ASSOCIATION OF PROFESSIONAL COMPLIANCE CONSULTANTS.

FCA Authorisations Division and APCC Liaison Meeting Minutes, Wednesday 7th October 2020, 10.00am – 11.30am via dial in.

Attendees:

FCA:

Kim Heffernan	Co-Chair, APPM
Nick Mears	Co-Chair, APPM
Alex McDermott	Lending & Intermediaries
Richard Atkinson	Claims Management Companies
Gavin Davis	TPR
Emma Krygier	Supervision Hub
James O'Connell	Retail
Karen Avis	Wholesale

APCC:

James Borley	APCC Member and Authorisation Working Group Chair
Ben Mason	APCC Member and Authorisations Working Group Member
Russell Facer	APCC Director and Authorisations Working Group Member
Gary Kershaw	APCC Director and Authorisations Working Group Member
Colin Sloan	APCC Member and Authorisations Working Group Member
Jourdain Tambo	APCC Member and Authorisations Working Group Member
Jude Bahnan	APCC Member and Authorisations Working Group Member
Bev Robertson	APCC COO

Agenda:

Introductions

Departmental Updates:

- **Retail**
- **APPM**
- **Wholesale**
- **Supervision Hub**
- **Lending and Intermediaries**

Claims Management Update

Temporary Permissions Regime Update

Departmental Updates

Retail

5MLD -there are 147 cases in assessment of which 110 have been identified as existing crypto businesses, 84 of which were received before the informal priority review deadline. The key message is that there was a large influx of cases on the deadline day, the majority of which require much more information. Because of this, the FCA has increased resource in the team working with colleagues from Supervision.

There has not been a great increase in the quality of applications, which has slowed the progress down significantly. This is evidenced by only four applications having been approved so far, with just 3 months left until the deadline for registration. Whilst only four have been approved, that is not to say that other applications have not been 'determined'. Firms have been persuaded to withdraw, or the FCA has used its power of direction (similar to a reguirement) under Reg 74C of the MLRs.

A key area of concern has been a lack of demonstrable experience, requiring the FCA to conduct interviews to assess. Allocation times are difficult to estimate, as they will deliberately be different for different firm types.

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Payments – James advised that the FCA has seen an increase in applications. There are currently 275 open cases at the moment, although many of them are at the 'subject to' stage; this is largely because they have a lot of firms trying to raise capital and get their safeguarding account, for which they are continuing to allow more time than previously. They are seeing more EMI cases being approved now where there is an associated crypto offering, after taking them to an internal committee for discussion and sign-off. Key here is the 'confusion risk' for consumers: what regulation applies, and when. James suggested that applications be accompanied by wireframes and clearly show how the confusion risk is being mitigated.

Change in Control – James advised that the amount of cases is decreasing, with a 'work in progress' of 204. The FCA is currently determining more cases than are coming in, however they are expecting an increase in CiC notifications if they see firm failure, which is more likely in the current stressed environment.

James confirmed that he would get back to the working group regarding allocation time of cases for 5MLD and Payments.

APPM

Kim advised that the FCA is continuing to battle with case volumes within APPM, with open breaches and stretched allocation times. The FCA continues to receive a high level of complaints in this regard, especially within the SMF and AR side. For some cases, applications are being allocated between 70 – 90 days from receipt, some of which will breach their statutory deadline before allocation. The FCA is co-ordinating a plan to address these problems and to bring the level of cases back to more 'business as usual' levels by the end of March. The plan has three mains aspects including:

1. Reallocating some resource within APPM and the flexible team within Authorisations. This has been put into place.
2. The FCA will be offering overtime to deal with cases at the lower complexity end. This will start at the end of October.
3. The FCA is setting up a team to support them on the more complex cases. This will be a team of experienced FCA case officers and some external secondees. Kim advised that the FCA struggled to find secondees themselves, therefore the APCC sent a call out to members to which six APCC members will be joining the new team starting 19th October, with further secondees to follow. Kim thanked the APCC for their help.

Kim is aware the plan will not improve things straight away but will be able to update on progress at the next meeting in January.

In relation to the quality of the applications, there continues to be a prevalence of non-disclosure, which is impacting the time taken to determine the application.

With regards Passporting, the team is preparing operationally for the end of the transition period, although they continue to receive applications (from UK firms) and notifications (from EEA regulators). The FCA will be able to update further on this within the next couple of weeks.

The team is also looking at adding some standard communications on the FCA website which will be updated regularly. This should answer some questions which come through the Supervision Hub.

Wholesale

Karen advised that the cancellation team continues to receive high numbers of applications, at around 16-17 a week. They are, unfortunately, expecting to see yet another rise due to Covid-19 and firms failing, and as a result of assertive supervision. There are a significant number of consumer credit and limited permission firms that are going through the cancellation process.

