STOP PRESS

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As the government sets the scene for the possibility of a "no-deal" Brexit the lack of progress on arrangements for insurance and the wider financial services industry continues to cause concern. Firms are being forced to consider how they would continue with their European operations if the current system of passporting came to an end. Time is running short and the uncertainty is proving expensive.

In this issue:

Preparing for Brexit: FCA webpage – FCA 3 August 2018
The FCA is advising firms to make sure they understand the implications of Brexit and plan accordingly. They should consider if or how they will be affected and what action they may need to take. The UK is currently due to leave the EU on 29 March 2019.

Earlier this year, the UK and EU agreed the terms of an implementation period which would apply from the end of March 2019 until the end of December 2020. During this time, EU law would still apply in the UK. Firms and funds would continue to benefit from passporting between the UK and EEA. However, the implementation period is part of the withdrawal agreement, and the agreement remains subject to further negotiations between the UK and EU.

The FCA has set out on a webpage some questions UK firms should be asking themselves in relation to Brexit, such as:

- Do you currently provide any regulated products or services to customers resident in the EEA? For example, you might provide financial advice to EEA based customers. Or you might have insurance contracts either with EEA based customers or which cover risks located in the EEA which require regulatory permission in that country in order to be serviced.
- Do you have customers or counterparties based in the EEA, including UK expatriates now based in an EEA country?
- Are you marketing financial products in the EEA? This includes products marketed on a website aimed at consumers in the EEA.
- Do you have agents in the EEA or interact with any intermediary service providers in the EEA? For example, you may use an insurance intermediary to distribute products into the EEA.

Firms are being urged to consider the implications of a range of possible scenario. In particular, where business takes place based on a passport then firms will need to consider if and on what basis it may be possible to continue after Brexit. They may also want to discuss the implications with trade associations or with the relevant EEA regulator in the countries in which they do business or seek independent legal advice.
FCA Brexit webpage: https://www.fca.org.uk/firms/preparing-for-brexit

"No deal" Brexit - urgent agreement needed says ABI - ABI 23 August 2018

Commenting on the publication by the UK Government of the Financial Services Technical Notice relating to a no-deal Brexit, Hugh Savill, Director of Regulation at the Association of British Insurers, said: "Leaving the EU without a deal would cause major inconvenience to millions of pensioners, travellers and drivers. We urge the Government to agree a deal as a matter of urgency. Today's paper emphasises the risk of insurers not being able to make payments to customers based in the EU after the end of March next year. Obviously insurers want to meet their commitments to their customers, but this problem has the potential to affect millions of insurance customers, including UK pensioners overseas. It can be fixed by co-operation between the UK and EU regulators – if the EU authorities wish to do so. Insurers have of course been making contingency plans for their own operations for many months now, but this contract issue is not one that insurers themselves can fix."

The publication acknowledges that many UK financial services firms who currently passport into the EEA are taking steps to ensure that they could continue to operate after exit, for example by establishing a new EU-authorised subsidiary. This would allow the UK firm to offer new services after exit through its EEA subsidiary, and in some cases existing contracts could be transferred to the new entity.

Government Technical note: https://www.gov.uk/government/publications/banking-insurance-and-other-financial-services-if-theres-no-brexit-deal/banking-insurance-and-other-financial-services-if-theres-no-brexit-deal

Assessing creditworthiness in consumer credit - FCA 31 July 2018

The FCA has published its final rules and guidance on assessing creditworthiness in consumer credit. In particular, the changes clarify:

- the distinction between affordability and credit risk
- the factors that should be used when deciding the proportionality of assessments
- the role of income and expenditure information
- expectations around firms' policies and procedures

Under the new rules lenders must establish, implement and maintain clear and effective policies and procedures to enable them to carry out creditworthiness assessments as provided for under the rules, setting out the principal factors they will take into account in carrying out the assessments.

Although the creditworthiness issue mainly affects lenders, the introduction of more stringent checks by finance providers as a result of the new rules may have an impact on insurance intermediaries that offer credit and their customers. The new requirements do not come officially into force until 1 November 2018, but finance providers have been making appropriate changes.

FCA PS18/19: https://www.fca.org.uk/publication/policy/ps18-19.pdf

SM&CR to improve culture – FCA regulatory round-up August 2018

Culture in financial services is widely accepted as the root cause of major conduct failings in the industry in recent history - according to Jonathan Davidson, Executive Director, Supervision Retail and Authorisations at the FCA.

In July the FCA published rules for extending the Senior Managers and Certification Regime to 47,500 firms. These rules will apply from 9 December 2019 for FCA solo-regulated firms, including insurance intermediaries. They are said to represent another step towards the transformation of culture across financial services. The aim is to encourage cultures where behaviours are driven by what is the right thing to do – not just by what firms need to do to be compliant. To prepare, firms need to:

- make sure Senior Managers have clear responsibilities,
- check and confirm any certified staff are fit and proper annually
- ensure staff understand how the Conduct Rules apply to them

The regulator has also published proposals for introducing a Directory of financial services workers to make it easier for people to be confident they can find the right people to deal with.

The FCA has provided a video overview of the SM&CR Regime: https://play.buto.tv/Nhdg5
and a user-friendly guide to explain the rules and the principles: https://www.fca.org.uk/publication/policy/guide-for-fca-solo-regulated-firms.pdf

CMC regulation to cost £16.8m - FCA consultation on recovering the cost - August 2018

The FCA estimates the cost of regulating claims management companies will be £16.8m up to 2020/21. The FCA is currently consulting on recovering the costs from the CMCs themselves. It anticipates that a significant number of firms will leave the market which would limit its ability to defer recovery of the costs; so it proposes to collect the 2019/20 fees in advance, at the time firms register for temporary

permissions. This would help to ensure that project costs are not imposed disproportionately on authorised firms further down the line.
FCA consultation: https://www.fca.org.uk/publication/consultation/cp18-23.pdf

FCA collaborates on new consultation to explore the opportunities of a Global Financial Innovation Network - FCA 7 August 2018
In collaboration with 11 financial regulators and related organisations, the FCA has announced the creation of the Global Financial Innovation Network (GFIN), building on the FCA's proposal earlier this year to create a 'global sandbox'. The network will seek to provide a more efficient way for innovative firms to interact with regulators, helping them navigate between countries as they look to scale new ideas. It will also create a new framework for co-operation between financial services regulators on innovation related topics, sharing different experiences and approaches. As part of the consultation, the group is seeking views on the mission statement for the GFIN, its proposed functions, and where it should prioritise activity. The group is also keen to hear from other interested regulators or related organisations who wish to get involved.
Consultation: https://www.fca.org.uk/publication/consultation/gfin-consultation-document.pdf

FSCS declares nine firms in default in July - FSCS 21 August 2018
Customers could get back money they have lost as a result of their dealings with any of the nine failed financial firms which the Financial Services Compensation Scheme (FSCS) declared in default during July 2018. A declaration of default means FSCS is satisfied a firm is unable to pay claims for compensation made against it. This paves the way for customers of that firm to make a claim for compensation. Since it began in 2001, FSCS has helped more than 4.5m people, paying out more than £26bn in compensation.
Amongst the firms declared in default are insurance intermediaries: Ignition Select Limited of London and Box Insurance Services and Newton General Insurance Services both based in Preston.