July 2020

SWEDISH
SECURITIES DEALERS
ASSOCIATION

The impact of Brexit on OTC derivatives

Other 'cliff-edge' effects under EU law at the end of the transition period

Stock-take of mitigating action taken to prepare for a no-deal Brexit

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This paper has been developed by the International Swaps and Derivatives Association, the Italian Financial Markets Intermediaries Association (*Associazione Intermediari Mercati Finanziari – ASSOSIM*), the Danish Securities Dealers Association (*Børsmæglerforening Danmark*), the European Banking Federation and the Swedish Securities Dealers Association (*Svenska Fondhandlareföreningen*) (together, the Associations) in response to concerns raised by their members about the impact on EU and UK firms and their EU and UK clients and counterparties of the end of the transition period provided for in the withdrawal agreement concluded between the EU and the UK under Article 50 of the Treaty on European Union.

In October 2018, a number of the Associations, along with other European financial industry associations, published a paper on the *Impact of Brexit on OTC derivatives – Other 'cliff-edge' effects under EU law in a 'no-deal' scenario.* That paper was published in response to concerns raised by the members of those associations that the UK might withdraw from the EU without concluding a withdrawal agreement and without any transition period to allow market participants time to adjust.

That paper set out reasons why this 'no-deal' Brexit scenario could have created a disruptive 'cliff-edge' change in the EU regulatory requirements that apply to OTC derivatives business in a way that might have adversely affected EU or UK firms and their EU and UK clients and counterparties (going beyond those impacts resulting from the loss by UK and EU firms of their single market 'passports'). The paper also set out proposals as to the actions that the Commission and Member States might take to mitigate the impact of this change.

On 31 January 2020, the UK withdrew from the EU after concluding a withdrawal agreement which provides for a transition period expiring on 31 December 2020 (and the EU and the UK did not agree an extension to the transition period by the deadline set out in the withdrawal agreement). The end of the transition period creates the potential for the same 'cliff-edge' change in the EU regulatory requirements for OTC derivatives business as a 'no-deal' Brexit and the adverse impact of the change in regulatory treatment at the end of the transition period is unlikely to be directly mitigated by the provisions of the free trade agreement to be negotiated between the EU and the UK.

The EU and the UK stated that they would complete their equivalence assessments of each other's regulatory and supervisory frameworks under their respective existing third-country regimes by the end of June 2020. In June 2020 the European Commission published a Communication (available here) giving an update on progress and indicating that the European Commission is considering a time-limited equivalence decision with respect to UK CCPs and that the European Commission is currently conducting its assessment of the UK's data privacy regime. The Commission has also published notices to stakeholders (available here) that indicate that the Commission's assessment of the UK's equivalence in some other areas. However, the Communication also identifies a number of areas where the Commission does not plan to adopt an equivalence decision in relation to the UK "in the short or medium term", including the equivalence decisions under Art 47(1) MiFIR (for investment firms providing investment services to EU professional clients and eligible counterparties) and Article 17(2) Short Selling Regulation (exemption for market making). The Communication and the notices to stakeholders are also silent on the Commission's intentions regarding equivalence decisions in some areas.

As a result, it is possible that equivalence decisions will not be granted in all areas before the end of the transition period. Therefore, this paper provides a stock-take of the mitigating action that was taken to prepare for a no-deal Brexit and indicates where that action would still be in effect at the end of the transition period and where that action has lapsed (as it was contingent on a no-deal Brexit). It also sets out the information contained in the original paper indicating where existing EU legislation allows for EU-level action (by equivalence decision or other measures) that could mitigate the impact of the end of the transition period.

There has been considerable discussion of the impact of a no-deal Brexit and the end of the transition period 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 EU clients and counterparties without authorisation in the EU (as well as on the obstacles to UK firms transferring legacy contracts to EU affiliates). Similarly, there has been discussion of the corresponding impact of the loss of the passport on EU firms conducting OTC derivatives business with UK clients and counterparties. This paper does not discuss those issues or the national measures taken by Member States to prepare for a no-deal Brexit or how the activation for the UK of the regime in the Markets in Financial Instruments Regulation for third-country investment firms might mitigate the impact of those issues.

