

MEMO# 31649

March 13, 2019

Brexit: A Summary of Key Technical Publications

[31649]

March 13, 2019 TO: ICI Members

ICI Global Members

Chief Risk Officer Committee

ICI Global Brexit Task Force

Securities Operations Advisory Committee SUBJECTS: International/Global RE: Brexit: A Summary of Key Technical Publications

Over the last few months, the UK and EU governments, institutions and regulatory authorities have published further information on their approach to various technical aspects of Brexit. The key publications of relevance to regulated funds and their managers at EU and UK level since our last general update[\[1\]](#) are summarised below. Specific updates have also been provided previously concerning European Securities and Markets Authority (ESMA) action on derivatives[\[2\]](#) and the delegation of portfolio management by UCITS to third country entities.[\[3\]](#)

European Commission “no-deal” Contingency Action Plan Measures

On 19 December 2018, the European Commission (“the Commission”) announced[\[4\]](#) that it had implemented various aspects of its “no-deal” Brexit contingency plan, many of which concern financial services and are of relevance to regulated funds and their managers, as set out below.

Central Clearing of Derivatives

The Commission announced a temporary and conditional equivalence decision for a fixed, limited period of 12 months to ensure that there will be no immediate disruption in the central clearing of derivatives. On 18 February 2019, ESMA announced that three central counterparties (CCPs) established in the UK will be recognised to provide their services in the EU.[\[5\]](#)

Central Securities Depositaries

The Commission announced a temporary and conditional equivalence decision for a fixed, limited period of 24 months to ensure that there will be no disruption in central depositaries services for EU operators currently using UK operators. On 1 March 2019, ESMA announced that in the event of a no-deal Brexit, the Central Securities Depository (CSD) established in

the United Kingdom (UK) – Euroclear UK and Ireland Limited – will be recognised as a third country CSD to provide its services in the European Union (EU).[\[6\]](#)

Novation of derivative contracts

The Commission announced two Delegated Regulations facilitating novation, for a fixed period of 12 months, of certain over-the-counter derivatives contracts, where a contract is transferred from a UK to an EU27 counterparty.

ESMA's Brexit Preparations

ESMA has undertaken various Brexit preparations of relevance to regulated funds and their managers,[\[7\]](#) including concerning reporting, recordkeeping and other aspects of EMIR[\[8\]](#) and most recently on 7 March 2019 concerning MIFID II/MIFIR,[\[9\]](#) covering the following:

- **Trading Obligation for Derivatives** – ESMA acknowledged the absence of an equivalence decision by the Commission covering UK derivative trading venues – a issue that ICI Global has joined other associations to urge action on[\[10\]](#) – but will continue to monitor closely how liquidity develops post-Brexit and whether markets will be sufficiently liquid to allow EU27 market participants to execute transactions in derivatives subject to the trading obligation on eligible trading venues;
- **Post-trade transparency** – ESMA noted that pending the publication of any assessments it is requested to make of UK trading venues, EU27 investment firms will not be required to make transactions that are executed on an UK trading venue public in the EU27 via an EU APA. Furthermore, ESMA noted that in the case of a no-deal Brexit, as investment firms in the UK will no longer be considered EU investment firms but will fall into the category of counterparties established in a third country, EU investment firms are required to make public transactions concluded OTC with UK counterparties via an APA established in the EU27.

UK Authorities' Brexit Preparations

The UK Financial Conduct Authority (FCA) has published a general statement on its approach to a no-deal Brexit,[\[11\]](#) along with sector specific guidance on Brexit for asset managers,[\[12\]](#) and a policy statement[\[13\]](#) covering various aspects of the UK regulatory framework including:

- Proposed changes to the FCA's Handbook;
- The temporary permissions regime;[\[14\]](#)
- Contract Continuity.

