

## MAIN FCA TRANSITIONAL DIRECTIONS

### 1 Part 1: The main FCA transitional directions

- 1.1 D These directions are made by the *FCA* under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (the 2019 Regulations), having consulted HM Treasury and other regulators as required by regulation 202 of those regulations, and being satisfied within the terms of regulation 200(3) and (4) of those regulations.
- 1.2 D The directions, which shall come into force on *IP completion day*, shall apply until 31 March 2022, unless otherwise stated in the directions (including in Annexes A and B) or unless varied or revoked beforehand (without prejudice to any continuing effect in relation to earlier times).
- 1.3 D The directions apply in relation to **relevant obligations**:
- (1) for which the *FCA* has responsibility for supervising or has other functions relating to a *person's* compliance with the obligation; and
  - (2) which arise from **exit instruments** in force on or before *IP completion day*.

### 2 Part 2: Interpretation

- 2.1 D **Relevant obligation, exit instrument, excluded obligation and enactment** have the meanings contained in Part 7 of the 2019 Regulations. In the directions, these terms (other than where appearing in headings and titles which are not styled in bold) are shown in bold.
- 2.2 D **The expressions standstill direction, and TP substituted compliance direction** have the meanings contained in 3.1D and 5.1D of the directions respectively. In the directions, these terms (other than where appearing in headings and titles which are not styled in bold) are shown in bold.
- 2.3 D Subject to 2.1D and 2.2D, italicised words and phrases have the meanings contained in the *Glossary* of the *FCA Handbook*, unless the context requires otherwise.
- 2.4 D References in the directions to **enactments** are to **enactments** as amended.

### 3 Part 3: The standstill direction

- 3.1 D The direction in this Part shall be referred to as the **standstill direction**. The **standstill direction** only applies in the cases and subject to the exclusions set out in the Annexes, and is subject to Part 4.
- 3.2 D The *FCA* directs that where, as a result of the operation of an **exit instrument**, a **relevant obligation**:

- (1) begins to apply to a *person*, the **relevant obligation** shall not apply to that *person*; and
  - (2) applies to a *person* differently from how it would but for an **exit instrument**, the obligation is modified so that a *person* does not breach it if they comply with the obligation as it applied immediately before *IP completion day*, subject to 3.3D.
- 3.3 D A pre-*IP completion day* obligation referred to in 3.2D(2) shall be construed in such a way that compliance with it would achieve the same result as it did immediately before *IP completion day* but in the context that the *United Kingdom* is no longer a Member State, with such adaptations to *EU* references as may be necessary. See in addition 6.5G.
- 3.4 D Unless an Annex specifies otherwise, the **standstill direction** applies to all *persons* subject to a **relevant obligation**.

#### 4 Part 4: Standstill direction – Exclusions and savings

##### Perimeter-related changes

- 4.1 D Subject to 4.2D, the **standstill direction** does not apply to the extent that a **relevant obligation** applies for the first time, or applies differently, as a result of amendments to:
- (1) the *Regulated Activities Order*;
  - (2) the *Financial Promotion Order*; or
  - (3) the *Exemption Order*.
- 4.2 D The **standstill direction** applies to **relevant obligations** arising from:
- (1) changes to the *regulated activity* specified in article 51ZA of the *Regulated Activities Order* (managing a UCITS), as set out in Annexes A and B to these directions; and
  - (2) the amendments made by the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 to paragraphs 2 and 3 of the Schedule to the *Exemption Order* (exemptions for EEA central banks and ECB) as set out in Annex A to these directions.
- 4.3 G The effect of 4.1D is that the **standstill direction** does not generally apply where the scope of a **relevant obligation** is affected by an amendment to the *Regulated Activities Order*, the *Financial Promotion Order* or the *Exemption Order*. For example, the *FCA's* Conduct of Business sourcebook (*COBS*) generally applies to a *person* carrying on *designated investment business* in the *UK*. The definition of *designated investment business* refers to a number of *regulated activities* specified in the *Regulated Activities Order*, some of which apply differently after *IP completion day*. A *person* will not be able to rely on the **standstill direction** if an obligation in *COBS* applies to them for

the first time because, for example, the definition of a *regulated activity* has been expanded.

