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EU Update: The Latest Developments on Brexit, MAR, and MiFID II

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Brexit: Breaking or Building Barriers to UK Financial Services Trade?

Since the results of the European membership referendum on June 23, 2016, asset managers have been keeping a close watch on its effect on the financial markets and have begun to consider whether resulting changes in regulation will require them to implement changes to their existing compliance procedures or engage in a larger scale restructuring of their businesses. This article begins with a discussion of Brexit and its impact on financial services and financial services regulation and the passporting and third country regimes. We will then provide an update on the second Markets in Financial Instruments Directive (MiFID II) and the Market Abuse Regulation (MAR). Our goal with this article is to provide asset managers with the current state of Brexit so that they can continue to assess its potential impact on their businesses. Importantly, Brexit and the penumbra of related issues are still changing and developing as the global financial markets continue to deal with significant levels of political uncertainty, as was most recently illustrated by the US presidential election. As a resource at the end of this article, we have included a glossary of some of the most common UK regulatory acronyms.

British Prime Minister Theresa May has declared that the United Kingdom (UK) will give formal notice of its decision to exit the European

Union (EU) by the end of March 2017. Before it can actually leave the EU, the UK will first need to trigger Article 50 of the Treaty on European Union (TEU), the mechanism which permits a member state to begin its exit of the EU. However, the UK High Court's determination on November 3, 2016 that the UK government cannot quit the EU without Parliament's consent has thrown the timeframe for this initial step into question.

Once formal notice of UK departure has been given, the Great Repeal Bill will be put before Parliament in order to repeal the 1972 European Communities Act, which gives direct effect to all EU law in Britain, and to convert the body of existing EU law into national law. Unlike EU directives, EU regulations are directly applicable and are not transposed into UK law. Without the Great Repeal Bill the UK would face the daunting and impracticable task of incorporating many thousands of EU regulations into the British legislative framework. This, though, will be a stop-gap measure. EU regulation providing jurisdiction to EU bodies will cease to have authority over the UK once it departs, and EU legislation is a living body that will continue to evolve from the point of adoption, moving apart from any UK bespoke version.

Economic Uncertainty

Prime Minister May has announced that "Brexit means Brexit," yet, in the absence of any concrete

Brexit plan, uncertainty over the precise terms of Brexit remains. Once Article 50 has been triggered, Britain will only have an initial two-year period (subject to extension with unanimous approval of the EU member states, which would prove difficult to obtain) in which to secure an exit deal with the EU and trade negotiations with the EU and the rest of the world.

Dialogue about a move toward a “hard Brexit” continues, which in its “hardest” form suggests UK-EU reliance on a fall-back position of the World Trade Organization rules, leading to potentially high import tariffs on both sides and no continuing membership of the single market. In contrast a “soft Brexit” is defined along the lines of the “Norway model,” which is an option that is looking increasingly untenable. Although membership of the European Economic Area (EEA) would provide Britain with single market membership, Britain would be subject to the same obligations as an EU member, such as requirements to comply with free movement and to make financial contributions to the EU budget.

The Norway model is unlikely to be accepted politically given that free movement of labor across the borders of EU member states and budget obligations were driving forces in the Brexit leave campaign. A Brexit that leaves Britain subject to Brussels’ rules, but with no say in their creation, is an unpalatable option for remain and leave campaigners alike.

Britain: An Island Alone?

Political considerations on both sides continue to shape the Brexit debate. The EU is cautious of setting a precedent whereby Britain is allowed to leave on terms that it can still have membership of the single market without being subject to its corresponding obligations. Both Germany and France have upcoming elections, and the outcome of the recent US election has further shaken the global political sphere. Prime Minister May has already been criticized for her apparent openness to the election of President-elect Trump, in contrast to the reserved response of other EU leaders. Such political differences add fuel to the likelihood of a hostile Brexit divorce.