Instead, this paper sets out other reasons why the end of the transition period 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 EU or UK firms and their EU 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). This paper does not address any issues arising under data protection legislation or consumer law.

1. Executive summary

Unless mitigating action is taken, the end of the transition period will 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 EU firms and EU clients and counterparties of UK firms (as well as, in some cases, on UK firms and UK clients and counterparties of EU firms).

EU and Member State authorities previously took some limited actions to mitigate the corresponding impacts that would have arisen in the event of a no-deal Brexit. However, in a number of cases, those actions lapsed when the UK entered the transition period.

In particular, the previous temporary recognition of UK CCPs lapsed when the UK entered the transition period and it is critical that the appropriate steps are taken to recognise UK CCPs under EMIR with effect from the end of the transition period. If not, EU firms would be unable to remain as clearing members of those CCPs, EU counterparties would be unable to continue to clear derivatives on those CCPs and EU and UK counterparties would face huge operational challenges associated with the migration of thousands of contracts and the related collateral to alternative CCPs (even if this is feasible). The recognition of UK CCPs will now need to be effected taking into account the amendments to the framework for recognition of third-country CCPs made by EMIR 2.2.

In addition, unless other mitigating action is taken, the end of the transition period will give rise to a wide range of other adverse impacts on EU firms and EU clients and counterparties of UK firms which are summarised in the annexed table.

EU law already gives the EU or EU 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, including granting recognition to UK CCPs.

The Commission and other EU authorities should make full use of these powers to mitigate the adverse impact of the end of the transition period.

The EU authorities should also provide early transparency to market participants as to the mitigating actions that the authorities expect to take 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).

2. Other 'cliff-edge' effects under EU law at the end of the transition period

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 treated as a third country at the end of the transition period (indicating those issues assessed as likely to have the greatest impact at the end of the transition period and those where the impact may not be immediate);

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

- indicates the possible actions that the EU and Member State authorities might take to mitigate those effects under existing EU law (in particular, whether the Commission or other EU authorities can take equivalence decisions or other action to mitigate the impact of the end of the transition period);

- indicates whether mitigating action was taken before 31 January 2020 at an EU-level in order to prepare for a no-deal scenario (and whether that action remains in effect).

One of the most important adverse impacts will arise if UK CCPs are not recognised under EMIR at the end of the transition period. This would affect the ability of EU 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 EU institutions under CRR in respect of their exposures to UK CCPs after the end of the transition period envisaged by CRR), increased systemic risk and distorted competition in global derivatives markets and CCPs, all of which would impede the access of EU firms and their clients and counterparties to these markets.

In addition, without mitigating action, there will be a wide range of other significant adverse impacts on EU firms and EU clients and counterparties of UK firms, including the adverse impact on:

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

- EU counterparties that will lose their ability to rely on the exemption from clearing requirements for OTC derivatives transactions with UK pension funds;

- EU counterparties that cease to be able to satisfy their trading obligation for OTC derivatives by trading on UK trading venues with the result that (unless the UK recognises EU trading venues for the purposes of the UK derivatives trading obligation) EU firms trading with UK counterparties might only be able to trade in-scope products on recognised third country venues, such as US swap execution facilities (and EU firms may also be directly subject to the conflicting requirements of the UK derivatives trading obligation);

- EU 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;

- EU 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;

- EU institutions subject to BRRD that are required to include bail-in recognition clauses in all their contracts governed by English law;

- EU 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. Mitigating actions taken for a no-deal Brexit

Before 31 January 2020, EU and Member State authorities took the following limited actions to mitigate these other impacts of a no-deal Brexit on the OTC derivatives markets:

- The Commission and ESMA took steps to grant temporary recognition under EMIR to UK CCPs. The Commission adopted a temporary equivalence decision (as amended, expiring one year after a no-deal Brexit) and ESMA granted recognition on the basis of that decision to take effect on a no-deal Brexit. However, these actions were contingent on a no-deal Brexit and therefore lapsed when the Withdrawal Agreement entered into force.

- The Commission adopted delegated acts extending exemptions under EMIR, MiFIR and MAR to the Bank of England and other UK authorities. These acts come into effect when the relevant legislation ceases to apply to the UK and therefore will apply from the end of the transition period.

