October 2018

The impact of Brexit on OTC derivatives

Other 'cliff edge' effects under EU law in a 'no deal' scenario

CONTENTS

Introduction 1

1. Executive summary 1

2. Other 'cliff edge' effects under EU law in a 'no deal' scenario 4

3. Available mitigation under existing EU law 5

4. 'Hiatus risk' 5

5. Other mitigating actions 8

6. Early transparency for market participants 9

7. Transition period 9

8. Corresponding issues under UK law and third-country law 9

Contacts 10

The Associations 11

Annex – Table of other 'cliff edge' effects under EU law in a 'no deal' scenario 14

October 2018

The impact of Brexit on OTC derivatives

Other 'cliff edge' effects under EU law in a 'no deal' scenario

This paper was developed by the International Swaps and Derivatives Association, the Association of German Banks (*Bundesverband deutscher Banken*), the Italian Financial Markets Intermediaries Association (*Associazione Intermediari Mercati Finanziari – ASSOSIM*), the Banking and Payments Federation Ireland, the Danish Securities Dealers Association (*Børsmæglerforening Danmark*), the Dutch Banking Association (*Nederlandse Vereniging van Banken*) and the Swedish Securities Dealers Association (*Svenska Fondhandlareföreningen*) in response to increasing concerns raised by their members that the UK may withdraw from the EU without concluding a withdrawal agreement under Article 50 of the Treaty on European Union and without any transition (or implementation) period to allow market participants time to adjust.

There has been considerable discussion of the impact of this 'no deal' scenario on the ability of UK firms to rely on their single market 'passports' both to conduct new OTC derivatives business and to service 'legacy' contracts with EU27 clients and counterparties without authorisation in the EU27 (as well as on the obstacles to UK firms transferring legacy contracts to EU27 affiliates). Similarly, there has been discussion of the corresponding impact of the loss of the passport on EU27 firms conducting OTC derivatives business with UK clients and counterparties. This paper does not discuss those issues.

Instead, this paper sets out other reasons why a 'no deal' scenario has the potential to create a disruptive 'cliff edge' change in the EU regulatory requirements that apply to OTC derivatives business in a way that may adversely affect EU27 or UK firms and their EU27 and UK clients and counterparties.

This paper focuses on the treatment of OTC derivatives business under existing EU law (see the index to the annexed table for a list of the EU legislation covered). It does not consider the impact of any current legislative proposals to amend that law or whether any such amendments are likely to take effect in advance of Brexit. This paper does not address any issues arising under data protection legislation or consumer law.

1. Executive summary

Unless mitigating action is taken, a 'no deal' scenario would give rise to a disruptive 'cliff edge' change in the EU regulatory requirements that apply to OTC derivatives business, having an immediate adverse impact on EU27 firms and EU27 clients and counterparties of UK firms (as well as, in some cases, on UK firms and UK clients and counterparties of EU27 firms).

One of the most important adverse impacts will arise if UK CCPs are not recognised under EMIR at the point of the UK's exit from the EU. This would affect the ability of EU27 firms to remain as clearing members of those CCPs, would affect the ability of EU counterparties to continue to clear derivatives on those CCPs and would create huge operational challenges associated with migration of thousands of contracts and the related collateral to alternative CCPs (if this is feasible). This would give rise to higher costs (including but not limited to a significant increase in the capital requirements of EU27 institutions under CRR in respect of their exposures to UK CCPs unless the Commission extends the existing transitional relief for third country CCPs), increased systemic risk and distorted competition in global derivatives markets and CCPs, all of which would impede the access of EU27 firms and their clients and counterparties to these markets.

In addition, a 'no deal' scenario would give rise to a wide range of other adverse impacts on EU27 firms and EU27 clients and counterparties of UK firms which are summarised in the annexed table.

In some cases, EU law already gives the EU or EU27 national competent authorities powers to take actions that would mitigate these adverse impacts, by extending existing exemptions to UK entities, adopting equivalence decisions and approving applications for recognition or endorsement. *The Commission and other EU authorities should consider making full use of these powers to mitigate the adverse impact of a 'no deal' scenario.*

However, there is a risk that these actions would only be taken or become effective after the UK has withdrawn from the EU and become a third country. This creates the risk of a disruptive hiatus (a gap) between the UK ceasing to be a Member State and the mitigating actions taking effect.

Therefore:

- *In a 'no deal' scenario, the Commission and the other EU authorities should consider taking all necessary steps in advance of Brexit to avoid a disruptive hiatus by ensuring that mitigating actions take effect from the date when the UK leaves the EU, including taking all available preparatory steps and, where possible, accepting applications and adopting advance formal decisions that take effect on that date.*

- *ESMA should consider working with relevant CCPs, trade repositories, credit rating agencies and benchmark administrators in advance of Brexit to facilitate applications for recognition, endorsement or registration in the event of a 'no deal' scenario so that, to the extent possible, any decision on recognition, endorsement or registration can take effect with effect from the date the UK leaves the EU.*

- *Additionally, the Commission should consider, as part of its contingency planning for a 'no deal' scenario, proposing EU legislation adapting EU law in advance of Brexit to create a temporary regime deferring the impacts addressed by these mitigating actions and allowing time for the taking of necessary actions after Brexit.*

- *The Commission, ESMA, the SRB and EU27 national competent authorities should consider taking, in cooperation with the UK authorities, all other actions available to them to eliminate or at least shorten any disruptive gap between Brexit and any mitigating action becoming effective.*

- *ESMA should also consider developing proposals to manage the transition to the reduced instrument scope under the MiFIR transparency and reporting regime in a way that reduces the adverse impact on EU27 investment firms and their clients and counterparties, in consultation with market participants.*

- *The Commission should consider including in the legislative proposal indicated above provisions for a temporary designation regime under the Settlement Finality Directive to manage the transition to a new arrangement for third-country systems that allows EU27 firms to participate in those systems on a sound basis.*

- *The EU authorities should consider providing early transparency to market participants as to the mitigating actions that the authorities expect to take and any likely gap before those actions become effective after Brexit so that firms and their clients and counterparties can plan accordingly.*

In the absence of a commitment to take mitigating actions and early transparency, firms and their clients and counterparties may be constrained to take disruptive, risky, costly and potentially irreversible (and ultimately unnecessary) steps to seek to mitigate the adverse impacts (and in some cases no such steps may be practically available to them). Therefore, the risk that there will be a hiatus after Brexit before mitigating actions by the authorities are taken or become effective may itself have a disruptive effect on markets in advance of Brexit.

The above considerations re-emphasise the importance of the UK and the EU concluding a Withdrawal Agreement which includes a transition period maintaining the current position by treating the UK as if it were a Member State for the purposes of EU law. However, there is a risk that similar issues to those addressed in this paper would arise at the end of the transition period.

This paper does not consider the corresponding issues that might arise under UK law in a 'no deal' scenario, including those that might arise as a result of the UK 'onshoring' EU law into UK law under the European Union (Withdrawal) Act 2018 (EUWA). *However, the UK authorities should consider providing early transparency as to the details of the changes to UK law being made under the EUWA to facilitate the actions to be taken by the EU authorities to mitigate the risks discussed in this paper.*

2. Other 'cliff edge' effects under EU law in a 'no deal' scenario

The annexed table:

- highlights some of the other 'cliff edge' effects that would arise under EU law in relation to OTC derivatives business as a result of the UK becoming a third country in a 'no deal' scenario (indicating those issues assessed as likely to have the greatest impact at 29 March 2019 and those where the impact may not be immediate);

- summarises the resulting impact on both EU27 firms and EU27 clients and counterparties of UK firms on the one hand and the impact on UK firms and UK clients and counterparties of EU27 firms on the other hand;

- indicates the possible actions that the EU authorities might take to mitigate those effects under existing EU law.