In the face of UK-EU tension, it is paramount that the long-standing relationship of the UK and EU is not forgotten. In terms of abiding by EU laws, the UK has traditionally been seen as leading the way in implementation of EU regulation, and the UK Financial Conduct Authority (FCA’s) adoption of EU legislation has served as a sound basis for other member states’ interpretation of EU rules.

Furthermore, the EU has a lot to lose if exports to the UK suffer. The UK economy is, after all, the world’s fifth largest economy and is second only to Germany within the EU, and London has become a key hub in the global financial services industry. It is therefore in the interests of both the EU and the UK to strike an acceptable trade deal. There is, however, a substantial risk of political considerations prevailing over economic realities.

Time to Build Bridges

If Britain sets the foundations for an amicable UK-EU relationship, the UK may, at least, succeed in obtaining some form of transitional arrangement. Such an arrangement could, for example, provide for the UK to join the EEA members on an interim basis until any new trade deals are ratified and would enable the UK and EU to finalize a trade deal ready to enter into force at the end of the interim period. A temporary EEA membership would help to appease countries concerned about their interests in the UK, such as Japan and the US.

Britain will, of course, ideally also seek to negotiate global trade deals during the two years that it prepares to depart the EU. However, legally the UK is not permitted to enter into other trade deals until it has left the EU and other countries will want to see the terms of Britain’s departure before agreeing to any new deals. It therefore falls to the UK to first guarantee favourable terms for its post-Brexit future with the EU.

Although Britain continues to hope that it can secure a favorable bespoke deal, political barriers may stand in its way. If Britain fails to achieve a suitable outcome, the UK risks losing its financial services

passport, and the British financial services industry may be left to rely on alternatives, such as the third country regime.

The Passporting and Third Country Regimes

The importance of the EU passport which comes with membership of the single market should not be underestimated. The EU passport allows financial services firms to operate across the member states on the basis of their home state authorization, without needing to be separately authorized in each EU state. In a recent FCA report, which took into account all the passporting directives,¹ the FCA found that over 8,000 EU firms outside the UK use the passport to provide services into the UK. A British departure from the single market and removal of passporting rights between the UK and the rest of Europe would therefore affect both UK and EU firms and consumers. However, even with loss of the passport, it is quite probable that the UK's strong financial services industry will continue to thrive because it is so well established as a critical piece of the global financial services market.

Third country regimes appear in a number of EU directives and have been heralded as a means by which UK financial firms could adapt to loss of the passport. Equivalence would enable the UK to provide financial services in the EU on similar terms as those provided on a passported basis, provided the UK's regulatory regime is, broadly, deemed equivalent. As discussed above, the UK has traditionally taken the lead in implementation of EU regulation and so, as a technical matter, meeting this condition should not be problematic.

The Alternative Investment Fund Management Directive (AIFMD), the European Market Infrastructure Regulation (EMIR), MiFID II, which will come into force in January 2018, and to some extent, the Prospectus Directive, all provide for third country regimes.

Third country regimes, however, suffer from a number of inherent disadvantages. An assessment of equivalence is subject to EU discretion

and is, therefore, susceptible to political influence. Moreover, the range of financial services covered by third country regimes is more limited than under the passporting regime. For example, there is no third country regime in relation to the Undertakings for the Collective Investments of Transferable Securities (UCITS) regime, which regulates the operation and sale of registered funds.

The EU's special arrangements for third countries also do not exist for certain core-banking services such as deposit-taking or lending to either retail or corporate clients, or for retail investment services. These, and other, gaps would, therefore, need to be covered in UK-EU negotiations. Third country regimes are less certain, since equivalence assessments on which they are based can be withdrawn.

Without an agreement on equivalence, UK financial services firms would still be able to establish branches in EU states, but the branch would be subject to authorization and supervision by the local regulator. Firms would be subject to increased regulation and may even be required to establish a fully fledged subsidiary.

The UK will therefore need to secure a harmonious discourse with the EU in order to ensure that any gaps in the regime can be bridged.

