

Financial Services Alerter

February 2019





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Introduction

February 2019

Welcome to Simmons & Simmons' Financial Services Alerter, our monthly bulletin containing brief details of significant legal and regulatory developments of relevance to the fund management and investment banking communities.

Although the primary focus of Financial Services Alerter is the UK, we also cover EU and other international developments of relevance to the UK.

The information contained in Financial Services Alerter is based exclusively on publicly available sources and relates to developments taking place in February 2019.

- **UK developments**
- **EU developments**
- **International developments**
- **ellexica and other client items**

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For further information, please contact [Darren Fox](#), [Charlotte Stalin](#), [Jonathan Melrose](#), [Penny Miller](#), or your usual contact at Simmons & Simmons.



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UK developments

FCA agrees MoUs with ESMA and other EU regulators in event of no deal Brexit

On 01 February 2019, the FCA published a [press release](#), “FCA agrees MoUs with ESMA and EU regulators to allow cooperation and exchange of information”. The memoranda of understanding (MoUs) cover cooperation and exchange of information in the event of a hard Brexit, and consist of:

- a multilateral MoU with EU and EEA National Competent Authorities (NCAs) covering supervisory cooperation, enforcement and information exchange and
- an MoU with the European Securities and Markets Authority (ESMA) covering supervision of Credit Rating Agencies and Trade Repositories.

FCA publishes statement on Brexit and expectations of firms

On 01 February 2019, the FCA published a [statement](#), “Brexit – what we expect firms and other regulated persons to do now”, outlining areas where firms should begin preparing to comply with Brexit-related changes to their UK regulatory obligations. The following areas are highlighted:

- MiFID2 transaction reporting
- EMIR reporting obligations
- Issuer rules
- Contractual recognition of bail-in
- Short selling notifications
- Use of credit ratings for regulatory purposes
- Securitisation

FCA publishes policy statement on general standards and communications rules in payment services and e-money sectors

On 01 February 2019, the FCA published [policy statement](#) PS19/3, “General standards and communication rules for the payment services and e-money sectors”, providing a summary of feedback and the FCA’s response to CP18/21 on general standards and communication rules.

Bank of England/PRA and ESMA conclude no-deal MoUs on recognition of UK CCPs and CSDs

On 04 February 2019, the European Securities and Markets Authority (ESMA) published a [press release](#), “ESMA agrees no-deal Brexit MOUs with the Bank of England for recognition of UK CCPs and the UK CSD”, communicating that it has agreed Memoranda of Understanding (MoUs) with the Bank of England/PRA for the recognition of central counterparties (CCPs) and of the central securities depository (CSD) established in the UK, that would take effect if there is a no-deal Brexit.

FCA publishes policy statement on further asset management market study remedies

On 04 February 2019, the FCA published a [policy statement](#) PS19/4, “Asset Management Market Study - further remedies” outlining feedback received and responses to CP18/9.

HM Treasury publishes draft Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019

On 05 February 2019, HM Treasury published a [draft version](#) of the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019. The Regulations come into force on exit day, with some exceptions.

HM Treasury publishes draft Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019

On 06 February 2019, HM Treasury published a [draft version](#) of the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019. Regulations 2, 3, 4, 5, 11 and Schedules 1 and 2 to the Regulations enter into force on exit day. The rest of the provisions come into force immediately before exit day.

Interchange Fee (Amendment) (EU Exit) Regulations 2019 made

On 18 February 2019, HM Government made SI 2019/284, “[Interchange Fee \(Amendment\) \(EU Exit\) Regulations 2019](#)” and published an accompanying [explanatory memorandum](#). The Regulations come into force on exit day.

Collective Investment Scheme (Amendment etc) (EU Exit) Regulations 2019 made

On 20 February 2019, HM Government made statutory instrument SI 2019/325, “[Collective Investment Schemes \(Amendment etc\) \(EU Exit\) Regulations 2019](#)” and published an accompanying [explanatory memorandum](#). The Regulations come into force on exit day, except for certain provisions specified in regulation 1(3).

Alternative Investment Fund Managers (Amendment) (EU Exit) Regulations 2019 made

On 21 February 2019, HM Government made statutory instrument SI 2019/328, “[Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#)” and published an accompanying [explanatory memorandum](#). The Regulations come into force on exit day.

Long-term Investment Funds (Amendment) (EU Exit) Regulations 2019 made

On 21 February 2019, HM Government made SI 2019/336, "[Long-term Investment Funds \(Amendment\) \(EU Exit\) Regulations 2019](#)" and published an accompanying [explanatory memorandum](#). The Regulations come into force on exit day, except for amendments on the Technical Standards Regulations, which came into force on 21 February 2019.

Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 made

On 21 February 2019, HM Government made statutory instrument SI 2019/335, "[Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019](#)" and published an accompanying [explanatory memorandum](#).

The Regulations come into force on exit day.

Venture Capital Funds (Amendment) (EU Exit) Regulations 2019 made

On 21 February 2019, HM Government made statutory instrument SI 2019/333 [Venture Capital Funds \(Amendment\) \(EU Exit\) Regulations 2019](#) and published an accompanying [explanatory memorandum](#). The Regulations come into force on exit day.

Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 made

On 22 February 2019, HM Government made statutory instrument SI 2019/341, "[Financial Markets and Insolvency \(Amendment and Transitional Provision\) \(EU Exit\) Regulations](#)" and published an accompanying [explanatory memorandum](#). The Regulations come into force on exit day, except for Regulation 1 and provisions on the temporary designation regime, which came into force on 23 February 2019.

Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2019 made

On 22 February 2019, HM Government made statutory instrument SI 2019/343, "[Social Entrepreneurship Funds \(Amendment\) \(EU Exit\) Regulations 2019](#)". The Regulations come into force on exit day.

UK and US regulators publish statement on post-Brexit continuity of derivatives trading and clearing

On 25 February 2019, the Bank of England/PRA, the FCA and the US Commodity Futures Trading Commission (CFTC) published a [joint statement](#), "Joint statement by UK and US authorities on continuity of derivatives trading and clearing post-Brexit". The following post-Brexit measures were agreed:

- continued supervisory co-operation
- extension of existing CFTC relief and comparability for the UK
- UK equivalence for the US.

HM Treasury publishes Financial Services (Miscellaneous) (Amendment) (EU Exit) (No 2) Regulations 2019

On 27 February 2019, HM Treasury published a [draft version](#) of the Financial Services (Miscellaneous) (Amendment) (EU Exit) (No 2) Regulations 2019 and an accompanying [explanatory memorandum](#). The Regulations come into force at the end of the period of 25 days beginning with the day on which the Regulations are made. This does not apply to amendments to the Financial Conglomerates and Other Financial Groups (Amendment) (EU Exit) Regulations relating to transitional provisions, which come into force immediately before exit day.

FCA publishes policy statement on Brexit

On 28 February 2019, the FCA published policy statement PS19/5, “Brexit Policy Statement: Feedback on CP18/28, CP18/29, CP18/34, CP18/36 and CP19/2”, outlining near-final proposals on:

- amendments to the FCA Handbook to correct deficiencies created by Brexit
- amendments to Binding Technical Standards (BTS) to correct deficiencies created by Brexit
- the establishment of a temporary permissions regime (TPR) for European Economic Area (EEA) entities operating in the UK and a financial services contracts regime (FSCR) for EEA entities seeking to service existing business, but not undertake new business, in the UK after Brexit
- the establishment of regulatory regimes for credit rating agencies (CRA), trade repositories (TR) and securitisation repositories (SR)
- EU Level 3 material
- non-Handbook guidance and
- forms.

Bank of England/PRA publishes policy statement on Brexit

On 28 February 2019, the Bank of England/PRA published joint [policy statement](#) PS5/19, “The Bank of England’s amendments to financial services legislation under the European Union (Withdrawal) Act 2018”, summarising the following (among other things):

- feedback to responses received on the Bank of England/PRA’s proposed approach to the use of the transitional power
- feedback to CP 25/18
- feedback to CP26/184 and CP32/185.

Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 made

On 28 February 2019, HM Government made [statutory instrument](#) SI 2019/405, “Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019” and published an accompanying [explanatory memorandum](#). The Regulations came into force on 01 March 2019.

Money Market Funds (Amendment) (EU Exit) Regulations 2019 made

On 28 February 2019, HM Government made [statutory instrument](#) SI 2019/394, “Money Market Funds (Amendment) (EU Exit) Regulations 2019” and published an accompanying [explanatory memorandum](#). The Regulations come into force on exit day, except for amendments to the Technical Standards Regulations, which came into force on 27 February 2019.

Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2019 made

On 28 February 2019, HM Government made statutory instrument SI 2019/403, "[Packaged Retail and Insurance-based Investment Products \(Amendment\) \(EU Exit\) Regulations 2019](#)" and published an accompanying [explanatory memorandum](#). The Regulations come into force on exit day.

FCA publishes MiFID2 costs and charges disclosures findings

On 28 February 2019, the FCA published a [webpage](#), "MiFID2 costs and charges disclosures review findings", setting out conclusions from its supervisory review of MiFID2 costs and charges disclosure. The review assessed how a sample of 50 firms in the retail sector complied with MiFID2 obligations for disclosing costs and charges.



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EU developments

ESMA publishes statement on no-deal Brexit EMIR derivatives

On 01 February 2019, the European Securities and Markets Authority (ESMA) published a [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”. The statement clarifies certain instances relating to the derivatives reported under Article 9 of EMIR, and applies in the event of a no-deal Brexit.

ESMA publishes updated Q&As on EMIR implementation

On 04 February 2019, the European Securities and Markets Authority (ESMA) published updated [Q&As](#) on the implementation of EMIR, making the following changes:

- Q&A 34 (amended) - trade repositories to confirm how counterparties should report a derivative with no maturity date
- Q&A 38 (amended) – trade repositories to clarify when reports should be submitted in relation to reporting derivatives that are terminated before the reporting deadline
- Q&A 50 (new) - trade repositories to clarify the approach counterparties should take for reporting field “confirmation means”.

