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Brexit: FCA guidance for firms operating in the UK under the Temporary Permissions Regime

March 12, 2021

On the 4 March 2021, the UK's Financial Conduct Authority ("**FCA**") updated its website with further guidance on the Temporary Permissions Regime ("**TPR**"), which came into force at the end of the transition period on 31 December 2020. The guidance is relevant for EU incoming firms that made an application under the TPR in 2020 to continue operating on a cross-border basis in the UK and who are currently carrying out their UK business or marketing on this basis.

As detailed in our previous note from November 2020, the UK established the TPR to enable firms and funds that relied on passporting into the UK under European legislation, to continue operating in the UK post-Brexit, providing those firms with limited temporary relief to operate without being authorised by the FCA.

The FCA is now contacting firms in the TPR and providing confirmation of the firm's "landing slot" (i.e., the opening and closing dates) during which firms have, to either apply for a UK authorisation or cancel their temporary permission and then cease any regulated activity in the UK.

Application for full authorisation

Firms that have received a landing slot are advised to review the FCA's guidance on landing slots for information on next steps for applications for FCA authorisation.

The FCA emphasises that applications for authorisation should not be submitted before the opening date and should be submitted no later than the closing date and specifies that the FCA reserves its right to disregard and potentially destroy applications received outside of the landing slot and in addition, may cancel the applicant's temporary permission, if applications are not received in time.

Cancelling temporary permission

Firms that choose not to submit an application and decide to cancel their temporary permission are provided with guidance on cancelling a temporary permission.

Firms should consider their circumstances when ceasing activities in the UK, as they might be eligible to move into the supervised run-off ("**SRO**") mechanism, which is part of the Financial Services Contracts Regime, in situations where there is remaining UK business to run off.

Supervision under the TPR

The FCA's third guidance explains how firms will continue to be supervised, as long as they are operating under the TPR. In most instances, firms in the TPR are supervised in the same way as other authorised firms, though matters that were reserved to the home state regulator before the end of the transition period, can be fulfilled by substituted compliance and may therefore not require reporting to the FCA.

Next steps

Firms in the TPR should now start to assess their UK strategy ahead of being provided with their landing slots and should review whether they require a UK authorisation or whether there are alternative approaches available, which will ensure they can serve UK clients or market their products to UK investors.

Where FCA authorisation is likely, firms should bear in mind timing to prepare the application and then be granted the authorisation can take between 6-9 months with delays currently expected due to volume of applications and challenges to processing times due to Covid-19. If firms require additional time to prepare, the FCA may grant a change of the opening and/or closing date.

Related Professionals

- **John Verwey**
  Partner
- **Michael Singh**
  Associate