- ESMA and Member State competent authorities concluded a number of cooperation agreements (memoranda of understanding) with UK regulators, including agreements with respect to the supervision of credit rating agencies. It is understood that these agreements will remain in place at the end of the transition period.
- Some Member States took mitigating actions, including actions to allow UK CCPs to continue to be protected by their national implementing rules on settlement finality and to permit UK firms to continue to be members of trading venues.
- In addition, the EU put in place measures granting relief from the EMIR clearing and margining requirements for novations of OTC derivatives contracts from UK to EU counterparties within the 12 months following a no-deal Brexit.

4. Mitigating the impact of the end of the transition period

EU and Member State authorities can do more to mitigate the impact of the end of the transition period on OTC derivatives markets.

Most importantly, the Commission and ESMA can take action to renew the recognition of UK CCPs under EMIR with effect from the end of the transition period. This will require the Commission to make the appropriate equivalence decision and ESMA to take the necessary steps to recognise UK CCPs, although this will now need to be done in accordance with the new framework for recognition of third-country CCPs put in place by EMIR 2.2.

However, there are other cases where EU law already gives the EU or EU national competent authorities powers to take actions that would mitigate these adverse impacts. See the summary table below.

The Commission and other EU authorities should make full use of these powers to mitigate the adverse impact of the end of the transition period.

In addition, the EU should renew the measures that were put in place to provide relief from clearing and margin requirements for novations of OTC derivatives from UK to EU counterparties so that they apply to novations within the 12 months following the end of the transition period. This would be helpful in facilitating more frictionless transfers of contracts from UK to EU counterparties.

The EU should also seek to mitigate the impact of the end of the transition period on EU counterparties that will lose their ability to rely on the exemption from clearing requirements for new OTC derivatives transactions with UK pension funds by making changes to the scope of the exemption.

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

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. †
	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 EU credit rating agency or certification in the EU under the Credit Rating Agencies Regulation to allow use for regulatory capital purposes. ‡⁑ (and † for certification).

UCITS Directive	Determine that UK institutions are subject to equivalent prudential regulation in relation to exposures of EU UCITs to UK 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.

✓ Action taken before 31 January 2020 takes effect at end of transition period.

5. Early transparency for market participants

EU and UK firms and their clients and counterparties need to plan for the end of the transition period 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 EU counterparties migrating existing positions cleared on UK CCPs to EU or third-country CCPs in advance of the end of the transition period (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).

The EU authorities should consider providing early transparency to market participants as to the actions that the authorities expect to take to mitigate the impact of the end of the transition period so that firms and their clients and counterparties can plan accordingly.

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

This paper does not consider the corresponding issues that might arise under UK law at the end of the transition period, 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's general approach when 'onshoring' EU financial services legislation is to treat EU states as the UK currently treats other third countries. This may give rise to issues for UK firms and UK clients and counterparties of EU firms and, in some cases, EU firms and EU clients and counterparties of UK firms corresponding to those discussed in this paper.

However, the UK Government has also taken 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 adopted measures that would mitigate the impact of many, if not all, of these issues on affected firms and their clients and counterparties. For example, the UK has put in place temporary permissions and recognition regimes that will give EU firms and EU 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 and exemptions from the clearing obligation that will apply in the UK for transactions with both UK and EU pension funds. ISDA will continue to engage with the UK authorities to address issues arising under UK law at the end of the transition period, with a view to mitigating the impact of the end of the transition period on both UK and EU firms and their EU and UK clients and counterparties.

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 apply EU law at the end of the transition period. 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 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 at the end of the transition period. 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.

Contacts

International Swaps and Derivatives Association	Scott O'Malia Chief Executive Officer
Italian Financial Markets Intermediaries Association ***(Associazione Intermediari Mercati Finanziari – ASSOSIM)***	Gianluigi Gugliotta Secretary General
Danish Securities Dealers Association ***(Børsmæglerforening Danmark)***	Jakob Legård Jakobsen Chief Executive Officer
European Banking Federation	Wim Mijs Chief Executive Officer
Swedish Securities Dealers Association ***(Svenska Fondhandlareföreningen)***	Urban Funered Chief Executive Officer Erica Johansson Senior Legal Counsel

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
www.isda.org/

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 925 member institutions from 75 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, LinkedIn, Facebook and YouTube.