The Fate of UK Financial Services Regulation

In the face of Brexit uncertainty, one thing remains clear: pending the UK's actual departure from the EU, the UK remains an EU member country and must abide by its legislation. Moreover, even once Article 50 is eventually triggered, Britain will still remain subject to EU legislation for at least two years.

It is prudent to note that the UK government and the FCA certainly believe in tough market standards, for example, pre-existing UK legislation shaped the EU financial services MAR, which has been effective since July 3, 2016 and succeeded the Market Abuse Directive (MAD) regime. The UK's previous market abuse regime was super-equivalent to the MAD

obligations, and such super-equivalence was largely retained in its implementation of MAD, including the UK “gold plating” the regulation to extend it to the Alternative Investment Market (AIM), a sub-market of the London Stock Exchange (LSE).

Following Brexit, current key UK financial services regulation such as MAR and MiFID are unlikely to be a target for deregulation. It is thus essential that firms continue to familiarize themselves with their obligations under EU law.

In light of this, below we discuss two key regulatory updates on MAR (which came into force across the EU within two weeks of the Brexit vote) and MiFID II (which is due to come into force in early 2018).

Market Abuse Regulation (MAR)

The key changes introduced by MAR relate to insider dealing, market manipulation, the making and receiving of market soundings, suspicious order and transaction reporting, and investment recommendations, all of which are especially relevant to buy-side and sell-side firms. Furthermore, MAR imposes additional obligations and requirements on issuers, and the managers of issuers, with shares and other financial instruments traded on EU trading venues.

MAR is an EU regulation and, as such, it takes direct effect in every EU member state without the necessity for member states to implement it through their own local laws. In the UK, the current laws on civil market abuse in the Financial Services and Markets Act 2000 (FSMA) have been repealed by the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016, which also ensure compatibility with MAR and that MAR is fully effective and enforceable in the UK. The existing rules in the FCA’s Code of Market Conduct have been replaced with signposts to relevant provisions of MAR.

Application of MAR Outside the European Union

Importantly, MAR applies to persons wherever located (inside or outside of the EU) in relation

to behavior concerning financial instruments that are admitted to trading on an EU trading venue. For example, where a US investment adviser trades with a US broker in the shares of an issuer whose shares are listed on the New York Stock Exchange, the adviser and broker will each be subject to the regime if the shares also happen to be admitted to trading on a multilateral trading facility (MTF) in the UK or another EU country. This is potentially challenging because EU market abuse standards differ from those applicable under the equivalent US regime.

The Rebuttable Presumption

Market participants accused of using inside information in connection with activities that amount to insider dealing will bear the burden of proving their own innocence. Article 9 MAR lists “legitimate behaviors,” such as where a transaction is conducted owing to a pre-existing legal obligation, which remove the rebuttable presumption that insider dealing has occurred, placing the burden of proof back on the relevant national regulator.

Accepted Market Practices and Market Soundings

Under the new regime, national competent authorities can establish “accepted market practices” that allow market participants to carry out certain types of behavior when dealing in financial markets that are customary for a particular national market, even though such activities may potentially constitute market abuse in another national market. Thus, what is an accepted market practice in one particular market may not be an accepted market practice in another. Market participants should therefore pay close attention to the type of activities they wish to carry out in each trading venue in which they wish to operate.

MAR also allows for certain practices involving the disclosure of inside information to one or more potential investors in order to gauge interest in a transaction, known as “market soundings.” Disclosing parties must follow detailed prescribed

procedures, including ensuring that all such information disclosed is recorded and includes the identity of (i) the proposed investor to which it is disclosed and (ii) the individuals representing the investor. In addition, that record must be made available to the relevant regulator upon request. Recipients of market soundings must also follow prescribed requirements.

