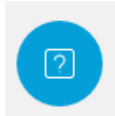
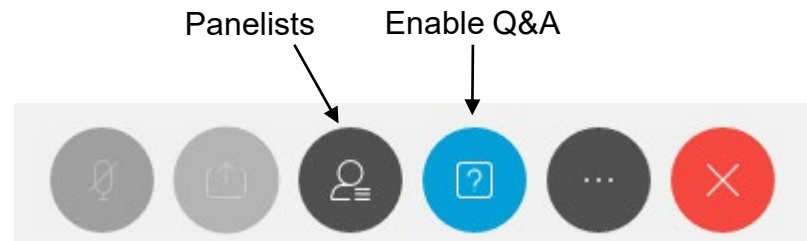
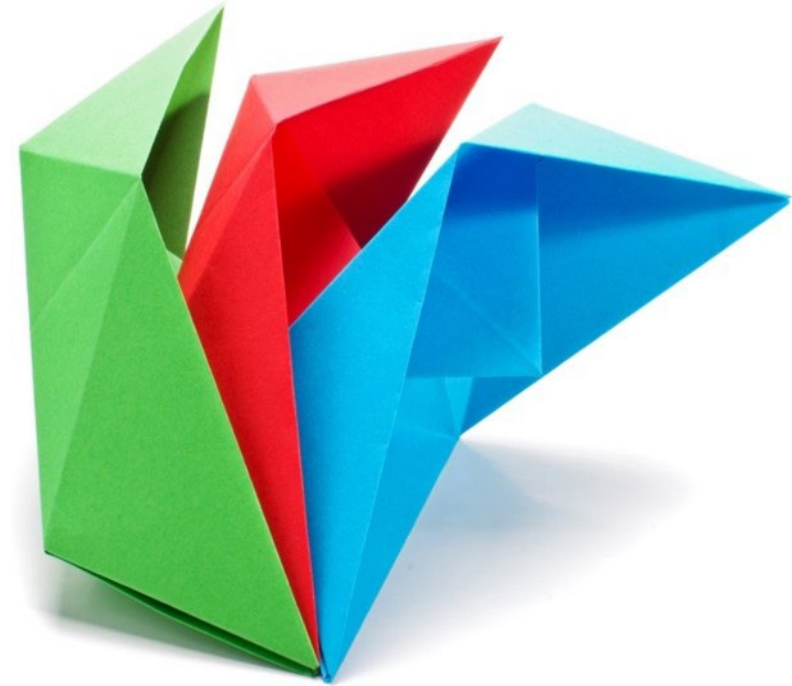


Housekeeping

- On joining the session your microphone will be muted and your video will be turned off
- You will not be able to enable your video or un-mute your microphone during the session
- To activate the Q&A function click  the Q&A box will appear on the right hand panel
- To submit a question use the Q&A function, send your question to “**All Panellists**”
- If you experience any technical issues and cannot submit these via Q&A please call +44 203 088 7196 or +44 203 088 7450





