TRAVERS SMITH

Post-Brexit Checklist for UK and EU/EEA Users of Derivatives

January 2021

As the dust settles on the EU–UK Trade and Cooperation Agreement, and the majority of businesses have returned after a break of some kind at the end of 2020, the end of the Brexit Transition Period means that UK (and some EU and EEA) users of derivatives find themselves in a new regulatory environment.

The UK, and its domestic regulators, are now responsible for administering UK EMIR[i] (the UK on-shored version of the European Market Infrastructure Regulation[ii] ("**EMIR**")). While this is primarily of relevance to UK users of derivatives, EU and EEA users of derivatives with cross-border arrangements (such as European funds that trade with UK banks) will also need to understand the changes.

For example, there are some differences in the way in which derivatives need to be reported, certain deadlines for notifications to regulators, and some areas of regulatory divergence (which have, in certain circumstances, been mitigated by time-limited exemptions).

The purpose of this checklist is to act as a reference point for UK, and affected EU and EEA, users of derivatives to assist them in ensuring that their arrangements are in order.

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1 Derivatives Trading Obligation

Both the EU's Markets in Financial Instruments Regulation[iii] ("**MiFIR**") and its UK equivalent[iv] require larger financial and non-financial counterparties to execute certain classes of cleared derivatives (such as

certain interest rate and credit derivatives) on a recognised trading venue – a requirement known as the derivatives trading obligation ("**DTO**"). Trading venues that provide execution of the relevant classes of derivatives include multilateral facilities such as Bloomberg Trading Facility BV in the Netherlands and Bloomberg MTF Ltd in London. The DTO is part of UK law following the end of the Brexit transition period, however neither the UK nor the EU has made equivalence decisions in respect of each other's trading venues for the purpose of enabling counterparties to derivatives transactions to comply. This means that, as of the end of the Brexit transition period, UK counterparties trading in-scope derivatives with EEA counterparties (and vice versa) may find that two conflicting sets of rules apply, and they cannot comply with both. UK branches of EEA firms which have temporary permission to conduct investment business in the UK will also be subject to a double trading obligation.

While equivalence decisions have been adopted in respect of some third-country trading venues - notably the US - allowing counterparties to comply with both sets of rules by moving derivatives transactions to those venues, this creates significant logistical difficulty as well as potentially affecting liquidity and the market is still seeking a workable solution from regulators in both jurisdictions. Counterparties to derivatives transactions that are required to be traded on a trading venue must consider how they are affected.

On 31 December 2020, the FCA gave some limited relief to UK firms, EU firms using the UK's temporary permissions regime, and branches of overseas firms in the UK: where those firms are trading with or on behalf of EU clients that are subject to the DTO, they may execute those derivatives transactions on an EU trading venue which is not recognised for the purposes of that obligation provided the venue otherwise has the necessary regulatory permissions to conduct investment business in the UK. These venues include venues recognised by the FCA as "Recognised Overseas Investment Exchanges" (including Euronext Paris SA and Deutsche Börse AG), venues granted temporary permission, or venues using the overseas persons exemption[v]. The relief is short-lived and limited to three months in the first instance and does not apply where the client has arrangements in place to execute the trade on a venue to which both the UK and the EU have granted equivalence.

Firms conducting their derivatives trading activity through an intermediary should consult their intermediary in the first instance to discuss what arrangements are being made in the immediate and longer term.

2 Temporary Clearing Arrangements

UK clearing houses can no longer be recognised by EU regulators as central counterparties ("**CCPs**") under EMIR without an equivalence decision by the EU Commission. In the absence of such recognition, UK clearing houses cannot be used to clear derivatives transactions which are subject to the EMIR clearing obligation. Although no permanent equivalence decision has been made in respect of UK clearing houses, temporary clearing arrangements will apply to allow counterparties to over-the-counter ("**OTC**") derivatives transactions that are required to clear those transactions under EMIR to continue using certain UK clearing houses for a limited period, ending on **30 June 2022**.

Counterparties to derivatives transactions within the scope of the clearing obligation under EMIR, such as certain interest rate and credit derivatives, will need to consider the future clearing arrangements applying to those derivatives transactions beyond that date. EU regulators have warned that UK entities trading with EEA counterparties may need to consider novating their transactions to an EU entity so that arrangements can be made with an EEA CCP before **30 June 2022**. The counterparties subject to either of the clearing obligations under EMIR or UK EMIR should remain aware of this issue following the end of the Brexit transition period as it may impact future clearing relationships.