One of the most important adverse impacts will arise if UK CCPs are not recognised under EMIR at the point of the UK's exit from the EU. This would affect the ability of EU27 firms to remain as clearing members of those CCPs, would affect the ability of EU counterparties to continue to clear derivatives on those CCPs and would create huge operational challenges associated with migration of thousands of contracts and their related collateral to alternative CCPs (if this is feasible). This would give rise to higher costs (including but not limited to a significant increase in the capital requirements of EU27 institutions under CRR in respect of their exposures to UK CCPs unless the Commission extends the existing transitional relief for third country CCPs), increased systemic risk and distorted competition in global derivatives markets and CCPs, all of which would impede the access of EU27 firms and their clients and counterparties to these markets.

In addition, there will be a wide range of other significant adverse impacts on EU27 firms and EU27 clients and counterparties of UK firms, including the adverse impact on:

- EU27 non-financial counterparties (and non-EU27 non-financial counterparties of EU27 firms) that may exceed the clearing threshold under EMIR where they have traded exchange-traded derivatives on UK regulated markets;

- EU27 entities that will lose their ability to rely on exemptions from clearing and margin requirements for OTC derivative transactions with their UK affiliates;

- EU27 counterparties that cease to be able to satisfy their trading obligation for OTC derivatives by trading on UK trading venues;

- EU27 institutions subject to CRR that may be subject to significant increased capital requirements on their exposures to UK credit institutions and other UK entities or as a result of no longer being able to use ratings issued or endorsed in the UK for regulatory capital purposes;
- EU27 investment firms that must adjust their systems to the changed instrument scope of the MiFIR transparency and reporting regime, potentially without adequate data on the instruments subject to that regime;
- EU27 institutions subject to BRRD that are required to include bail-in recognition clauses in all their contracts governed by English law;
- EU27 members of UK CCPs or other systems designated under the Settlement Finality Directive that may have to demonstrate that their membership is not affected by the loss of protections conferred by that directive.

3. Available mitigation under existing EU law

In some cases, EU law already gives the EU or EU27 national competent authorities powers to take actions that would mitigate these adverse impacts. See the summary table on the next page. These include powers to extend existing exemptions to UK entities, adopt equivalence decisions and approve applications for recognition or endorsement.

The Commission and other EU authorities should consider making full use of these powers to mitigate the adverse impact of a 'no deal' scenario.

4. 'Hiatus risk'

However, there is a risk that these actions would only be taken or become effective after the UK has withdrawn from the EU and become a third country. Some of the powers to take mitigating actions only apply in relation to third countries and, in any event, the EU authorities may not initiate the relevant process at an early enough stage to ensure that the mitigating action takes effect seamlessly when the UK leaves the EU.

This creates the risk of a disruptive hiatus (a gap) between the UK ceasing to be a Member State and the mitigating actions taking effect. This could be an extended period where, for example, the Commission must carry out an equivalence assessment and adopt delegated or implementing acts or where entities must apply for and obtain recognition, at least if no preparatory steps have been taken in advance of Brexit.

Summary table: EU authorities can mitigate adverse impacts of Brexit by taking the following actions

Legislation	Action
EMIR	Extend the exemptions to the Bank of England and the UK debt management office. *
	Determine the equivalence of UK regime regulating markets for exchange-traded derivatives for the purposes of the definition of OTC derivatives. †
	Determine the equivalence of UK transactional rules to ensure the continuance of exemptions for intragroup transactions. †
	Recognise UK CCPs for clearing (and QCCP treatment under CRR and protection from resolution action under BRRD). †‡⁑
	Recognise UK trade repositories for reporting. †⁑⁂
MiFIR	Extend the central bank exemption to the Bank of England. *
	Confirm the equivalence of UK trading venues for the purposes of the EU post-trade transparency regime. ‡
	Determine the equivalence of the UK regime for trading venues and the UK trading obligation for the purposes of the derivatives trading obligation. †
CRR	Determine the equivalence of the UK regulatory framework for institutions and other entities for the purposes of risk-weighting exposures to UK entities. †
	Approve endorsement of relevant ratings by an EU27 credit rating agency or certification in the EU under the Credit Rating Agencies Regulation to allow use for regulatory capital purposes. ‡⁑ (and † for certification).
CRR (cont)	Extend the transitional relief treating third country CCPs as QCCPs. †
UCITS Directive	Determine that UK credit institutions are subject to equivalent prudential regulation in relation to exposures of EU UCITs to UK credit institutions. ‡
Short selling regulation	Determine that the principal trading venue of relevant shares is in the UK. ‡
BRRD	Determine that the UK recognition regime for EU resolution actions meets the requirements of the RTS under Art 55. ‡
MAR	Extend the benefit of the exemption to UK public bodies and Bank of England. *
Benchmarks Regulation	Include benchmarks in ESMA register based on UK equivalence (†‡⁑) or a decision on recognition (‡) or endorsement of UK/third-country benchmarks (‡).

Key:

Immediate/high impact	Immediate/lower impact	Delayed impact

* Requires European Commission to adopt delegated act, subject to no objection by Council and European Parliament.

† Requires European Commission to adopt implementing act or decision, after review by European Securities Committee.

‡ Requires decision by EU or national authority.

⁑ Requires cooperation agreement to be in place between EU and UK regulators.

⁂ Requires international agreement to be in place between EU and UK.

EU authorities could take some preparatory steps in advance of Brexit to shorten this period. For example:

- the Commission could start equivalence reviews based on UK 'onshored' EU legislation and prepare draft delegated or implementing acts;
- ESMA could review draft applications for recognition, endorsement or registration;
- ESMA could agree cooperation arrangements with the UK authorities; and
- ESMA, the SRB and national authorities could prepare the necessary decisions.

However, these preparatory steps, on their own, may not be enough to avoid a disruptive hiatus altogether or to forestall the disruptive market impact in advance of Brexit resulting from the actions of market participants seeking to mitigate the impact of even a short hiatus.

In a 'no deal' scenario, the Commission and the other EU authorities should consider taking all necessary steps in advance of Brexit to avoid a disruptive hiatus by ensuring that these mitigating actions take effect from the date when the UK leaves the EU, including taking all available preparatory steps and, where possible, accepting applications and adopting advance formal decisions that take effect on that date.

In addition, in some cases, the mitigating action will not be effective for EU27 firms unless the relevant entities submit applications to the EU authorities to activate the relevant regime. UK CCPs and trade repositories will need to apply to ESMA for recognition under EMIR. EU27 credit rating agencies will need to apply to ESMA to endorse UK or (in some cases) third-country credit ratings under the Credit Rating Agencies Regulation (and UK credit rating agencies may need to apply for certification in the EU). UK and (in some cases) third-country benchmark administrators will need to apply (or, in the case of third-country administrators currently recognised in the UK, reapply) for inclusion of their benchmarks in the ESMA register under the Benchmarks Regulation under the equivalence or recognition regimes (or an EU27 supervised entity will have to apply to endorse their benchmarks). The recognition of UK trade repositories for reporting purposes under EMIR would also involve the EU and the UK entering into an international agreement on information sharing.

ESMA should consider working with relevant CCPs, trade repositories, credit rating agencies and benchmark administrators in advance of Brexit to facilitate applications for recognition, endorsement or registration in the event of a 'no deal' scenario so that, to the extent possible, any decision on recognition, endorsement or registration can take effect with effect from the date the UK leaves the EU.

There are concerns that the above measures will not be effective to eliminate any disruptive gap before mitigating actions are effective. For example, it may not be practical, in the time available, for all CCPs and other entities to prepare, submit and have approved the necessary

applications even if it is possible to take decisions on those applications in advance of Brexit. The UK government is addressing these issues by creating temporary permissions and recognition regimes to mitigate the impact of these issues in the UK.

Additionally, the Commission should, as part of its contingency planning for a 'no deal' scenario, consider EU legislation adapting EU law in advance of Brexit to create a temporary regime deferring the impacts addressed by these mitigating actions and allowing time for the taking of necessary actions after Brexit.