Fog in Channel: the Help! I've Lost my Passport! edition

Bob Penn, Kirsty Taylor, Jo Owens and Nikki Johnstone

8 October 2020

What we are going to discuss today

1. General update

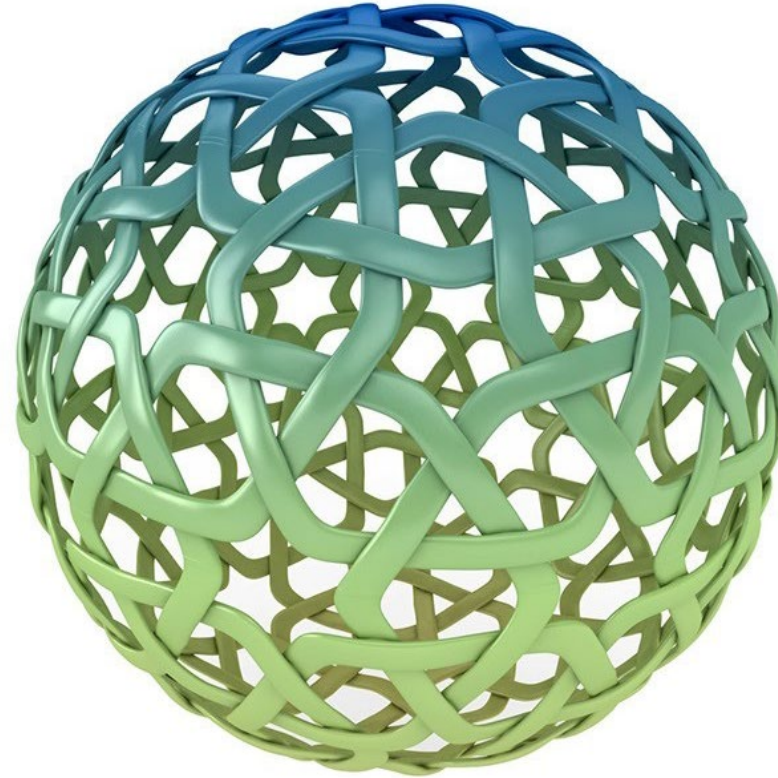
2. Help! I've Lost my Passport

2.1. Licencing

2.2. Options

2.3. Costs

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General update

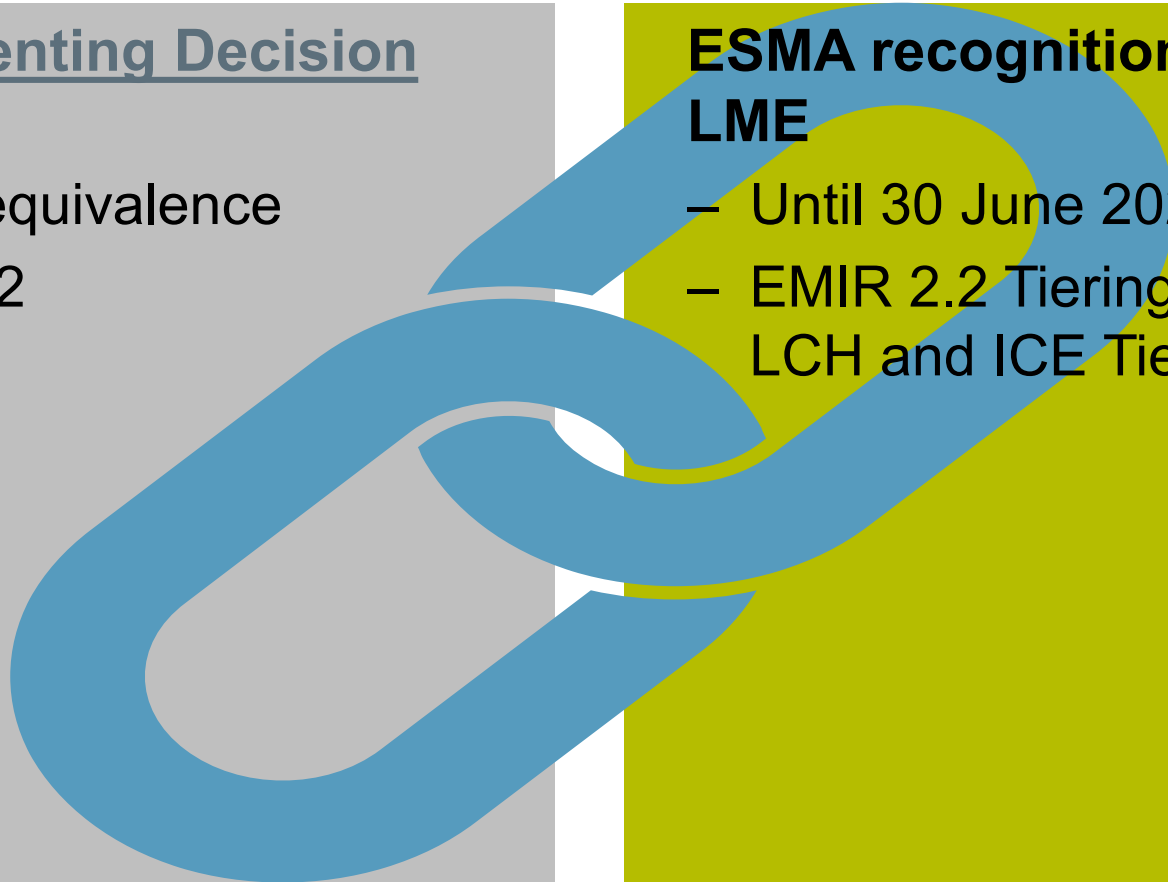
More good news!

