



January 2019

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The Financial Services Contracts Regime

Of relevance to
All firms

Useful links

[fca.org.uk/news/statements/financial-services-contracts-regime](https://www.fca.org.uk/news/statements/financial-services-contracts-regime)

The UK Government has published draft legislation for the Financial Services Contracts Regime (“FSCR”).

If the UK leaves the EU without a withdrawal agreement, the FSCR will enable firms who do not enter the temporary permissions regime to wind down their UK business in an orderly fashion.

The temporary permissions regime will enable relevant firms and funds which passport into the UK to continue operating in the UK if the UK leaves the EU without a withdrawal agreement and the passporting regime falls away.

Alongside the temporary permissions regime, the Government had committed to introduce further legislation to ensure existing contractual obligations not covered by the temporary permissions regime can continue to be met. The Government has now published draft legislation for the FSCR which will provide a limited period of time during which EEA inwardly passported firms can continue to service UK contracts entered into prior to Brexit, in order to wind down their UK business in an orderly fashion.

The FSCR will provide two discrete mechanisms:

- Supervised run-off – for EEA firms with UK branches or top-up permissions in the UK, and firms who entered the temporary permissions regime but did not secure a UK authorisation at the end.
- Contractual run-off – for remaining incoming services firms.

<https://www.fca.org.uk/news/statements/financial-services-contracts-regime>

FCA Policy Statement (PS18/21) — Updated December 2018: Small and Medium Sized Enterprises access to Financial Ombudsman Service

Of relevance to
All firms

Useful links

[fca.org.uk/publications/policy-statements/ps18-21-sme-access-financial-ombudsman-service-near-final-rules](https://www.fca.org.uk/publications/policy-statements/ps18-21-sme-access-financial-ombudsman-service-near-final-rules)

In January 2018, the FCA published a Consultation Paper (CP18/3) proposing that Small and Medium Sized Enterprises (SMEs) with fewer than 50 employees, annual turnover of under £6.5m and an annual balance sheet total of under £5m should be able to access the Financial Ombudsman Service (“FOS”) on the same terms as individual consumers and micro-enterprises. The FCA proposed broadly equivalent eligibility criteria for charities and trusts. The FCA also proposed that personal guarantors of loans to a business they are involved in should also be able to complain to the FOS.

Following consultation, the FCA has made some changes to its approach and in summary, the FCA has:

- relaxed the proposed eligibility criteria for SMEs so that they would only have to meet the turnover test and one of either the headcount or balance sheet total tests, rather than all three tests; and
- allowed the FOS more time to prepare for the changes and allowed itself more time to consider the changes as part of the FCA’s wider consideration of the FOS’s business plan and budget for 2019-20.

The FCA expects the changes will mean around 210,000 additional SMEs will have access to the ombudsman service.

The changes to the FOS’s eligibility criteria will come into force on 1 April 2019.

<https://www.fca.org.uk/publications/policy-statements/ps18-21-sme-access-financial-ombudsman-service-near-final-rules>

Securitisation Regulation: PRA and FCA joint statement on reporting of private securitisations

Of relevance to
All firms

Useful links

[fca.org.uk/news/statements/
securitisation-regulation-pra-and-fca-
joint-statement-reporting-private-
securitisations](https://www.fca.org.uk/news/statements/securitisation-regulation-pra-and-fca-joint-statement-reporting-private-securitisations)

The Prudential Regulation Authority and Financial Conduct Authority have issued a joint statement setting out how they propose to direct the manner in which firms must make information regarding 'private' securitisations available to the UK competent authorities. This direction is intended to apply to all UK established originators, sponsors and Securitisation Special Purpose Entities (SSPEs) from 15 January 2019 .

<https://www.fca.org.uk/news/statements/securitisation-regulation-pra-and-fca-joint-statement-reporting-private-securitisations>

FCA proposes permanent measures for retail CFDs and Binary Options

Of relevance to
Retail CFD Providers

Useful links

[fca.org.uk/publication/consultation/cp18-37.pdf](https://www.fca.org.uk/publication/consultation/cp18-37.pdf)

[fca.org.uk/publication/consultation/cp18-38.pdf](https://www.fca.org.uk/publication/consultation/cp18-38.pdf)

The FCA published two consultation papers in December 2018 concerning Contracts for Difference (“CFDs”) and Binary Options.