The Commission, ESMA, the SRB and EU27 national competent authorities should consider taking, in cooperation with the UK authorities, all other actions available to them to eliminate or at least shorten any disruptive gap between Brexit and any mitigating action becoming effective.

5. Other mitigating actions

In addition, these actions would not mitigate all the adverse 'cliff edge' impacts of the UK becoming a third country identified in the annexed table. In particular, additional action would be necessary to mitigate the following issues which are identified in the annexed table as potentially having an immediate high impact on EU27 firms and EU27 clients and counterparties of UK firms:

- **MiFIR: Reduction in instrument scope of transparency and reporting regime.** With effect from Brexit, the MiFIR transparency and reporting regime will cease to apply to instruments that are only traded on UK trading venues. EU27 investment firms will need to adjust their systems accordingly with effect from Brexit to avoid over-reporting and adverse client impacts. However, it is uncertain when ESMA will update FIRDS to reflect the reduced instrument scope of the regime (and how it will source data for this purpose).

  ESMA should consider developing proposals to manage the transition in a way that reduces the adverse impact on EU27 investment firms and their clients and counterparties, in consultation with market participants.

- **Settlement Finality Directive (SFD): Protection for UK designated systems.** With effect from Brexit, systems governed by UK law designated by the UK authorities under the SFD will no longer benefit from the protection from EU27 insolvency law afforded by the SFD to designated systems. This may affect the ability of EU27 firms to remain as clearing members of UK CCPs unless they can otherwise demonstrate that the relevant insolvency regime would extend the SFD or equivalent protections to UK CCPs (as non-EU clearing members currently do).

  The Commission should consider including in the legislative proposal indicated above provisions for a temporary designation regime to manage the transition to a new arrangement for third-country systems that allows EU27 firms to participate in those systems on a sound basis.

6. Early transparency for market participants

EU27 and UK firms and their clients and counterparties need to plan for a 'no deal' scenario based on an accurate understanding of the actions that the EU authorities expect to take if this scenario materialises. In the absence of a commitment to take mitigating actions and early transparency, firms and their clients and counterparties may be constrained to take disruptive, risky, costly and potentially irreversible (and ultimately unnecessary) steps to seek to mitigate the adverse impacts.

In some cases, there may not be any steps that market participants can practically take to mitigate these impacts. For example, there are significant practical obstacles to EU27 counterparties migrating existing positions cleared on UK CCPs to EU or third-country CCPs in advance of Brexit (e.g., because of the difficulty of finding an executing counterparty to enter into offsetting trades to close out existing cleared positions and then another executing counterparty to put on new trades with the alternative CCP).

Therefore, the risk that there will be a hiatus after Brexit before mitigating actions by the authorities are taken or become effective may itself have a disruptive effect on markets in advance of Brexit.

The EU authorities should consider providing early transparency to market participants as to the mitigating actions that the authorities expect to take and any likely gap before those actions become effective after Brexit so that firms and their clients and counterparties can plan accordingly.

7. Transition period

The above considerations re-emphasise the importance of the UK and the EU concluding a Withdrawal Agreement which includes a transition period maintaining the current position by treating the UK as if it were a Member State for the purposes of EU law. A transition period would provide more time for the UK and the EU to negotiate and conclude a long-term arrangement between them that mitigates the impact of the issues described in this paper.

However, even if the UK and the EU do conclude a Withdrawal Agreement, there is a risk that similar issues to those discussed here would arise at the end of the transition period, moving the 'cliff edge' to that date.

8. Corresponding issues under UK law and third-country law

This paper does not consider the corresponding issues that might arise under UK law in a 'no deal' scenario, including those that might arise as a result of the UK 'onshoring' EU law into UK law under the European Union (Withdrawal) Act 2018 (EUWA). The UK Government has indicated that its general approach when 'onshoring' EU financial services legislation will be to treat EU27 states as the UK currently treats other third

countries. This might give rise to issues for UK firms and UK clients and counterparties of EU27 firms and, in some cases, EU27 firms and EU27 clients and counterparties of UK firms corresponding to those discussed in this paper.

However, the UK Government has also indicated that it will take a different approach in some cases, including where this is necessary to manage the transition to a stand-alone UK regime. Accordingly, it has already proposed measures that would mitigate the impact of these issues on affected firms and their clients and counterparties, e.g., the proposed temporary permissions and recognition regime which will give EU27 firms and EU27 and third-country CCPs temporary permission and recognition under UK law for a period during which they can seek full authorisation or recognition in the UK. So far, there have been no proposals by the EU to adopt similar measures.

Nevertheless, the EU authorities will not be able to take some of the steps required to mitigate the risks discussed above until the UK authorities have published the details of the changes to UK law and regulation under the EUWA. For example, the Single Resolution Board and other EU resolution authorities will need to evaluate the proposed UK regime for recognising and giving effect to EU resolution actions so that they can make appropriate determinations as to whether EU27 institutions subject to Article 55 of the Bank Recovery and Resolution Directive need to include bail-in recognition clauses in their contracts governed by English law.

The UK authorities should consider providing early transparency as to the details of the changes to UK law being made under the EUWA so as to facilitate the actions to be taken by the EU authorities to mitigate the risks discussed in this paper.

In addition, this paper does not consider the issues that might arise under the laws of third countries as a result of the UK ceasing to be an EU Member State in a 'no deal' scenario. Some third countries have granted exemptions or other relief to UK firms and other entities or to transactions involving the UK that were predicated on the UK being an EU Member State or those firms, entities or transactions being subject to EU law (e.g., in relation to transactions with UK entities currently subject to the margin rules under EMIR or in relation to UK trading venues). In some cases, these exemptions or reliefs may cease to be available to UK firms or other entities or cease to apply to those transactions if the UK leaves the EU in a 'no deal' scenario, even though those firms, entities or transactions should remain subject to a UK regulatory regime based on EU law as a result of the EUWA. They may also cease to be available even if there is a transition period (e.g., if the exemption or relief is predicated on the UK actually being a Member State). The UK authorities may need to engage with third-country authorities to ensure that those exemptions or reliefs remain available after Brexit.

If you would like to discuss this paper further, please contact any of the persons listed on the next page.

The Associations named below are grateful to Chris Bates, Partner, and Caroline Dawson, Senior Associate, at Clifford Chance LLP for their assistance with preparing this paper.

CONTACTS

International Swaps and Derivatives Association	Scott O'Malia Chief Executive Officer
Association of German Banks ***(Bundesverband deutscher Banken)***	Andreas Krautscheid Chief Executive Christian Ossig Chief Executive
Italian Financial Markets Intermediaries Association ***(Associazione Intermediari Mercati Finanziari – ASSOSIM)***	Gianluigi Gugliotta Secretary General
Banking and Payments Federation Ireland	Maurice Crowley Acting Chief Executive and Director, Banking & Payments
Danish Securities Dealers Association ***(Børsmæglerforening Danmark)***	Jakob Legård Jakobsen Chief Executive Officer
Dutch Banking Association ***(Nederlandse Vereniging van Banken)***	Eelco Dubbeling Managing Director
Swedish Securities Dealers Association ***(Svenska Fondhandlareföreningen)***	Lars Afrell Senior Vice President

This document is not intended to be comprehensive or to provide legal advice. Members and others should consult their own legal advisers on the implications of the matters covered in this document.

THE ASSOCIATIONS

International Swaps and Derivatives Association
https://www.isda.org/

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 900 member institutions from 68 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website:www.isda.org. Follow us on Twitter @ISDA.

Association of German Banks (*Bundesverband deutscher Banken*)
https://bankenverband.de/

The Association of German Banks (BdB) is the voice of the private banks in Germany. As a leading trade association, it coordinates, shapes and represents the interests of the private banking industry and acts as a mediator between the private banks, policymakers, administrators, consumers and the business sector. The BdB represents more than 200 private commercial banks and eleven member associations as well as around 20 FinTechs which are associated members.

