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Brexit & financial services

Securities: The Listing and Prospectus Regimes

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Introduction

The main objective of the EU Prospectus Directive and the Regulation that later replaced it was to facilitate an issuer's access to the EU markets by harmonising the relevant standards of the EU Member States and by introducing a "*passporting*" mechanism, allowing a single prospectus to be used throughout the EEA once it had been approved for the purpose of an offer to the public or an admission to trading on a regulated market. This benefit has been lost as a result of Brexit and issuers who want to offer securities to investors in both the UK and one or more EEA Member States now have to seek the approval of both the FCA and the competent authority of the relevant home EEA Member State.

The passporting mechanism could to some degree be re-instated if the EU and the UK would determine their respective rules to be equivalent to each other. However, although HM Treasury has deemed the laws of EEA Member States to be equivalent to the rules in place in the UK, the EU Commission has not yet made a similar determination in respect of the UK rules and UK-based issuers therefore now enjoy a similar level of access to the EU markets as other third, non-EU, countries.

Brexit has also had an impact on the London Stock Exchange with Amsterdam overtaking London as Europe's foremost (equities) stock exchange, experiencing a more than fourfold increase in shares traded between December 2020 and February 2021. With London under pressure to defend and re-assert its position in the markets against its rivals in the EU and the US, also in light of the growing use of special purpose acquisition vehicles ("SPACs"), the UK Listing Review chaired by Lord Hill published a report recommending reforms to the UK Listing rules to boost growth and markets (the "Hill Review").

Suggested changes include the introduction of dual-class shares that would give company founders greater control over their businesses, lowering the requirement for free float of shares in public hands to 15%, as well as a "*complete rethink as to the whole purpose of the prospectus*" to reduce regulation and encourage efficient capital raising.[1]

The Hill Review illustrates the likelihood of UK rules diverging from those applicable in the EU, which would in turn make it more difficult to obtain a favourable equivalence determination from the EU Commission.

In this note, the applicable EU law regime will be reviewed first before the changes that Brexit brought will be analysed.

The applicable EU Law Regime

The Prospectus Regulation (EU) 2017/1129 came into effect on 21 July 2019, replacing the Prospectus Directive 2003/71/EC and the Prospectus Regulation 809/2004. In the UK, these changes were implemented by the Financial Services and Markets Act 2000 (Prospectus) Regulations 2019 SI 2019/1043 which amended the Financial Services and Markets Act 2000.

The main objective of the Prospectus Regulation (just as with the prior Prospectus Directive and Regulation) was the harmonisation of the relevant rules of each Member State to provide a single legal framework throughout the EU regarding the content, approval and publication requirements of prospectuses for transferable securities. As a result, issuers can offer their securities and raise capital throughout the EU on the basis of a single prospectus, a mechanism known as "*passporting*."

Under EU law, securities can only be offered to the public and traded on a regulated market within the EU if a prospectus is published in accordance with the rules set out in the Prospectus Regulation.[2] The Regulation however allows EU Member States to exempt offers of securities from this obligation provided that (i) the amount of the offer does not exceed EUR 8,000,000 and (ii) such offer is not subject to the notification requirements set out in Article 25.[3] This exemption does not apply to securities that are admitted to trading on a regulated market.[4]

A prospectus must contain all the necessary information to allow an investor to make an informed decision as to (i) the assets and liabilities, profits and losses, financial position and prospects of the issuer and of any guarantor, (ii) the rights attaching to the relevant securities, as well as (iii) the reasons for the issuance and its impact on the issuer.[5] The specific information that must be included in a prospectus is set out in two delegated acts: the Prospectus Delegated Regulation (Commission Delegated Regulation 2019/980) and the Prospectus RTS Regulation (Commission Delegated Regulation 2019/979).[6]

A prospectus may be prepared as a single document or in the form of three separate documents, consisting of a registration document (which contains the information in relation to the issuer), a securities note (containing the information relating to the securities)[7] and a prospectus summary (which provides the key information that investors need to understand the nature and risks of the issuer, guarantor and securities that are being offered or admitted to trading on a regulated market).[8]

