

Temporary Permissions Regime

Summary

Having received industry feedback based on a Consultation Paper on the **temporary permissions regime for inbound firms and funds**, the FCA is now expected to launch the regime in January 2019.

In a hard Brexit scenario, passporting arrangements for firms and investment funds between the EU and the UK, which previously allowed for reciprocal market access, would no longer be available.

The Temporary Permissions Regime ('TPR') intends to reduce the risks and disruption that would potentially occur if there were an abrupt loss of passporting, and expects to allow firms and funds to continue to retain their contractual rights, fulfil their obligations and manage existing business. It is expected that the TPR would allow relevant EEA-domiciled investment funds to continue to be marketed in the UK to new and existing investors.

Contacts

Robert Mellor

EMEA Asset Management Brexit Leader at PwC
T: +44 (0)7734 607485
E: robert.mellor@pwc.com

James Stewart

Mainstream Funds UK Tax Leader at PwC
T: +44 (0)7469 033107
E: james.w.stewart@pwc.com

Marco Boldini

Head of Financial Services Regulatory – Legal
T: +44 (0)7706 284193
E: marco.boldini@pwc.com

Rachel Buggle

UK Investor Tax Reporting Specialist
T: +44 (0)7711 562049
E: rachel.m.buggle@pwc.com

Jasleen Grewal

Lawyer, Asset and Wealth Management
T: +44 (0)7704 073922
E: jasleen.grewal@pwc.com

Funds

What is a temporary permission?

For EEA UCITS and EEA AIFs (including EuSEF, EuVECA, ELTIFs and MMFs) the TPR will mean that these funds can be marketed in the UK for a temporary period on the same basis as before exit day.

When does the Temporary Permissions Regime come into effect?

The TPR is a contingency plan that will only come into effect (on the 29 March 2019) if the UK and the EU do not enter into the implementation period (i.e. in a 'no deal' scenario).

How long will a temporary permission be?

It will vary from fund to fund, but it will last a maximum of 3 years.

During the TPR, investment funds will be given an application period or a 'landing slot' to submit a notification for recognition in the UK.

Do firms/funds need a temporary permission?

Yes, if fund managers want to be prepared for the possibility of there being no transition deal, a temporary permission will allow them to ensure a smooth transition and to market their funds on the same basis as they did before exit day.

What are the potential consequences of a fund not entering the TPR?

If a fund manager does not notify the FCA that it wants to enter the TPR, it will become subject to significantly more restrictions on its ability to market EEA-domiciled funds to investors in the UK. These restrictions would include the fund losing its marketing passport rights. In this case the fund manager would have to cease marketing the fund at 11pm on Brexit day. The fund manager could reapply to market the fund outside of the TPR at a later date, either by being recognised under s.272 FSMA or by registering for the fund to be marketed in the UK under the national private placement regime. However, any needed approval would take time to process and the fund may not be granted marketing permission, or may not be able to market to the same category of investors. In contrast, opting in to the TPR should provide fund managers with a smooth transition mechanism to continue their business as usual.

Furthermore, not applying for the TPR could be evidence that the fund in question will not be a special investment fund for UK VAT purposes going forward. To the extent that a UK supplier is providing services in relation to any such fund, this could have an impact upon the VAT recovery position for that supplier, albeit the rules in this area remain complex.

How and when to notify the FCA for a temporary permission

The application is an online process which can be completed via the FCA's Connect system. It opens on 7 January 2019 and closes before exit day.

If notification is not made during this period, the TPR cannot be used.

When do funds have to submit a notification? And what happens if an application is not made?

The FCA will allocate each fund manager that has applied for a temporary permission a landing slot, in which a manager will need to apply for UK recognition, or submit a notification in respect of EEA-domiciled funds.

After an application for recognition has been received, the FCA will determine the outcome and the fund manager will be notified of the decision.

If a marketing fund manager does not apply for recognition or submit a notification for a fund during the allocated landing slot, the fund will not receive a temporary permission and the marketing fund manager will no longer be able to market the fund on the same basis as before exit day.

Potential impact of TPR on UK reporting funds

Funds will be able to maintain their status as a reporting fund under the Offshore Fund Regime regardless of whether the fund enters the TPR. However, to the extent that you are currently marketing EEA funds (including, but not limited to those registered with HMRC as reporting funds) to UK investors then you may wish to enter into the TPR in order to continue marketing your funds in the UK post Brexit Day. This requires you to notify the FCA (via the FCA Connect system) of your intention to rely on the TPR. The notification process will open on 7 January 2019 and will close before Brexit Day. During the TPR, fund managers will be allocated a 3 month window within which to submit an application or notification for recognition of the fund in the UK.

Please note that as currently contemplated the TPR is restricted to existing funds that have notified the FCA before Brexit Day. Any new umbrella funds or sub-funds launched after Brexit Day (other than sub-funds with umbrella UCITS inside the TPR) will not qualify for entry into the TPR. We anticipate that new share classes that are created after Brexit Day should be able to rely on the TPR if they are part of a sub-fund or umbrella fund that has already registered for the TPR.