

DRAFT 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(4) of those regulations.
- 1.2 D The directions, which shall come into force on *exit day*, shall apply until ~~30 June~~31 December 2020, unless otherwise stated in the directions 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 exit 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 **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 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 *exit day*, subject to 3.3D.
- 3.3 D A pre-exit 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 *exit day* but in the context of the *United Kingdom* no longer being a Member State, with such adaptations to *EU* references as may be necessary.
- 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 changes to the *regulated activity* specified in article 51ZA of the *Regulated Activities Order* as set out in Annexes A and B; [and 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 as set out in Annex A.](#)
- 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 exit. 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 [Subject to contrary provision in the Annexes \(including as set out in row 32\(f\) of Annex A, in relation to the Securitisation \(Amendment\) \(EU Exit\) Regulations 2019\)](#), ~~the~~ **standstill direction** does not apply where the pre-exit obligation consists of:

- (1) an obligation to provide information to an institution of the *EU* 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 *EU* or a Member State, in circumstances where the function does not apply to the *United Kingdom*.

Requirements imposed by the FCA

- 4.5 D Nothing in the **standstill direction** shall affect the application of a **relevant obligation** for the purposes of the *FCA* imposing a requirement on a *person* under or pursuant to, or for the purposes of, that obligation.
- 4.6 G Changes made by **exit instruments** to *FCA* powers 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** is not intended to apply to those changes. For example, if the *FCA* is entitled to require information from a greater class of *persons* post-exit than pre-exit, the greater class of *persons* must comply with any *FCA* 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 before [30 June 31 December](#) 2020, but the requirements will remain the same for firms.

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 *exit day* for a *TP firm*; and
 - (2) the obligation is one which before *exit 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 *Market Abuse Regulation*; and
 - (6) in relation to *rules* which apply to *TP firms* made under *exit instruments*.
- 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 *exit 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 that direction 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 *exit day* for a *TP firm* which, before *exit 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 *exit day* for a payment supplier, a relevant EEA AIFM or the operator, trustee or depositary of a relevant recognised scheme which, before *exit 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*):

- (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*) 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*) 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" "depositary" 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.

~~Direction in relation to payment services provided by EEA credit institutions in the financial services contracts regime~~

~~5.15 D Subject to the conditions in 5.17D, the *FCA* directs that the prohibition in regulation 138(1) of the *Payment Services Regulations* and regulation 63(1) of the *Electronic Money Regulations* are modified so as not to apply to a relevant credit institution.~~

~~5.16 D Subject to the conditions in 5.17D, the *FCA* directs that regulations 30(1)(a)(ii), 36(1)(a)(ii) and 49(a)(ii) of the *EU Exit Passport Regulations* are to apply to a relevant credit institution as if the reference to "carrying on such an activity in the United Kingdom" included providing a payment service in the *United Kingdom*.~~

5.17 D ~~The payment services or the issuing of electronic money provided by a relevant credit institution in the direction in 5.15D and the payment services referred to in the direction in 5.16D are only those:~~

- ~~(1) the relevant credit institution was providing in the *United Kingdom* immediately before *exit day* in accordance with the exercise of an EEA passport right under Title 5 of Directive 2013/36/EU; and~~
- ~~(2) to the extent that they are necessary for the performance of a contract entered into before *exit day* and provided for the purposes of performing such a contract.~~

5.18 D A “relevant credit institution” is:

~~in 5.15D, a credit institution within the meaning of the article 4(1)(1) of the Capital Requirement Regulation 575/2013 while it is an exempt person for the purposes of section 19(1)(b) of the Financial Services and Markets Act 2000 by virtue of regulation 47 of the *EU Exit Passport Regulations*;~~

~~in 5.16D:~~

- ~~(1) for the purposes of regulation 30(1)(a)(ii) or 36(1)(a)(ii) of the *EU Exit Passport Regulations*, a credit institution within the meaning article 4(1)(1) of the Capital Requirement Regulation 575/2013 while it has permission under regulation 28 or 34 of the *EU Exit Passport Regulations*; or~~
- ~~(2) for the purposes of regulation 49(a)(ii) of the *EU Exit Passport Regulations*, a credit institution within the meaning of article 4(1)(1) of the Capital Requirement Regulation 575/2013 while it is an exempt person for the purposes of section 19(1)(b) of the Financial Services and Markets Act 2000 by virtue of regulation 47 of the *EU Exit Passport Regulations*.~~

