BANK OF ENGLAND
PRUDENTIAL REGULATION AUTHORITY

FCA FINANCIAL CONDUCT AUTHORITY

Please note: This letter has been prepared for the website. Square brackets show where this letter may differ slightly from the versions sent directly to firms.

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Dear [CEO / Branch Manager],

Final preparations for end of the transition period

The transition period, which began when the UK left the EU on Friday 31 January 2020, is due to end at 11pm on Thursday 31 December 2020. It is imperative that firms continue to build on their preparatory work to ensure that they, and to the extent possible their clients, are ready for a range of scenarios at the end of the transition period.

As noted by the Financial Policy Committee (FPC) in its statement on Thursday 8 October 2020, most risks to UK financial stability that could arise from disruption to the provision of cross-border financial services, should the transition period end without the UK and EU agreeing equivalence or other arrangements for financial services, have been mitigated.[1] This reflects the extensive preparations made by authorities and the private sector over a number of years.

UK authorities have put temporary measures in place to ensure that UK households and businesses will be able to continue accessing services from EU financial institutions after the end of 2020. These measures include the Temporary Permissions Regime (TPR) and the use of temporary transitional powers, on which both the Bank of England (Bank), Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) have published information.[2] UK firms have developed strategies and established EU entities where appropriate, including making use of FSMA Part VII business transfers where needed.

However, financial stability is not the same as market stability, and some market volatility and disruption to financial services, particularly to EU-based clients, could arise. Financial institutions are continuing to make preparations and engage with clients and customers to minimise any disruption, and it is important that they continue to do so. Final steps by individual firms are required to ensure their preparedness for the end of the transition period. These actions will vary between firms and may differ between UK firms and EEA firms operating in the UK.

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1 Financial Policy Summary and Record of the Financial Policy Committee Meeting on Wednesday 30 September 2020. Available at: https://www.bankofengland.co.uk/financial-policy-summary-and-record/2020/october-2020.

2 Available at: https://www.bankofengland.co.uk/eu-withdrawal/temporary-transitional-power; and https://www.fca.org.uk/brexit/onshoring-temporary-transitional-power-ttp.

This letter sets out key areas requiring final preparations, including: contingency planning and continuity of cross-border business in respect of EU liabilities; Part VII saving provision; data; EEA bank account closures; EEA passporting firms; and TPR firms' Part 4A submission timeline.

Contingency planning and continuity of cross-border business in respect of EU liabilities

The PRA wrote to firms directly in February this year in relation to contingency planning to ensure ongoing service continuity in respect of EU liabilities.[3] Firms were requested to provide confirmation to their PRA supervisory contact that they had engaged with all relevant EU authorities.

Firms intending to run-off their remaining liabilities relying on EU run-off regimes where these are available or seeking to transfer their EU liabilities to an EU-authorised insurer should ensure that they finalise preparations and implement suitable and realistic contingency plans in advance of the end of the UK transition period. You should proactively continue to discuss your contingency plans, as well as any associated risks with the relevant EU authorities, to ensure that they remain satisfied with them.

In its communication published on Tuesday 13 October 2020, European Insurance and Occupational Pensions Authority (EIOPA) set out its expectations of the insurance sector. Firms should ensure that they are prepared for the end of the transition period, have measures in place to prevent insurance activity without authorisation and ensure service continuity of cross-border business.[4] It also reminded firms and intermediaries of their duty to inform customers about the possible impact of the withdrawal of the UK from the EU on insurance contracts. There is more information about FCA's expectations here.

If you have identified customers who will be affected by a reduction or cessation in service provision, you should ensure that they are treated fairly and provide them sufficient notice to seek alternative arrangements in an orderly manner. You should also continue to take the necessary steps to manage any remaining operational risks.

Part VII saving provision

Parliament has legislated for a Part VII 'saving provision'.[5] This will provide up to two years from the end of the transition period for parties to obtain a UK court order sanctioning the transfer of insurance business. It will apply where that insurance business transfer scheme is already underway at the end of the transition period (under the current Part VII regime) and has met two conditions: payment of the regulatory fee and approval of an independent expert.

Firms should note that the mutual recognition framework contained in the Solvency II Directive will not apply to insurance business transfers sanctioned by the UK courts after the end of the transition period, even if they fall within the saving provision. Instead, recognition will be based on national regimes in each EEA jurisdiction. Therefore, insurers intending to rely on the saving provision as part of their contingency plans should continue to engage proactively with relevant EEA authorities.

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3 Available at: https://www.bankofengland.co.uk/prudential-regulation/letter/2020/outstanding-eu-liabilities-following-uk-withdrawal-from-the-eu.

4 Available at: https://www.eiopa.europa.eu/content/eiopa-calls-insurance-sector-complete-preparations-end-uk-transition-period.

5 The Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/710). HMT has indicated on 15 October 2020 that it will bring forward further secondary legislation to update references to 'exit day' in these Regulations to refer to the end of the transition period.

Data

In the absence of a decision by the European Commission on UK data protection adequacy, the use of standard contractual clauses (SCCs) in relevant contracts is one of the available ways that EEA firms can comply with the EU's cross-border personal data transfer laws after the expiry of the transition period.

UK firms are generally well-advanced on their part in making arrangements for the implementation of these clauses into UK-EEA contracts. You may need to consider whether contracts involving the transfer of personal data to your firm from the EEA (where those contracts have not yet been remediated) need to be updated to comply with EU requirements or to consider other appropriate measures for personal data transfers from the EEA into your firm in the UK, where this is necessary to ensure the continuity of services to your firm. This could include reviewing the position for EU vendors or third parties on which your services rely.