The volumes in cases in the VoPs team are stable at around 270 cases across the two processes.

They are seeing a spate of application to provide CFDs for retail clients, despite the FCA Policy Statement re crypto for retail clients.

There is greater focus from the FCA on the unregulated activities of firms and their impact on the regulated activities being carried on. Therefore the FCA will be asking more questions of firms and, where appropriate, seeking requirements/limitations on the firm's permission for high-risk models. If the firm says they won't be engage in a particular activity/instrument/customer type, then they won't mind agreeing a VREQ.

Matched Principals: the IFR is clear that there is no longer a matched principal (capital) exemption, but firms need to be clear what their plans are to transition to the higher capital resources requirements. Better to send this upfront with the application, than be asked for it later on.

The FCA is taking more cases to various committees, the team is resetting ways in which they are reviewing applications.

Supervision Hub

Emma advised that the Supervision Hub is currently extremely busy, this is mostly due to the Resilience survey and system improvements. Emma foresees the busyness of the Supervision Hub to continue for the next few months, therefore asked the APCC to advise members to only call if necessary and, if they do, to expect delays at points over the next few months.

Positively, the Supervision Hub are continuing to focus on their sector coverage. When consumers call, they will be speaking to people who should understand their business models in more depth.

A member of the APCC advised that there have been numerous issues with scam emails from the FCA, it was suggested that there should be one standardised email address to avoid confusion.

Lending and Intermediaries Update

Alex advised that the FCA seems to have made good progress with Retail Intermediaries. They currently have 130 cases waiting to be allocated, however there has been an increase in staff numbers so there are currently 300 cases being worked on. The oldest case in the queue is 14 weeks.

One of the reasons the FCA were able to quickly decrease cases from Retail Intermediaries is because they moved people from Credit Intermediaries. There was a big spike in cases in Credit Intermediaries in June and July; there are currently 770 cases, 150 cases are currently being worked on. The oldest case is 20 weeks. The FCA expects the number to come down rapidly now as they will have more resource.

Debt cases are currently low, with 30 being worked on by the team and nine outstanding in the queue. Within Debt, there has been a spike in complicated cases, from firms which appear to be attempting to cash in on the downturn (high-cost short-term loans). In Lending, there are currently 12 cases still to be allocated, with 41 cases being worked on.

Claims Management Update

The FCA has now received a total of 914 applications, of which 610 have been authorised. 127 firms have withdrawn, and seven applications have been refused by the FCA. There are 145 applications in progress, and they are currently receiving on average of five new applications per month.

Case officers are now moving into different areas of the business as applications start to decrease; because of this cases may need to be re-allocated but disruption should be minimised through early planning.

Regarding reporting, the FCA is now starting to receive information form firms where they are obligated to report information but often this does not contain the information that is required. The FCA would like to reiterate to firms to read the guidance that is available on their website and of the importance of reporting on time.

Temporary Permissions Regime (TPR) Update

Gavin advised that the key update is that the notification window has reopened until 30 December 2020. The FCA has had 20 new notifications (since re-opening on 30 September) and is not expecting to see many notifications this time round. The FCA anticipates that a number of Fund Managers that have previously notified which funds they wish to continue to market temporarily, may want to update their notifications to reflect their current line-up. Fund managers will need to let the FCA Fund Authorisation Team know that they want to update their notification by the end of 9 December 2020 at the very latest.

The regime comes into force on 31 December at 11pm. The FCA plan to take the Register down at 11pm in order to make the necessary changes e.g. end-date passporting records and update firms' status to show they are in the TPR or the Supervised Run-Off regime (SRO) from January 1.

As the TPR has not yet come into force, there are currently no firms in the regime but 1500 firms have notified (1100 solo, 400 dual). The most popular directives are IDD and MiFID.

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The FCA has issued one newsletter to all the firms that have notified, which was later than hoped due to Covid-19. There will be another newsletter sent out within the next week regarding the International Firms consultation (CP20/20). The last newsletter will be sent out in November to remind firms to prepare. The APCC asked if the content of these newsletters could be shared with its Members.

AOB

The APCC is collating feedback regarding the Register to send across to the FCA. This should hopefully reduce calls into the Supervision Hub.

There are some changes coming down the line looking at how the FCA will enforce Brexit and Funeral Plan Implementation etc. The FCA will be moving to a six-department structure instead of its currently five department structure. The Supervision Hub will remain unchanged, however the FCA will now have an Approved Persons (no Passporting!) and Mutuals department, Banking Payments and Insurance department (including Insurance Intermediaries), Wholesale department, Credit and Lending department and a new Consumer Investments department which will have a Change of Control team and a Cancellations team.. The intention is to better align the Authrisations departments to the Supervision departments and portfolios. The move should be completed by January/February 2021.