Italian Financial Markets Intermediaries Association (*Associazione Intermediari Mercati Finanziari – ASSOSIM*)
https://www.assosim.it/

ASSOSIM represents the interests of the intermediaries active on the Italian financial markets, namely, Italian investment firms, investment banks and subsidiaries of foreign investment services providers. Its members account for nearly the entire amount of the transactions carried out on the Italian stock markets as from Italy, and more than 80% when considering cross border transactions.

Banking and Payments Federation Ireland
https://www.bpfi.ie/

Banking & Payments Federation Ireland is the voice of banking and payments in Ireland, representing over 70 member institutions and associates, including licensed domestic and foreign banks and institutions operating in the financial marketplace here.

Danish Securities Dealers Association (*Børsmæglerforening Danmark*)
https://finansdanmark.dk/

The Danish Securities Dealers Association (*Børsmæglerforening Danmark*) is open to members of a regulated market and others which main activities are related to the Danish securities market. Its objectives are: to promote a positive development within trading in securities by attending the common interests of its members; to represent the securities dealers and promote their economical and professional interests facing the Government, the Danish parliament (*Folketinget*) and other public authorities, as well as national and international organizations relevant to the market such as regulated markets, Clearing and settlement providers; to provide service and assistance to members.

Dutch Banking Association (*Nederlandse Vereniging van Banken*)
https://www.nvb.nl/

The Dutch Banking Association (*Nederlandse Vereniging van Banken*, or 'NVB') strives to achieve a strong, healthy and internationally competitive banking system for the approximately 70 Dutch and foreign banks and credit institutions operating in the Netherlands. The NVB is the link between the banking sector, the government and the public and contributes to a vital and sustainable sector. We want to bridge the gap between the banks and the public by facilitating dialogue between all parties involved in the sector. Together, we work on innovation, security, stability and transparency.

Swedish Securities Dealers Association (*Svenska Fondhandlareföreningen*)
http://www.fondhandlarna.se/

The Swedish Securities Dealers Association (*Svenska Fondhandlareföreninge*n) was founded in 1908 and represents the common interest of banks and investment firms active in the Swedish securities market. The Association's main objective is to promote a sustainable, strong and efficient securities market and it regularly raises its members' views on regulatory, market and infrastructure-related issues. It also provides a neutral forum for its members to discuss matters which are of common interest.

Annex - Index

1.	**EMIR - Regulation (EU) No 648/2012**
(a)	Central bank and debt management office (DMO) exemption
(b)	Recognition of markets – definition of OTC derivatives
(c)	Intragroup exemption - clearing
(d)	Intragroup exemption - margin
(e)	Recognition of CCPs
(f)	Recognition of trade repositories
(g)	Pension fund exemption
2.	**MiFID2 - Directive 2014/65/EU**
(a)	Exemptions from authorisation - commodity derivatives activity ancillary to the main business
(b)	Change to systematic internaliser (SI) status
(c)	Direct electronic access (DEA) to EU27 trading venues
(d)	Change in instrument scope of position limits regime
(e)	Data reporting service providers
3.	**MiFIR - Regulation (EU) No 600/2014**
(a)	Central bank exemption
(b)	Changes to transparency classifications and thresholds
(c)	Reduction in instrument scope of transparency and reporting regime
(d)	Post-trade transparency waterfall (OTC transactions)
(e)	Post-trade transparency (transactions executed on UK venues)
(f)	Derivatives trading obligation
(g)	Derivatives trading obligation and clearing arrangements
4.	**CRR - Regulation (EU) No 575/2013**
(a)	Exposures to UK entities
(b)	Loss of UK credit ratings
(c)	Exposures to UK CCPs
(d)	CVA: Exposures to NFCs
(e)	CVA: Exposures to pension funds
5.	**Settlement Finality Directive – Directive 98/26/EC**
(a)	Protection for Bank of England
(b)	Protection for UK designated systems
6.	**Financial Collateral Directive - Directive 2002/47/EC**
	Enforceability of financial collateral
7.	**UCITS Directive - Directive 2009/65/EC**
	Exposures to UK institutions
8.	**Short Selling Regulation – Regulation (EU) No 236/2012**
(a)	Market maker notifications
(b)	Reduced instrument coverage of EU rules
(c)	Dual regulation of short position disclosure
9.	**BRRD – Directive 2014/59/EC**
(a)	Bail-in recognition clauses
(b)	Protection against resolution actions - institutions
(c)	Protection against resolution actions - CCPs
10.	**Market Abuse Regulation - Regulation (EU) No 596/2014**
	Member State and central bank exemptions
11.	**Benchmarks Regulation - Regulation (EU) 2016/1011**
(a)	Use of UK benchmarks
(b)	Use of UK recognised/endorsed third-country benchmarks
12.	**Financial market infrastructures (FMIs)**
(a)	UK firms' membership of EU27 FMIs
(b)	EU27 firms' membership of UK FMIs

Key:

Immediate/high impact	Immediate/lower impact	Delayed impact

ANNEX
TABLE OF OTHER 'CLIFF EDGE' EFFECTS UNDER EU LAW IN A 'NO DEAL' SCENARIO

Issue	Reference	Effects of a 'no deal' scenario	Impact on EU27 firms and EU27 clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU27 firms	Possible mitigating action after Brexit under existing EU law
1. European Market Infrastructure Regulation (EMIR) - Regulation (EU) No 648/2012					
(a) Central bank and debt management office (DMO) exemption	Art 1(4)(c)	Bank of England and UK DMO cease to be exempt counterparties under clearing and margin and other risk mitigation rules.	EU27 counterparties facing the Bank of England and UK DMO may be required to clear contracts, exchange initial and variation margin and put in place other required risk mitigation (including possibly for existing contracts).[1]	None, except indirect impact on Bank of England and UK DMO if they continue to contract with EU27 counterparties that are now subject to additional requirements.	Commission adopts delegated act under Art 1(6) extending Art 1(4)(c) to the UK.
(b) Recognition of markets – definition of OTC derivatives	Arts 2(7), 2a and 10	Exchange traded derivatives (ETDs) executed on UK regulated markets become treated as 'OTC derivatives' for the purposes of EMIR, in particular for the purposes	EU27 NFC-s may become NFC+ as a result of inclusion of their UK ETDs in the calculation (and thus may become subject to clearing, valuation reporting, and margin and	None, except indirect impact on UK NFC-s that become NFC+ if they continue to contract with EU27 counterparties that are now subject to additional requirements.	Commission adopts implementing act under Art 2a determining that UK regulated markets are subject to equivalent rules.

[1] ESMA's answer in its Q&A to OTC Question 19 states that, for the purposes of the clearing obligation and risk mitigation techniques other than exchange of collateral, EU counterparties should treat non-EU central banks not listed in Art 1(4) as third country entities that that would be NFCs if established in the EU. The answer does not address the treatment of how the margin rules should apply or whether central banks should be classified as NFC+.

Issue	Reference	Effects of a 'no deal' scenario	Impact on EU27 firms and EU27 clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU27 firms	Possible mitigating action after Brexit under existing EU law
		of determination of NFC+ status.[2]	other risk mitigation rules).[3] EU27 counterparties may also be required to clear, margin and engage in risk mitigation with EU27, UK and rest of world NFC-s that become NFC+ as a result of inclusion of UK ETDs in calculation. EU27, UK and rest of world NFC-s contracting with EU27 counterparties may have to update their		

[2] Where an NFC- become an NFC+, this may also extend the scope of the derivatives trading obligation under Art 28 MiFIR (see below). The crossing of the clearing threshold by an NFC does not affect the CVA charge under CRR for exposures to the NFC under existing contracts (see point (a) and the third sub-paragraph of Art 382(4) CRR). There may be other consequences under CRR if references to 'OTC derivatives' in CRR were interpreted in line with EMIR. In addition, if an EU27 CCP clears ETDs traded on a UK regulated market, the reclassification of the derivatives as OTC derivatives would increase the level of initial margin the CCP should require under EMIR as the minimum time horizon for the liquidation of OTC derivatives is five business days, compared to two business days for ETDs (under Art 26 of Commission Delegated Regulation (EU) No 153/2013). The reclassification of ETDs traded on a UK regulated market as OTC derivatives may also raise issues as to whether they are subject to the clearing obligation under Art 4 EMIR if they happen to meet the criteria for clearing.

