



Brexit: The UK's "no deal" planning

Temporary Permissions Regime for EEA firms and investment funds – what asset managers need to know

With the ultimate outcome of Brexit still hugely uncertain, the UK's Financial Conduct Authority ("FCA") has pushed ahead with its "no deal" planning and has opened its Temporary Permissions Regime ("TPR") notification window to EEA firms and investment funds marketing in the UK.

The TPR will allow firms currently passporting into the UK to continue new and existing regulated business within the scope of their current permissions in the UK for a limited period, while they seek full FCA authorisation, if the UK leaves the EU on "exit day" (11pm on 29 March 2019) without an implementation period in place. It will also allow certain funds to continue temporarily marketing in the UK on the basis of current European marketing passports and rights, with no need for a hiatus before they are able to comply with UK marketing regimes, in particular the national private placement regime ("NPPR").

The FCA has advised that firms should not wait for confirmation of whether there will be an implementation period before they submit their notification, as firms and investment funds that have not submitted a notification will not be able to use the regime.

All notifications must be made by the FCA's [Connect](#) online system. The FCA has published a guide for Connect covering the notification process for firms ([PDF](#)) and investment funds ([PDF](#)).

There will be no fee for making a notification under the TPR. The notification window will remain open until 28 March 2019.



Useful links



[FCA webpage for temporary marketing permission regimes](#)

[UCITS draft regulation](#)

[UCITS draft FCA direction](#)

[AIF draft regulation](#)

[AIF draft FCA direction](#)

[FCA's Connect online system](#)

[Guide to Connect for investment funds](#)

The marketing TPR for investment funds

Who can utilise the marketing TPR?

Alternative investment funds ("AIFs") managed by an EEA-authorized alternative investment fund manager ("AIFM") and undertakings for collective investment in transferable securities ("UCITS") being marketed in the UK before exit day under European marketing passports / rights may continue to be marketed after exit day provided that the fund manager notifies the FCA under the TPR. This includes other types of funds under the AIF brand, including European venture capital funds, European social entrepreneurship funds, and European long-term investment funds.

Once the notification window has closed, fund managers that have not submitted a notification for a fund will be unable to use the marketing TPR for that fund, and as such will not be able to continue marketing that fund in the UK on the same basis as they did before exit day. The only exception to this is for new sub-funds of umbrella EEA UCITS that are in the marketing TPR on exit day. It is possible for those new sub-funds to benefit from the marketing TPR even if launched after exit day, as long as one sub-fund of the EEA UCITS was registered for the TPR.

How long will the marketing TPR last?

Although expressed to last for a three-year period, please note that in practice funds are likely to benefit from the TPR for a much shorter period, as the FCA can at any point during that three-year period, require a fund / fund manager to make a UK marketing notification.

The FCA will allocate a three-month "landing slot" to fund managers to submit an application for the relevant fund to market under the UK marketing regimes (e.g. NPPR for AIFs). The first landing slot is expected to be in Q4 2019 if there is a no deal Brexit, with an expected five further landing slots, the last of which would close at the end of March 2021. In the case of AIFs, the last landing slot will close at the end of March 2020. There is no option for firms to select a landing slot or indicate a preference. The FCA will inform firms of their landing slot shortly after exit day.

The marketing TPR will cease to apply once a fund's landing slot expires, either because an NPPR notification has been made or marketing for that fund has ceased. It is important to note this means that after their landing slot, EEA UCITS will be treated as AIFs and will have to market in the UK under NPPR or go through an FCA application process to be a recognised overseas regulated fund (a s272 scheme). See [our note](#) for more information.

NPPR is a notification-only process and so will be relatively straightforward in practice, however the current requirements will continue to apply, meaning there will need to be a co-operation agreement between the FCA and the relevant national regulator of both the EEA AIFM and the AIF (if different) before it can be utilised. This will in practice depend on how quickly those agreements are put in place following Brexit. The EEA AIFM will also notably become subject to the obligation to submit Article 24 AIFMD reports to the FCA.

Are there any points still to be clarified?

The legislative basis for the marketing TPR is set out in two draft regulations (see relevant links in the box on the left), and the directions to fund managers on the notification process issued by the FCA are also still in draft and may be subject to change.