#### EU and Member State institution functions

- 4.4 D The **standstill direction** does not apply where the *pre-IP completion day* obligation consists of:
- (1) an obligation to provide information to a body or office or institution of the *EEA* or a Member State;
  - (2) an obligation to apply technical or other information published by a European Supervisory Authority; or
  - (3) any obligation linked to a function of an institution of the *EEA* or a Member State, in circumstances where the function does not apply to the *United Kingdom*,

but subject to contrary provision in the Annexes (including as set out in row 32(g) of Annex A concerning confirmation of a pre-submitted notification on or immediately before *IP completion day* in relation to eligibility for STS designation, in relation to the Securitisation (Amendment) (EU Exit) Regulations 2019).

#### Duties, powers or functions of the FCA, Bank of England, PRA, and HM Treasury

- 4.5 D Nothing in the **standstill direction** shall affect the application of a **relevant obligation** where a change made by an **exit instrument** relates to a duty, power or function of the *FCA*, the Bank of England, the *PRA*, or HM Treasury.
- 4.6 G Changes made by **exit instruments** to *FCA*, Bank of England, *PRA* or HM Treasury duties, powers or functions could result in obligations beginning to apply to a *person*, or applying differently. The purpose of 4.5D is to make it clear that the **standstill direction** does not affect the application of a **relevant obligation** which arises from the conferral of a duty, power or function on, or a modification of a duty, power or function of, the *FCA*, Bank of England, *PRA* or HM Treasury. For example, if *FCA*, the Bank of England, *PRA* or HM Treasury are entitled to require information from a greater class of *persons* post-*IP completion day* than pre-*IP completion day*, the greater class of *persons* must comply with any request; the obligation to comply with such a request would not be affected by the **standstill direction**.

#### Gibraltar

- 4.7 D The **standstill direction** is without prejudice to any provision made by an **exit instrument** relating to the application of **relevant obligations** in respect of Gibraltar.

#### Interaction with HM Treasury equivalence decisions

- 4.8 D The **standstill direction** does not apply to a **relevant obligation** which begins to apply in a *person's* case or applies in the *person's* case differently as a result of the operation of an equivalence direction or equivalence determination.
- 4.9 D “Equivalence direction” and “equivalence determination” have the same meanings as in the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019.
- 4.10 G In certain areas, the use of the transitional power has the same effect as if the EU had been found equivalent by HM Treasury. The effect of 4.8D is to end the transitional relief if HM Treasury find the EU equivalent, but the requirements will remain the same for firms. See further explanation in our prudential transitional direction at paragraph 5.7G.
- 4.11 G The FCA is also exercising its power under Part 7 of the 2019 Regulations to make the FCA transitional direction for the Share Trading Obligation.

## 5 Part 5: Temporary permission firms, etc

Direction in relation to temporary permission firms etc allowing for substituted compliance for provisions other than rules etc.

- 5.1 D The direction in 5.3D shall be referred to as the **TP substituted compliance direction**.
- 5.2 G The **TP substituted compliance direction** provides for substituted compliance with the law in a *TP firm's Home State* for **relevant obligations** in relation to *TP firms*, in provisions other than *rules*, unless the obligation is excluded from the direction.
- 5.3 D The *FCA* directs that:
- (1) where the operation of the *EU Exit Passport Regulations* leads to a **relevant obligation** on *IP completion day* for a *TP firm*; and
  - (2) the obligation is one which before *IP completion day* was reserved to the *Home State* of the *TP firm*,
  - (3) the obligation is modified so that the *TP firm* does not breach the obligation if:
    - (a) the *TP firm* (or its *appointed representative*) complies with, or applies (in the case where under the *Home State's* law the obligation does not apply to the *TP firm's* (or its *appointed representative's*) activity in the *United Kingdom*):
      - (i) the same provision of the relevant directly-applicable *EU* measure which applies in the *firm's Home State*; or