ESMA updates MiFIR data reporting Q&As

On 04 February 2019, the European Securities and Markets Authority (ESMA) updated its [Q&As](#) on MiFIR data reporting, making the following changes:

- section 2, Q&A 5 (new) - LEI of the issuer
- section 5, Q&As 2, 3 and 4 (new) - Maturity Date, expiry date and termination date.
- section 17, Q&A 1(c)) (amended) – Complex trades

ESMA publishes consultation on draft guidelines on liquidity stress testing of UCITS and AIFs

On 05 February 2019, the European Securities and Markets Authority (ESMA) published a [consultation paper](#), “Guidelines on liquidity stress testing in UCITS and AIFs”. ESMA aims to publish a final report by summer of 2019.

The consultation period closes on 01 April 2019.

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ESMA to recognise UK CCPs in the event of a no-deal Brexit

On 18 February 2019, the European Securities and Markets Authority (ESMA) published a [press release](#), “ESMA to recognise three UK CCPs in the event of a no-deal Brexit” confirming that three central counterparties (CCPs) established in the UK will be recognised to provide services in the EU. They are:

- LCH Limited
- ICE Clear Europe Limited
- LME Clear Limited.

ESMA renews prohibition on binary options for three months from 02 April 2019

On 18 February 2019, the European Securities and Markets Authority (ESMA) published a [press release](#), “ESMA renews binary options prohibition for a further three months from 02 April 2019”. ESMA has agreed to renew the prohibition on binary options from 02 April 2019 on the same terms as the previous renewal decision that started to apply on 02 January 2019. The renewal was agreed by ESMA’s Board of Supervisors on 14 February 2019.



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International
developments

IOSCO publishes consultation on recommendations relating to sustainable finance

On 01 February 2019, the International Organization of Securities Commissions (IOSCO) published a [consultation paper](#), "Sustainable finance in emerging markets and the role of securities regulators", outlining a list of recommendations designed to encourage transparency and disclosure for issuers and to facilitate the development of sustainable finance.

The consultation period closes on 01 April 2019

Lexica and other client items

01 February 2019	<u>Let's get engaged: Stewardship in the UK - FRC and FCA consult on revisions to the Stewardship Code and on the regulatory framework for effective stewardship</u>
04 February 2019	<u>Simmons & Simmons FinTech Fund</u>
05 February 2019	<u>Central Bank of Ireland publishes Markets Update with preparations for Brexit at the forefront</u>
05 February 2019	<u>Brexit and the Luxembourg Temporary Permissions Regime</u>
05 February 2019	<u>The future of the Asset Management industry</u>
05 February 2019	<u>Temporary permission regime published in the Netherlands</u>
05 February 2019	<u>Formal launch of Global Financial Innovation Network and cross border testing pilot</u>
07 February 2019	<u>Former fund manager fined £32,200 for disclosure of information in advance of IPO</u>
07 February 2019	<u>Brexit: First tangible measures published by French Government in order to prepare for a Hard Brexit</u>
07 February 2019	<u>FCA Consultation on changes to align the FCA Handbook with the EU Prospectus Regulation and other Prospectus Regulation related developments</u>
08 February 2019	<u>The FCA's policy statement following the Asset Management Market Study: impact on fund managers</u>
11 February 2019	<u>Common Ownership Structures in Asset Management Industry Under Closer Inspection by German Competition Authorities</u>
11 February 2019	<u>No Deal BREXIT: Luxembourg takes measures to ensure stability for the financial market</u>
13 February 2019	<u>1% SDLT surcharge on acquisitions of UK residential property by non-residents</u>
13 February 2019	<u>Brexit - French ordonnance dated 06 February 2019</u>
14 February 2019	<u>Investing in Supply Chain Finance as an Asset Class - World Supply Chain Finance Report 2019</u>
15 February 2019	<u>The German Master-KVG model</u>
15 February 2019	<u>Distribution of Investment Funds in Germany</u>
15 February 2019	<u>Funds finance in the spotlight: emerging developments in due diligence</u>
15 February 2019	<u>Jurisdiction and Governing Law after a No Deal Brexit - the state of play</u>
18 February 2019	<u>BaFin publishes short selling ban in Wirecard AG</u>
21 February 2019	<u>A sneak peek at the Dutch advance ruling practice</u>
21 February 2019	<u>The Amsterdam Derivatives Academy presented: Brexit, initial margin and benchmark reform</u>
25 February 2019	<u>EMIR Newsflash: UK Treasury issues guidance on pension clearing exemption</u>

25 February 2019	<u>Brexit: Amendment to the German Pfandbrief Act introduced by the German Federal Council (Bundesrat) to permanently recognise the eligibility of UK assets as cover</u>
27 February 2019	<u>PRIIPs KIDs: impact of the ESAs' Final Report</u>
28 February 2019	<u>Let's get (more) engaged: Stewardship in the UK - FCA consults on UK implementation of Shareholder Rights Directive II</u>
28 February 2019	<u>Reduced Dismissal Protection for Top-Banker</u>
28 February 2019	<u>Brexit as a frustrating event?</u>

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