A prospectus may only be published after it has been approved by the competent authority of the relevant EEA Member State. Following the submission of the prospectus, the regulatory authority has 10 days to inform the issuer of its decision, although failure to do so does not constitute automatic approval. In case the competent authority refuses to approve the prospectus, it will inform the issuer of its decision and specify the changes that must be implemented and the additional information that must be provided. The Prospectus Regulation does not prescribe the level of fees that the relevant authorities may charge for the review and approval of prospectuses and instead merely requires that such fees be reasonable, proportionate, and disclosed to the public.[9]

Once a prospectus has been approved, it must be published at the latest at the commencement of the offer to the public or the admission to trading of the securities. An issuer, offeror or person asking for the admission to trading on a regulated market satisfies this obligation by publishing the prospectus on his website, the website of the financial intermediary placing or selling the securities, or that of the regulated market where the admission to trading is being sought or, if no admission to trading on a regulated market is being sought, that of the operator of the MTF.

The prospectus must be easily accessible, be published in downloadable, printable and searchable electronic format that cannot be modified and must remain publicly available for at least 10 years after its publication.[10]

Once a prospectus has been approved and published, issuers are under a continuing obligation to update and supplement it in case there is a significant new factor, material mistake or material inaccuracy in relation to the information included therein that may affect the assessment of the securities. Any such supplement needs to be approved by a competent authority of an EEA Member State and be subsequently published in the same way as the prospectus itself. Provided that the significant new factor, material mistake or material inaccuracy arose or was noted before the closing of the offer period or the delivery of the securities, investors who had already agreed to purchase or subscribe the securities in question have two days following the publication of the new information to withdraw their acceptances. This period can however be extended by the issuer or the offeror.[11]

The major innovation that the EU prospectus legislation introduced was the "*passporting*" mechanism, meaning that once a prospectus has been approved by the competent authority of one EEA Member State (the so-called "*home Member State*"), it is valid for public offers or admissions to trading on a regulated market in any other State forming part of the EEA (the "*host Member State*"), without requiring any further regulatory approval. The only step that needs to be satisfied is the notification requirement set out in Article 25 of the Prospectus Regulation, which requires the competent authority of the home Member State to notify its counterpart in the host Member State and ESMA that the prospectus was drawn up in accordance with the requirements set out in the Prospectus Regulation.[12] The passporting mechanism therefore avoids the duplication of regulatory controls and the resulting administrative burden and facilitates an issuer's access to the markets of the entire EEA.

The Prospectus Regulation also introduced the concept of a universal registration document, which is akin to a prospectus but does not include the offering sections and is filed annually with the competent authority in the relevant home EEA Member State. This document can be used to launch offerings by publishing a securities note, which sets out the offering sections of a prospectus. For the first two years, the competent regulator must approve the universal registration document but thereafter, the issuer can obtain a "*frequent issuer*" status which allows it to file the universal registration document without the need for approval, enabling it to launch offerings on an accelerated basis.

The Law applicable after the Transition Period

The Brexit transition period, also called the implementation period, lasted from 31 January 2020 until 11pm on 31 December 2020, which is also referred to as the "*IP Completion Day*." Following the end of the transition period, all EU law that had been in force in the UK on IP Completion Day has been retained and converted into domestic UK law through a process which is also known as "*onshoring*."[13] As a result, directly effective EU regulations (including the Prospectus Regulation) as well as UK secondary legislation that transposed EU Directives continue to be binding, the only difference being that they do so on the basis of domestic UK law only. This onshoring process was effected through a set of statutory instruments, which are called the Brexit SIs.

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Brexit SIs

The aim of the Brexit SIs is to ensure the smooth transition from the UK as a member of the European Union to a "third country." They do not make policy changes, except those necessary to reflect the UK's new position as a non-EU Member State. The relevant Brexit SIs for the purposes of this note are:

i. The Prospectus (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/1234) (the "Prospectus Brexit SI"), as subsequently amended by the Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020/628, and its explanatory memorandum ("Prospectus Explanatory Memorandum");

ii. The Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/707), as subsequently amended by the Prospectus Brexit SI (the "Official Listing Brexit SI") and its explanatory memorandum ("Official Listing Explanatory Memorandum"); and

iii. The Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (SI 2019/541), as amended by the Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020/628 (the "Equivalence Brexit SI") and its explanatory memorandum ("Equivalence Explanatory Memorandum").