Where SCCs are in place please note the advice from the European Data Protection Board and the UK's Information Commissioner's Office, and applicable EU case law.[6]

EEA Bank Account Closures

The ability of UK banks to continue providing services to customers – particularly retail customers – resident in the EU will be determined by national regimes. If you have customers in the EU who are reliant on UK banks accounts that may be closed, you will need to review your capability to make and receive payments to and from an overseas account. You will also need to identify impacted customers and work with them to implement alternative arrangements if necessary so that they can continue to benefit from their insurance product. The FCA expects you to communicate with your customers in a timely and supportive manner.

EEA Passporting Firms

Upon entry into TPR at the end of the transition period, EEA passporting firms will obtain deemed temporary Part 4A permission to operate in the UK pending permanent authorisation as Third Country Branches with a Part 4A permission. The PRA wrote to the relevant firms on Tuesday 1 September 2020 to remind them of the need to ensure operational preparedness to meet the regulatory requirements that will apply once firms enter into TPR. [7] Whilst in the TPR, firms will be subject to the same obligations and supervisory framework and we will have the same powers in relation to them, as if they were a Part 4A authorised firm.[8] The PRA expectations are set out at a high level in the PRA's approach to insurance supervision and SS2/18.[9] The PRA and FCA have set out information for firms using TPR on their websites.[10] This includes information on the rules which will apply to firms

6 Available at: https://edpb.europa.eu/sites/edpb/files/files/file1/20200724_edpb_faqoncjeuc31118_en.pdf and https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2020/07/updated-ico-statement-on-the-judgment-of-the-european-court-of-justice-in-the-schrems-ii-case/.

7 Available at: https://www.bankofengland.co.uk/prudential-regulation/letter/2020/tpr-operational-readiness.

8 Firms in TPR with an establishment in the UK will be required to comply with the same rules that apply to other third country branches (subject to any applicable transitional relief). For firms in TPR without a branch in the UK (cross border service providers) a more limited set of rules will apply. Further details can be found here: https://www.bankofengland.co.uk/eu-withdrawal/temporary-permissions-regime.

9 October 2018: https://www.bankofengland.co.uk/prudential-regulation/publication/2018/pra-approach-documents-2018; and March 2018: https://www.bankofengland.co.uk/prudential-regulation/publication/2018/international-insurers-pras-approach-to-branch-authorisation-and-supervision-ss.

10 Available at: https://www.fca.org.uk/brexit/temporary-permissions-regime-tpr.

in the TPR and considerations for firms leaving the TPR. The FCA is currently consulting on its approach to the authorisation and supervision of international firms in CP20/20 (which is relevant to firms from both EEA and non-EEA jurisdictions).[11] This will supplement the FCA's existing Approach to Authorisation and Approach to Supervision documents.[12] For dual regulated firms, it will sit alongside the SS2/18. The PRA and FCA will also continue to work closely with firms regarding their applications for permanent authorisation. In addition, the financial services contracts regime (FSCR) will enable EEA passporting firms that do not enter the TPR to wind down their UK business in an orderly fashion.[13]

TPR firms' Part 4A application submission timeline

In August 2019 and June 2020 the PRA sent information requests to every firm that had notified into TPR but had not provided a Part 4A application asking when they intended to submit a Part 4A application. This information was requested to support PRA planning to ensure there will be sufficient resources allocated to review the large volume of Part 4A applications expected during TPR.

The PRA is now planning its review activity based on the dates provided by TPR firms. Therefore, it is important that a TPR firm submits its Part 4A application during the quarter previously notified to the PRA (for example, Q3 2021). If a TPR firm anticipates that it will be unable to submit during the quarter previously notified, it should contact the PRA at the earliest opportunity: PRA.TPR@bankofengland.co.uk.

All TPR firms should be aware that the PRA continues to consider a range of options in relation to the timing of the submission of Part 4A applications and reserves the right to direct firms to apply during a specified period within TPR.[14]

Other areas of focus for firms

The above is not an exhaustive list of all the issues that may arise, and we are aware that you are also working on other matters linked to the end of the transition period (for example, motor insurers considering how they communicate with their customers on issues like "green cards", the international certificates of insurance guaranteeing that motorists have the necessary third-party insurance cover for travel, etc). We expect that you will continue these efforts to address risks specific to your firm and that you will keep your supervisors informed. FCA Supervisors are also following up where appropriate with specific questions about firms' preparations through the FCA's usual supervisory channels.

Both the PRA and the FCA have set out extensive information on our websites about the issues firms need to consider.[15] You should ensure that you are familiar with that material.

Thank you for your firm's constructive engagement on these issues to date. We look forward to that dialogue continuing in supervisory engagement over the coming weeks.

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11 Available at: https://www.fca.org.uk/publication/consultation/cp-20-20.pdf.

12 Available at: https://www.fca.org.uk/publications/corporate-documents/our-approach-authorisation; and https://www.fca.org.uk/publications/corporate-documents/our-approach-supervision.

13 Available at: https://www.bankofengland.co.uk/eu-withdrawal/financial-services-contracts-regime; and https://www.fca.org.uk/brexit/temporary-permissions-regime-tpr/financial-services-contracts-regime.

14 The power of direction under regulation 6(6) of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 SI 2018/1149.

15 Please see: https://www.bankofengland.co.uk/eu-withdrawal; and https://www.fca.org.uk/brexit.

Yours sincerely

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