There is also some inconsistency between the draft regulation for AIFs and the FCA's pronouncements so far on the marketing TPR. In particular, in addition to the draft regulation making the marketing TPR available for those AIFs currently marketed under the AIFMD passport, it suggests (at regulation 78C) a notice to the FCA should also be made for those non-EEA AIFs currently marketed under the UK's implementation of Article 36 AIFMD. However, the notes to the FCA's draft directions do not cover non-EEA AIFs under Article 36. The FCA's [consultation](#) on the TPR sheds some more light on this (at paragraph 2.13), suggesting that such non-EEA AIFs can continue to market in the UK under NPPR and do not need to use the marketing TPR. Explicit confirmation from the FCA on this point would be useful. In the absence of any such confirmation, it is advisable for managers of such funds to nevertheless notify the FCA.

What should managers do now?

Fund managers should consider which funds will need to utilise the marketing TPR and if they need to update any information about that fund with their national regulator. They should also, as a practical step, log into Connect to check that the FCA has included the correct list of funds and update that list if necessary, in order to speed up the process when completing the full TPR application.

As the regulations are still in draft form, the FCA has advised that managers can complete notifications prior to them coming into force. Once in force, the FCA will contact any manager who notified in advance and give them the opportunity to confirm if they do not want the FCA to treat their early notification as a notification for the purposes of the regulations.



Useful links



[FCA webpage for TPR notifications](#)

[FCA direction to firms](#)

[FCA's Connect online system](#)

[Guide to Connect for firms](#)

[FCA webpage for the financial services contracts regime](#)

How will the TPR operate for firms?

EEA investment firms can also benefit from the TPR to continue to provide their currently passported services in the UK in the event of a “no deal” Brexit. As with the marketing TPR, this permission is intended to be temporary to give firms time to plan how they intend to operate in the UK after TPR and to prepare their application for UK authorisation (whether as a stand-alone firm or as a branch).

Firms using the regime will be allocated a “landing slot” to submit their application for UK authorisation within the period that the TPR operates. The landing slots for firms are the same as those for funds, i.e., the first one is expected to be Q4 2019 with the final one ending in March 2021. The FCA is expected to allocate landing slots based on the type of business undertaken. There is no option for firms to select a landing slot or indicate a preference. The FCA will inform firms of their landing slot shortly after exit day.

What should firms do now?

European firms should look at their current incoming UK passports and analyse whether these will be required following Brexit and whether they need to make any updates with their national regulator. If any business is reliant on an incoming UK passport (for example, an EEA UCITS management company currently managing a UK UCITS), then those firms should submit a TPR application. This decision should also be taken in light of firms' wider Brexit planning and how they intend to provide services to UK clients.

The UK is also putting in place legislation to establish a “financial services contracts regime” to allow certain firms who do not enter the TPR or who do not secure a licence or fully wind down their business by the end of their temporary permissions to run-off their existing UK contracts in an orderly fashion. Further details can be found in [our note](#) on the topic. The FCA mentions explicitly that “EEA firms managing UK authorised funds will not be able to continue to manage those funds under FSCR after exit day. Those firms should notify the FCA in order to enter the temporary permission regime to benefit from the transitional period. The same applies to trustees or depositaries of such funds”.

Luxembourg firms and funds

The CSSF has issued a [communication](#) advising that firms and funds established in Luxembourg making use of the TPR are required to notify the CSSF, as soon as they have submitted their TPR notification to the FCA, by sending an email notification to: opc@cssf.lu. The email must include the name of the firm, fund or sub-fund and a detail of the services/activities for which the TPR notification has been submitted as well as the date of the TPR notification.

Further Resources



For more information, see [our note](#) on preparing the UK fund management regime for Brexit, [our note](#) on the FCA's consultation on how its rules will apply to firms in the TPR, and other relevant information on our:

[Brexit Knowledge Portal](#)

[Linklaters Brexit homepage](#)



Key Contacts

If you have any questions or would like to discuss your Brexit planning or any aspect of the TPR, please contact any of the individuals named below, or your usual Linklaters LLP contact(s).

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