Commission Implementing Decision 2020/1308

- UK CCP temporary equivalence
- Expires 30 June 2022

ESMA recognition of LCH, ICE and LME

- Until 30 June 2022
- EMIR 2.2 Tiering decisions determine LCH and ICE Tier 2



ESMA: Updated statements

MiFIR

- C6 carve out
- ESMA's opinions on third country trading venues for post-trade transparency and position limits
- Post-trade transparency for OTC transactions between EU/UK counterparties
- CRR: ITS on main indices and recognised exchanges

ESMA Statements on impact of Brexit

BMR

- UK administrators/ benchmarks and ESMA register

EC formal notice

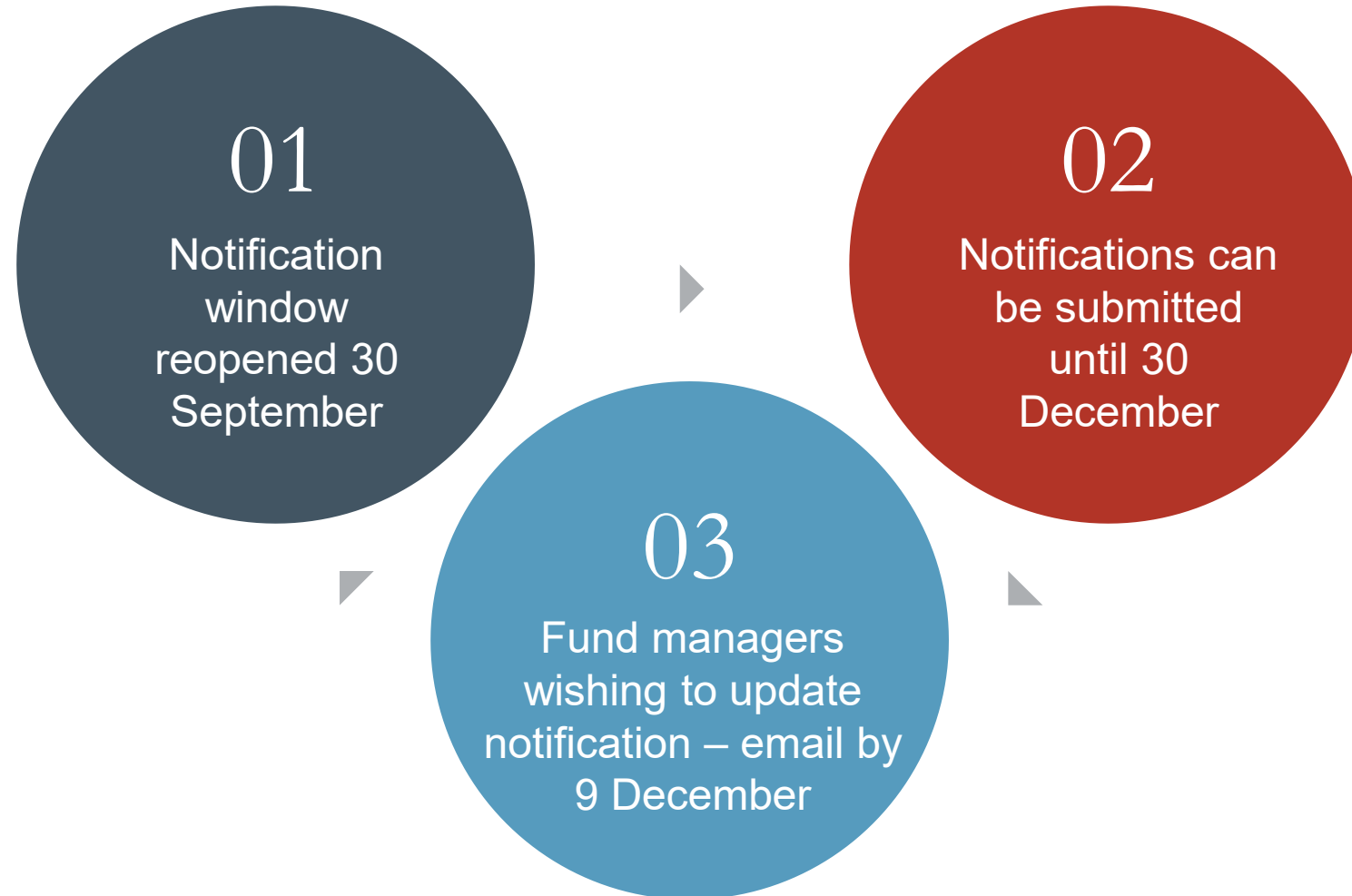
“

[the] draft Internal Market Bill...is – by its very nature – a breach of the obligation of good faith... in the Withdrawal Agreement”

Press statement by President von der Leyen on the implementation of the Withdrawal Agreement between the EU and the UK

>

FCA TPR Notification window



FCA Handbook and updated TTP Directions

FCA Handbook

- FCA Handbook - 1 Jan 2021 version
- Guide to the FCA Handbook for post-Brexit transition
- Handbook Notice 80
- Technical Standards and Level 3 Materials

FCA TTP Directions

- Updated to reflect transitional period
- Expanded list of “must-do” items
- General relief
 - Interaction with TPR
 - Interaction with equivalence

FCA supervisory expectations on Brexit

1

MiFID II transaction reporting – FCA has built FCA FIRDS to replace ESMA FIRDS: it will broadly operate on the same basis as ESMA FIRDS.

2

Issuer rules – EEA entities that have securities admitted to trading or traded on UK markets will be required to submit information to the FCA and disclose certain information to the market from IPCD.

3

Short selling notifications – any firm wishing to use the exemption for market-making activities under the Short Selling Regulation will be required to join a UK trading venue and notify the FCA of their intention to use the market maker exemption 30 days ahead of their intended use. Any notifications already made to the FCA will remain valid post-IPCD.

