

Member Briefing: Brexit Update

EISA Regulatory Committee

November 2020

A NEW HANDBOOK AND A NEW TEMPORARY TRANSITIONAL POWER FOR THE FCA TO EASE FIRMS INTO THE NEW POST-BREXIT REGULATION REGIME

The UK's Brexit transition period is due to end at 11pm on 31 December 2020 and ahead of that date, the FCA has continued to encourage firms to prepare for all Brexit eventualities, including a no-deal Brexit. Whilst Brexit is not expected to have a significant direct impact on those EISA Members who are UK focussed in their business models, those with investors who are located abroad and/or those who have BIR offerings or EuVECAAs, may want to keep a close eye on the developments in the Brexit negotiations over the next few months.

Regulations for firms will change as EU legislation such as AIFMD and MiFID is 'onshored' to the UK but, whilst firms will need to adapt to this, we are not expecting wholesale changes to the regulatory regimes and, as detailed below, there will be a transitional period in relation to most changes. The EIS Association's Regulatory Committee is keeping an eye on developments and will provide updates as matters progress. In addition, we encourage Members to keep an eye out for more communications from the FCA as we approach the end of 2020: <https://www.fca.org.uk/brexit>

HANDBOOK NOTICE 80

The aim of the product governance rules is to ensure that manufacturers and distributors of investment products act in the client's best interests during all stages of the life-cycle of products or services. The FCA's focus is motivated by a desire to ensure that investors are not being misled or sold products which are inappropriate to their needs. This sits alongside an interest in marketing of products and classification of investors. However, product governance is not as well understood as those topics.

APPLICATION TO MEMBERS

On 1 October 2020, the FCA published Handbook Notice 80 providing greater clarity on how to move forwards over the coming months. Handbook notice 80 details:

- (a) all amendments required by the EU exit regulations up to 30 September 2020 to ensure that a functioning regulatory and legal framework for financial services will be in place after the transition period;
- and

(b) the details of a new Temporary Transitional Power (TTP) that the Treasury has given to UK financial regulators to enable them to make transitional provisions in relation to financial services legislation for a temporary period.

The FCA is expecting to have greater clarity by the end of October as to whether a Brexit deal will be reached or whether the UK will end the transition period with no deal. Although the changes made on 1 October will ensure the proper functioning of the respective provisions once the UK is no longer subject to EU law, the FCA is expecting to publish further changes to the Handbook in December 2020 to reflect the outcomes of the continuing Brexit negotiations.

To view the updated text of the Handbook, users just need to visit the [FCA Handbook website](#) and use the time travel function. Normally this function is used to review past regulation but it will now present the future, post-Brexit version of the Handbook too. The FCA has also amended and reissued the following pieces of non-Handbook guidance:

- FCA's approach to EU non-legislative materials;
- FCA's approach to non-Handbook guidance where it relates to EU-law or EU-derived law; and
- Interpretative Guide on completing the FCA's forms after the UK's withdrawal from the EU.

TEMPORARY TRANSITIONAL POWER

Handbook Notice 80 states that the FCA intends to apply the TTP on a broad basis from the end of the transition period until 31 March 2022, meaning that firms do not generally need to prepare now to meet the changes to their UK regulatory obligations brought about by the 'onshoring' of EU regulation post-Brexit. Where the TTP applies, the FCA will allow firms flexibility (and is actively encouraging firms to use the flexibility) in choosing to apply either the new or pre-existing rules until 31 March 2022, at which point it will expect firms to comply with the new 'onshored' UK regime. The FCA have stated that the TTP will be used in respect of PRIN, GEN, MIPRU, IPRI(INV), COBS, ICOBS, MCOB, BCOBS, CASS, MAR, SUP, COMP, COLL, CONC, FUND, LR, PRR, DTR.

However, it should be noted that there are some areas where transitional relief will not be granted/used and the FCA expects firms to be preparing to comply with their changed obligations ready for 11pm on 31 December 2020, including in respect of: MIFID II transaction reporting, EMIR reporting obligations, SFTR reporting obligations, certain requirements under MAR, Issuer rules, Contractual recognition of bail-in, CASS, market-making exemption under the Short Selling Regulation, use of credit ratings for regulatory purposes, securitisation, electronic commerce EEA firms, mortgage lending after the transition period against land in the EEA and payment Services (strong customer authentication and secure communication).

For further details, please see the [FCA's Handbook Notice 80](#).