr-a-and-fca-agree-memorandum-understanding-mou-eba>

Brexit — FCA statement on various MiFID obligations and benchmarks regulation if the UK leaves the EU without a transition period

Of relevance to
All firms

Useful links

[esma.europa.eu/press-news/esma-news/
esma-sets-out-its-approach-several-
mifid-ii-mifir-and-bmr-provisions-under-
no](https://esma.europa.eu/press-news/esma-news/esma-sets-out-its-approach-several-mifid-ii-mifir-and-bmr-provisions-under-no)

[fca.org.uk/news/statements/statement-
various-mifid-obligations-and-
benchmarks-regulation-if-uk-leaves-eu-
without-implementation](https://fca.org.uk/news/statements/statement-various-mifid-obligations-and-benchmarks-regulation-if-uk-leaves-eu-without-implementation)

Following ESMA's statement clarifying its approach to aspects of the MiFID position limits regime, post-trade transparency requirements, derivatives trading obligations and benchmarks regulation, the FCA has published a statement setting out its position on these issues. It should be noted that these opinions are relevant for a no-deal scenario and may change depending on the final timing and nature of Brexit.

Both ESMA's and the FCA's Statements can viewed at the following links:

[https://www.esma.europa.eu/press-news/esma-news/esma-sets-out-its-
approach-several-mifid-ii-mifir-and-bmr-provisions-under-no](https://www.esma.europa.eu/press-news/esma-news/esma-sets-out-its-approach-several-mifid-ii-mifir-and-bmr-provisions-under-no)

[https://www.fca.org.uk/news/statements/statement-various-mifid-
obligations-and-benchmarks-regulation-if-uk-leaves-eu-without-
implementation](https://www.fca.org.uk/news/statements/statement-various-mifid-obligations-and-benchmarks-regulation-if-uk-leaves-eu-without-implementation)

Brexit — FCA to introduce UK Benchmarks Register

Of relevance to
All firms

Useful links

[fca.org.uk/news/statements/fca-to-introduce-uk-benchmarks-register](https://www.fca.org.uk/news/statements/fca-to-introduce-uk-benchmarks-register)

The FCA has said that in its plans to prepare for a range of outcomes in relation to Brexit, including the UK leaving the EU without a transition period, it has developed a new UK Benchmarks Register. This new Register will replace the ESMA Register for UK supervised users, and UK and third-country based benchmark administrators that want their benchmarks to be used in the UK. The new UK Benchmarks Register will include benchmark administrators and third country benchmarks.

Benchmark Administrators

The Benchmarks Administrators Register is a public record of all benchmark administrators that are:

- authorised, registered or recognised by the FCA;
- outside the UK and have notified the FCA that they benefit from an equivalence decision that has been adopted by the UK;
- copied from the ESMA register as set out in the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019.

Third-Country Benchmarks

The Third-Country Benchmarks Register is a public record of all benchmarks that are:

- provided by third country benchmarks administrators recognised by the FCA;
- endorsed by a UK authorised or registered benchmarks administrator, or other supervised entity, for use in the UK
- provided by benchmarks administrators from outside the UK, that have notified the FCA that they benefit from an equivalence decision that has been adopted by the UK
- copied from the ESMA register as set out in the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (link is external).
- On exit day, the FCA will temporarily copy information from the ESMA register onto the UK Benchmarks Register. This information will stay on the UK Benchmarks Register for a period of 2 years unless it is subsequently removed pursuant to, and in accordance with, the UK Benchmarks Regulation.

<https://www.fca.org.uk/news/statements/fca-to-introduce-uk-benchmarks-register>

FCA Policy Statement 19/7 — Finalising the Directory

Of relevance to
All firms

Useful links

[fca.org.uk/publications/policy-statements/ps19-7-finalising-directory](https://www.fca.org.uk/publications/policy-statements/ps19-7-finalising-directory)

The FCA has published Policy Statement 19/7 which sets out the final rules on the Directory, a new public register for checking the details of certain individuals working in financial services.

Whilst the FCA's Financial Services Register ("FS Register") will continue following the extension of the Senior Managers and Certification Regime ("SM&CR") it will contain fewer individuals as only individuals for specified Senior Manager roles will continue to be approved by the FCA and appear on the FS Register.

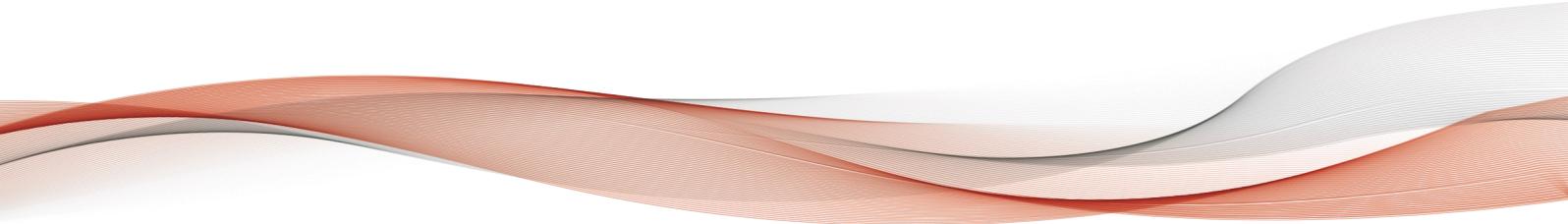
Following feedback to FCA consultations, the FCA is introducing the new Directory. The FCA are introducing a new definition being "Directory Person", which captures which persons will appear on the Directory. This definition includes, amongst others, "certification employees".

Under SM&CR, firms have 12 months from when the regime comes into force to certify relevant employees. All firms (other than banks and insurers, to which an earlier date applies) can start submitting data for uploading to the Directory in relation to their certified staff from 9 December 2019. The deadline for uploading data is 9 December 2020.

The Directory will go live on 9 December 2020 for firms (other than banks and insurers which again will have an earlier date). Further details can be found in the Policy Statement.

<https://www.fca.org.uk/publications/policy-statements/ps19-7-finalising-directory>

Key Dates



Key Date	Topic
Spring 2019	<u>Financial Guidance and Claims Bill</u> —FCA takes over regulation of Claims Management Services
6 April 2019	New FCA rules on pension transfer assumptions to use when revaluing benefits
December 2019	Senior Managers & Certification Regime to cover all FSMA authorised firms, replacing the Approved Persons Regime
3 July 2020	End of 30-month period during which the US Securities and Exchange Commission provides market participants with greater certainty regarding their US regulated activities and compliance with MiFID II rules on Investment Research
July 2020	5th Money Laundering Directive to be adopted throughout Europe
October 2020	Pension transfer specialists to obtain the investment advice qualification
31 December 2020	Brexit—end of transitional period

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