4

EMIR reporting obligations – from IPCD, UK firms and central counterparties (CCPs) will be required to report into a UK-registered trade repository (TR).

FCA supervisory expectations on Brexit (cont'd)

5

Contractual recognition of bail-in – UK firms will need to include contractual recognition of bail-in in terms in all new or materially-amended liabilities governed by the law of an EEA State, with the exception of unsecured liabilities that are not debt instruments, from IPCD. EEA firms with EEA-law governed contracts with UK firms will need to put in place bail-in language.

6

Use of credit ratings for regulatory purposes – after IPCD, all ratings will need to be issued or endorsed by a credit ratings agency (CRA) established in the UK and registered with the FCA for them to be eligible for regulatory use. NB CRA Regulation transitional for existing ratings.

7

Securitisation – UK originators or sponsors will need to direct notifications to the FCA from IPCD for UK securitisations they wish to be considered simple, transparent, and standardised (STS) under the Securitisation Regulation.

Additional FCA Key Requirements

8

SFTR reporting obligations – from IPCD, FCs (including third country branches), CSDs and CCPs to report in-scope SFTs to a UK TR.

9

MAR issuer notifications and STORs– Issuers that have securities admitted to trading or traded on UK markets will be required to submit information to the FCA. Persons professionally arranging or executing transactions will be required to report STORs to the FCA where they are registered or have their head office in the UK or, in the case of a branch, where the branch is situated in the UK

10

CASS requirements – EEA branches of UK firms must (i) segregate UK client money from EEA branch money; and (ii) ensure that EEA branch money will no longer be held under the CASS statutory trust.

