

APCC BREXIT WORKING GROUP

Note of FCA Trade Body Brexit Briefing Call - 24 July 2020

1. FCA Confirmed that its engagement with firms will increase in the second half of 2020 as per the speech by Nausicaa Delfas of 1 July 2020.
2. FCA confirmed that the registration window for the Temporary permission Regime will reopen on 30 September 2020.
3. ESMA and FCA have confirmed that they intend that all existing Memoranda of Understanding (MoU) between them shall remain intact and in force for the foreseeable future.
4. There is some uncertainty regarding the status “**in flight**” issues/files at the end of the transition Period (31 December 2020). These are issues where EU Directives and/or Regulations have been passed into law but have not yet come into force (in whole or part). The most recent examples of this are the Investment Firms Directive (IFD), the Investment Firms Regulations (IFR) where FCA has issued a Discussion Paper regarding how the UK may choose to implement them in the UK. The FCA stressed that it was committed to the highest international standards of regulation and that there would be no lowering of regulatory standards and equivalent outcomes.
5. FCA also indicated that it is dealing with a number of “**cliff-edge risks**”.
 - a) The most immediate and key cliff edge risk is related to data protection and a recent European Court Justice case that ruled that the US Privacy Shield (data protection) standards were not equivalent to the EU and thus prohibited data transfers from the EU to the USA.
 - b) There is also significant concern that UK banks and payment institution can continue to participate in the **Single Euro Payment Area (SEPA)**. In order to ensure participation banks and payment institutions must act with great urgency to ensure they complete any data gaps.
 - c) As yet there is no timeline in general for resolution of risk issues arising from the technical standards refit under EMIR.
 - d) There is significant risk attaching to passporting and the issue of firms currently relying on in-bound passports to do business in the UK needing to either become FCA regulated or to wind down their UK business if not.

- e) Similar risk attaches to UK firms that rely on out-bound passports who will need to become regulated in the host countries in which they wish to operate by 31 December 2020.
 - f) There is some concern regarding “equivalence”. There are many directives and regulations dealing with consumer-facing services where there is no ability to apply equivalence under the directive or regulation. In areas where the EU has indicated equivalence may be possible it is clear it will be on a case by case (directive by directive basis) and that it will have limited time application before the need to renew it. It is also apparent that equivalence will apply predominantly to wholesale market infrastructure such as Central Counterparties (CCPs) and not to consumer/retail services.
 - g) Firms under the Transitional Permission Regime (TPR) will come under UK supervision from Day One. There will be no reliance on the Home state regulator.
 - h) The FCA has confirmed it will rely on its MoU with ESMA to permit the delegation of investment management to UK investment managers by overseas firms and funds
 - i) There is a possibility that during transition those firms registered in the TPR may be subject to Transaction Reporting under FCA rules and under their Home state regulator’s rule.
 - j) FCA has not set any deadline ahead of 31 December 2020 from which it will cease to process applications for outbound passports.
6. FCA confirmed that the EU is working to avoid any agreement or series of agreements needing to be ratified by the national (and in some cases regional parliaments) of member states. It is believed and hoped that an all-encompassing “Canada Style” agreement can be avoided which will mean that ratification is required only by the European Parliament.
7. The likely deadline for an agreement or series of agreements to be finalised is end of October 2020. If this is not achieved, it is unlikely an agreement or series of agreements could be ratified in time for 31 December 2020.
8. FCA will convene a further call/meeting in late September or October to update trade bodies as to progress.

PAUL GRAINGER

Chairman