Italian Financial Markets Intermediaries Association (*Associazione Intermediari Mercati Finanziari – ASSOSIM*)
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.

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.

European Banking Federation
www.ebf.eu/

The European Banking Federation is the voice of the European banking sector, uniting 32 national banking associations in Europe that together represent some 3,500 banks – large and small, wholesale and retail, local and international – employing about two million people.

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

The Swedish Securities Dealers Association (*Svenska Fondhandlareföreningen*) 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.

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

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Key:

Immediate/high impact	Immediate/lower impact	Delayed impact
✓ EU mitigating action taken before 31 January 2020	× No EU mitigating action taken before that date	
§ EU-level equivalence decision or other mitigating power available		

ANNEX
TABLE OF OTHER 'CLIFF-EDGE' EFFECTS UNDER EU LAW AT THE END OF THE TRANSITION PERIOD

Issue	Reference	Effects of end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
1. European Market Infrastructure Regulation (EMIR) - Regulation (EU) No 648/2012[1]					
(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.	EU 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).[2]	None, except indirect impact on Bank of England and UK DMO if they continue to contract with EU counterparties that are now subject to additional requirements.	Commission adopts delegated act under Art 1(6) extending Art 1(4)(c) to the UK. [Delegated act adopted and takes effect at end of transition period. See Commission delegated regulation (EU) 2019/460, here.]
(b) Recognition of markets – definition of	Arts 2(7), 2a and 10	Exchange traded derivatives (ETDs) executed on UK regulated markets become treated as 'OTC derivatives' for the	EU FC-s and NFC-s may become FC+ or NFC+ as a result of inclusion of their UK ETDs in the calculation (and thus may become	None, except indirect impact on UK FC-s or NFC-s that become FC+ or NFC+ if they continue to contract with EU	Commission adopts implementing act under Art 2a determining that UK

[1] This table assumes that the temporary derogations from clearing and margin requirements for transactions between EU counterparties and their non-EU affiliates currently set to expire on 20 December 2020 are extended.

[2] 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 end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
OTC derivatives		purposes of EMIR, in particular for the purposes of determination of FC+ and NFC+ status.[3]	subject to clearing, valuation reporting, and margin and other risk mitigation rules).[4] EU counterparties may also be required to clear, margin and engage in risk mitigation with EU, UK and rest of world FC-s or NFC-s that become FC+ or NFC+ as a result of inclusion of UK ETDs in calculation. EU, UK and rest of world FC-s and NFC-s contracting with EU	counterparties that are now subject to additional requirements.	regulated markets are subject to equivalent rules. [No EU mitigating action taken.]

3 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 EU 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.

4 Arts 4a(1) and 10(1) EMIR envisage annual calculations of whether an FC or NFC exceeds the clearing threshold. This may mean that the inclusion of positions in derivatives traded on UK markets does not immediately affect all FCs and NFCs. Arts 4a(1) and 10(1) also make clear that a counterparty that exceeds the threshold is only required to clear future contracts entered into or novated 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 end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
			counterparties may have to update their EMIR status representations.		
(c) Recognition of CCPs	Arts 4 and 25	UK CCPs are no longer able to provide clearing services to EU clearing members and trading venues and cease to be permitted venues for clearing of derivatives subject to the clearing obligation under EMIR.[5]	EU 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). EU counterparties trading OTC derivatives on EU trading venues must make alternative clearing arrangements.	UK clearing members of UK CCPs clearing OTC derivatives subject to the EU clearing mandate for EU clients may be affected by any proposed transfer of positions to other CCPs (it is unclear whether EU clients would be required to transfer existing positions). UK counterparties trading OTC derivatives on EU 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).[6] [Temporary recognition granted to UK CCPs (but has now lapsed). See Commission Implementing Decision (EU) 2018/2031, as amended (here) and ESMA announcements on

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

6 Under EMIR, as amended, ESMA also must assess whether a third-country CCP is systemically important or likely to become systemically important and, if so (and it decides to recognise the CCP), the extent to which the CCP's compliance with certain requirements is satisfied by its compliance with comparable requirements applicable in the third country, at least where the recognition decision is taken after the entry into force of the relevant delegated acts setting the criteria for those assessments.