Additional FCA Key Requirements (cont'd)

11

E-Commerce EEA Firms – Firms wishing to carry on new regulated business via e-commerce in the UK from the end of transition period will need to consider if they need UK authorisation and make urgent plans to apply.

12

Mortgage Lending Against EEA Residential Property – loan contracts entered into after IPCD and secured on land in the EEA will not be regulated mortgage contracts and may instead be regulated credit agreements

13

Payment Services – SCA and Secure Communication – BTS as onshored will apply from IPCD

FCA considerations for firms



Client money and client assets

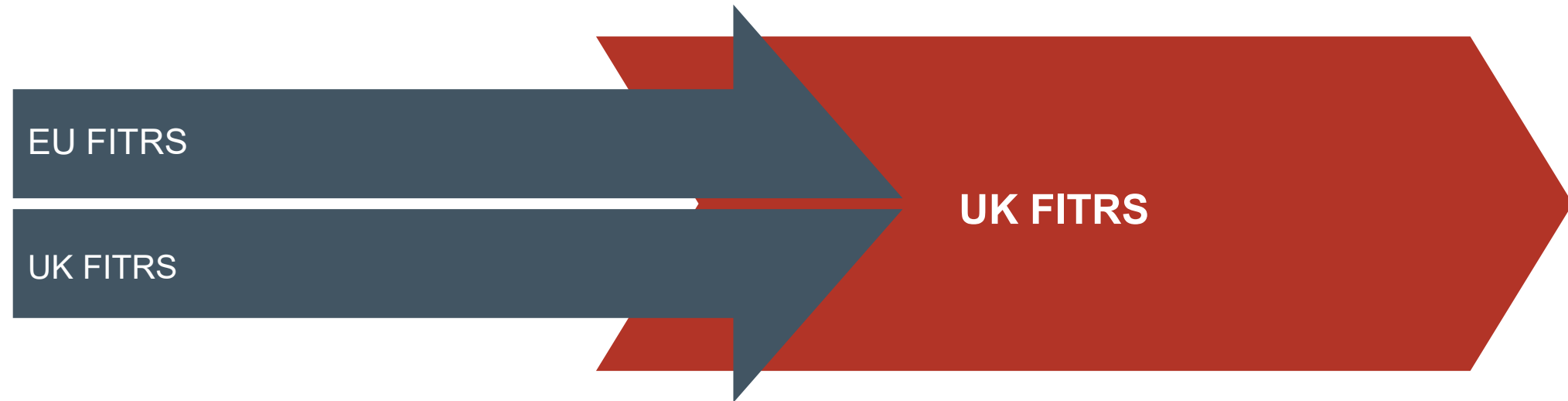
FCA advocate:

periodic due diligence reviews on third parties holding client money or custody assets