Mike Wells (Head of Department – APPM) will be leaving the organisation in November, and recruitment is underway for a new Head of Department. Chris Jell (Head of Department – Supervision Hub) will be leaving the organisation at the end of October, and recruitment is underway for a new Head of Department. Kim confirmed that she will update the APCC when new Heads of Department have been appointed.

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Alex McDermott advised that there is currently a consultation regarding Vulnerable Customers, the FCA is looking to organise a roundtable for consultants to discuss this. Bev advised that the APCC General Insurance Working Group has just responded to the consultation and is looking for an FCA representative to attend their next meeting, Alex and Bev are to discuss the logistics offline.

Temporary Permissions Regime

An update on the TPR from the FCA

We are contacting you with an update on the UK's temporary permissions regime (TPR) as you have previously notified us that your firm wishes to use the TPR.

The TPR will now commence after the transition period which is expected to end on 31 December 2020. It will allow your firm to continue to operate in the UK for a limited period after the end of the transition period within the scope of its passport into the UK, while you apply for full authorisation in the UK, if this is required.

Although no action is required now, you should read this newsletter. It includes information about:

- being regulated by us once your firm is in the TPR and which of our rules will apply to your firm while it is in the TPR
- applying for full authorisation in the UK (whether this is via a branch or a UK-incorporated subsidiary) and the associated application fees
- what do to if your firm has changed its plans and you want to withdraw your firm's TPR notification before 31 December 2020
- the UK's financial services contract regime

During the remainder of the transition period, we may also take the opportunity to ask you for more information about your firm. We may contact you in the coming months to find out more about your business and your plans. We appreciate your continued cooperation.

Being regulated by the FCA

Once your firm enters the TPR, it will be regulated by us for its UK business and it will, at all times, need to meet our Threshold Conditions, adhere to our Principles for Businesses and follow the relevant rules and guidance in our Handbook.

We have set out the main rules which will apply to firms in the TPR here.

In particular, and because this may require your firm to change its systems, we would draw your attention to the status disclosure wording that you will need to include in letters (or electronic equivalents) to indicate that your firm is in the TPR. Full details of the wording can be found in GEN 4 Annex 1B Statutory status disclosure (TP firms) in here. Please note that the wording you will need to use depends on whether your firm has a branch in the UK or not.

Firms in the TPR will also be required to pay annual fees and the levies that we collect on behalf of other bodies in the UK. Further details are included in our Policy Statement PS19/5.

You can find out more about the purpose of, and our approach to supervising firms and individuals here.

Applying for authorisation

Once your firm is in TPR, we will allocate it a period (or landing slot) during which it can apply for full authorisation in the UK, if this is required.

We are currently reviewing our approach to the authorisation and supervision of international firms. We intend to consult later this year on how we assess applications from branches of international firms.

You should also take into account the UK's Senior Managers and Certification Regime (SM&CR) which covers people working in financial services and aims to reduce harm to consumers and strengthen market integrity by making individuals accountable for their conduct and competence.

When you submit your application for full authorisation, we will expect you to be ready, willing and organised.

In addition to the annual fees mentioned above, your firm will also need to pay a fee when you submit your application for authorisation. This ranges from £1,500 to £25,000 depending on the complexity of your application. There is more information on authorisation application fees here.

You can find our Approach to Authorisation here and there is more information about applying for full authorisation in the UK here.

Withdrawing a TPR notification

If your firm has changed its plans and no longer wants to use the TPR, you can withdraw your notification at any time before the end of the transition period. If you do this your firm will not enter the TPR but may instead enter the UK's financial services contracts regime (FSCR) under which it can wind-down its UK business. Please see below for more information on the FCSR.

To withdraw your notification, you must let us know by email before 31 December 2020.

If your firm cancels its passport to the UK (via your local regulator) before the end of the transition period or your firm's home state authorisation is cancelled before the end of the transition period, your firm will not enter the TPR or the FSCR.

Financial services contracts regime (FSCR)

If your firm has changed its plans and no longer wants to use the TPR, your firm may enter the FSCR.

The FSCR will automatically apply to firms that are passporting into the UK at the end of the transition period (and have existing UK contracts to service which require a UK permission) but that do not enter the TPR and will allow these firms to wind-down their UK business in an orderly fashion.

Please note that the FSCR does not cover new business and therefore if you wish to undertake new business (which requires a UK permission) after the transition period, you should not withdraw your notification.

Contact us

If you have any queries, you can contact us via firm.queries@fca.org.uk or contact our Brexit Helpline 0800 048 4255 (from the UK) or +44 207 066 1000 (from outside the UK).

You can also stay up to date with the latest regulatory developments via our monthly Regulation Round-up newsletter.