5.19 G ~~5.15D and 5.16D make directions to disapply and modify **relevant obligations** in the *Payment Services Regulations*, the *Electronic Money Regulations* and the *EU Exit Passport Regulations*.—5.15D is to ensure that a credit institution which enters Part 7 of the *EU Exit Passport Regulations* is able to continue to provide payment services or issue electronic money while it is covered by the exemption in Part 7. 5.16D is to ensure that a credit institution which enters Part 6 or Part 7 of the *EU Exit Passport Regulations* and that is only providing payment services in the *United Kingdom* (and not carrying on *regulated activities* in the *United Kingdom*) is able to continue to do so while it is covered by those provisions.~~

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.

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| <p>Provisions in exit instruments which do not result in obligations applying for the first time, or applying differently</p> | <p>A relevant obligation is one that begins to apply, or applies differently, as a result of the operation of an exit instrument.</p> <p>Some amendments made by exit instruments do not result in the creation of a relevant obligation. For example, an exit instrument may amend a cross-reference so that it is to <i>UK</i> implementing legislation rather than an underlying EU directive. Alternatively, an exit instrument may copy into <i>UK</i> law a definition which previously appeared in an EU 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 relevant obligation.</p> |
| <p>Provisions in exit instruments which confer functions, powers and duties on the <i>FCA</i></p> | <p>An exit instrument 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 exit instruments 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> are not relevant obligations. The directions are of no effect on the scope of the <i>FCA's</i> 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-exit 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 they comply as they were doing prior to *exit day*. For example, money-laundering legislation may require post-exit enhanced due diligence for EEA entities in circumstances where it is not required pre-exit. 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 they will still need to comply with the due diligence standards which existed pre-exit.

6.5 G (1) Since the *United Kingdom* will not be a Member State of the *EU* after *exit day*, obligations will need to be construed in a way that achieves the same result as before *exit day*. So, for example, if an obligation referred to an *EEA State* before *exit day*, it would need to be construed as referring to an *EEA State* and the *United Kingdom* after *exit 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 of Member States, the *EU* and non-EEA third countries.

Are you required to comply with the pre-exit version of an obligation?

6.6 G The **standstill direction** does not require compliance with the pre-exit version of an obligation. It will be sufficient that a *person* complies with the post-exit version of an obligation.

6.7 G For example:

(1) A pre-exit obligation may have applied to activities carried on from an establishment in the *United Kingdom* or another *EEA State*.

(2) The post-exit 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.

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-exit 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 The **standstill direction** is intended to complement, but not be a substitute for, transitional provisions or regimes which are already in place. The **standstill direction** has therefore not generally been applied to obligations where separate transitional provisions or regimes already exist to mitigate disruption.
- 7.4 G A *TP firm* should refer to Part 5 of the directions.
- 7.5 G The Annexes contain further information on how the **standstill direction** applies in areas where there are also specific transitional regimes.

Sectors where post-exit changes have reduced the geographic scope of a pre-exit obligation

- 7.6 G We have generally not applied the **standstill direction** in areas where obligations only apply differently because they have reduced geographical scope – for example, where obligations no longer apply to activities carried on from an establishment in the *EEA*. In these circumstances, *persons* should already be complying with the post-exit obligation and, therefore, they do not need time to adapt to the change.

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 a direction under Part 7 of the 2019 Regulations. 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 exit day

- 9.1 G The **standstill direction** applies to obligations that will exist under *UK* law after exit day. The **standstill direction** cannot affect obligations that will exist after *exit day* under *EU* law or the national laws of *EEA States*. For example, *UK persons* will no longer be able to passport into the *EEA* after *exit 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 exit 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 *exit 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.

11 Part 11: Revocation of previous main FCA transitional directions

- 11.1 D [The previously made main FCA transitional directions are wholly revoked and replaced by the directions and guidance in this main FCA transitional direction.](#)**

By order of the Board

~~April 9~~[\[October, 2019\]](#)