

The FCA's Temporary Permissions Regime

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The FCA has issued Consultation, CP18/29 inviting feedback on their proposed temporary permissions regime, "TPR" which will allow EEA firms and investment funds to continue business activity in the UK where there is no agreement or transition period in place post Brexit date, 29th March 2019.

Background

- Where there is no transitional period, the Passporting Regime will no longer be in place and existing permissions could be disbanded for inbound firms and investment funds.
- Without these revised rules, TPR firms cannot continue their business activities in the UK post Brexit.

Impacts:

- TPR will allow UK Passporting Rules that currently apply to the TP firm to continue post-Brexit for a maximum period of 3 years after EU exit date;
- Applicable firms must notify the FCA of their intention to utilise the TPR regime. The date of this notification window is yet to be advised;
- Failure to notify the FCA within the relevant notification window will result in an inability for TPR firms to continue to market in the UK;
- TPR firms will be issued a 'landing slot', a date by which to seek full authorisation in preparation for the end of the 3-year period of TPR. This date is immovable;
- TPR will last a maximum period of 3 years and after which the permission will automatically end if the full FCA authorisation is not taken up;

- The FCA will allow for substituted compliance where the TP firm can demonstrate it continues to comply with the equivalent home member state rule subject to an FCA equivalence assessment review. However, given there is often interpretation or transposition differences across member states, this may prove challenging for the TPR firm.
- Also referenced in the consultation is the application of the new compliance requirements under the UK's Senior Manager and Certificate regime, SM&CR and Disclosure and Reporting requirements under CASS as they will apply on a go forward basis, to TPR impacted firms.
- Under the proposed TPR, a fund manager cannot:-
 - add any new schemes to the funds in the TPR;
 - add new sub-funds to umbrella schemes; or
 - change or extend the customer category to be marketed while the scheme is in TPR.

Nest Steps

- Is your business impacted by the TPR?
- Responses to this consultation are required before 7th December 2018
- Final Rules anticipated in early 2019 ahead of Brexit date, 29th March 2019
- Have you considered the extent of Brexit impacts to your business model?