

FCA Releases Final Brexit Guidance to Financial Sector



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Overview

The Financial Conduct Authority published a [policy statement](#) on 28 February 2019 setting out near-final rules and guidance that will apply to financial services firms in the event of a no-deal Brexit. Most notable is the introduction of a 15-month 'grace period' for firms to comply with rule changes in the event of a no-deal Brexit on 29 March 2019.

The FCA has been in the process of converting EU rules into domestic rules but the changes made will have a knock-on effect on firms' reporting systems. These rules (which will require Treasury approval before coming into effect) seek to combat that knock-on effect by giving financial firms the grace period in order to comply. Banks, asset managers, insurers and brokers would be covered by these updated rules and could face penalties if they do not comply in time.

Proposals

Avoiding the cliff edge

In addition to the 15-month grace period, other key proposals in the rules include

Financial Services Compensation Scheme (“FSCS”)

The regulator confirmed it will implement the proposals it consulted on regarding the FSCS, which will require EEA firms covered by the FSCS in the Temporary Permissions Regime (“**TPR**”) to contribute to the FSCS levy from 1 April 2019. Similarly, the FCA’s proposal that services firms in the TPR should be included in the compulsory jurisdiction of the Financial Ombudsman Service will be implemented.

Transitional Powers

The FCA has previously outlined how it will use special transitional powers to ensure a stable regulatory environment if the UK leaves the European Union without a deal. It noted that this power would give it the ability to waive or modify changes to regulatory requirements which have been amended under the EU (Withdrawal) Act. It has now consulted on how the TPR should operate. This includes rules relating to:

- Senior Managers & Certification Regime (SM&CR) and the Approved Persons Regime;
- The FSCS;
- The Financial Ombudsman Service; and
- Disclosure of a TP firm’s authorisation status (status disclosure).

It noted it will implement its rules to apply the SM&CR to EEA branches during the TPR as consulted upon.

Gibraltar

In December 2018, the FCA outlined draft rules allowing Gibraltar-based firms to have the same market access to the UK as they have now until the end of 2020. The FCA stated it has not received any comments disagreeing with the proposal and confirmed it will proceed making these rules. In addition, it noted that the Treasury had published two Statutory Instruments to support market access between the UK and Gibraltar. The first relates to the continuation of passporting rights of Gibraltar-based firms into the UK, and the second preserves the overall pre-Brexit regulatory position.

Other Notable Proposals

Other notable proposals in the paper include amendments to the FCA Handbook and Binding Technical Standards to correct deficiencies created by Brexit; the establishment of regulatory regimes for credit reference agencies, trade repositories and securitisation repositories; and additional guidance that sits outside the FCA Handbook (known as “non-Handbook guidance”).

The final version of the rulebook is expected to be published on 28 March, a day before Brexit, if the UK and EU do not agree a transitional deal.

Commentary

The FCA’s Executive Director of International said in a statement: “*The FCA has been*

preparing for a range of scenarios, including the possibility that the UK leaves the EU in March 2019 without an implementation period. The documents published today are a significant milestone in this work: they ensure that there is a functioning regulatory regime from day one, and that firms are clear as to the requirements they need to meet by end March 2019 and beyond, so they can continue to meet the needs of their customers."

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