Suspicious Transaction and Order Reporting (STOR)

MAR requires all persons who professionally arrange or execute transactions to maintain effective systems and procedures to detect and report suspicious transactions and orders and cancellations thereof. Although there is some debate surrounding who falls within the definition of a person professionally arranging or executing transactions, the European Securities and Markets Authority (ESMA) and national regulators appear to be including portfolio and fund managers within this definition.

Investment Recommendations

MAR also regulates persons who make investment recommendations and how such investment recommendations may be disclosed or disseminated in the media. In short, persons who make investment recommendations must take reasonable care to ensure that their investment recommendations are “objectively disclosed” and note any conflicts of interest in relation to the relevant financial instruments. In March 2016, the European Commission issued regulatory technical standards in relation to investment recommendations.

Enforcement

MAR requires EU member states to put into place effective mechanisms to encourage whistleblowing and to provide whistleblowing protections. MAR further introduces a set of investigative powers that national regulators should be given to compel attendance at interviews, and to exercise entry, search, and seizure powers. In this regard, the UK is

ahead of other EU states, and in these respects, MAR brings the rest of the European Union up to the UK position. In addition, MAR provides for a range of penalties that regulators should have the power to impose, which include a fine of up to €15 million or 15 percent of annual turnover for a corporation guilty of insider dealing or market manipulation.

Cooperation with Third Countries

MAR states that, where necessary, national regulators should enter into cooperation agreements with the supervisory authorities of third countries concerning the exchange of information, and the enforcement of obligations arising under MAR, in third countries. National regulators proposing to enter into an arrangement of this kind must inform ESMA and the other national regulators with which they wish to cooperate.

The Criminal Offense of Insider Dealing

MAR does not touch in any way the UK criminal insider dealing regime under Section 56(1) of the Criminal Justice Act 1993. The UK is, therefore, left in a position where insider dealing by amending or cancelling an order after coming into possession of inside information or insider dealing on an MTF or OTF is capable of being punished by a fine under the civil regime but is not a criminal offense. The UK government has indicated its intention to bring the criminal regime into line with MAR.

Impact of MAR on Issuers

The regime extends to issuers that trade on the LSE’s Main Market as well as those that trade on AIM, including financial instruments for which an admission to trading on either market has been made. MAR provides that ESMA must compile a centralized list of financial instruments that are admitted to trading but, somewhat unhelpfully, makes clear that the regime applies to financial instruments regardless of whether they are included in ESMA’s list. This means that it will not be possible to use the list for compliance purposes as a definitive indication of

whether or not any particular financial instrument is within scope.

Listed issuers are subject to multiple sets of regulation within the UK: Main Market issuers will continue to comply with their obligations under the FCA's Listing Rules, and AIM companies will remain subject to the AIM Rules for Companies (AIM Rules) as regulated by the LSE.

Disclosure of Inside Information

The definition of "inside information" and an issuer's obligation to publicly disclose it remain largely the same as under the previous regime. Delaying disclosure continues to be possible under MAR, but the new regime brings more onerous requirements for an issuer to effect these provisions. The following conditions for delay must be met:

- Immediate disclosure is likely to prejudice the issuer's legitimate interests.
- Delay of disclosure is not likely to mislead the public.
- Confidentiality can be ensured.

The issuer must inform the FCA of the delay and keep a written record of the delay's circumstances (and, on the FCA's request, provide an explanation in writing about how the issuer met the conditions set out in MAR). Disclosure may no longer be delayed if any rumor arises that threatens the information's confidentiality. Issuers should prepare a holding announcement where any disclosure is delayed. If there is a threat of a leak of information and an issuer is unable to make a holding announcement, the FCA has the discretion to suspend the issuer's securities from trading.

PDMR Dealing

MAR provides that persons discharging managerial responsibilities (PDMRs) and persons closely associated (PCAs) must notify the issuer and the competent authority of every transaction conducted on their own account (whether by themselves, or, for

example, by a portfolio manager). AIM Companies will need a reasonable and effective dealing policy from admission under AIM Rule 21.