With regard to Binary Options, the FCA is proposing permanent rules to prohibit the sale, marketing and distribution of binary options to retail clients by firms that carry out the activity in, or from, the United Kingdom.

<https://www.fca.org.uk/publication/consultation/cp18-37.pdf>

With regard to CFDs, the FCA is proposing to intervene in this market to address poor conduct by UK and EEA firms who offer CFDs to retail consumers, and to limit the sale of CFDs and other directly substitutable products with excessive risk features that result in harm to retail consumers.

Consultation Paper 18/38 (“CP18/38”) follows the European Securities and Markets Authority’s (“ESMA”) decision to temporarily restrict how these products are sold to retail consumers because of the significant investor protection risks they pose.

CP18/38 proposes making ESMA’s temporary product intervention measures permanent in the UK. The FCA’s proposed intervention takes a wider scope than ESMA’s intervention by including products with many of the same characteristics as CFDs, which the FCA terms as CFD-like options.

The FCA is also proposing to apply 30:1 leverage limits to CFDs referencing certain government bonds, to better reflect their risk (compared to 5:1 under ESMA’s measures).

The FCA will consult separately in early 2019 on a potential ban on the sale of CFDs and other derivatives referencing cryptocurrencies to retail consumers. This follows the commitment made in the UK Crypto-asset Taskforce Final Report published in October 2018. Therefore, the measures in CP18/38 that apply to CFDs referencing cryptocurrencies may change as a result of future consultation.

<https://www.fca.org.uk/publication/consultation/cp18-38.pdf>

ESMA to renew restrictions on CFDs for a further three months from 1 February 2019

Of relevance to
All firms

Useful links

esma.europa.eu/press-news/esma-news/esma-renew-restrictions-cfds-further-three-months-1-february-2019

The European Securities and Markets Authority (“ESMA”) has agreed to renew the restriction on the marketing, distribution or sale of Contracts for Difference (“CFDs”) to retail clients, in effect since 1 August, from 1 February 2019 for a further three-month period.

The renewal was agreed by ESMA’s Board of Supervisors on 18 December 2018 and includes renewing the following:

1. Leverage limits on the opening of a position by a retail client from 30:1 to 2:1, which vary according to the volatility of the underlying:
 - 30:1 for major currency pairs;
 - 20:1 for non-major currency pairs, gold and major indices;
 - 10:1 for commodities other than gold and non-major equity indices;
 - 5:1 for individual equities and other reference values;
 - 2:1 for cryptocurrencies;
2. A margin close-out rule on a per account basis. This will standardise the percentage of margin (at 50% of minimum required margin) at which providers are required to close out one or more retail client’s open CFDs;
3. Negative balance protection on a per account basis. This will provide an overall guaranteed limit on retail client losses;
4. A restriction on the incentives offered to trade CFDs; and
5. A standardised risk warning, including the percentage of losses on a CFD provider’s retail investor accounts. The standardised risk warning will continue to allow use of the additional abbreviated risk warning introduced in the previous renewal decision for cases where the standard terms of a third party marketing provider have a character limit which is lower than the number of characters comprising the full or the abbreviated risk warning, provided that the advertisement also links to a webpage of the provider on which the full risk warning is disclosed.

<https://www.esma.europa.eu/press-news/esma-news/esma-renew-restrictions-cfds-further-three-months-1-february-2019>

ESMA is ready to review UK CCPs and CSDs recognition applications for a No-Deal Brexit scenario

Of relevance to
All firms

Useful links

[esma.europa.eu/press-news/esma-news/
esma-ready-review-uk-ccps'-and-csds'-
recognition-applications-no-deal-brex](https://www.esma.europa.eu/press-news/esma-news/esma-ready-review-uk-ccps-and-csds-recognition-applications-no-deal-brex)

ESMA published a Public Statement on 19 December 2018 to clarify its plans for the recognition of Central Counterparties established in the United Kingdom ("UK CCPs") as Third Country CCPs ("TC-CCPs") under Regulation (EU) No 648/2012 (European Markets Infrastructure Regulation - EMIR) for a No-Deal Brexit scenario, where UK CCPs will become TC-CCPs as of 30 March 2019.

