



Newgate News

FCA update on Brexit

The Financial Conduct Authority (FCA) has published an updated version of the FCA handbook to show the rules that will apply at the end of the transitional period (which ends on 31st December 2020).

It has also set out details on how it intends to use the Temporary Transitional Power (TTP). The TTP will give firms more time to adapt to their new obligations however, the FCA have said that there are some areas where it would not be appropriate for them to apply the TTP. In those key areas, the FCA expects firms to prepare now to comply with the changes to their regulatory obligations by 31st December 2020.

The FCA intends to apply the TTP on a broad basis until 31st March 2022. This means that firms do not generally need to prepare now to meet the changes that will be brought about by onshoring, however, there are some areas in which the TTP will not apply. Firms will need to prepare to comply with these changes by 31st December 2020.

The FCA expects firms to undertake reasonable steps to comply with the changes to their regulatory obligations by the end of the transition period. This Regulatory Update highlights the key areas of change.

October 2020

- Updates to the FCA's handbook highlight post-transition period rules
- The FCA's long-term view of Temporary Transitional Power (TTP) and how firms must respond
- FCA guidance on MAR, MiFID II, EMIR and CASS
- How Newgate can help
- What firms can do to prepare for Brexit despite market uncertainty

MAR

STOR reporting: Firms will be required to report STORs to the FCA where they are registered in the UK or have their head office in the UK or, in the case of a branch, where the branch is situated in the UK. This will be regardless of any obligations under EU law to report STORs to an EU authority where they are registered in the EU or have a branch in the EU.

Newgate's advice: *Firms must report STORs to the FCA regardless of whether they have an EU head office. If there is a branch in the UK, then they must report to the FCA.*

MIFID2

The UK's transaction reporting system will change due to Brexit. Firms who are reporting transactions using EMSA's FIRDS system will need to start using the FCA's FIRDS systems from January 2021 onwards. The layout of the FCA FIRDS systems will remain almost identical to ESMA's systems to make it easier for firms. EEA firms who operate through a UK branch and who operate through the Temporary Permission Regime (TPR) will need to prepare to connect directly to the Market Data Processor (MDP) or use an Approved Reporting Mechanism (ARM) to be able to transaction report to the FCA by the end of the transition period.

Newgate's advice: *Firms should check with their ARMs what their plans are after the TTP and will need to consider changing ARMs if their current one does not comply with the changes.*

EMIR

After the transition period, all firms that enter derivatives transactions in scope of EMIR will be required to report the details of those transactions to an FCA-registered Trade Repository (TR). TRs will be required to provide the relevant UK authorities with access to that data.



Client Assets Sourcebook Requirements (CASS)

At the end of the transition period, CASS will no longer be applicable to EEA branches of UK firms. These firms must segregate UK client money from EEA branch money and must ensure that EEA branch money will no longer be held under the CASS statutory trust.

Newgate's advice: *Any firm holding EEA client funds under the CASS rules will need to segregate these funds. UK client money must be held separately.*

Newgate's advice: *We understand the uncertainty that Brexit continues to cause for firms and at Newgate we are still unclear on the exact terms that will be in place as of the 31st December 2020. The FCA has not published details of temporary permission regimes being offered by EEA regulators and has ceased trying to compile guidance on transitional period requirements from 1st January 2021 available from other EEA member states. It is expected that all ESMA and FCA Memoranda of Understanding (MoU) shall remain intact and in force for the foreseeable future. There is uncertainty regarding the status of pending regulations at the end of the transition Period (31st December 2020) i.e. issues where EU Directives and/or Regulations have been passed into law but have not yet come into force (in whole or part) such as the Investment Firms Directive (IFD), the Investment Firms Regulations (IFR) and EU Regulation of sustainability-related disclosures. Since the FCA is committed to the highest standards of regulation, Newgate will proceed on the basis that such regulation will be implemented in some form in the UK and will continue to engage with clients to ensure readiness.*

Newgate will continue to monitor FCA engagement within the industry. For firms that wish to continue to do business in another EEA states, it is recommended that contact is made with regulators on a country by country basis to get clarity on outstanding issues.

Please contact your Newgate Consultant on 0203 696 8750 if you need assistance on any matters raised in this newsletter.