Notification

PDMR and PCA dealing notifications must be made no later than three business days after the transaction date. This is more restrictive than the four-day period under the previous regime. The periods for PDMR and issuer notification run concurrently, therefore share dealing codes should be adapted to give the issuer sufficient time to notify the market once the PDMR's initial notification is received.

De Minimis Provision

Dealings that fall below a de minimis threshold of €5,000 per calendar year will not require notification. However, issuers should consider the best mechanism for monitoring dealings and whether to notify all dealings, including those that fall below this level.

MAR Closed Periods

MAR prohibits PDMRs from conducting any transactions on their own account or for a third-party account, directly or indirectly, during a closed period of 30 calendar days before announcing an interim financial report or a year-end report (which the issuer is obliged to make public under national law or the rules of the relevant exchange). Limited exemptions apply, including certain transactions relating to employee share schemes and transactions conducted in exceptional circumstances, such as severe financial difficulty.

Insider Lists

Article 18 of MAR requires issuers or any person acting on their behalf to provide to the FCA on its request a list of all persons who have access to inside information (with the rationale for including each person and the time when he or she obtained access to inside information). "Access to inside

information” is not defined in MAR, and the provision therefore has a potentially wide application.

The issuer remains responsible for taking all reasonable steps to ensure that those on the lists acknowledge in writing their legal and regulatory duties. Data protection legislation should be considered when creating lists, given that personal details, such as name and address are required.

Share Buy-Backs and Stabilizations

Share buy-backs will fall within a MAR safe harbor, provided that certain conditions are met. Stabilizations are also permitted subject to similar requirements, with the addition of a condition that the stabilization is carried out for a limited period. The issuer must notify the trading venue’s competent authority of all stabilization transactions’ details no later than the end of the seventh daily market session following the transactions.

MiFID II

On January 3, 2018, the second Markets in Financial Instruments Directive (MiFID II) is set to form the legal framework governing the requirements applicable to investment firms, regulated markets, data reporting service providers, and third country firms providing investment services or activities in the union. Although the Markets in Financial Instruments Regulation (MiFIR) as an EU regulation will take effect directly, the new MiFID Directive will need to be implemented into UK law. The FCA has pushed back publication of its final rules until 2017, and despite having published its consultation paper in 2015, HM Treasury is unlikely to finalize its implementing statutory instruments for some time. Changes to the Prudential Regulatory Authority (PRA) rules will also be required.

The legislation directly captures firms carrying out advisory and individual portfolio management activities, as well as indirectly capturing AIFMs or UCITS management companies that distribute products through MiFID firms.

Investor Protection

The legislation sets out new provisions on independent advice. Clients must be informed whether advice is provided on an independent basis, and if so, the firm must comply with additional requirements, including a prohibition on accepting inducements.

Firms providing portfolio management or independent investment advice are prohibited from accepting and retaining fees, commissions, or any monetary or non-monetary benefits paid or provided by a third party or person acting on their behalf. Firms must have a policy in place for accounting for all such commission to the client, although minor non-monetary benefits may be permitted. Firms not providing independent investment advice or portfolio management must comply with the existing inducement rules for all types of third-party payments.

Research Unbundling

The FCA is consulting on whether to apply research unbundling requirements to MiFID exempt UK-authorized firms carrying out investment management of collective investment schemes.

Investment firms providing both execution and research services will have to price and supply these services separately, and confusion remains over the permissibility of traditional Commission Sharing Arrangements (CSAs) and their relation to RPAs (pre-funded research payment accounts). The delegated legislation published in 2016 provides that a client research charge may be collected alongside a transaction commission and delegation of administration of the research payment account to a third party is permitted (provided certain conditions are met). However, the research charge must be based on a research budget and must not be linked to the volume and/or value of transactions.

If a firm is unable to use an RPA it is likely to have to bear research costs itself. As investment firms must provide specific information on costs and associated charges to the client, including an itemized cost breakdown upon request, such increased cost

transparency may prevent firms from transferring increased cost to investors. This burden has led to concern over reduced research functions causing both increased execution charges from banks and decline in firm performance.