Issue	Reference	Effects of end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
					temporary recognition (here).[7]]
(d) Mandatory reporting for NFC-s	Art 9(1a)	EU non-financial counterparties below the clearing threshold (NFC-s) that have entered into OTC derivatives with UK financial counterparties will no longer be able to rely on the UK counterparties' obligation to report the transaction on their behalf.	EU NFC-s must make arrangements for reporting existing and new transactions with UK financial counterparties.	UK financial counterparties wishing to continue reporting transactions for EU NFC-s will need to put in place new delegated reporting arrangements with those counterparties.	None. [No EU mitigation action taken.[8]]
(e) Recognition of trade repositories	Arts 9, 75 and 77	UK trade repositories cease to be permitted recipients of reports that EU counterparties are required to make by EMIR.	EU counterparties may no longer be able to meet their reporting obligations by reporting to UK trade repositories and will have to make new arrangements. It is unclear whether they will need to provide data on existing contracts to EU trade repositories to facilitate reporting of	None, except where UK firms provide EMIR delegated reporting services to EU clients and fulfil this service by submitting the reports to a UK trade repository (UK firm may need to make new arrangements with EU repositories to meet EU client requirements or	UK trade repositories apply for and are granted recognition by ESMA under Art 77. This requires (a) the Commission to adopt an implementing act 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)

7 In February 2019, ESMA and the Bank of England entered into a cooperation agreement with respect to the supervision of CCPs (see here) but the agreement may now need to be amended to address the new requirements of Art 25(7) EMIR.

8 The mandatory reporting obligation applies from 18 June 2020, after the UK ceased to be a Member State on 31 January 2020.

Issue	Reference	Effects of end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
			amendments, terminations, valuations, etc. in relation to those contracts.	terminate their delegated reporting service).	and (c) the FCA and ESMA to enter into cooperation arrangements under Art 75(3). [No EU mitigating action taken.]
(f) 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.[9]	EU 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 EU counterparties.	None. [No EU mitigating action taken.]
2. Markets in Financial Instruments Directive (MiFID2) - Directive 2014/65/EU					
(a) Exemptions from authorisation – commodity derivatives activity ancillary to the main business	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 becoming able to rely on that exemption for the first time). The overall market threshold test is calculated	Some EU corporates may have to seek authorisation in the EU under Mifid2.[10] Changes to booking models and distribution of trading activity in a group may also	None.	None. [No EU mitigating action taken.]

[9] The transitional exemption is currently scheduled to expire on 18 June 2021 but may be extended. 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).

[10] 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 end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
		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.	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 EU firm becoming an SI).	Some EU 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 EU investment firms may cease to be SIs in relation to some classes of derivatives (unless they have already opted in).[11]	None.	None. [No EU mitigating action taken.]

[11] 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).

Issue	Reference	Effects of end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
		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).	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 EU trading venues	Arts 18(5) and 48(7)	UK firms that are participants in EU trading venues may no longer be able to provide DEA to those markets.	None.	UK firms may need to cease to provide DEA to EU trading venues of which they are members or participants.	None. [No EU mitigating action taken.]
(d) Change in instrument scope of position limits regime	Title IV	Commodity derivatives traded on UK venues no longer aggregated with the same instruments traded on EU venues but may be aggregated as economically equivalent OTC contracts (EEOTCs) for the purposes of compliance with EU position limits regime unless ESMA determines the UK venue to be a trading venue for the	Need to change systems to capture impact of change.	Need to change systems to capture impact of change.	None. [No EU mitigating action taken.]

