EVIA European Venues & Intermediaries Association

LEBA London Energy Brokers' Association

# EVIA response to the Financial Conduct Authority's Consultation Paper 18/29 issued on 8th October 2018:

# Temporary permissions regime for inbound firms and funds

## Summary

The FCA published *Consultation Paper 18/29: Temporary permissions regime for inbound firms and funds* (CP18/29). As part of its contingency planning for a hard Brexit (where there is no agreement on the Withdrawal Agreement), HM Treasury is legislating for a temporary permissions regime (TPR) that will allow, for a limited period of time, after Brexit day:

(i) EEA firms that currently passport into the UK to continue conducting business in the UK; and
(ii) managers of UCITS funds and managers of alternative investment funds that market their funds in the UK, to continue marketing such funds in the UK.

The FCA are consulting on the rules which apply to TP firms and investment funds in the TPR, including how the TPR will be funded.

Key features of the TPR are as follows:

- The regime will come into effect only if there is no deal, and therefore no implementation period, and the passporting regime falls away.
- It will start on exit day 29 March 2019 and continue for up to three years.
- It will cover inbound EEA firms and funds (both EEA-domiciled UCITS and AIFs with a passport).
- EEA firms and funds will need to comply with certain FCA rules in respect of their UK business:
    - All FCA rules that currently apply to them.
    - All FCA rules that implement a requirement of an EU directive which are currently reserved to the firm's home state and which the FCA does not currently apply. However, where firms can demonstrate they continue to comply with the equivalent home state rules in respect of their UK business, the FCA will accept 'substituted compliance' in respect of these rules.
    - Certain additional rules that the FCA believes are necessary to provide appropriate consumer protection or that relate to funding requirements.
    - The FCA Principles for Business, with the exception of Principle 4 (financial prudence).

The FCA will establish an online process to be used for notification of a firm's intention to use the TPR via the FCA´s Connect system. Fund managers will need to notify the FCA that they want to continue to market their funds to investors in the UK. The FCA expects to open the notification window in early 2019 and it will close before exit day. Once the notification window has closed, firms that have not submitted a notification will not be able to use the TPR.

Following exit day, the FCA will allocate each firm a three-month application period or 'landing slot', during which it will need to submit its application for full authorisation in the UK. The first landing slot will be October to December 2019, followed by a further five landing slots, the last one closing at the end of March 2021.

## Questions

**Q1: Do you agree that our proposed rule changes give adequate effect to our general approach for TP firms? If not, why not?**

A1: EVIA does agree with the approach to apply the proposed rule changes to TPR firms who wish to continue to access the UK markets as this will ensure continuity of consumer protection and market practices. This will also provide clear guidance to TPR firms of the specific rules they are bound by after exit day.

However, in the cases of many of our members who are operating MiFIR trading venues in the EU, we have already asked for, and would still welcome clear guidance on where the FCA understands that an investment service may be being provided in the UK, should an FCA authorised firm access those markets. Should any permission be deemed to apply, then we would again ask the FCA for clear guidance on whether such Reverse Solicitation specifically operates under the Overseas Persons Exemption ("OPE") if operating an MTF/OTF in the EU, or whether the specified scope of a "legitimate approach" in the UK renders the activity again beyond the intended scope of the TPR. Specifically, where an EU27 MiFIR TV allows access to pre-existing non-retail UK market counterparties/participants ("members"), then is it performing an investment activity in the UK and do those EU MiFIR TVs need to access the TPR in order to carry on?

We also welcome clear guidance on UK client accessing an EU venue as it was still not clear, pending local Brexit legislation in both Germany and in France, whether it would operate under any EU regulatory scope or be understood to adopt reverse solicitation. The impact of this clarity is important, and not least due to the need to clearly understand whether any transaction reporting obligation may apply to the TV under Brexit where none would currently apply.

**Q2: Do you agree with our approach to applying the Principles? If not, why not?**

A2: Yes, EVIA does agree with the proposed approach to applying the Principle to TPR firms as these are applied to all authorised firms conducting investment service activities to UK clients.

**Q3: Do you agree with our approach to applying the Prudential sourcebooks to TP firms?**

A3: Yes, EVIA does agree with the proposed approach to applying the Prudential source-books to TPR firms.

**Q4:** Do you agree with our proposed legal drafting to apply our general approach to fund marketing activities in the TPR? If not, why not?

A4: No comments.

**Q5:** Do you agree with our proposals on protecting client assets held by firms in the TPR? If not, why not?

A5: Yes, EVIA does support and agree that TPR firms that receive or hold client assets in connection with investment business to comply with client assets arrangements, to ensuring clients are protected and to enable effective supervision of these firms.

**Q6:** Do you agree that TP firms should be required to contribute to the SFGB costs on the same basis as UK firms from 30th March 2019 onwards? If not, why not?

A6: Yes, EVIA does agree that TPR firms should contribute to the SFGB on the same basis as UK firms.

**Q7:** Do you agree with our proposals for the IML levy payable by TP firms? If not, why not?

A7: No comments.

**Q8:** Do you agree with the proposed guidance in GEN 2.2.35G in how it applies to SUP? If not, why not?

A8: Yes, EVIA does agree with the proposed guidance applying to TPR firms as it applies to other Part 4A firms.

**Q9:** Do you agree with our proposals for periodic fees payable by firms in the TPR? If not, why not?

A9: Yes, EVIA does concur with proposed approach that periodic fees should be payable by TPR firms on the same basis as UK firms.

**Q10:** Do you agree with our special project fees proposals for firms in the TPR? If not, why not?

A10: No comments.

**Q11:** Do you agree with our proposals for periodic fees payable by funds in the TPR? If not, why not?

A11: No comments.

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