deposits with an institution in the EEA, ensure not subject to increased risk

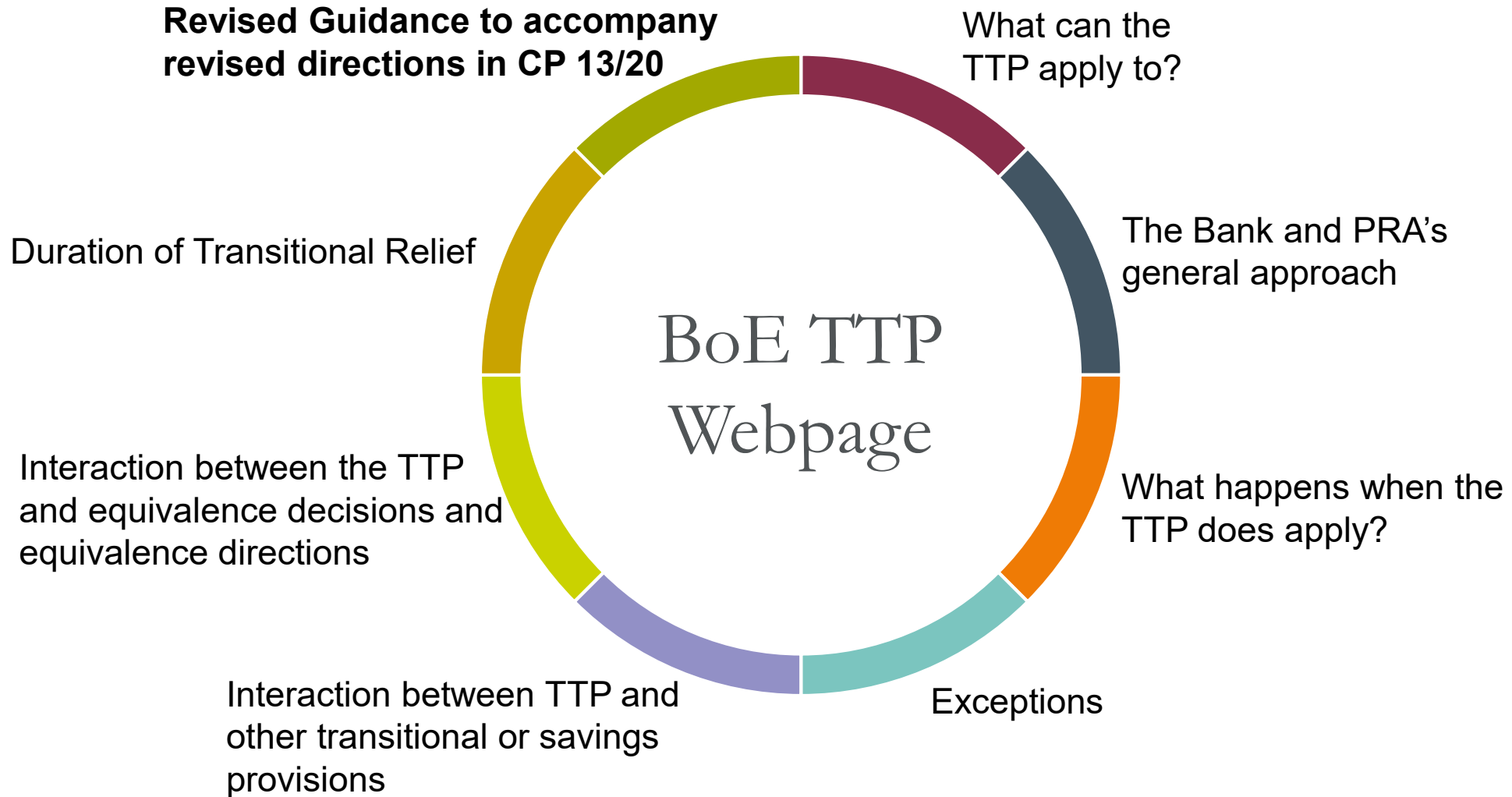
Ensure existing client asset protections and safeguards remain effective