Issue	Reference	Effects of end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
		purposes of the EU position limits regime.[12]			
(e) Data reporting service providers	Title V	UK approved publication arrangements (APAs) and approved reporting mechanisms (ARMs) cease to be permitted means for EU investment firms to comply with post-trade transparency and transparency reporting obligations under MiFIR.	EU 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. [No EU mitigating action taken.]
3. Markets in Financial Instruments Regulation (MiFIR) - Regulation (EU) No 600/2014					
(a) Central bank exemption	Art 1(6)	EU trading venues and investment firms can no longer apply the exemption from pre- and post-trade transparency to the Bank of England's transactions.	EU 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 EU firms.	Commission adopts delegated act under Art 1(9) extending Art 1(6) to the Bank of England. Bank of England gives EU trading venues and investment firms notice that

[12] The Annex to ESMA's opinion on trading venues for the purposes of the MiFID2 position limit regime (3 June 2020, ESMA70-156-112) does not include any UK venues. Therefore, pending a further opinion, commodity derivatives traded on UK venues may, after the end of the transition period, be treated as EEOTCs with respect to commodity derivatives traded on EU venues if those derivatives meet the conditions in Article 6 of Commission Delegated Regulation (EU) 2017/591. Commodity derivatives traded on UK venues will continue to be subject to the UK position limits regime.

Issue	Reference	Effects of end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
					it intends to apply the exemption. [Delegated act adopted and takes effect at end of transition period. See Commission delegated regulation (EU) 2019/462, here.]
(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 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	EU investment firms should expect potentially significant changes in classifications and thresholds.[13] 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.	None.	None. [No EU mitigating action taken. However, ESMA issued a number of statements on operational issues related to a no-deal Brexit.[14]]

[13] 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.

[14] See ESMA - update on the UK's withdrawal from the EU - preparations for a possible no-deal Brexit scenario on 31 October 2019 (7 October 2019, here) and ESMA's Data Operational Plan under a no-deal Brexit scenario on 29 March (19 March 2019, here)

Issue	Reference	Effects of end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
		being regarded as having a liquid market.			
(c) Reduction in instrument scope of transparency and reporting regime	Arts 18-22, 26 and 27	EU 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.	EU 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 transparency and reporting regime.	None. UK investment firms must comply with UK reporting rules.	None. [No EU mitigating action taken. However, ESMA issued a number of statements on operational issues related to a no-deal Brexit (see above).]
(d) Post-trade transparency waterfall (OTC transactions)	Art 21 and Art 7(5) and (6) RTS 2	EU 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).	EU 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. [No EU mitigating action taken.]

Issue	Reference	Effects of end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
(e) Post-trade transparency (transactions executed on UK venues)	Art 21	EU 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.	EU investment firms may have to make arrangements to publish trades if they execute on UK trading venues.	None.	ESMA adopts equivalence decisions with respect to UK trading venues in accordance with its opinion of 3 June 2020 (ESMA70-154-165).[15] [No EU mitigating action taken.]
(f) Derivatives trading obligation	Art 28	EU counterparties cease to be able to satisfy their trading obligation for OTC derivatives by trading on UK trading venues, with the result that (unless the UK recognises EU trading venues for the purposes of the UK derivatives trading obligation) EU firms trading with UK counterparties might only be able to trade in-scope products on recognised third country venues, such	EU counterparties may have to transact on EU 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. Note: even if the Commission adopts such an act, restrictions under national law in some EU Member States may prevent UK recognised venues admitting EU counterparties as participants (see below).

[15] The Annex to ESMA's opinion of 3 June 2020 does not include any UK trading venues. The opinion indicates that, from 3 October 2020, EU investment firms concluding transactions in instruments covered by Article 21 MiFIR on third-country trading venues not included in the Annex to the opinion must comply with the post-trade transparency obligations under that Article in relation to those transactions.

Issue	Reference	Effects of end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
		as US swap execution facilities.[16]			[No EU mitigating action taken.]
(g) Derivatives trading obligation and clearing arrangements	Arts 28, 29 and 33	EU counterparties must comply with derivatives trading obligation and clearing obligations even where UK firm complies with UK rules.	Transactions between EU 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). [No EU mitigating action taken.]
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)	EU 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	EU 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 EU 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. [No EU mitigating action taken.]

[16] In addition, EU firms may also become directly subject to the conflicting requirements of the UK derivatives trading obligation under the UK temporary permissions regime and the rules of the Financial Conduct Authority.

Issue	Reference	Effects of end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
		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	EU 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 EU credit rating agency (CRA) or certified in the EU under the Credit Rating Agencies Regulation.	EU 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, EU and rest of world counterparties.	None.	Endorsement of relevant ratings by an EU CRA or certification in the EU under the Credit Rating Agencies Regulation (Regulation (EU) 1060/2009.[17] An EU 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).