[3] Art 10(1)(b) states that the clearing obligation does not apply unless and until a counterparty's rolling average position over 30 working days exceeds the relevant clearing threshold. This may give the Commission time within which to adopt the relevant implementing act after Brexit. Art 10(1) also makes clear that a counterparty that exceeds the threshold is only required to clear future contracts (and only then within four months of exceeding the threshold). EMIR does not articulate the impact of exceeding the threshold on existing contracts under the valuation, reporting and margin or other risk mitigation rules.

Issue	Reference	Effects of a 'no deal' scenario	Impact on EU27 firms and EU27 clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU27 firms	Possible mitigating action after Brexit under existing EU law
			EMIR status representations.		
(c) Intragroup exemption – clearing	Art 4 (and clearing RTS)	Existing exemptions for transactions between UK and EU27 affiliated entities cease to apply.	EU27 counterparties contracting with UK affiliates may be required to clear contracts (it is unclear whether and how this would affect existing contracts).	None, except indirect impact on UK entities contracting with EU27 affiliates that are now subject to additional requirements.	Commission adopts implementing act under Art 13(2) with respect to equivalence of UK regime.[4] EU27 counterparty applies for authorisation to apply the exemption under Art 4(2)(b).
(d) Intragroup exemption – margin	Art 11 (and margin RTS)	Existing exemptions for transactions between UK and EU27 affiliated entities cease to apply.	EU27 counterparties contracting with UK affiliates may be required to exchange initial and variation margin on contracts (it is unclear whether and how this	None, except indirect impact on UK entities contracting with EU27 affiliates that are now subject to additional requirements.	Commission adopts implementing act under Art 13(2) with respect to equivalence of UK regime.[5] EU27 counterparty applies for a positive decision to apply the exemption under Art 11(8) or, as applicable,

[4] In the absence of the relevant equivalence decision, the EU27 counterparty may be able to rely on the transitional derogations for third countries under clearing RTS which expire on 21 December 2018 (G4 rates), 9 May 2019 (CDS), 9 July 2019 (other EEA currencies), although there are proposals to extend these dates to 21 December 2020. However, it must notify the relevant EU27 national competent authority and receive confirmation that the relevant conditions of the derogation are met (which may not be possible until after Brexit).

[5] In the absence of the relevant equivalence decision, the EU27 counterparty may be able to rely on the transitional derogation for third countries under the margin RTS which expires on 4 January 2020 (unless there is an earlier equivalence decision) but must meet the conditions set out in the margin RTS including the application of Chapter III of the margin RTS (which may not be possible until after Brexit).

Issue	Reference	Effects of a 'no deal' scenario	Impact on EU27 firms and EU27 clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU27 firms	Possible mitigating action after Brexit under existing EU law
			would affect existing contracts).		notifies its intention to apply the exemption under Art 11(9).
(e) Recognition of CCPs	Arts 4 and 25	UK CCPs are no longer able to provide clearing services to EU27 clearing members and trading venues and cease to be permitted venues for clearing of derivatives subject to the clearing obligation under EMIR.[6]	EU27 counterparties may no longer be able to continue as clearing members of UK CCPs or to clear contracts on those CCPs where the clearing mandate applies (it is unclear whether and how this would affect existing contracts cleared on UK CCPs). EU27 counterparties trading OTC derivatives on EU27 trading venues must make alternative clearing arrangements.	UK clearing members of UK CCPs clearing OTC derivatives subject to the EU clearing mandate for EU27 clients may be affected by any proposed transfer of positions to other CCPs (it is unclear whether EU27 clients would be required to transfer existing positions). UK counterparties trading OTC derivatives on EU27 trading venues must make alternative clearing arrangements	UK CCPs apply for and are granted recognition by ESMA under Art 25. This requires (a) the Commission to adopt an implementing act under Art 25(6) with respect to the UK and (b) the Bank of England and ESMA to enter into cooperation arrangements under Art 25(7).
(f) Recognition of trade repositories	Arts 9, 75 and 77	UK trade repositories cease to be permitted recipients of reports that EU27 counterparties are required to make by EMIR.	EU27 counterparties may no longer be able to meet their reporting obligations by reporting to UK trade	None, except where UK firms provide EMIR delegated reporting services to EU27 clients and fulfil this service by submitting the reports to a UK trade	UK trade repositories apply for and are granted recognition by ESMA under Art 77. This requires (a) the Commission to adopt an implementing act

[6] In addition, UK CCPs would also no longer be treated as QCCPs under CRR until recognised under EMIR (see below).

Issue	Reference	Effects of a 'no deal' scenario	Impact on EU27 firms and EU27 clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU27 firms	Possible mitigating action after Brexit under existing EU law
			repositories and will have to make new arrangements. It is unclear whether they will need to provide data on existing contracts to EU27 trade repositories to facilitate reporting of amendments, terminations, valuations, etc. in relation to those contracts.	repository (UK firm may need to make new arrangements with EU27 repositories to meet EU27 client requirements or terminate their delegated reporting service).	under Art 75(1) with respect to the UK, (b) the UK and the EU to enter into an international agreement under Art 75(2) and (c) the FCA and ESMA to enter into cooperation arrangements under Art 75(3).
(g) Pension fund exemption	Arts 85(2) and 89(1)	UK pension funds cease to be eligible for the transitional exemption from the clearing obligation for pension funds.[7]	EU27 counterparties will no longer be able to enter into uncleared OTC derivatives with UK pension funds where the clearing mandate applies.	None, except indirect impact on UK pension funds considering contracting with EU27 counterparties.	None
2. Markets in Financial Instruments Directive (MiFID2) - Directive 2014/65/EU					
(a) Exemptions from authorisation – commodity derivatives	Art 2(1)(j) and Art 2 RTS 20	Brexit may result in some firms ceasing to be able to rely on the exemption from authorisation in Article 2(1)(j) MiFID2 (or	Some EU27 corporates may have to seek authorisation in the EU under Mifid2.[8]	None.	None.

[7] This expired on 17 August 2018 but there are plans to extend this. The loss of the pension fund exemption does not affect the CVA capital charge under CRR for exposures to pension funds under existing contracts (see point (c) and the second sub-paragraph of Art 382(4) CRR).

[8] The impact is unlikely to be immediate as the tests are calculated on a three-year trailing average (see Art 4 RTS 20).

Issue	Reference	Effects of a 'no deal' scenario	Impact on EU27 firms and EU27 clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU27 firms	Possible mitigating action after Brexit under existing EU law
activity ancillary to the main business		becoming able to rely on that exemption for the first time). The overall market threshold test is calculated by comparing the group's trading activity in the EU with total market trading activity in the EU. Brexit will result in UK trading activity being excluded from both the numerator and denominator of the calculations for the purposes of this test.	Changes to booking models and distribution of trading activity in a group may also influence the result of the tests.		
(b) Change to systematic internaliser (SI) status	Art 4(1)(20) and Art 15 MiFID2 delegated act	Investment firms may become or cease to be SIs in particular classes of derivatives. Two of the tests for SI status require a firm to compare its trading activity in the relevant class with total trading activity in the EU and Brexit will result in UK trading activity being excluded from the denominator of this calculation (increasing the likelihood of an EU27 firm becoming an SI).	Some EU27 investment firms may need to comply with the SI obligations in relation to additional classes of derivatives (if they have not already opted in for those classes. Some EU27 investment firms may cease to be SIs in relation to some classes	None.	None.