- (ii) a provision of the *Home State's* law which implements the same provision of the relevant directive; and
  - (b) the *TP firm's* (or its *appointed representative's*) compliance with or application of the provision covers its activities in or into the *United Kingdom*.
- 5.4 D The **TP substituted compliance direction** does not apply unless a *TP firm* can demonstrate to the *FCA* that, at the time in question, it complied with or applied a *Home State* provision referred to in the **TP substituted compliance direction** to the extent referred to in the direction.
- 5.5 D The **TP substituted compliance direction** does not apply:
- (1) to *TP firms* for the purposes of the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 or technical standards previously deriving from *MiFID* or *MiFIR*;
  - (2) to obligations in relation to authorisation or registration;
  - (3) to obligations resulting from the deletion of section 59(8) or section 63E(7) of the Financial Services and Markets Act 2000;
  - (4) to obligations in the *SFTR*;
  - (5) to obligations in the *Securitisation Regulation*;
  - (6) to obligations in the *Market Abuse Regulation*; and
  - (7) in relation to *rules* which apply to *TP firms* made under **exit instruments**.
- [Note: the **TP substituted compliance direction** cannot apply to *rules* made under powers other than the power in regulation 3 of the Financial Regulators' Powers (Technical Standards etc.)(EU Exit) Regulations 2018, as obligations under those powers do not create relevant obligations, as to which see paragraph 5.10G(3) and 6.1G below.]
- 5.6 D In relation to an obligation covered by the **TP substituted compliance direction**, where:
- (1) a *TP firm's Home State* has exercised a national discretion expressly permitted by:
    - (a) an *EU* directive not to apply a provision which would implement a provision of an *EU* directive; or
    - (b) an *EU* regulation not to apply a provision of that regulation; and
  - (2) the *United Kingdom* has chosen to apply that provision,
- the *TP firm* has no need to comply with, or apply, the obligation in question.

- 5.7 D A provision referred to in the **TP substituted compliance direction** includes a provision where an *EU* measure sets out a number of options, and the *Home State* referred to in that direction has chosen one or more such options different from those chosen by the *United Kingdom* to implement the same provision.
- 5.8 G (1) The operation of the *EU Exit Passport Regulations* referred to in the **TP substituted compliance direction** is the operation of regulation 8(3), 11(3), 28(3) or 34(3) of those regulations which provides that a *TP firm* is to be treated as having a Part 4A permission.
- (2) A provision referred to in the **TP substituted compliance direction** in an **enactment** applies to a *TP firm* (unless the contrary intention appears) where the **enactment** refers to an *authorised person* or includes a reference to a *person* having *Part 4A permission* (however expressed).
- 5.9 G (1) It is not necessary to apply the **TP substituted compliance direction** to provisions of *MiFIR* and the *MiFID Org Regulation*, because the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 address whether provisions of those measures should be subject to substituted compliance in relation to *TP firms*. The **standstill direction** applies to *TP firms* in limited circumstances as described in row 24 of Annex A of that direction.
- (2) It is not necessary to apply the **TP substituted compliance direction** to any obligation resulting from the deletion of sections of sections 59(8) or 63E(7) of the Financial Services and Markets Act 2000, because the **standstill direction** has been applied (see row 19.4 and 19.5 of Annex A).
- 5.10 G (1) The **TP substituted compliance direction** refers to a provision which deals with a matter which immediately before *IP completion day* was reserved to the *Home State* of the *TP firm*. This includes provisions that under an *EU* directive are always the responsibility of that state, for example, concerning prudential matters. It also includes provisions the responsibility for which depends on whether the service or activity takes place at a *branch* in a state other than the *Home State* of the *firm*, or is provided cross-border from a *branch* or establishment in the *Home State*.
- (2) The **TP substituted compliance direction** does not apply to *rules* applied to *TP firms*, to the limited extent such *rules* could result in **relevant obligations** (see the note below).
- (3) In addition to the **TP substituted compliance direction**, a *TP firm* may, other than in respect of *rules*, also benefit from the **standstill direction**. This would arise, for example, where the **standstill direction** is applied in the Annexes to those directions to **relevant obligations** of *TP firms* by operation of the *EU Exit Passport Regulations*. In practice, this

would apply mostly to **relevant obligations** arising from statutory instruments or instruments amending binding technical standards. As explained below, most of the *rules* which apply to *TP firms* could not result in **relevant obligations**.