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

Issue	Reference	Effects of end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
					In either case, there must be a cooperation agreement in place between the FCA and ESMA. [ESMA and the FCA concluded a cooperation agreement for credit rating agency supervision (press release, here).]

Issue	Reference	Effects of end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
(c) Exposures to UK CCPs	Arts 300 – 311 and 497	EU 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 after the end of a transition period.[18]	EU 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.	None.	See recognition of CCPs under EMIR above. [EU mitigating action taken (but has now lapsed) – see recognition of CCPs under EMIR above.[19]]
(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 uncleared transactions will not benefit from the	EU 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 EU firms to enter into new derivative transactions with affected UK NFCs.	See EMIR: Recognition of markets – definition of OTC derivatives above. [No EU mitigating action taken.]

18 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 the end of the transition period.

19 Regulation (EU) 2019/876 (here) replaced Art 497 CRR with new (non-renewable) transitional provisions (these provisions came into force on 27 June 2019). These allow non-EU CCPs to be treated as exposures to QCCPs, where a Commission equivalence decision had not yet entered into force, until the earlier of (a) two years after the date of entry into force of a relevant equivalence decision, (b) if they applied for recognition after 27 June 2019, two years after the date of their application for recognition or (c) if they applied for recognition before 27 June 2019, 28 June 2021.

Issue	Reference	Effects of end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
		exemption from the CVA capital charge.			
(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.	EU 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 EU firms to enter into new derivative transactions with UK pension funds.	None. [No EU mitigating action taken.]
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 EU insolvency law afforded under the directive to collateral security provided to EU central banks.	EU 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 EU firms.	None. [No EU mitigating action taken.]
(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 EU insolvency law afforded	This may affect the ability of EU 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 EU clearing members.	None. [No EU mitigating action taken. However, some Member States extended protections of national laws to UK CCPs.]

Issue	Reference	Effects of end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
		under the directive to designated systems.[20]			
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 EU counterparties where the directive no longer protects collateral.	UK firms dealing with EU counterparties in relevant Member States adversely affected if can no longer rely on enforceability of collateral.	Depends on national law. [No EU mitigating action taken.]
7. UCITS Directive – Directive 2009/65/EC					
Exposures to UK institutions	Arts 50(1)(f) and (g) and 52(1)	EU 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	EU UCITS may need to terminate existing contracts with UK institutions.	None, except indirectly because EU UCITS may seek to terminate existing contracts with UK firms.	EU national competent authorities determine that UK institutions are subject to equivalent prudential regulation (depends on national law).

[20] 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 end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
		on national implementation of the directive).			[No EU mitigating action taken.]
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 EU 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 EU 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 EU national competent authorities do not accept these notices in advance of the end of the transition period.	None. [No EU mitigating action taken.]
(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 EU and to UK sovereign debt.	EU 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. [No EU mitigating action taken.]

Issue	Reference	Effects of end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
(c) Dual regulation of short position disclosure	Arts 1, 5, 6 and 16	Derivatives on shares admitted to trading on both EU and UK trading venues subject to short position disclosure requirements under both EU and UK law, even if primary trading market is in the UK.[21]	EU firms may have to comply with both UK and EU law disclosure requirements.	UK firms may have to comply with both UK and EU law disclosure requirements.	EU national competent authorities may determine that the principal trading venue of some of these shares is in the UK (but this is only effective when ESMA updates its list[22]). [No EU mitigating action taken.]
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	EU firms and EU 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	None, except indirectly in so far as UK entities contract under English law with EU 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

21 Article 17(2) SSR also allows the Commission to adopt equivalence decisions in respect of third-country markets. If the Commission adopted such a decision in respect of UK markets, some UK and EU firms may be able to continue to use the market making exemption based on their membership of UK markets for financial instruments that are traded on those markets as well on EU markets.

22 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.