Issue	Reference	Effects of a 'no deal' scenario	Impact on EU27 firms and EU27 clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU27 firms	Possible mitigating action after Brexit under existing EU law
		However, one of these tests and another test of frequency of trading only apply to derivatives with a liquid market and Brexit seems likely to result in fewer classes of derivatives being treated as having a liquid market (see below).	of derivatives (unless they have already opted in).[9] Changes to booking models and distribution of trading activity in a group may also influence the result of the tests.		
(c) Direct electronic access (DEA) to EU27 trading venues	Arts 18(5) and 48(7)	UK firms that are participants in EU27 trading venues may no longer be able to provide DEA to those markets.	None.	UK firms may need to cease to provide DEA to EU27 trading venues of which they are members or participants.	None.
(d) Change in instrument scope of position limits regime	Title IV	Commodity derivatives traded on UK venues no longer aggregated with instruments traded on EU venues and EEOTC contracts for the purposes of compliance with EU position limits regime.[10]	Need to change systems to capture impact of change.	Need to change systems to capture impact of change.	None.

[9] These impacts are unlikely to be immediate as the determination of whether a firm is an SI is assessed quarterly by reference to data from the past six months (Art 17 MiFID2 delegated act). Investment firms are required to perform their first assessment and, where appropriate, comply with the SI obligations in relation to derivatives by 1 March 2019 (see Question 1, Section 7 of ESMA's Questions and Answers on MiFID II and MiFIR transparency topics).

[10] Commodity derivatives traded on UK venues will continue to be subject to the UK position limits regime.

Issue	Reference	Effects of a 'no deal' scenario	Impact on EU27 firms and EU27 clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU27 firms	Possible mitigating action after Brexit under existing EU law
(e) Data reporting service providers	Title V	UK approved publication arrangements (APAs) and approved reporting mechanisms (ARMs) cease to be permitted means for EU27 investment firms to comply with post-trade transparency and transparency reporting obligations under MiFIR.	EU27 investment firms can no longer comply with their post-trade transparency and transaction reporting obligations under MiFIR by reporting via UK APAs or ARMs and will have to make new arrangements.	None.	None.
3. Markets in Financial Instruments Regulation (MiFIR) - Regulation (EU) No 600/2014					
(a) Central bank exemption	Art 1(6)	EU27 trading venues and investment firms can no longer apply the exemption from pre- and post-trade transparency to the Bank of England's transactions.	EU27 investment firms can no longer apply the exemption from pre- and post-trade transparency to the Bank of England's transactions.	Bank of England loses benefit of Art 1(6) if it deals with EU27 firms.	Commission adopts delegated act under Art 1(9) extending Art 1(6) to the Bank of England. Bank of England gives EU27 trading venues and investment firms notice that it intends to apply the exemption.
(b) Changes to transparency classifications and thresholds	Art 2(1)(17)(a) and Arts 13 and 16 RTS 2	There may be changes to the classification of instruments as having a liquid market and the SSTI and LIS thresholds for instruments as a result of	EU27 investment firms should expect potentially significant changes in	None.	None.

Issue	Reference	Effects of a 'no deal' scenario	Impact on EU27 firms and EU27 clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU27 firms	Possible mitigating action after Brexit under existing EU law
		the exclusion of UK data from the calculations used for the periodic assessment of instruments under RTS 2. The exclusion of UK data seems likely to result in fewer classes of derivatives being regarded as having a liquid market.	classifications and thresholds.[11] Competent authorities have the power to temporarily suspend transparency for instruments where there is a large fall in the volume of trading in the EU.		
(c) Reduction in instrument scope of transparency and reporting regime	Arts 18-22, 26 and 27	EU27 investment firms no longer required to comply with pre- and post-trade transparency obligations and transaction reporting and reference data obligations for instruments that are only traded on a UK trading venue.	EU27 investment firms need to adjust systems to ensure that they do not over-publish or over-report data on trades (this also raises issues regarding the use of client information where there is no longer a regulatory requirement for publication or reporting of trades). It is uncertain when ESMA will update FIRDS to reflect the reduced instrument scope of the EU	None. UK investment firms must comply with UK reporting rules.	None.

[11] These impacts are unlikely to be immediate as the relevant data are collected on a calendar year basis and the results of the calculation are published by 30 April in the following year. See Art 13(7) and (17) RTS 2.

Issue	Reference	Effects of a 'no deal' scenario	Impact on EU27 firms and EU27 clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU27 firms	Possible mitigating action after Brexit under existing EU law
			transparency and reporting regime.		
(d) Post-trade transparency waterfall (OTC transactions)	Art 21 and Art 7(5) and (6) RTS 2	EU27 investment firms trading with UK investment firms can no longer rely on publication by the UK firm to displace their own obligation to publish trades (where UK firm is the seller or a systematic internaliser).	EU27 investment firms transacting with UK firms may have to make own arrangements for publication of trades (even if duplicative of publication by UK firm).	None. UK investment firms must comply with UK reporting rules.	None.
(e) Post-trade transparency (transactions executed on UK venues)	Art 21	EU27 investment firms executing OTC derivatives transactions on UK trading venues may be required to publish their trades, instead of relying on the publication by the venue.	EU27 investment firms may have to make arrangements to publish trades if they execute on UK trading venues (but pending ESMA's assessment may be able to rely on the last paragraph of ESMA's opinion of 15 December 2017).	None.	ESMA adopts equivalence decisions with respect to UK trading venues in accordance with its opinion of 15 December 2017 (ESMA70-154-467).
(f) Derivatives trading obligation	Art 28	EU27 counterparties cease to be able to satisfy their trading obligation for OTC derivatives by trading on UK trading venues.	EU27 counterparties may have to transact on EU27 or other recognised third-country venues.	UK counterparties must comply with requirements of UK derivatives trading obligation.	Commission adopts decision under Art 28(4) with respect to the relevant UK trading venues.

Issue	Reference	Effects of a 'no deal' scenario	Impact on EU27 firms and EU27 clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU27 firms	Possible mitigating action after Brexit under existing EU law
					Note: even if the Commission adopts such an act, restrictions under national law in some EU27 Member States may prevent UK recognised venues admitting EU27 counterparties as participants (see below).
(g) Derivatives trading obligation and clearing arrangements	Arts 28, 29 and 33	EU27 counterparties must comply with derivatives trading obligation and clearing obligations even where UK firm complies with UK rules.	Transactions between EU27 and UK counterparties may be subject to duplicative requirements.	UK counterparties must comply with UK requirements.	Commission adopts implementing act under Art 33(2) with respect to the UK (or a decision with respect to relevant UK trading venues – see above).
4. Capital Requirements Regulation (CRR) - Regulation (EU) No 575/2013					
(a) Exposures to UK entities	Arts 107(4), 114(7), 115(4), 116(5) and 142(2)	EU27 institutions may no longer be able risk weight exposures to UK institutions and other UK entities arising from OTC derivatives in the same way as currently (e.g., they may have to risk weight exposures to UK banks and investment firms as	EU27 institutions may be subject to an increase in their capital requirements in respect of existing and future contracts with UK counterparties.	None, except for the indirect impact arising because it may be more expensive for EU27 firms to enter into new derivative transactions with UK counterparties.	Commission amends Implementing Decision (EU) 2016/2358 under these provisions to extend it to UK institutions and other UK entities.

Issue	Reference	Effects of a 'no deal' scenario	Impact on EU27 firms and EU27 clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU27 firms	Possible mitigating action after Brexit under existing EU law
		exposures to UK corporates).			
(b) Loss of UK credit ratings	Part III, Chs 2, 4 and 6 and Arts 259(3), 282(2)(c)(i), 323(2), 336(4)(a), 384 and 385	EU27 institutions will no longer be able to use UK credit ratings (or third-country credit ratings currently endorsed in the UK) for capital purposes (e.g., to risk weight exposures, for qualification of credit risk mitigation or for the calculation of the CVA charge) unless the ratings are endorsed by an EU27 credit rating agency (CRA) or certified in the EU under the Credit Rating Agencies Regulation.	EU27 institutions using UK ratings for capital purposes may be subject to an increase in their capital requirements in respect of existing and future contracts with UK, EU27 and rest of world counterparties.	None.	Endorsement of relevant ratings by an EU27 CRA or certification in the EU under the Credit Rating Agencies Regulation (Regulation (EU) 1060/2009.[12] An EU27 CRA must apply to ESMA to endorse a UK or other third-country rating and satisfy the conditions in the Regulation. A UK CRA must apply to ESMA for certification and satisfy the conditions in the Regulation (and the Commission must have adopted a decision on equivalence of the UK regime).