Product Governance

Increased costs will also result from the introduction of new product governance rules, which, according to ESMA, aim to protect investors by requiring firms to take responsibility for ensuring that products and services are only offered in the interest of clients. Products and services should not be offered in a way that is prejudiced by a firm's own commercial, funding, or prudential needs. Firms must cooperate in order to meet new obligations placed on manufacturers and distributors, which will include the need to share information on the characteristics and identified target market of each financial instrument. The FCA proposes to apply product governance requirements to third country firms in the form of rules rather than guidance in order to ensure that they are treated 'no more favorably' than EU/EEA firms.

Suitability and Appropriateness

Firms may decide to reconsider the kind of products that they offer as a result of change to the MiFID suitability and appropriateness assessments. The MiFID II Directive places obligations on firms providing investment advice or portfolio management services to obtain information about the client's risk tolerance and ability to bear losses as part of the assessment on product suitability. For firms that are subject to the appropriateness requirements, the range of non-complex products that are needed to meet the "execution-only" exclusion are narrowed and a shift towards products falling under the revised classification may therefore be seen.

Client Categorization

Public and local authorities must be classified as retail clients, although they can elect to be treated as

professional clients. The FCA has discretion to adopt alternative or additional criteria in order to assess the expertise and knowledge of local authorities who wish to become 'elective professional clients,' and it has stated that it is keen to ensure only those with the requisite expertise can be treated as professional clients, especially given concerns over alleged mis-selling in recent years. Firms will need to review their current client categorizations, which may impact internal systems, and AIF/UCIT asset managers should be aware that the FCA proposes extending the scope of these provisions to non-MiFID scope business.

Transparency and Reporting

The MiFID transparency and reporting regimes are expanded to capture more asset classes and to cover all trading venues. In addition to coming under increased pressure for greater detail in reports, buy-side firms will become more restricted in relying on their broker to meet reporting obligations on their behalf.

Best Execution

Investment firms face the increased burden of taking all "sufficient steps" (as opposed to "all reasonable steps" under MiFID) to ensure best execution, and this requirement is extended to cash bonds, derivatives, and FX forwards. Investment firms that execute client orders will need to summarize and make public on an annual basis, for each class of financial instruments, the top five execution venues in terms of trading volumes where they executed client orders in the preceding year and information on the quality of execution obtained. Order execution policy shall include information on the different venues where the investment firm executes its client orders and the factors affecting the choice of execution venue.

Although the legislation aims to strengthen front office accountability and systems and controls, the extension of transparency requirements has led to concerns over liquidity, particularly in relation to OTC fixed income securities.

Derivatives

Following G20 commitments, derivatives have been a focus of recent regulatory change, and the interaction between EMIR and MiFID II and its impact on the cleared derivatives industry is of particular interest. Further to the changes introduced by EMIR, MiFIR will extend the clearing obligation to all transactions in derivatives that are concluded on a regulated market (RM). In addition, ESMA will specify which derivatives subject to the EMIR clearing obligation will be required to be traded on an RM, multilateral trading facility (MTF), organized trading facility (OTF), or a third country trading venue deemed to be equivalent, based on separate liquidity and venue tests. Consultation on ESMA's discussion paper closed on November 21, 2016, and ESMA will now use the feedback to draft technical standards on the trading obligation should it deem this appropriate. The legislation will be extended to catch units in emission allowances that are recognized under the European Emission Trading Scheme and certain commodity derivatives contracts traded on an OTF, and the regulators will set limits on the size of positions that a person can hold in any commodity derivative traded on a venue. Furthermore, it is important to note that the reporting regimes under EMIR and MiFIR are not uniform, and both regulations fail to provide certainty on the future of indirect clearing. Other key market changes include a volume cap on dark pool trading, specific provision for regulation of MTFs, introduction of OTFs, and an enhanced Systematic Internalisers (SI) regime. There are also new requirements on firms providing direct electronic access (DEA) and algorithmic traders.

