

THE BREXIT CLOCK HAS NEARLY RUN OUT — BUT  
DO BANKS HAVE THE INFORMATION THEY NEED?



**Brexit remains enigmatic. With plenty of confusion and indecision at the government level, it continues to be difficult for businesses to plan appropriately. However, when it comes to Financial Services, the regulators have provided information to allow inbound firms to plan. Essentially it is now a binary outcome: a deal followed by an implementation period, or no deal followed by a Temporary Permission Regime (TPR).**

The question though is whether this provides inbound firms with adequate detail to build a plan of action and a roadmap for 2019. At Sia Partners, we believe that with the PRA and FCA consultation papers on the proposed Temporary Permission Regime, firms should have sufficient detail to plan for 2019 on a worst-case basis.

Most firms we are working with are planning for such a scenario: a hard Brexit and implementation of the TPR. Other outcomes are still possible – for example a transition period, or even a cancellation of Brexit all together – but planning for a worst-case no-deal scenario remains the most prudent approach for firms to take.

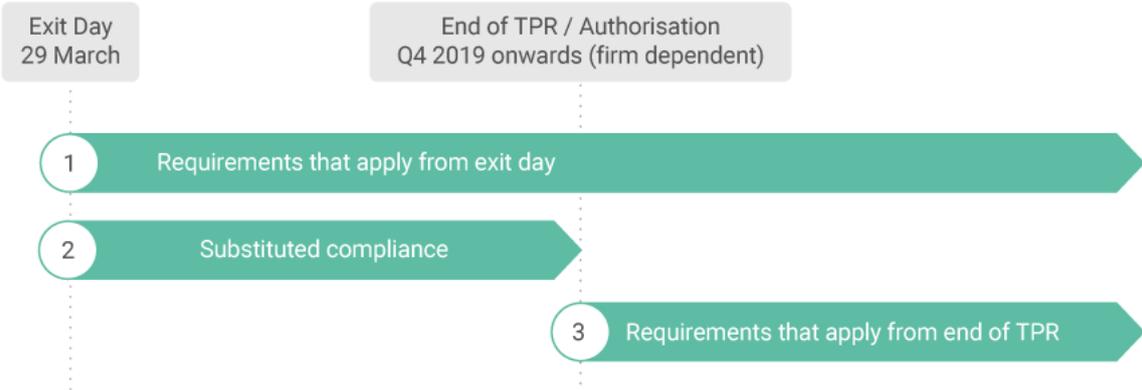
Under the TPR, there are essentially 3 buckets that inbound firms can fall into, determining when they need to comply with the various UK Financial Services regulations.

margin requirements for non-cleared OTC derivatives transactions. In addition, the FCA complaints handling rules under the Financial Ombudsman Service compulsory jurisdiction must also be adhered to from Exit Day.

It should be noted that regarding the Senior Managers & Certification Regulation the PRA and the FCA seem to have taken divergent approaches, with the PRA imposing the rules from exit day while the FCA rules requirements will be applicable only from authorisation. Such inconsistencies in approach could lead to a number of implementation challenges for firms. This is especially the case as many firms will also need to comply under their current FCA SMCR framework, creating a 'hybrid' SMCR governance regime until authorisation.

2. Those items where tailored requirements apply from Exit Day (until authorisation as a third country branch or subsidiary)

Some items under the TPR will apply in tailored form, with the possibility for firms to rely on what the TPR has termed 'substituted compliance'. This in effect means that the PRA and FCA will deem compliance with the Home State Supervisory (HSS) rules as sufficient.



1. Those items which will apply in full from Exit Day (until authorisation as a third country branch or subsidiary)

There are several items where the TPR makes it clear that the rules will apply from exit day. Hence, firms will need to be ready to comply from April 2019. This includes the Financial Services Compensation Scheme (FSCS), as well as bi-lateral

Substituted compliance will mainly apply to FCA requirements. Modifications are in progress for several FCA policies and initiatives, such as their Principles for Business which will apply in full during TPR, with the exception of PRIN 4 (MiFID Business). Meanwhile the FCA COBS (Conduct of Business Sourcebook) rules will apply with minimal changes, but the content and timing is currently unknown for the FCA Status Disclosures.

CASS (Client Assets & Money) rules meanwhile, will be simplified with a reliance on substituted compliance during TPR, though clarity is still needed to fully understand what evidence (if any) is required to demonstrate this. Limited rules also apply for Exit Day application of insolvency disclosures, bespoke reporting and in some cases the sharing of audit reports.

3. Those items where firms need to be ready by the end of the TPR only (i.e. from authorisation as a third country branch or subsidiary)

Once authorised, the full third country branch or subsidiary requirements will come into force. Inbound firms will already have obtained 'landing slots' from the relevant regulators indicating the quarter in which authorisation should be obtained. Once authorised, firms will effectively leave the TPR.

However, even post-TPR, FCA reporting will apply with a reliance on substituted compliance, alongside FCA SYSC (Systems & Controls) rules. And as alluded to in point 1, there is a difference of approach between the two regulators regarding SMCR.

While the above provides inbound firms with some clarity as to what requirements apply when, unfortunately, there are still some remaining issues for firms to deal with. This includes items which are not clear despite the proposed TPR arrangements, and which the TPR has in fact made more confusing (e.g. SMCR arrangements, pre-, during and post-TPR). Additionally, items remain which currently do not have temporary relief, but will be hugely challenging to implement by Exit Day (e.g. MiFIR transaction reporting).

2019, and especially Q1, will be a very challenging time for inbound firms given all of these factors.

Sia Partners is a management consulting firm, currently supporting several firms in their Brexit planning and preparations.

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