Passporting

Indisputably the greatest impact Brexit has on UK capital markets is the loss of passporting rights. Thus, UK-based issuers are now no longer able to prepare and use a single prospectus which, once approved by an EEA regulator, could be used in any other EEA Member State, as well as the UK. Instead, as of 11pm on 31 December 2020:

i. prospectuses that received the necessary approval from an EEA regulator are no longer automatically passported into the UK, but instead need to also be approved by the FCA before the securities which they refer to can be offered to the public in the UK or admitted to trading on a UK regulated market; and

ii. UK-based issuers need to seek approval from the competent authority of at least one EEA Member State before they can offer securities to the public in the EU or trade them on a regulated market within the EU.[14]

Issuers intending to offer securities to investors situated in both the UK and one or several EEA Member States therefore now need to prepare two prospectuses, which need to be approved respectively by the FCA and the competent authority of the relevant home EEA Member State. The same regime applies to a prospectus set out in a single document as well as to its constituent parts (the registration document, the securities note and the prospectus summary).[15]

Although currently both regimes are obviously still very similar if not identical to each other, this will change in the future as the laws of the EU and the UK develop. It seems inevitable that with time the applicable rules will diverge, considering that this was very much the underlying reason for Brexit and is moreover the UK's publicly stated intention.[16] In light of the Hill Review, it appears that such divergence will come sooner rather than later. As such, issuers will face the increased burden of complying with two separate sets of regulations when preparing two separate prospectuses and seeking approval from two separate regulatory authorities.

The impact is however not immediate and EEA-based issuers can also benefit from the UK's "*grandfathering*" provision. It is important to note that UK and EEA prospectuses that were approved before the IP Completion Day are being treated differently: whereas EEA prospectuses (including any supplementary prospectus) that were "*passported into*" the UK before the IP Completion Day remain valid up to the end of their normal validity period, i.e. 12 months after the date on which they were originally approved (the so-called "*grandfathering*" process),[17] prospectuses that have been approved by the FCA and were "*passported into*" the EU are no longer valid in the EU and UK-based issuers must therefore seek the approval of the competent authority in the relevant EEA Member State.

Thus, the grandfathering provision operates only in favour of EEA-approved prospectuses. ESMA's reasoning for not extending the same treatment to FCA-approved prospectuses is that since after the IP Completion Day it is no longer possible to supplement such prospectuses and issuers are no longer able to inform investors of any significant new factor, material mistake or inaccuracy, contrary to their obligations under Article 16 of the Prospectus Directive,[18] such prospectuses can no longer be used to offer securities to the public or admit securities to trading on a regulated market within the EU or the EEA.[19] For UK issuers, the immediate cut-off therefore occurred at 11pm on 31 December 2020 and they do not have the benefit of a period of time (in addition to the transition period), during which they could seek the necessary approvals from the relevant EEA authorities.

In the UK, the grandfathering provision applies equally to the constituent parts of a prospectus as well as to universal registration documents, meaning that a document that received approval from the competent authority in an EEA Member State and that was passported into the UK before the IP Completion Day continues to be valid for up to 12 months after it was approved. In case the securities note and/or the prospectus summary was not passported into the UK prior to the IP Completion Day, any such document needs to be approved by the FCA, in addition to any EEA approval that it may already have received.[20] Similarly, any supplements to prospectuses must also be approved by the FCA.[21]

The grandfathering provisions also apply with respect to the incorporation of information by reference. Thus, issuers in the UK are no longer able to incorporate information by reference to information contained in a document approved by an EEA regulator, whereas information contained in relevant documents approved by an EEA regulator before the IP Completion Day can still be incorporated by reference in UK prospectuses.[22]

Listing regime

Since the IP Completion Day, the UK's primary markets regime applies to all issuers that either (i) have securities admitted to trading on a regulated market in the UK or admitted to listing in the UK, or (ii) make a public offer in the UK, irrespective of the country which the issuers were originally incorporated in.[23]