UK Implementation of EU Regulation

It should not be forgotten that the UK has traditionally been seen as leading the way in implementation of EU regulation, and the example set by the FCA serves as a sound foundation for other member states' adoption of EU law. In other words, the EU 27 have a lot to lose as a result of Brexit and the absence of the UK from the table. Furthermore,

although EU regulations take effect in the UK without the need for implementation, EU directives need to be transposed into domestic law, which gives the UK substantial freedom in adopting EU measures. The UK has, in fact, often chosen to adopt a higher standard than that of its EU counterpart. A number of EU laws, such as MAR and MiFID have in fact been welcomed by the UK.

Action Plan

Brexit

We recommend that firms monitor Brexit developments and consult their legal service providers to help understand these developments as they unfold. We advise developing a contingency plan for a "hard Brexit" and how to respond to withdrawal of passporting rights and the absence of a third country equivalent mitigant. Firms should also review existing contracts in light of jurisdictional scope, definition of "EEA," current investment strategies, review of force majeure implications, and termination rights.

MAR

Firms on the buy side and sell side, wherever they are located in the world, must ensure that their systems and controls and training programs protect against breach of the expanded regime. For example, firms should ensure that they have up-to-date policies on disclosure of inside information and PDMR dealings. Adequate record-keeping procedures should be put in place to ensure that disclosed inside information (to be kept on the firm's website), insider lists, and market soundings records are kept for at least five years. The issuer must comply with ESMA technical standards. Crucially, issuers must remember that even if a safe harbour under MAR does apply, they still must comply with their obligations under the FCA Handbook and/or AIM Rules at all times.

MiFID II

Faced with an incoming tide of change, firms have no choice but to act now to build their defenses.

Firms will need to monitor ESMA Q&As, FCA and PRA consultation papers, and other regulatory updates. Robust IT infrastructure, clear record-keeping procedures, adequate remuneration, cost, and complaints handling policies, and a compliant corporate governance system will all need to be in place prior to the January 2018 deadline.

Glossary

AIF – Alternative Investment Fund. Collective investment undertakings which are not UCITS, such as hedge funds, private equity funds and real estate funds. “Private funds” as defined in the Investment Advisers Act can be considered a substantially equivalent term in the US market.

AIFM – Alternative Investment Fund Manager. Managers and sponsors of AIFs. “Private Fund Adviser” can be considered a substantially equivalent term in the US market.

AIFMD – Alternative Investment Fund Managers Directive. Regulatory scheme that imposes certain requirements on AIFMs.

AIM – Alternative Investment Market. A sub-market of the LSE, designed for smaller companies to gain a listing on a recognized stock exchange.

CSA – Commission Sharing Arrangement. Refers to payments made in connection with trade execution for the provision of investment research. MiFID II introduced new regulations with respect to such arrangements.

DEA – Direct Electronic Access. Refers to trading access for trading firms. Regulated by MiFID II.

EEA – European Economic Area. Established in 1994 pursuant to the EEA Agreement, which allows for the free movement of persons, goods, services and capital among members of the EU and Norway, Lichtenstein, and Iceland.

EMIR – European Market Infrastructure Regulation. Adopted in 2012, the Regulation on OTC Derivatives, Central Counterparties, and Trade Repositories seeks to address certain risks in the OTC derivatives market that were highlighted during the recession.

ESM – European Single Market. Single market for the free flow of the “four freedoms” of goods, capital, people and services among the 28 EU member states and Norway, Lichtenstein and Iceland.

ESMA – European Securities and Markets Authority.

EU – European Union. Political and economic union that currently consists of 28 member states, including the UK.

FCA – Financial Conduct Authority. The current financial regulatory body which is the conduct regulator for the UK and the prudential regulator for firms other than banks and large dealers (which are prudentially regulated by the Prudential Regulation Authority), but which operates independently of the UK government and is financed through fees paid by members of the financial services industry.