Issue	Reference	Effects of end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
		recognising EU resolution decisions meets the requirements of RTS under Art 55.	contracts creating liabilities.[23]		Delegated Regulation (EU) 2016/1075.[24] [No EU mitigating action taken.]
(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.[25]	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. [No EU mitigating action taken.]
(c) Protection against resolution actions - CCPs	Arts 44(1)(e), 69(4)(b), 70(2) and 71(3)	UK CCPs that have EU clearing members subject to BRRD may no longer benefit from protections against resolution actions afforded to systems designated under the	This may affect the ability of EU 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 EU clearing members.	See EMIR – Recognition of CCPs above. [EU mitigating action taken (but has now lapsed) – see recognition of CCPs under EMIR above.]

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

24 The UK Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (SI 2018 No 1394) will 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 after the end of the transition period. 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 BRRD 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.

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

Issue	Reference	Effects of end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
		settlement finality directive or CCPs.[26]			
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 EU 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. [Delegated act adopted and takes effect at end of transition period. See Commission delegated regulation (EU) 2019/461, here.]
11. Benchmarks Regulation (BMR) - Regulation (EU) 2016/1011					
(a) Use of UK benchmarks	Art 29(1)	EU supervised entities no longer able to use benchmarks provided by UK administrators in new financial instruments after 31 December 2021 (or by	EU supervised entities may be required to cease using UK benchmarks (such as LIBOR) in OTC derivatives that are financial instruments even	None.	ESMA includes UK benchmarks and their administrators in its register. This requires that (a) the Commission adopts an implementing decision

26 Amendments to BRRD make clear that the protection for third country CCPs is limited to third country CCPs recognised under EMIR (Member States must implement these amendments by 28 December 2020).

Issue	Reference	Effects of end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
		adding UK benchmarks to existing instruments after that date).	where their contracts do not allow a change of benchmark.[27]		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 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).

[27] These impacts are unlikely to be immediate at the end of the transition period 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 treated as third country benchmarks as a result of the end of the transition period until 31 December 2021 (and in existing instruments after that date). This would give UK administrators until 31 December 2021 to seek to qualify their benchmarks for use in the EU under one of the third country regimes under the Regulation..

Issue	Reference	Effects of end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
					[No EU mitigating action taken.]
(b) Use of UK recognised/ endorsed third-country benchmarks	Arts 32 and 33	EU supervised entities no longer able to use benchmarks provided by third-country administrators in new financial instruments after 31 December 2021 (or by adding the third-country benchmark to existing instruments after that date) where the third-country administrator has been recognised in the UK or the third-country benchmark has been endorsed by a UK supervised entity.	EU supervised entities may be required to cease using some third-country benchmarks.[28]	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 EU national competent authority for recognition and satisfy the conditions in the regulation (which may require a cooperation agreement to be in place). An EU supervised entity may apply to its national competent authority to endorse a third-country benchmark and satisfy the conditions in the regulation.

28 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 treated as recognised or endorsed in the EU as a result of the end of the transition period until 31 December 2021 (and in existing instruments after that date). This would give the third country administrators until 31 December 2021 to seek to requalify their benchmarks for use in the EU under one of the third country regimes under the Regulation.

Issue	Reference	Effects of end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
					[No EU mitigating action taken.]
12. Financial market infrastructures (FMIs)					
(a) UK firms' membership of EU FMIs	N/A	EU FMI rulebooks or national law in some EU Member States may prevent UK firms continuing as members of EU FMIs such as trading venues, settlement systems and CCPs.[29]	Withdrawal of UK firms may affect liquidity or efficiency of FMIs for EU firms using those FMIs.	UK firms may have to participate indirectly in EU FMIs.	Depends on FMI rulebooks and national law. [No EU mitigating action taken. Some Member States have adopted laws that would facilitate UK firms' continued membership of their trading venues.]
(b) EU firms' membership of UK FMIs	N/A	National law in some EU Member States may require UK FMIs to obtain local authorisation in order to provide services to EU firms that are members of UK FMIs (or require those firms to obtain the approval of their regulator to	EU firms may have to participate indirectly in UK FMIs.	Withdrawal of EU firms may affect liquidity or efficiency of UK FMIs for UK firms using those FMIs.	Depends on national law. [No EU mitigating action taken.]

29 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 end of the transition period	Impact on EU firms and EU clients and counterparties of UK firms	Impact on UK firms and UK clients and counterparties of EU firms	Possible mitigating action under existing EU law [EU mitigating action taken for no-deal Brexit]
		continue their membership).[30]			

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