[**Note:** the *rules* we apply to *TP firms* are predominantly made using powers other than powers under Part 3 of the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018, which could not result in **relevant obligations** in any event. Such *rules* cannot be subject to the **standstill direction**, the **TP substituted compliance direction** or the **prudential standstill direction** in respect of their application to *TP firms*. However, where a *rule* applied to a *TP firm* is waived or modified by the **standstill direction** for a *firm* other than a *TP firm*, provision to similar effect for a *TP firm* is included in the *FCA Handbook* (see *GEN 2.2.27R(3)* and (4) and *GEN 2.2.33R(3)*). *GEN 2.2.33R(3)* makes similar provision for *TP UCITS qualifiers* and *TP AIFM qualifiers*.]

Direction in relation to the distance marketing regulations for TP firms, payments suppliers, relevant EEA AIFMs and recognised schemes

- 5.11 D The *FCA* directs that where the operation of the *EU Exit Passport Regulations* on the *Distance Marketing Regulations* leads to a **relevant obligation on IP completion day** for a *TP firm* which, before *IP completion day* was reserved to the *EEA State* where the *TP firm* has an establishment from which the service is provided, the obligation is modified so that the *TP firm* does not breach it if it (or its *appointed representative*):
- (1) complies with, or applies (in the case where under that state's law the provision does not apply to the *firm's* (or its *appointed representative's*) activity in the *UK*), the same provision of the *EEA State's* law which implements the same provision of the *Distance Marketing Directive*; and
  - (2) the *TP firm's* (or its *appointed representative's*) compliance with, or application of, the provision covers its activities in or into the *United Kingdom*.
- 5.12 D The *FCA* directs that where the operation of the *Distance Marketing Regulations* leads to a **relevant obligation on IP completion day** for a payment supplier, a relevant EEA AIFM or the operator, trustee or depositary of a relevant recognised scheme which, before *IP completion day* was reserved to the *EEA State* where the *person* has an establishment from which the service is provided, the obligation is modified so that the *person* does not breach it if it (or its *appointed representative* or, in the case of a payment supplier, its agent):
- (1) complies with, or applies (in the case where under that state's law the provision does not apply to the *person's* (or its *appointed*

*representative's* or, in the case of a payment supplier, its agent's) activity in the *United Kingdom*), the same provision of the *EEA State's* law which implements the same provision of the *Distance Marketing Directive*; and

- (2) the *person's* (or its *appointed representative's* or, in the case of a payment supplier, its agent's) compliance with or application of the provision covers its activities in or into the *United Kingdom*.

- 5.13 D The expressions in 5.12D of “payment supplier” and “relevant EEA AIFM” have the meanings in regulation 4(1C) of the *Distance Marketing Regulations*; and of “operator”, “trustee” “depository” and “relevant recognised scheme” have the meanings in regulation 4(6) of those Regulations.
- 5.14 D The direction in 5.11D or 5.12D does not apply unless, as the case may be, a *TP firm* or a *person* referred to in the direction can demonstrate to the *FCA* that, at the time in question, it complied with or applied a provision of the law of the state referred to in 5.11D or 5.12D to the extent referred to there.

## 6 Part 6: General Guidance

What is a relevant obligation?