As previously communicated in its public statement of 23 November 2018, the ESMA Board of Supervisors supports continued access to UK CCPs, in order to limit the risk of disruption in central clearing and to avoid any negative impact on the financial stability of the EU. Therefore, ESMA aims to recognise UK CCPs in a timely manner, where the four recognition conditions under Article 25 of EMIR are met.

The ESMA Board of Supervisors also supports continued access to the UK Central Securities Depository ("CSD") in order to allow the UK CSD to avoid any negative impact on the Irish securities market.

<https://www.esma.europa.eu/press-news/esma-news/esma-ready-review-uk-ccps'-and-csds'-recognition-applications-no-deal-brex>

ESMA tells firms to provide clients with information on the implications of Brexit

Of relevance to
All firms

Useful links

[esma.europa.eu/press-news/esma-news/esma-tells-firms-provide-clients-information-implications-brexit](https://www.esma.europa.eu/press-news/esma-news/esma-tells-firms-provide-clients-information-implications-brexit)

ESMA issued a statement on 19 December 2018 to remind firms providing investment services of their obligations to provide clients with information on the implications of the United Kingdom's withdrawal from the European Union on their relationship with clients and on the impact of Brexit-related measures that a firm has taken or intends to take.

In order to avoid any potential disruption arising from client confusion, firms that will be impacted by Brexit should ensure that they provide clear information to clients whose contracts and services may be affected. The information should be provided as soon as possible, once available, and should cover at least the following areas:

- Impact of UK departure for the given firm and its business, and the implications this has for the relationship between the client and the firm;
- Actions the firm is taking, such as organisational arrangements to deal with client inquiries;
- Implications for clients of any corporate restructuring and, in particular, any relevant changes to contractual terms; and
- Contractual and statutory rights of clients in these circumstances, including the right to cancel the contract and any right of recourse, where applicable.

ESMA and national competent authorities will continue to monitor developments, including by engaging with firms to assess the level of firms' preparedness and to ensure that their clients are appropriately informed in the context of the firms' preparation for Brexit.

<https://www.esma.europa.eu/press-news/esma-news/esma-tells-firms-provide-clients-information-implications-brexit>

Key Dates

Key Date	Topic
21 January 2019	ESMA Technical Advice under the Prospectus Regulation in force, covering the areas of format and content of a prospectus, the EU Growth prospectus and the scrutiny and approval of a prospectus
10 March 2019	Internalised Settlement reporting requirements—ESMA to issue regulatory and implementing technical standards
13 March 2019	Competition and Markets Authority due to complete their investigation into the supply and acquisition of investment consultancy services and fiduciary management services to institutional investors, including pension schemes, charities, insurance companies and endowment funds
11pm on Friday 29 March 2019	Brexit— European Union (Withdrawal) Bill will repeal the European Communities Act 1972 and make other provision in connection with the withdrawal of the UK from the EU
Spring 2019	Financial Guidance and Claims Bill —FCA takes over regulation of Claims Management Services
1 April 2019	FCA requires managers of dual-priced authorised funds to pay box profits to the fund for the benefit of investors or to individual investors who have bought or sold units
6 April 2019	New FCA rules on pension transfer assumptions to use when revaluing benefits
December 2019	Senior Managers & Certification Regime to cover all FSMA authorised firms, replacing the Approved Persons Regime
3 July 2020	End of 30-month period during which the US Securities and Exchanged Commission provides market participants with greater certainty regarding their US regulated activities and compliance with MiFID II rules on Investment Research
July 2020	5th Money Laundering Directive to be adopted throughout Europe
October 2020	Pension transfer specialists to obtain the investment advice qualification
31 December 2020	Brexit—end of transitional period

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