The Official Listing Brexit SI does not make any major changes to the current regime. As such, the FCA remains responsible for maintaining the Official List[24] and an application for admission to the Official List still needs to be made to the FCA by or with the consent of the issuer of the securities in question.[25] Similarly, the FCA may refuse granting an application for listing if it is not satisfied that the listing rules and any other requirement imposed by the FCA has been complied with,[26] or if it considers that granting the application would be detrimental to the interests of investors.[27]

However, considering that EEA Member States have become third countries since the IP Completion Day, the FCA's power to refuse applications for listings has been expanded and the FCA is now, contrary to the previous situation, able to refuse an application for listing securities which are already listed in an EEA Member State if the issuer has failed to comply with any obligation to which it is subject in the UK.[28] Similarly, the listing rules have been amended so as to require shares to be admitted to trading on a UK regulated market operated by a recognised investment exchange,[29] rather than on a regulated market functioning in accordance with the rules set out in Article 4(1)(21) of the MiFID II Directive 2014/65/EU and operated by a recognised investment exchange. Equally, shares of companies incorporated in a third country (including EEA Member States) will not be admitted to listing unless they are listed in either their country of incorporation or the country in which the majority of their shares are being held.[30]

Changes to the transparency rules

The transparency rules have also not undergone any major changes. The Transparency Directive 2004/109/EC, as subsequently amended, was implemented in the UK in January 2007 mainly through amending the FCA's Disclosure Guidance and Transparency Rules (DTR). The main rules in relation to the prospectus and listing regimes are set out in DTR 4, 5 and 6, which respectively concern (i) periodic financial reporting obligations, (ii) vote holder and issuer notification rules and (iii) continuing obligations and access to information. These transparency rules apply to issuers with transferable securities admitted to trading whose home State is the UK.[31]

Under DTR 4, issuers have to publish their annual financial reports, which must include the audited financial statements, a management report and responsibility statements,[32] at least four months after their financial year has ended[33] and ensure that they remain available for at least ten years.[34]

The responsibility statements are made by the persons responsible within the issuer and must provide that to the best of their knowledge the financial statements give a true and fair view of the assets, liabilities, financial position, profits and losses of the company and that the management report includes a fair review of the development and performance of the business, the position of the issuer and a description of the principal risks and uncertainties that it faces. Additionally, issuers must also publish half-yearly financial reports at least three months after the first half of the financial year which must similarly remain available to the public for at least ten years.[35] These rules are however subject to several exemptions, including in respect of issuers that exclusively issue debt securities of units of at least EUR100,000 which have been admitted to trading.[36]

DTR 5 requires shareholders to notify issuers incorporated in the UK of the percentage of their voting rights, which they may hold either directly or indirectly, if such percentage reaches, exceeds or falls below 3% and for each 1% increase thereafter. Different thresholds apply in relation to non-UK issuers, where such notification requirements only apply from 5% onwards and only for each 5% increment thereafter.[37] DTR 5.1.3R sets out the voting rights that are to be disregarded when calculating these thresholds, which include those attaching to shares acquired for clearing and settlement purposes and shares held by a custodian or nominee in such capacity.[38]

The rules set out in DTR 6 require issuers to disseminate to as wide a public as possible regulated information, which includes all the information which they are required to disclose under the Transparency Directive, the Market Abuse Regulation, as well as the Listing Rules and the DTR.[39] Such information, except annual financial reports that are required to be published under DTR 4.1 if the information contained therein is not required to be included in the half-yearly report, must be communicated to the media in unedited full text.[40] The regulated information must also be communicated to a regulatory information service (RIS), clearly indicating (i) the issuer concerned, (ii) that such information constitutes regulated information and its subject matter, and (iii) the time and date of the communication of the regulated information by the issuer.[41]

Listed companies that are required to comply with corresponding requirements imposed by an EEA Member State are currently exempt from complying with DTRs 4-6.[42] Since the IP Completion Day, that exemption no longer applies and listed companies thus have to comply with these transparency obligations irrespective of their place of incorporation and regardless of whether or not they comply with equivalent requirements in an EEA Member State.