Under UK EMIR, derivatives transactions subject to the clearing obligation must be cleared via a CCP recognised by the Bank of England. The Bank of England can only grant recognition to CCPs in a jurisdiction which HM Treasury has deemed to be equivalent to the regime under UK EMIR. HM Treasury has made an equivalence decision in respect of EEA states which means that CCPs in those states may be granted full recognition under UK EMIR, but applications are decided on a case-by-case basis and the process can be lengthy. The Bank of England has brought into effect a temporary recognition regime allowing EEA clearing houses that apply for recognition to continue to clear derivatives transactions for a period of 3 years, extendable by HM Treasury. The Bank of England is maintaining a list of third-country CCPs which have notified it of their intention to apply for recognition.

3 Notification to FCA of Clearing Thresholds

All UK FCs and UK NFCs that exceed the clearing thresholds (or that have chosen not to calculate

whether or not they exceed such thresholds) must make a "first" clearing threshold notification to the FCA on or after 1 January 2021, whether or not they have already made such a notification to the FCA under EMIR. See the text box below for an explanation of the relevant clearing thresholds. The deadline for the FCA to receive the first notification under UK EMIR is **17 June 2021**.

FINANCIAL COUNTERPARTIES:

Financial Counterparties" or "FCs" include regulated entities such as banks, investment firms, pension schemes, asset managers and alternative investment funds.

"Non-financial Counterparties" or "NFCs" are parties to derivatives who do not fall within the category of Financial Counterparty.

FC+ and NFC+ are FCs or NFCs (respectively) who exceed at least one of the clearing thresholds outlined below. FC- and NFC- (respectively) are FCs and NFCs who do not exceed these thresholds. Note that where NFCs exceed a threshold, the clearing obligation applies only in respect of the class for which the threshold is exceeded.

The clearing thresholds are exceeded where the aggregate month-end average notional amount of OTC derivatives in each class over the preceding 12 months exceeds EUR 1 billion for credit or equity derivatives, and EUR 3 billion for interest rate derivatives, FX derivatives or commodities and other types of derivatives combined, measured at a group level for all entities (in the case where an FC is calculating) or all NFCs (in the case where an NFC is calculating) in the group. NFCs may omit hedging risk management transactions from this calculation.

If counterparts choose not to calculate the notional amounts, they will be deemed FC+ or NFC+ as applicable.

4 Clearing Exemption for Pension Schemes

Until now, certain EU (including UK) pension schemes have benefited from a temporary exemption from the clearing obligation under EMIR where they enter into derivatives transactions that are objectively measurable as reducing investment risks directly relating to the financial solvency of that pension scheme. In the EU, this exemption is due to expire in June 2021, although EU regulators have recommended that the EU Commission use its powers to extend this exemption for a further year.

UK pension schemes no longer benefit from the exemption under EMIR, as the EU Commission has not extended the scope of the exemption to UK pension schemes trading with EU entities. In the UK, however, HM Treasury has extended the exemption for certain pension schemes until at least June 2023 and included both UK and EEA pension schemes within its scope. This means that UK entities within scope of UK EMIR that trade with EEA pension schemes which benefit from the UK exemption will not have to clear those derivatives transactions while the exemption remains in place, but where EU entities that are subject to EMIR trade with UK pension schemes they will need to clear derivatives transactions if the EU entities are otherwise subject to the clearing obligation.

The rules as to which pension schemes are exempt are complex, so please contact us for further information.

5 Exchange-Traded Derivatives may become OTC Derivatives and count toward Clearing Thresholds

Under EMIR, derivatives which are executed on a regulated market, known as exchange-traded derivatives, are not treated as OTC derivatives and do not count towards clearing thresholds. However, where the regulated market is in a third country, such as the UK, exchange traded derivatives will be counted as OTC derivatives in the absence of an equivalence decision and recognition of the regulated market. As no equivalence decision has yet been made by the EU Commission in respect of UK trading venues, this means that counterparties subject to EMIR who execute derivatives transactions on markets in the UK will have to count those transactions towards the relevant clearing thresholds where applicable.

This issue has been the subject of extensive lobbying by ISDA and other trade associations, but a long-term solution has not yet been found. While EU regulators have made some concessions to UK trading venues with regard to transparency rules and position limits under MiFIR, they have not recognised venues for the purposes of EMIR.

Counterparties may find themselves required to clear derivatives executed on exchange for the first time as a result. If your business will be affected by this, please contact us for more information.

6 Exemptions from Margining – Equity and Index Options and Physically-Settled FX

EMIR includes temporary exemptions from mandatory margining requirements for certain derivatives transactions which UK buy-side counterparties may have been relying on to date. In particular, counterparties have not been required to exchange

variation margin for physically-settled FX forwards and physically-settled FX swaps unless one of the counterparties is a bank or investment firm. This exemption was originally drafted to remain in force dependent on the coming into force of various provisions relating to the Markets in Financial Instruments Directive[vi].