Other UK authorities, including the Prudential Regulatory Authority (PRA) have published aspects of their approach,[\[15\]](#) including a recent joint statement with the Commodity Futures Trading Commission on the derivatives trading and clearing[\[16\]](#) and the MoU concluded by the Bank of England and ESMA which is of relevance to the recognition of UK CSDs and CCPs noted above.[\[17\]](#)

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endnotes

[1] See Memo No. 31495, RE: Brexit: A summary of key political and technical publications, dated 26 November 2018, available from <https://www.iciglobal.org/iciglobal/pubs/memos/memo31495>

[2] See Memo No. 31497, RE: Recent ESMA Actions on Derivatives in Advance of Brexit, dated 26 November 2018, available from <https://www.iciglobal.org/iciglobal/pubs/memos/memo31497>

[3] See Memo No. 31589, RE: ESMA and EU Securities Regulators Agree No-Deal Brexit MoUs with the UK FCA, available from <https://www.iciglobal.org/iciglobal/pubs/memos/ci.memo31589.global>

[4] European Commission Press Release - Brexit: European Commission implements “no-deal” Contingency Action Plan in specific sectors, available from http://europa.eu/rapid/press-release_IP-18-6851_en.htm

[5] https://www.esma.europa.eu/sites/default/files/library/esma71-99-1114_esma_to_recognise_three_uk_ccps_in_the_event_of_a_no-deal_brexit.pdf

[6] <https://www.esma.europa.eu/file/50542/download?token=jNgAUEvQ>

[7] <https://www.esma.europa.eu/convergence/brexit>

[8] ESMA Public Statement on issues affecting reporting, recordkeeping, reconciliation, data access, portability and aggregation of derivatives under Article 9 EMIR in the case of UK withdrawal from the EU without a transitional agreement, 1 February 2019, available from https://www.esma.europa.eu/sites/default/files/library/esma70-151-1997_statement_brexit_emir_data.pdf

[9] ESMA Public Statement, Impact of Brexit on MiFID II/MiFIR and the Benchmark Regulation (BMR) – C(6) carve-out, trading obligation for derivatives, ESMA opinions on third-country trading venues for the purpose of post-trade transparency and position limits, post-trade transparency for OTC transactions, BMR ESMA register of administrators and 3rd country benchmarks, 7 March 2019, available from https://www.esma.europa.eu/sites/default/files/library/esma70-155-7253_public_statement_mifidii_bmr_provisions_under_a_no_deal_brexit.pdf

[10] See Memo 31632, RE: ICI Global Joins Letter Urging EU Recognition of UK Trading Venues in Preparation for Brexit, dated 1 March 2019, available from <https://www.iciglobal.org/iciglobal/pubs/memos/ci.memo31632.global>

[11] Press Release: FCA confirms proposals in the event of a no-deal Brexit, 28 February 2019, available from <https://www.fca.org.uk/news/press-releases/fca-confirms-proposals-event-no-deal-brexit>

[12] FCA: Brexit: information for participants in the wholesale markets operating in the UK (including wholesale banks, wholesale markets and asset managers), 26 February 2019, available from <https://www.fca.org.uk/firms/preparing-for-brexit/uk-participants-wholesale-markets>

[13] FCA Brexit Policy Statement: Feedback on CP18/28, CP18/29, CP18/34, CP18/36 and CP19/2, available from <https://www.fca.org.uk/publication/policy/ps19-05.pdf>

[14] <https://www.fca.org.uk/brexit/temporary-permissions-regime>

[15] <https://www.bankofengland.co.uk/eu-withdrawal>

[16] Joint Statement by UK and US authorities on continuity of derivatives trading and clearing post-Brexit, dated 25 February 2019, available from <https://www.cftc.gov/PressRoom/PressReleases/7876-19>

[17] ESMA Press Release: ESMA agrees no-deal Brexit MOUs with the Bank of England for recognition of UK CCPs and the UK CSD, 4 February 2019, available from <https://www.esma.europa.eu/file/50218/download?token=oYGMhCFL>

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