[12] It may be possible for an EU27 rating agency to endorse a third country credit rating in advance of Brexit so that the rating could continue to be used in the EU27 after Brexit, but this is not possible in relation to credit ratings issued by UK credit rating agencies.

Issue	Reference	Effects of a 'no deal' scenario	Impact on EU27 firms and EU27 clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU27 firms	Possible mitigating action after Brexit under existing EU law
					In either case, there must be a cooperation agreement in place between the FCA and ESMA.
(c) Exposures to UK CCPs	Arts 300 – 311 and 497	EU27 institutions cease to be able to treat exposures to UK CCPs arising from cleared OTC derivatives or participation as a clearing member in the default funds of UK CCPs as exposures to QCCPs, unless the transitional period under Art 497(2) is extended.[13]	EU27 institutions may be subject to an increase in their capital requirements in respect of their existing and future contracts directly or indirectly cleared on UK CCPs or their contributions to default funds of UK CCPs, unless the transitional period under Art 497(2) is extended.	None.	See recognition of CCPs under EMIR above. Commission amends Commission Implementing Regulation (EU) 2018/815 extending the transitional period under Art 497(2) for successive six month periods until recognition of UK CCPs under Art 25 EMIR (action to be taken in advance of Brexit).
(d) CVA: Exposures to NFCs	Art 382(4)(a)	If EU, UK or rest of world NFC-s are reclassified as NFC+ as a result of UK ETD being treated as OTC derivatives under EMIR, exposures to those counterparties for new	EU27 institutions may be subject to an increase in their capital requirements in respect of future contracts with affected EU, UK or rest of world NFCs.	None, except for the indirect impact arising because it may be more expensive for EU27 firms to enter into new derivative	See EMIR: Recognition of markets – definition of OTC derivatives above.

[13] Under Art 497(2) CRR, institutions can consider a third-country CCP to be a QCCP for the purposes of CRR until the expiry of a transitional period or until a decision is made on an application for recognition by the CCP under EMIR. The transitional period currently expires on 15 December 2018, but the Commission may extend it for successive six-month periods under Art 497(3). This action can be taken in advance of Brexit.

Issue	Reference	Effects of a 'no deal' scenario	Impact on EU27 firms and EU27 clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU27 firms	Possible mitigating action after Brexit under existing EU law
		uncleared transactions will not benefit from the exemption from the CVA capital charge.		transactions with affected UK NFCs.	
(e) CVA: Exposures to pension funds	Art 382(4)(c)	New uncleared transactions with UK pension funds will not benefit from the exemption from the CVA capital charge.	EU27 institutions may be subject to an increase in their capital requirements in respect of future contracts with UK pension funds.	None, except for the indirect impact arising because it may be more expensive for EU27 firms to enter into new derivative transactions with UK pension funds.	None.
5. Settlement Finality Directive (SFD) – Directive 98/26/EC					
(a) Protection for Bank of England	Art 9	The Bank of England will no longer benefit from the protection from EU27 insolvency law afforded under the directive to collateral security provided to EU central banks.	EU27 firms contracting with the Bank of England may need to provide new opinions on enforceability of collateral.	Bank of England may need to re-assess enforceability of collateral received if it continues to contract with EU27 firms.	None.
(b) Protection for UK designated systems	Section III	Systems governed by UK law and designated in the UK under the directive will no longer benefit from the protection from EU27 insolvency law afforded	This may affect the ability of EU27 firms to remain as clearing members of UK CCPs (depending on the national law treatment of third-country CCPs).	UK CCPs may re-assess legal opinions with respect to EU27 clearing members.	None.

Issue	Reference	Effects of a 'no deal' scenario	Impact on EU27 firms and EU27 clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU27 firms	Possible mitigating action after Brexit under existing EU law
		under the directive to designated systems.[14]			
6. Financial Collateral Directive (FCD) - Directive 2002/47/EC					
Enforceability of financial collateral	Art 1(2)	Some Member States may have implemented the directive in a way that means that UK firms can no longer rely on the directive to protect the enforceability of financial collateral arrangements with some local counterparties.	None, except indirect impact on EU27 counterparties where the directive no longer protects collateral.	UK firms dealing with EU27 counterparties in relevant Member States adversely affected if can no longer rely on enforceability of collateral.	Depends on national law.
7. UCITS Directive – Directive 2009/65/EC					
Exposures to UK institutions	Arts 50(1)(f) and (g) and 52(1)	EU27 UCITS may no longer be able to maintain exposures to UK institutions in respect of OTC derivatives or may be subject to lower limits on those exposures (depending	EU27 UCITS may need to terminate existing contracts with UK institutions.	None, except indirectly because EU27 UCITS may seek to terminate existing contracts with UK firms.	EU27 national competent authorities determine that UK institutions are subject to equivalent prudential regulation (depends on national law).

[14] This may depend on how the relevant Member State has implemented the relevant provisions of the directive. Some Member States have implemented relevant provisions of the directive to extend to third country CCPs. Separately, insolvency regimes in some Member States may provide equivalent protections. However, such protections would likely need to be demonstrated through legal opinions or something similar, akin to what non-EU clearing members provide to UK CCPs today.

Issue	Reference	Effects of a 'no deal' scenario	Impact on EU27 firms and EU27 clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU27 firms	Possible mitigating action after Brexit under existing EU law
		on national implementation of the directive).			
8. Short Selling Regulation (SSR) – Regulation (EU) No 236/2012					
(a) Market maker notifications	Art 18(1) and (8)	UK firms relying on the market making exemption under the regulation in relation to instruments admitted to trading on EU trading venues will need to make new notifications to the EU27 national competent authority of the main trading venues on which it trades for those instruments.	None.	UK firms may need to make new notifications to EU27 national competent authorities (in addition to any notifications to FCA for those instruments). These notifications must be made at least 30 days before the market maker uses the exemption. Therefore, there could be a gap if EU27 national competent authorities do not accept these notices in advance of Brexit.	None.
(b) Reduced instrument coverage of EU rules	Art 1	EU short selling rules no longer apply to shares that are admitted to trading in the UK but not the EU27 and to UK sovereign debt.	EU27 firms need to adjust their systems (but may need to comply with UK rules instead).	UK firms need to adjust their systems (but may need to comply with UK rules instead).	None.
(c) Dual regulation of	Arts 1, 5, 6 and 16	Derivatives on shares admitted to trading on both EU27 and UK trading	EU27 firms may have to comply with both UK and	UK firms may have to comply with both UK and	EU27 national competent authorities may determine that the principal trading

Issue	Reference	Effects of a 'no deal' scenario	Impact on EU27 firms and EU27 clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU27 firms	Possible mitigating action after Brexit under existing EU law
short position disclosure		venues subject to short position disclosure requirements under both EU and UK law, even if primary trading market is in the UK.	EU law disclosure requirements.	EU law disclosure requirements.	venue of some of these shares is in the UK (but this is only effective when ESMA updates its list[15]).
9. Bank Recovery and Resolution Directive (BRRD) – Directive 2014/59/EC					
(a) Bail-in recognition clauses	Art 55 and RTS	English law becomes the law of a third country. Firms subject to BRRD required to include bail-in recognition clauses in English law contracts creating liabilities unless home state resolution authority determines that UK mechanism for recognising EU resolution decisions meets the	EU27 firms and EU27 clients and counterparties of UK firms subject to the directive and contracting using English law may need to include relevant clauses at least in new contracts creating liabilities.[16]	None, except indirectly in so far as UK entities contract under English law with EU27 counterparties subject to the directive.	SRB and relevant national resolution authorities determine that UK mechanism for recognising EU resolution actions meets the requirements of the second sub-para of Art 55(1) as specified in Art 43(3) of Commission Delegated Regulation (EU) 2016/1075.[17]

[15] Art 16(2) requires ESMA to publish, every two years, the list of shares for which the principal trading venue is located in a third country. The list is effective for a two-year period.