Changes to the free float rules

As of the IP Completion Day, free float rules for both standard and premium listings take into account securities that are held in public hands not just in the EEA, but in any country in the world. This amendment constitutes a relaxation of the so-called "shares in public hands" requirement which requires that at least 25% of the class of equity shares need to be distributed to the public at the time an application is made for the admission of such shares to listing.[43] As a result, LR6.14.2(1) (for premium listing) and LR14.2.2(2) (for standard listing), which provide that shares listed in non-EEA States may also be taken into account towards the 25% threshold have become redundant and have been deleted.

It is questionable however whether this relaxation of the free float rules has any material effect, since under LR6.14.2(1)R shares listed in third countries had already been taken into account and the FCA regularly granted waivers in respect of the free float rules, allowing investors situated in third countries to be included in the calculation.[44] The real difference may therefore merely lie in the fact that since the IP Completion Day, the public hands requirement includes third countries as of right, rather than as a matter of the FCA's discretion.

Continuing obligations

There have not been any drastic changes to the continuing obligations of companies with a standard or premium listing of equity shares and they still need to comply with, amongst others:

1. the admission to trading requirements set out in LR2.2.3R;[45]

2. the free float rules set out in LR6.14.1R and LR 6.14.3R;[46] and

3. the transparency rules set out in DTR 4-6.[47]

Equivalence Determinations

Under the EU prospectus and transparency regimes, the European Commission has the power to consider a third country's regulatory and supervisory regime to be equivalent to that applicable in the EU. As such, an EEA regulator can approve prospectuses that have been prepared in accordance with the rules of non-EEA countries if it has been found that these rules provide the same or equivalent standards as are required by the Prospectus Regulation. In the UK, this power to make equivalence decisions has now been transferred to HM Treasury.[48]

Any equivalence decisions that have been made by the EU Commission prior to the IP Completion Day have become retained UK law and thus continue to apply. The regulatory frameworks of any countries that have been deemed equivalent to that of the EU are therefore automatically deemed equivalent to that of the UK, although HM Treasury has of course the power to repeal any such decision. The clear objective behind the equivalence regime is to avoid disruption for UK firms that rely on services provided by foreign firms.[49]

In light of the close links between the EU and UK financial services markets and their respective volumes, equivalence determinations could provide a useful mechanism to ensure a frictionless future relationship between these markets. On 11 April 2019, HM Treasury, pursuant to its newly received powers under regulation 2 of the Equivalence Brexit SI, made the Prospectus Directive and Transparency Directive Equivalence Directions 2019, which provide that for the purposes of the prospectus rules "*the law of each EEA state ensures the equivalence of prospectuses drawn up in that country with prospectuses drawn up under the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day.*"[50]

As a result, the laws of each EEA Member State have been deemed equivalent to the rules set out by the FCA and the information requirements under the Prospectus Regulation, which, as mentioned above, now form part of UK law. This therefore avoids the duplication of regulatory and supervisory requirements, at least in relation to prospectuses that have been approved in an EEA Member State.

The Trade and Cooperation Agreement that has been concluded between the EU and the UK (i.e. the "Deal") does not include an EU-wide arrangement for services and does not include any equivalence framework or decision.[51] UK-based firms are therefore now subject to the EU's third-country regime under which the EU has the option to recognise the UK's regulatory framework as equivalent to that in force in the EU.[52] It is important to note that the EU Commission, although it has started to assess the UK's regulatory framework, has not yet made an equivalence decision in relation to the UK. The EU has also repeatedly stated that it will only make an equivalence determination if it would be in the EU's interest to do so.[53] In light of the Hill Review and the UK's general intention to reassert its position in the financial markets, it is likely that the UK rules will start to diverge from those in force in the EU in the future, thereby threatening the prospect of an equivalence decision from the EU.

Under the equivalence regime, both the EU and the UK have the power to unilaterally make and withdraw equivalence determinations, which will depend on the regulatory alignment between the two jurisdictions. Considering that it is currently uncertain whether the UK's future regulatory framework will be held to be equivalent, there is a real risk that (subject to the grandfathering provisions referred to above) issuers will face disruptions and additional administrative burdens.

