
# Brexit

# Key issues for equity capital markets issuers

**5 January 2021**

## Background

The UK left the EU on 31 January 2020. However, under the agreement on the UK's withdrawal from the EU, the UK continued in most respects to be treated as if it were still part of the EU until 31 December 2020. Now that this transition period has ended, the full effects of this profound change in UK law and regulation apply.

On 24 December 2020, the UK and the EU finally agreed a deal – the Trade and Cooperation Agreement (**TCA**) – to govern significant aspects of the trade relationship between the UK and EU from 1 January 2021 onwards. For more information about the TCA, see The UK-EU Trade and Cooperation Agreement: an overview. While the announcement of the TCA has been a source of relief for both UK and EU businesses, its scope in the area of financial services is limited and the UK is no longer part of the EU's capital markets union.

### Prospectus, transparency and listing regimes

As a result, secondary legislation[1] made under the European Union (Withdrawal) Act 2018 came into force at the end of the transition period. This replicates as domestic law within the UK, as far as possible, the effects of the prospectus, transparency and listing regimes, as they applied at the end of the transition period. However, the legislation makes a number of specific changes to reflect the UK's departure from the EU's capital markets union. These include:

- ***Approval of prospectuses***: Under the Prospectus Regulation (EU) 2017/1129, once a prospectus has been approved by one EEA state's competent authority, it can be "passported" into all other EEA states for offers to the public or applications for admission to trading on a regulated market without additional prospectus approval. Now that it is outside the EU's capital markets union, the UK will generally default to treating EEA states and issuers as other "third" countries and issuers. This means that prospectuses for use in the UK will need to be approved by the FCA even if they have been approved by a national competent authority of an EEA member state. Consequently:
  - EEA member state IPO candidates listing shares in London – and only listing in London – will not have to front-run a local approval (which is then passported into the UK Financial Conduct Authority (**FCA**)), but rather go directly to the FCA. This presumes (i) no public offering in that EEA member state where the issuer is incorporated and (ii) any European offering being sold to institutional investors;
  - EEA member state IPO candidates listing GDRs in London – and only listing GDRs in London – will continue, as previously, to go directly to the FCA for prospectus approval; and
  - EEA member state IPO candidates undertaking a dual listing in London and an EEA member state will have to undertake two separate approval processes for the prospectus, unless and until either the UK or the

[1] Principally, the Official Listing of Securities, Prospectus and Transparency (Amendment etc.)(EU Exit) Regulations 2019 and the Prospectus (Amendment etc.) (EU Exit Regulations) 2019

relevant EEA member state has determined that prospectus contents are "equivalent" (under Article 29 of the Prospectus Regulation or, in the case of the UK, its on-shored equivalent)[2].

- ***Grandfathering***: Prospectuses passported into the UK before the end of the transition period may be used in the UK until their validity expires.
- ***Equivalence determinations***: Technical assessments of the prospectus regimes of third country jurisdictions will no longer be carried out by the European Commission, but instead will be undertaken by the FCA.

  HM Treasury is responsible for making equivalence decisions (after consultation with BEIS) in respect of the accounting rules of third country jurisdictions for the purposes of determining whether those rules meet the necessary equivalence standards for the prospectus and transparency regimes.

**Market abuse regime**

Again, secondary legislation made under the European Union (Withdrawal) Act 2018[3] replicates, as far as possible, as domestic UK law the EU market abuse regime (**EU MAR**) as at the end of the transition period. It also addresses deficiencies resulting from the UK's departure from the capital markets union to ensure that the UK's market abuse regime continues to operate effectively.

- ***Maintaining the scope of the EU MAR***: UK MAR captures conduct related to instruments admitted to trading or traded on both UK and EU trading venues.
- ***Notification requirements***: UK MAR retains EU MAR's notification requirements for issuers to report certain information to the relevant national competent authority. These include obligations to report manager transactions, to report any delay in publicly disclosing inside information and to provide, on request, insider lists. As a result of the UK's departure from the capital markets union:
  - certain rules have been on-shored with no difference in substantive application. For example, where an EEA member state issuer is solely listed in London, it remains the case that it must notify the FCA of its delayed disclosure of inside information; and
  - certain rules have been substantively changed. For example, where persons discharging managerial responsibilities of an EEA member state issuer solely listed in London were previously required to notify the local regulator of managers' transactions, this has changed to the FCA.

## Contacts


**Richard Barham**
Partner
D +44 20 7246 7109
M +44 7795 618263
richard.barham@dentons.com



**Nikolas Colbridge**
Partner
D +44 20 7246 7102
M +44 7769 248817
nikolas.colbridge@dentons.com



**Anna Janik**
Managing Practice Development Lawyer
D +44 20 7246 7384
M +44 7747 656819
anna.janik@dentons.com


Law stated as at 5 January 2021

[2] The Joint Declaration on Financial Services signed at the same time as the TCA includes a non-binding declaration to discuss how to move forward with equivalence determinations.
[3] Market Abuse (Amendment) (EU Exit) Regulations 2019