- 6.1 G The 2019 Regulations allow the *FCA* to give a transitional direction in relation to a **relevant obligation**. An obligation is a **relevant obligation** if:
  - (1) the obligation is imposed by or under an **enactment**,
  - (2) the obligation is not an **excluded obligation**,
  - (3) the regulator has responsibility for supervising, or has other functions relating to, the *person's* compliance with the obligation, and
  - (4) as a result of the operation of an **exit instrument**, the obligation
    - (a) begins to apply in the *person's* case, or
    - (b) applies in the *person's* case differently from how it would, but for the **exit instrument**, apply in the *person's* case.
- 6.2 G The following should not be considered **relevant obligations** for the purposes of the directions, and are not modified by them.

<p>Provisions in <b>exit instruments</b> which do not result in obligations applying for the first time, or applying differently</p>	<p>A <b>relevant obligation</b> is one that begins to apply, or applies differently, as a result of the operation of an <b>exit instrument</b>.</p> <p>Some amendments made by <b>exit instruments</b> do not result in the creation of a <b>relevant obligation</b>. For example, an <b>exit instrument</b> may amend a cross-reference so that it is to <i>UK</i> implementing legislation rather than an underlying EU directive. Alternatively, an <b>exit instrument</b> may copy into <i>UK</i> law a definition which previously appeared in an EU</p>
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	directive. In both cases, if there is no difference in the meaning of the definition/cross-reference, the obligation does not apply differently. As a result, the obligation is not a <b>relevant obligation</b> .
Provisions in <b>exit instruments</b> which confer functions, powers and duties on the <i>FCA</i> , the Bank of England, <i>the PRA</i> or HM Treasury	<p>An <b>exit instrument</b> may confer new functions or powers on the <i>FCA</i>, or it may amend existing functions or powers. For example, various powers to make binding technical standards are being transferred by <b>exit instruments</b> from the European Supervisory Authorities and the Commission to the <i>FCA</i>.</p> <p>Provisions conferring functions, powers or duties on the <i>FCA</i>, the Bank of England, <i>PRA</i> or HM Treasury are not <b>relevant obligations</b>. The directions are of no effect on the scope of the those persons' functions, powers and duties.</p>

#### The purpose of the directions

- 6.3 G The purpose of the directions is to give regulated persons time to adapt to changes to financial services regulation caused by the *United Kingdom's* withdrawal from the *EU*. Continuity is generally achieved by:
- (1) disapplying obligations that begin to apply to a *person*;
  - (2) otherwise allowing *persons* to continue to comply with the pre-*IP completion day* version of an obligation; and
  - (3) in addition, for *TP firms*, allowing substituted compliance for *Home State* obligations.
- 6.4 G The **standstill direction** means that a *person* will not be in breach of a **relevant obligation** so long as it complies, as it was doing prior to *IP completion day*. For example, money-laundering legislation may require post-*IP completion day* enhanced due diligence for EEA entities in circumstances where it is not required pre-*IP completion day*. The **standstill direction** means that a *person* who does not carry out such enhanced due diligence will not be in breach of the legislation. But it will still need to comply with the due diligence standards which existed pre-*IP completion day*.
- 6.5 G
- (1) Since the *United Kingdom* will not be subject to EU law after *IP completion day*, obligations will need to be construed in a way that achieves the same result as before *IP completion day*. So, for example, if an obligation referred to an *EEA State* before *IP completion day*, it would need to be construed as referring to an *EEA State* and the *United Kingdom* after *IP completion day*. This is the effect of 3.2D and 3.3D.
  - (2) In construing a **relevant obligation** so that it achieves the same result despite the *United Kingdom* no longer being a Member State, adaptations may need to be made. These adaptations may be to *EU* references, such as to *EU* entities. Other references requiring adaptation may be to governments, central banks, national competent authorities,

other institutions or bodies of Member States, the *EU* and non-EEA third countries.

Are you required to comply with the pre-*IP completion day* version of an obligation?

6.6 G The **standstill direction** does not require compliance with the pre-*IP completion day* version of an obligation. It is open to a *person* relying on these direction to choose whether to comply with a pre-*IP completion day* obligation or with the post-*IP completion day* version of an obligation. However, a *person* relying on these directions must do one or the other.