Moreover, as both regimes will inevitably develop and eventually diverge from one another, any equivalence decision that would be made is liable to be changed and the relevant regulatory frameworks will need to be continuously monitored. The UK will therefore need to strike a fine balance between changing its rules to reposition itself as an independent leader in the global financial services market and risking a finding from the EU Commission that its regulatory regime is not equivalent to that of the EU.

<u>Other amendments</u>

Other changes that have occurred following the IP Completion Day concern (i) the transfer of responsibilities and functions from EU bodies to the appropriate UK bodies and (ii) the future co-operation and information sharing obligations between the UK and EEA Member States.

<u>The transfer of functions</u>

Regarding the transfer of functions, the EU Commission's power to make equivalence determinations has been transferred to HM Treasury.[54] HM Treasury therefore now has the power to set out general equivalence criteria and is responsible for specifying conditions under which annual financial and half-yearly reports must remain available to the public (DTR4), the obligations shareholders have to comply with when notifying issuers of the proportion of their voting rights (DTR5), and the minimum standards required in relation to the dissemination of information under DTR 6.3.[55]

The FCA has taken over the functions that had previously been exercised by ESMA, including the role of assessing particular third country regimes[56] and it is also responsible for making binding technical standards.[57]

The functions of the European Supervisory Authorities (ESA), which provide a technical assessment of the relevant third country's regulatory and supervisory regime on the basis of which the EU Commission then takes its decision, and which are also responsible for making equivalence decisions in relation to specific firms within third countries, have been transferred to the Bank of England, the PRA and the FCA as appropriate.[58]

<u>The UK's future co-operation and information sharing obligations</u>

Brexit has a major impact on the FCA's co-operation and information sharing obligations. Under the Prospectus Regulation, the competent authorities of the EEA Member States are required to co-operate with each other, exchange information promptly and to cooperate in any investigation, supervision and enforcement activity.[59] The information sharing obligations are quite broad, considering that the authorities have to supply any information required for the purposes of the Prospectus Regulation[60] and any failure to co-operate can be referred to ESMA.[61]

In addition to these co-operation obligations between EEA regulators, they are also required to co-operate with ESMA and to provide it with all the necessary information to allow it to carry out its duties without delay.[62]

Since the IP Completion Day, the UK's co-operation and information sharing obligations have ceased to exist.[63] Any future co-operation with either ESMA or any of the EEA Member States will be carried out on a discretionary basis in the same way as had previously been done with regulatory authorities of non-EEA Member States, in accordance with the rules set out in the Financial Services and Market Act 2000.[64]

The UK is currently seeking to agree a new legally enforceable regulatory cooperation framework on financial services with the EU.[65] Its proposal has however been rejected by the EU which has indicated that it wishes to set up a voluntary framework for dialogue between regulators and supervisory authorities that would allow for information exchanges on regulatory and prudential issues, similar to those already existing between the EU and other jurisdictions.[66]