UK FITRS



- Open for testing 5 October
- Workshops
- Feedback

BoE/PRA General Guidance on TTP

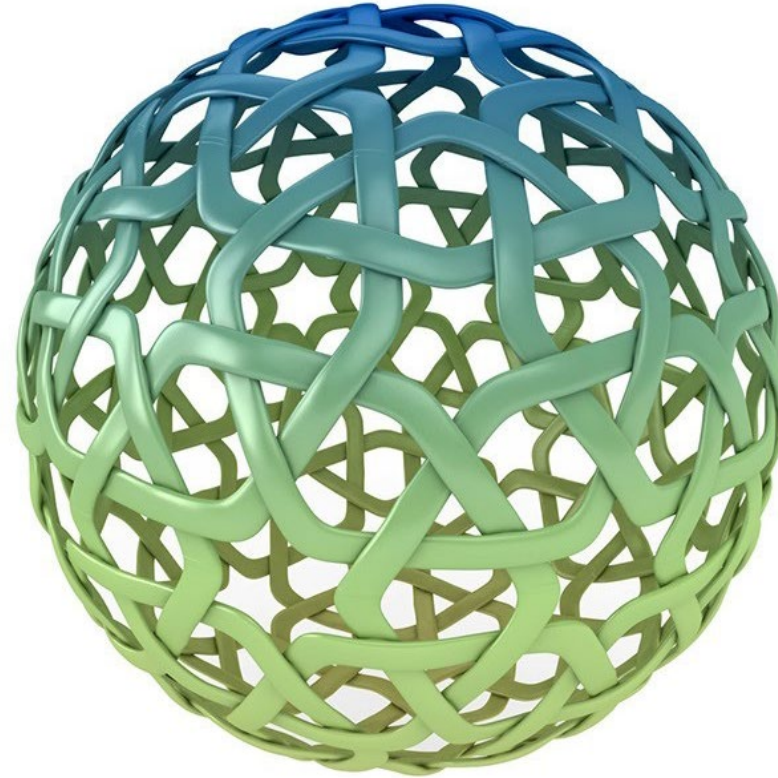


New SIs

The Equivalence Determinations for Financial Services (Amendment etc.) (EU Exit) Regulations 2020

- minor amendments / deficiency fixes
- provide for the FCA and the BoE to establish, before IPCD, "co-operation arrangements" with EEA regulators where HM Treasury makes an equivalence direction
- allow the UK regulators to accept applications from EEA firms for "regulatory decisions" before IPCD

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Help! I've Lost my Passport!

What we are going to discuss

- EEA firms face the loss of passport rights into the UK at the end of the transitional period
- The vast majority provide services into the UK without having a UK branch (ie are **services firms**)
- The UK government has offered a temporary permissions regime (**TPR**) and a financial services contracts run-off regime (**FSCR**) for EEA firms
- FCA has indicated that 1500 firms have opted into the TPR. More are expected to before the end of the year
- But is the TPR the right answer? We will discuss
 - **Licensing** – do you need authorisation in the UK at all post-Brexit? What's the 'overseas persons exclusion' and is it a sustainable model for access to UK markets post-Brexit?
 - **Options** for licensing – TPR v run-off regimes
 - **Costs** of remaining authorised – what requirements will apply to a services firm in the TPR and thereafter?

General Prohibition

“

no person may carry on a regulated activity in the UK unless it is an authorised or exempt person

”

Section 19 Financial Services and Markets Act 2000

First, take an inventory of what you do, and map it to the UK regime

- The UK regulatory regime is highly differentiated.
- The territorial scope of regulation (answering the question: “when do I need a license to provide cross-border services?”) and the regulatory rules work differently across different types of activity.
- For these purposes we are going to consider the following separately:

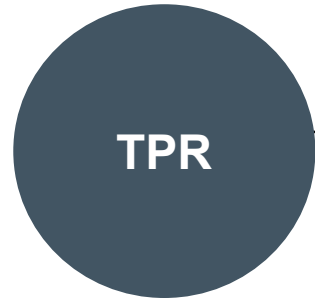
1	Commercial lending
2	Deposit-taking and wholesale investments
3	Retail investments
4	Consumer credit and residential mortgages
5	Payment services

Next... do I in fact need authorisation to provide services post-exit?

- The UK operates a very liberal framework for financial services. Many activities can be carried on without authorisation.
- **Health warning: the summary below is simple: the law is complex. This is not legal advice.**

1	Commercial lending	–Commercial lending is unregulated.
2	Deposit-taking and wholesale investments	–Deposit-taking outside the UK is unregulated, subject to restrictions on marketing –Overseas persons exclusion (OPE) permits wholesale investment activities to be undertaken into the UK, subject to restrictions on marketing
3	Retail investments	–OPE in principle available... but –Restrictions on marketing effectively require a local authorised firm
4	Consumer credit and residential mortgages	–The consumer credit regime has an unclear territorial scope and does not exclude overseas lenders –The UK residential mortgage regime does not exclude overseas lenders with respect to UK <i>situs</i> borrowers on UK property
5	Payment services	–The territorial scope of the payment services regimes appears narrow but it is not clear that FCA intends that overseas payment services providers can actively market and provide cross-border services into the UK

Temporary Permissions Regimes



Most EEA firms with UK branches or providing services into the UK are authorised to undertake regulated activities in the UK under section 31(1)(b) and Schedule 3 of the Financial Services and Markets Act 2000 (**FSMA**) as an incoming EEA firm authorised by the PRA and FCA, based on the 'passport' right to provide banking and investment services under Title V of CRDIV and/or Article 34 and 35 of MiFID II (**pure passported firms**).