FSMA – Financial Services and Markets Act 2000. Act of the UK Parliament that establishes the FCA and the Prudential Regulatory Authority as financial services regulators.

LSE – London Stock Exchange.

MAD – Market Abuse Directive. 2003 EU regulation that sought to implement an EU-wide market abuse regime.

MAD II – revised Market Abuse Directive. Composed of MAR and CSMAD, published in 2014.

MAR – Market Abuse Regulation. Published in 2014 because of an outdated MAD, MAR seeks to harmonize laws across the EU, increases the scope of existing offenses and introduced new offenses beyond those included in MAD, such as attempted insider dealing, and manipulation of benchmarks and commodities. MAR applies directly in each EU member state without implementing laws.

MiFID – Markets in Financial Instruments Directive. Applicable across the EU since 2007, regulatory scheme that regulates the business conduct and organizational requirements for investment firms, authorization requirements for regulated markets, regulatory reporting, trading transparency and financial instruments.

MiFID II – The second Markets in Financial Instruments Directive. Together with MiFIR, makes up the Regulation on Markets in Financial Instruments, which was adopted in 2014 and builds upon MiFID to impose new regulatory requirements based on market developments since 2007.

MiFIR – Markets in Financial Instruments Regulation. Together with MiFID II, makes up the Regulation on Markets in Financial Instruments, which was adopted in 2014 and builds upon MiFID to impose new regulatory requirements based on market developments since 2007.

MTF – Multilateral Trading Facility. Non-exchange financial trading venue, the operation of which is considered an investment service. This concept was first introduced in MiFID.

OTF – Organized Trading Facility. An organized trading system which is not an MTF or an RM. Concept was first introduced in MiFID II. Participants in an OTF may buy and sell interests in bonds, structured products, emission allowances or derivatives in a way that results in the formation of a contract.

PCA – Persons Closely Associated. Defined in MAR and relevant for the market abuse regulations. Examples include, but are not limited to, spouse or spousal equivalent and dependent children.

PDMR – Persons Discharging Managerial Responsibilities. As defined in MAR, a person within an issuer, an emission allowance market participant or another entity referred to in MAR who is either (i) a member of the administrative, management or supervisory body of that entity (that is, a director), or (ii) a senior executive who is not a member of the bodies referred to above but who has regular access to insider information relating directly or indirectly to that entity and has power to take managerial decisions affecting the future developments and business prospects of that entity.

RM – Regulated Market. A multilateral system which brings together multiple third-parties buying

and selling interests in financial instruments in a way that results in a contract, and which is authorized and functions regularly and in accordance with the provisions of MiFID II.

SI – Systematic Internaliser. An investment firm that deals on its own account by executing customer order flow in liquid shares outside an RM or MTF in an organized, frequent and systematic way.

STOR – Suspicious Transaction and Order Report. MAR requires firms and trading venues to report suspicious orders, transactions, and attempted market abuse on STORs.

TEU – Treaty on the European Union. Entered into in 2007 and forms the basis of EU laws.

UCITS – Undertakings for Collective Investment in Transferable Securities. EU Directive that regulates funds which are for retail distribution and establishes a passport for the management and marketing of those funds throughout EU member states. Because they are subject to this regulation, these funds are often called “UCITS.” The Investment Company Act in the US, which regulates publicly offered investment companies, can be considered comparable.

UK – United Kingdom. A sovereign country that consists of four countries: England, Northern Ireland, Scotland and Wales. The UK is currently a member of the EU, but on June 23, 2016 the result of a popular referendum favored leaving the EU.

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NOTE

- ¹ MiFID, Alternative Investment Fund Managers Directive (AIFMD), Insurance Mediation Directive, Mortgage Credit Directive, Electronic Money Directive, Capital Requirements Directive, and Solvency II.

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