



UK - Registration Update - TPR and Access to Market post Brexit

The clock is ticking to 31 December 2020 (the “**Brexit Deadline**”), the date on which the transition period set down in the EU/UK Withdrawal Agreement will expire and the UK will become a “third country”.

At that point, access to the UK market for Irish funds will change considerably and cease in practical terms for a period for **new** funds authorised after the Brexit Deadline and **existing** funds which have not entered the Temporary Permissions Regime (“**TPR**”) by 30 December 2020 (the “**TPR Deadline**”).

Temporary Permissions Regime

The TPR allows continued access to the UK market for a period of up to 3 years after the Brexit Deadline. The TPR is available to UCITS and AIFs which are already approved to market in the UK and which make application for the regime prior to the TPR Deadline.

Funds and sub-Funds which are authorised prior to the TPR Deadline, but do not apply for the TPR, will no longer be permitted to market in the UK after the Brexit Deadline as the UCITS/AIFMD passport will cease.

Any previous TPR applications by UCITS and AIFMs should be reviewed to ensure that they include all registered sub-funds and AIFs which are to continue to market in the UK, and the application updated prior to the TPR Deadline. The window for notification of updated and new TPR applications will open at the end of September.

At a certain point during the 3 year TPR period, the FCA will allocate a three month “landing slot” for each fund in the TPR to submit an application for full FCA authorisation.

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Fund managers cannot carry out the following activities for funds with temporary permission:

- ❑ change or extend the category of customer to be marketed to while a fund is in the TPR (i.e. where an AIF has a right to market to professional investors only, the AIF cannot commence marketing to retail investors while still in the TPR);
- ❑ apply to undertake further regulated activities; or
- ❑ cross-border mergers between UK UCITS and EEA UCITS.

Registration for the TPR is a straightforward process. The FCA will open the TPR window at the end of September and will issue guidance on practical steps for new applications and updates.

Practical Considerations

❑ **UCITS authorised before the TPR Deadline**

- ❑ Prior to the TPR Deadline, existing UCITS should make initial TPR applications, or double check existing applications, to ensure that all authorised sub-funds which the manager wishes to market in the UK have:
 - ❑ passported to market in the UK (allowing 10 business days following submission to Central Bank of Ireland); and
 - ❑ been included in the TPR application for the UCITS umbrella.
- ❑ UCITS which have entered the TPR will be permitted to add any new sub-funds which are authorised after the Brexit Deadline to the TPR.

❑ **New UCITS umbrella funds authorised after the Brexit Deadline**

New UCITS umbrella funds authorised after the Brexit Deadline will not be able to apply for the TPR and will not have a passport to the UK market pending an alternative recognition regime being put in place by the FCA

Example - Existing UCITS Umbrella

Sub-Fund	Date of Authorisation	Passported to UK at 30.12.2020	Sub-funds included in UCITS TPR Application at 30.12.2020	Action
Sub-fund A	1.1.2001	Yes	Yes – included in 30.4.2019 application	No further action required for Sub-fund A as already covered by previous UCITS TPR application made on 30.4.2019.
Sub-fund B	1.11.2020	Yes	Yes/No	Existing UCITS TPR application to be updated prior to TPR Deadline to add Sub-Fund B. If TPR application for UCITS is not updated to include Sub-fund B prior to TPR Deadline, Sub-fund B may not be marketed in UK after Brexit Deadline.
Sub-fund C	15.12.2020	No	No	As Sub-fund C is authorised before the Brexit Deadline but is not passported to market into UK at TPR Deadline, it may not be entered into TPR and may not be marketed in UK after the Brexit Deadline.
Sub-fund D	2.1.2021	No	No	As UCITS had made TPR application for Sub-fund A and B, it may enter Sub-fund D to the TPR as it was authorised after the Brexit Deadline. Process to be advised.

▣ **AIFs authorised before the TPR Deadline**

- ▣ Prior to the TPR Deadline, AIFMs should make initial TPR applications, or double check existing applications, to ensure that all authorised AIFs which the AIFM wants to market in the UK have:
 - ▣ passported to market in the UK (allowing 20 business days following submission to the Central Bank of Ireland); and
 - ▣ been included in the AIFM's TPR application.

Example - AIFs

AIF	Date of Authorisation	Passported to UK at 30.12.2020	AIF included in AIFM TPR Application at 30.12.2020	Action
AIF A	1.1.2001	Yes	Yes – included in 30.4.2019 application	No further action required for AIF A as already covered by previous UCITS TPR application made on 30.4.2019.
AIF B	1.11.2020	Yes	Yes/No	Existing TPR application for AIFM to be updated prior to TPR Deadline to include Sub-Fund B. If TPR application for AIFM is not updated to include AIF B prior to TPR Deadline AIF B may not market in UK after Brexit Deadline.
AIF C	15.12.2020	No	No	As AIF C is not passported to market into UK at TPR Deadline it may not be entered into TPR and may not be marketed in the UK post Brexit Deadline.
AIF D	2.1.2021	No	No	AIF D may only market in UK under UK NPPR Regime.

▣ **New AIFs authorised after the Brexit Deadline**

- ▣ New AIFs (including new sub-funds of an existing AIF umbrella) authorised after the Brexit Deadline will not be able to apply for the TPR. The only route to the UK market for such funds is to professional investors under the UK National Private Placement Regime (“NPPR”).

▣ **Alternative routes to the UK market - the Overseas Fund Regime (“OFR”) and NPPR**

Currently the only alternative to the UCITS passport is full FCA recognition under section 272 of the Financial Services and Markets Act, which is acknowledged as impractical and unworkable and will not be a feasible route to the UK market.

HM Treasury has consulted on a proposed streamlined new recognition for UCITS, the OFR, which is based on country based equivalence and supervisory cooperation between competent authorities. The consultation closed in May 2020. The OFR proposes that registration under the scheme would be a simple application at fund level. Certain categories of funds may be required to comply with additional requirements as a condition of being recognised in the UK - to ensure consistency between overseas funds and domestic UK funds, such as matters related to disclosure, the provision of investor facilities in the UK, regular reporting to the FCA, and payment of regulatory fees.

There is no timeframe set out for the introduction of the OFR, therefore, following the TPR Deadline there will be a period where (in practical terms) new EEA UCITS cannot register to market in the UK until the OFR is in place.

The UK NPPR regime, which will be available for new AIFs authorised after the TPR Deadline, is a notification-only process and so will be relatively straightforward in practical terms for Irish AIFs. However, certain provisions of AIFMD will apply, including the requirement for a co-operation agreement between the FCA and the relevant national regulator of both the EEA AIFM and the AIF (if different) and Article 24 AIFMD reporting to the FCA.

▣ **Action to be taken**

- ▣ UCITS and AIFs should note the TPR deadline for any new fund launches, allowing enough time for CBI authorisation, passporting under the UCITS Directive/AIFMD to the UK and submission/update of their TPR application.
- ▣ Existing TPR applications should be reviewed to ensure that they include all funds which are to continue to market in the UK after the Brexit Deadline. It is likely that the FCA will impose two separate deadlines for updated TPR applications – a notification of intent to update, followed by a later update/reapplication deadline. If there are no changes to your existing TPR application and to the funds included in such earlier application, no further action should be required.
- ▣ New TPR applications should be made in advance of the TPR Deadline.

For further information, please contact a member of the fund registrations team or your usual Dillon Eustace contact.

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