Some EEA firms are separately authorised by virtue of so-called 'top-up permissions' permitting them to provide services not within the scope of their passport (**top-up firms**).

EEA authorised electronic money institutions, EEA authorised payment institutions and EEA registered account information service providers are equally currently entitled to provide electronic money issuance, redemption, distribution and payment services in the United Kingdom in the exercise of a passport right.

Post IPCD, an EEA firm will no longer be authorised as of right under the passport to undertake regulated activities in the UK.

In order to prevent disruption to incoming EEA firms, the UK Government has introduced the TPR under the EEA Passport Rights (Amendment, etc., and Transition Provisions) (EU Exit) Regulations 2018 and the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018

Under the TPR, firms which are currently incoming EEA firms will, for a maximum of three years, be treated as if they have permission to carry on those regulated activities in the UK for which they had permission under their passport. After the regime ceases to have effect, they will require permission to carry on a regulated activity.

Change in regulatory ruleset under TPR

- Each regulator has indicated that it will treat TPR firms in the same way as third country (non-EEA) firms post-Brexit, subject to certain modifications, but has taken a different approach to the modification of rules for TPR firms relative to third country firms.
- The changes to the rulesets entail substantial changes to the regulatory ruleset applicable to incoming EEA firms on entry into the TPR.
- When TPR firms exit the TPR, the modifications for TPR firms will no longer apply. Exit will therefore entail further changes to firms' regulatory rulesets.

Dancing with the devil: what does going into TPR cost me?

- The TPR is designed for firms that intend to become authorised. In practice many firms are entering into it reflexively and will use the regime whilst they work out next steps.
- It is **not cost-free**:
- Regulatory rules applicable to services firms from entry into the regime
- Generally, the FCA permits substituted compliance (continued reliance on EU, rather than UK rules): but
 - UK complaints handling rules; compulsory jurisdiction of the Financial Ombudsman
 - Conduct of business requirements applicable to consumer credit, residential mortgages
 - UK safeguarding regime will apply to payment service providers with respect to UK customer funds
- Legal requirements: UK MiFIR applies to TP firms which are investment firms
- Longer term **the FCA will require a branch, a subsidiary (if a payment institution) or that you exit the regime**

Are the other temporary regimes a better bet?



FSCR: Scope and duration



Scope

Activities which are:

- necessary for the performance of a pre-existing contract and which the firm was permitted to carry on beforehand;
- necessary for the purpose of reducing the financial risk of a party to, or affected by, a pre-existing contract;
- necessary in order to transfer property, rights or liabilities under a pre-existing contract to an authorised person;
- necessary in order to comply with a requirement imposed by or under an “enactment”; and
- only insofar as the relevant activity is necessary for that purpose.



- Restricted to services which are “necessary” on a literal interpretation?
- Cancellable / discretionary performance?



Duration

- 15 years for existing contracts of insurance; or
 - 5 years for all other activities;
- from entry into FSCR.

So what's the plan?

- Assess current position
- Prepare to enter TPR
 - Identify applicable requirements
 - Prepare to notify clients
- Assess appetite to establish a UK branch
 - Prepare for authorisation; or
 - Prepare to close or restructure UK business

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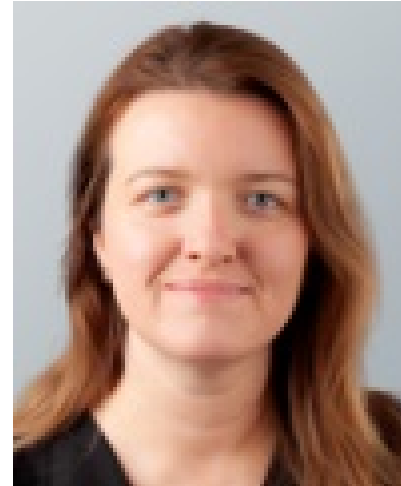
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