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1 www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/966133/UK_Listing_Review_3_March.pdf.
2 Prospectus Regulation, Arts. 3(1) and 3(3).
3 Prospectus Regulation, Art. 3(2).
4 Prospectus Regulation, Art. 3(3).
5 Article 6(1) of the Prospectus Regulation.
6 Article 13 of the Prospectus Regulation.
7 Article 6(3) of the Prospectus Regulation.
8 Article 7(1) of the Prospectus Regulation.
9 Article 20 of the Prospectus Regulation.
10 Article 21 of the Prospectus Regulation.
11 Article 23 of the Prospectus Regulation.
12 Articles 24-25 of the Prospectus Regulation.
13 See sections 2-3 of the European Union (Withdrawal) Act 2018 which provide that EU-derived domestic legislation will continue to have effect and direct EU legislation will be incorporated into domestic UK law.
14 Official Listing Brexit SI, Regs. 7-8; Official Listing Explanatory Memorandum, at para. 7.19; section 86 of the Financial Services and Markets Act 2000.
15 Prospectus Explanatory Memorandum, paras. 2.18-2.19.
16 Speech by M Barnier on 30 June 2020 to the Eurofi General Assembly.
17 Official Listing Brexit SI, Reg. 73; see also Official Listing Explanatory Memorandum, para. 7.20; Prospectus Brexit SI, Reg. 74; Prospectus Explanatory Memorandum, para. 2.17.
18 Now Article 23 of the Prospectus Regulation.
19 ESMA, Q&A, Prospectuses, 30th updated version – April 2019, answer to question 104.
20 Prospectus Brexit SI, Reg. 75; see also Prospectus Explanatory Memorandum, paras. 2.20-2.21.
21 Prospectus Explanatory Memorandum, para. 2.17.
22 Prospectus Brexit SI, Reg. 47; see also Prospectus Explanatory Memorandum, paras. 2.22-2.23.
23 FCA CP 18/36, paras. 3.69-3.70.
24 Section 74 FSMA.
25 Section 75 FSMA.
26 Section 75(4) FSMA.
27 Section 75(5) FSMA.
28 Official Listing Brexit SI, reg.5; section 75(6) FSMA.
29 LR2.2.3R.
30 LR 6.15.1R and 14.2.4R.
31 DTR4.1; DTR5.1.1(1)R; DTR6.1.1(1)R.
32 DTR4.1.5R.
33 DTR4.1.3R.
34 DTR4.1.4R.
35 DTR4.2.2R.
36 DTR4.4.2R.
37 DTR5.1.2R.
38 DTR5.1.3R.
39 DTR6.3.4R.
40 DTR6.3.5R
41 DTR6.3.7R.
42 LR9.2.6BR; LR14.3.23.
43 LR6.14.1R; LR14.2.2R; LR18.2.8R. As indicated above, the Hill Review recommended that the threshold be lowered to 15%.
44 FCA Consultation Paper CP18/36, para. 3.75.
45 LR9.2.1R; LR14.3.1R; see paragraph 28 above.
46 LR9.2.15R; LR14.3.2R; see paragraphs 34-35 above.
47 LR9.2.6BR; LR14.3.23R; see paragraphs 29-35 above.
48 Equivalence Explanatory Memorandum, paras. 2.7-2.15, 7.18-7.19; Official Listing Explanatory Memorandum, paras. 7.14-7.16.
49 Equivalence Explanatory Memorandum, para. 7.17.
50 The Prospectus Directive and Transparency Directive Equivalence Directions 2019, at para. 3.
51 www.ec.europa.eu/commission/presscorner/detail/en/qanda_20_2532
52 Equivalence Explanatory Memorandum, para. 7.6.
53 Speech by M Barnier on 30 June 2020 to the Eurofi General Assembly.
54 See paragraph 37 above; Regulation 54 of the Prospectus Brexit SI.
55 Regulation 71 of the Official Listing Brexit SI; Official Listing Explanatory Memorandum, para. 7.14.
56 Regulation 72 of the Official Listing Brexit SI; Official Listing Explanatory Memorandum, para. 7.14.
57 Prospectus Explanatory Memorandum, paras. 2.8-2.9; Official Listing Explanatory Memorandum, para. 7.11; Reg. 72 of the Official Listing Brexit SI.
58 Regulations 4 and 6 of the Equivalence Determinations SI; Equivalence Explanatory Memorandum, para. 7.18.
59 Article 33(1) of the Prospectus Regulation.
60 Article 33(3) of the Prospectus Regulation.
61 Article 33(5) of the Prospectus Regulation.
62 Article 34 of the Prospectus Regulation.
63 Regulation 59 of the Prospectus Brexit SI; Prospectus Explanatory Memorandum, para. 2.24.
64 Prospectus Explanatory Memorandum, para. 2.24; Official Listing Explanatory Memorandum, para. 7.17.
65 Article 17.19 of the UK's draft free trade agreement proposal, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886010/DRAFT_UK-EU_Comprehensive_Free_Trade_Agreement.pdf.
66 Speech by M Barnier on 30 June 2020 to the Eurofi General Assembly.

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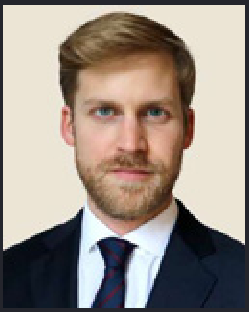

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