Temporary Permissions Regime newsletter

An update on our approach to international firms

We are contacting you to inform you about, and encourage you to engage with, a Consultation Paper (CP). This is an important consultation and will be relevant to EEA-based firms that have notified for the UK's temporary permissions regime (TPR). We would welcome your feedback on the CP.

The CP sets out how we propose to assess applications for the authorisation of branches of international firms, which following the end of the transition period will include firms from both EEA and non-EEA jurisdictions. Once finalised, this will supplement our existing Approach to Authorisation and Approach to Supervision documents.

This newsletter also includes information about:

- being regulated by us once your firm is in the TPR and which of our rules will apply to your firm while it is in the TPR
- applying for full authorisation in the UK (whether this is via a branch or a UK-incorporated subsidiary) and the associated application fees
- what do to if your firm has changed its plans and you want to withdraw your firm's TPR notification before 31 December 2020
- the UK's financial services contract regime

Our approach to international firms

We recognise that international firms have been and will continue to be a key contributor to the success of the UK financial services market. Our operational objectives mean that we need to secure an appropriate degree of protection for UK consumers and protect and enhance the integrity of the UK's financial system while promoting effective competition in the interests of consumers.

In order to effectively supervise a firm's UK activities, **international firms that require authorisation to undertake regulated business in the UK <u>will be expected</u> to have a <u>physical place of business in the UK</u>**, whether this is via a branch or subsidiary.

International firms operating in the UK through branches present some unique challenges and we need to consider whether the nature and scale of those activities would present additional risks of harm to UK consumers and the UK's financial system, and whether these risks can be adequately mitigated.

The CP sets out our general expectations and **we would welcome your comments on it so that we can consider your views on our proposed approach**.

The consultation is open until 27 November 2020 and you can give us your feedback by email on cp20-20@fca.org.uk or use the online response form.

Being regulated by the FCA

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Once your firm enters the TPR, it will be regulated by us for its UK business and it will, at all times, need to meet our Threshold Conditions, adhere to our Principles for Businesses and follow the relevant rules and guidance in our Handbook. In our Principles for Businesses, please pay attention to **Principle 11** which requires firms to deal with the regulator in an open and cooperative manner. It is important to let us know anything relating to the firm of which we would reasonably expect notice, for example, plans to grow the business.

We have set out the main rules which will apply to firms in the TPR here and our approach to supervision is here.

In particular, and because this may require your firm to change its systems, we would draw your attention to the status disclosure wording that you will need to include in letters (or electronic equivalents) to indicate that your firm is in the TPR. Full details of the wording can be found in GEN 4 Annex 1B Statutory status disclosure (TP firms) in here. Please note that the wording you will need to use depends on whether your firm has a branch in the UK or not.

Firms in the TPR will also be required to pay annual fees and the levies that we collect on behalf of other bodies in the UK. Further details are included in our Policy Statement PS19/5.

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You should also take into account the UK's Senior Managers and Certification Regime (SM&CR) which covers people working in financial services and aims to reduce harm to consumers and strengthen market integrity by making individuals accountable for their conduct and competence.

When you submit your application for full authorisation, we will expect you to be ready, willing and organised.

In addition to the annual fees mentioned above, your firm will also need to pay a fee when you submit your application for authorisation. This ranges from £1,500 to £25,000 depending on the complexity of your application. There is more information on authorisation application fees here.

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To withdraw your notification, you must let us know by email before 31 December 2020.

If your firm cancels its passport to the UK (via your local regulator) before the end of the transition period or your firm's home state authorisation is cancelled before the end of the transition period, your firm will not enter the TPR or the FSCR.

Financial services contracts regime (FSCR)

If your firm has changed its plans and no longer intends to carry on its UK business nor undertake new business, your firm will need to wind down and enter the FSCR.

The FSCR will automatically apply to firms that are passporting into the UK at the end of the transition period (and have existing UK contracts to service which require a UK permission) but that do not enter the TPR and will allow these firms to wind-down their UK business in an orderly fashion.

Please note that the FSCR does not cover new business and therefore if you wish to undertake new business (which requires a UK permission) after the transition period, you should not withdraw your TPR notification.

Updating details of UK tied agents

If your firm provides MiFID services in the UK through tied agents, your firm will have included a list of those tied agents as part of its TPR notification. You should consider if this list of tied agents needs to be updated. If it does please email an updated tied agents annex to TPQueries@fca.org.uk including your firm's name and FRN.

Contact us

If you have any queries, you can contact us via firm.queries@fca.org.uk or contact our Brexit Helpline 0800 048 4255 (from the UK) or +44 207 066 1000 (from outside the UK).

You can also stay up to date with the latest regulatory developments via our monthly Regulation Round-up newsletter.

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