[16] It is unclear the extent to which the requirements of national laws implementing Article 55 would apply in relation to existing contracts.

[17] It is expected that the UK Government will use its powers under the European Union (Withdrawal) Act 2018 to amend the UK's existing mechanism for recognising third country resolution actions (ss 89H to 89J Banking Act 2009) so that it also applies to EU resolution actions. This mechanism should meet the requirements of the second sub-para of Art 55(1) since it implements the requirements of Arts 94 and 95 of the directive for the recognition of third country resolution actions and the requirements of the Commission Delegated Regulation specifying the requirements of the second sub-para of Art 55 are modelled on the requirements of those articles.

Issue	Reference	Effects of a 'no deal' scenario	Impact on EU27 firms and EU27 clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU27 firms	Possible mitigating action after Brexit under existing EU law
		requirements of RTS under Art 55.			
(b) Protection against resolution actions - institutions	Art 44(2)(e)	UK institutions with short term (<7 days original maturity) claims on EU entities subject to BRRD may no longer benefit from protection against bail-in.[18]	None, except indirectly in that may affect dealings with UK institutions.	UK institutions may re-evaluate treatment of short-term exposures to EU institutions.	None.
(c) Protection against resolution actions - CCPs	Arts 44(1)(e), 69(4)(b), 70(2) and 71(3)	UK CCPs that have EU27 clearing members subject to BRRD may no longer benefit from protections against resolution actions afforded to systems designated under the settlement finality directive or CCPs.[19]	This may affect the ability of EU27 firms to remain as clearing members of UK CCPs (depending on the national law treatment of third-country CCPs).	UK CCPs may re-assess legal opinions with respect to EU27 clearing members.	See EMIR – Recognition of CCPs above.

[18] This may depend on how the relevant Member State has implemented this provision of the directive.

[19] This may depend on how the relevant Member State has implemented the relevant provisions of the directive. Proposed amendments to the directive make clear that the protection for third country CCPs is limited to third country CCPs recognised under EMIR.

Issue	Reference	Effects of a 'no deal' scenario	Impact on EU27 firms and EU27 clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU27 firms	Possible mitigating action after Brexit under existing EU law
10. Market Abuse Regulation (MAR) – Regulation (EU) No 596/2014					
Member State and central bank exemptions	Art 6	UK Government and Bank of England cease to benefit from exemptions from MAR for transactions, etc. carried out for specified policy purposes.	None, except indirectly in so far as affects willingness of UK Government and Bank of England to transact with EU27 counterparties.	May affect UK Government and Bank of England.	Commission adopts delegated act extending the benefit of part of the exemptions to UK public bodies and the Bank of England.
11. Benchmarks Regulation (BMR) - Regulation (EU) 2016/1011					
(a) Use of UK benchmarks	Art 29(1)	EU27 supervised entities no longer able to use benchmarks provided by UK administrators in new financial instruments after 1 January 2020 (or by adding UK benchmarks to existing instruments after that date).	EU27 supervised entities may be required to cease using UK benchmarks (such as LIBOR) in OTC derivatives that are financial instruments even where their contracts do not allow a change of benchmark. [20]	None.	ESMA includes UK benchmarks and their administrators in its register. This requires that (a) the Commission adopts an implementing decision under Art 30(2) or (3) as to the equivalence of the UK regulatory framework, (b) the UK administrator notifies ESMA of its consent to use of the benchmarks in the EU and (c) the FCA and ESMA

[20] These impacts are unlikely to be immediate because ESMA has interpreted the transitional provisions of Art 51(5) in a way that means EU supervised entities should be able to continue to use UK benchmarks that become third country benchmarks as a result of Brexit until 1 January 2020 (and in existing instruments after that date). This would give UK administrators until 1 January 2020 to seek to qualify their benchmarks for use in the EU under one of the third country regimes under the Regulation. No similar transitional relief would be available at the end of the proposed transition period under the Withdrawal Agreement.

Issue	Reference	Effects of a 'no deal' scenario	Impact on EU27 firms and EU27 clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU27 firms	Possible mitigating action after Brexit under existing EU law
					enter into cooperation arrangements under Art 30(1) and (4). Alternatively, the UK administrator may (a), until an equivalence decision is adopted under Art 30, seek recognition of the benchmark in the EU under Art 32 or (b) seek endorsement of the benchmark in the EU under Art 33 (see below).
(b) Use of UK recognised/ endorsed third-country benchmarks	Arts 32 and 33	EU27 supervised entities no longer able to use benchmarks provided by third-country administrators in new financial instruments after 1 January 2020 (or by adding the third-country benchmark to existing instruments after that date) where the third-	EU27 supervised entities may be required to cease using some third-country benchmarks.[21]	None.	Third-country administrator obtains recognition or endorsement of the benchmark in the EU under Art 32 or 33. A third-country administrator must apply to the EU27 national competent authority for

[21] These impacts are unlikely to be immediate because ESMA has interpreted the transitional provisions of Art 51(5) in a way that mean EU supervised entities should be able to continue to use third country benchmarks that cease to be recognised or endorsed in the EU as a result of Brexit until 1 January 2020 (and in existing instruments after that date). This would give the third country administrators until 1 January 2020 to seek to requalify their benchmarks for use in the EU under one of the third country regimes under the Regulation. No similar transitional relief would be available at the end of the proposed transition period under the Withdrawal Agreement.

Issue	Reference	Effects of a 'no deal' scenario	Impact on EU27 firms and EU27 clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU27 firms	Possible mitigating action after Brexit under existing EU law
		country administrator has been recognised in the UK or the third-country benchmark has been endorsed by a UK supervised entity.			recognition and satisfy the conditions in the regulation (which may require a cooperation agreement to be in place). An EU27 supervised entity may apply to its national competent authority to endorse a third-country benchmark and satisfy the conditions in the regulation.
12. Financial market infrastructures (FMIs)					
(a) UK firms' membership of EU27 FMIs	N/A	EU27 FMI rulebooks or national law in some EU27 Member States may prevent UK firms continuing as members of EU27 FMIs such as trading venues, settlement systems and CCPs.[22]	Withdrawal of UK firms may affect liquidity or efficiency of FMIs for EU27 firms using those FMIs.	UK firms may have to participate indirectly in EU27 FMIs.	Depends on FMI rulebooks and national law.

[22] Art 37 EMIR requires EU CCPs to have non-discriminatory membership criteria solely based on the objective of controlling the risk for the CCP. Arts 18(3) and 53 MiFID2 requires trading venues to have non-discriminatory rules, based on objective criteria, governing access to their facilities. However, in some cases, FMI rulebooks may not provide for non-EU members or local law may regard a non-EU member as providing services requiring local authorisation.

Issue	Reference	Effects of a 'no deal' scenario	Impact on EU27 firms and EU27 clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU27 firms	Possible mitigating action after Brexit under existing EU law
(b) EU27 firms' membership of UK FMIs	N/A	National law in some EU27 Member States may require UK FMIs to obtain local authorisation in order to provide services to EU27 firms that are members of UK FMIs (or require those firms to obtain the approval of their regulator to continue their membership).[23]	EU27 firms may have to participate indirectly in UK FMIs.	Withdrawal of EU27 firms may affect liquidity or efficiency of UK FMIs for UK firms using those FMIs.	Depends on national law.

[23] Art 25 EMIR will prohibit UK CCPs from providing clearing services to EU27 clearing members until the CCPs are recognised by ESMA (see above).