6.7 G For example:

- (1) A pre-*IP completion day* obligation may have applied to activities carried on from an establishment in the *United Kingdom* or another *EEA State*.
- (2) The post-*IP completion day* unmodified obligation may only apply to activities carried on from an establishment in the *United Kingdom*.
- (3) In this case, the **standstill direction** will not require a *person* to continue to comply with the obligation when carrying on activities from an establishment in an *EEA State*. It will be sufficient that the *person* complies with the obligation for activities from a *UK* establishment.

Effect of the standstill direction on a definition where the direction applies to a provision

6.8 G Where the **standstill direction** applies to a provision that contains a definition that has changed as a result of an **exit instrument**, the **standstill direction** also applies to the change to the definition in that provision, so far as relevant.

## 7 **Part 7: Guidance on how we have applied the standstill direction in the Annexes**

7.1 G We have generally applied the **standstill direction** in a broad way in areas where **relevant obligations** arise. However, there are some areas in which we have not applied the **standstill direction**. This Part gives general guidance on how we have identified where to apply the **standstill direction**. More specific guidance can be found in the Annexes.

Where a standstill would pose risks to our objectives

7.2 G We have not applied the **standstill direction** in areas where allowing persons to continue to comply with the pre-*IP completion day* versions of their regulatory obligations would pose risks to our objectives.

Interaction between the standstill direction and other transitional provisions or regimes

- 7.3 G (1) The **standstill direction** is not a substitute for transitional provisions or regimes which have been put in place by HM Treasury or the *FCA*. The **standstill direction** has therefore not generally been applied to obligations where separate transitional provisions or regimes already exist to mitigate disruption. However, please note, for example, the application of the directions in Annex A to credit rating agencies and in relation to consumer credit.
- (2) Where an area already contains a transitional provision, we have not generally applied the TTP beyond that transitional provision. For example, in relation to the transitional provision for EEA prospectuses approved before the end of the transition period, the TTP will not affect a person's duty to comply with the new onshored requirements for EEA prospectuses which have not been approved by the end of the transition period.

7.4 G A *TP firm* should refer to Part 5 of the directions.

7.5 G The Annexes to these directions contain further information on how the **standstill direction** applies in areas where there are also specific transitional regimes.

## 8 **Part 8: The effect of the directions on guidance**

8.1 G The directions do not modify the *FCA Handbook* and non-*Handbook* guidance on **relevant obligations**. However, we expect *FCA Handbook* and non-*Handbook* guidance to be interpreted in a way that takes into account any modifications of an underlying obligation by any of these directions. Guidance should be interpreted sensibly and purposively in the light of any such modifications.

8.2 G We expect the same approach to be taken to guidance on **relevant obligations** issued by the European Supervisory Authorities and other bodies, to the extent such guidance continues to be relevant. Our wider approach to *EU* non-legislative materials is set out in the *FCA*'s Statement on "[Our approach to EU non-legislative materials](#)".

## 9 **Part 9: The effect of the directions on activities subject to EU or other non-UK law after IP completion day**

9.1 G The **standstill direction** applies to obligations that will exist under *UK* law after *IP completion day*. The **standstill direction** cannot affect any obligations that will exist after *IP completion day* under foreign law, for example, *EU* law or the national laws of *EEA States*. For example, *UK persons* will no longer be able to passport into the *EEA* after *IP completion day*, and their activities in the *EEA* may be subject to authorisation or registration requirements and other provisions of *EU* and national law.

## 10 **Part 10: The interaction between the standstill direction and the FCA Handbook transitional provisions in GEN TP 5**

- 10.1 G We have made a number of transitional provisions in *GEN TP 5*. The purpose of the *GEN TP 5* transitional provisions is to provide for continuity in actions that span *IP completion day* in some way. For example, if a *firm* is required to notify the *FCA* of a breach of a requirement, it will continue to be required to notify the *FCA* of breaches of requirements as they applied before *IP completion day*.
- 10.2 G *GEN TP 5* should be interpreted in a way that takes into account any modifications by a direction under Part 7 of the 2019 Regulations.

By order of the Board

22 December 2020