EMIR also exempted derivatives counterparties from the exchange of either initial or variation margin for single-stock equity options or index options, for a limited period, which has now expired.

These exemptions are subject to extensions or amendments which are currently in the form of regulatory standards adopted by the EU Commission. These propose that the exemption for variation margin on physically-settled FX forwards and physically-settled FX swaps is made permanent, and the exemptions from margining for equity options and index options is extended until 4 January 2024.

The regulatory standards also set out the revised implementation deadlines for adherence to initial margin requirements proposed by IOSCO on 3 April 2020 as a result of COVID-19. Counterparties with uncleared derivatives transactions that have an aggregate average notional amount (calculated on the last business day of March, April and May of the calendar year in which they must comply with initial margin requirements) exceeding EUR 50 billion must start complying with initial margin requirements by **1 September 2021**, while those who exceed EUR 8 billion (on the same calculation) must adhere to initial margin requirements by **1 September 2022**.

However, the regulatory standards adopted by the EU Commission are subject to non-objection by the European Parliament and the Council, so they have not come into force yet in the EU. As a result, they did not form part of retained law in the UK. The PRA has indicated that both the PRA and FCA will consult on similar changes in the early part of 2021 and will exercise a degree of forbearance in the meantime due to the mismatch in timing between the proposed EU rule and the UK rules. If your business may be affected as a result, please contact us for more information.

7 Trade Reporting under EMIR and UK EMIR

All derivatives transactions within the scope of EMIR must be reported to an EEA trade repository registered with ESMA or a third-country trade repository recognised by ESMA. As the Brexit transition period has ended, UK trade repositories are no longer recognised for this purpose. Where trade reports are required to be made by EEA counterparties under EMIR, these reports must therefore be made to EEA trade repositories instead.

UK entities must now make reports under UK EMIR to a trade repository registered with the FCA in the UK or a trade repository using the Temporary Registration Regime until its application has been passed. Counterparties to derivatives transactions should check the FCA register for the status of a repository before using or continuing to report to a particular repository. UK branches of EU counterparties do not have to report under the UK EMIR regime as they are not in scope. EU branches of UK firms are in scope, however, and must report derivatives transactions under UK EMIR.

While UK Alternative Investment Funds ("**AIFs**") are within scope of UK EMIR as financial counterparties established in the UK, note that AIFs not established in the UK but managed by a UK authorised or registered AIF manager are also in scope and so must also comply with UK EMIR. Where the AIF itself is established in the EEA, UK managers should note that this leads to a double reporting requirement, as an EEA AIF is a financial counterparty under EMIR and must report its derivatives transactions to an EEA trade repository. EEA AIFs in practice are already likely to be delegating compliance with their reporting requirements to their UK manager, as EMIR places legal responsibility for reporting on the AIF manager.

Entities that have delegated reporting to their counterparties should consider whether those reporting arrangements will need to be revisited.

Note that the reporting requirements under UK EMIR are outside the FCA's temporary transitional power[vii] (i.e. the power the FCA has to permit parties to comply with the pre-Brexit regulatory framework for a certain period of time), and firms are expected to comply with these requirements by **31 December 2020**. The FCA has stated that it intends to act proportionately and where firms are not fully prepared by that date enforcement action will not be taken where the firm has taken reasonable steps to comply by that date.

8 Notification by Counterparties using exemptions for Intragroup Transactions

UK entities that currently benefit from intragroup exemptions from the clearing and margining requirements of EMIR in respect of derivatives transactions with EEA group counterparties may make a prescribed notification to the FCA by **1 February 2021** in order to continue to benefit from those exemptions beyond 1 March and 1 May 2021 respectively.

This is because HM Treasury has made an equivalence decision in respect of EEA states for the purpose of applying intragroup exemptions, which means counterparties now must apply for the intragroup exemption rather than relying on the derogation for intragroup derivatives transactions which ran until equivalence decisions were granted.

The notification must identify the pairs of entities to which the equivalence decision applies and confirm whether there are any changes to the conditions under which the original intragroup derogation was granted.

9 Lifecycle Events

Counterparties to derivatives transactions may be required to comply with certain contractual and regulatory obligations during the life of a derivatives transaction, as well as needing to conduct market hedges. These are known as "Lifecycle Events". Lifecycle Events may include (for example) the rolling of open positions, portfolio compression, exercise of options, and unwinds and novations.

Although the subject is too broad to cover in detail here, the UK's exit from the EU and the consequent loss of UK firms' passporting rights for conducting investment business in the EU, has created complex issues surrounding continuing conduct of these cross-border activities between the UK and EEA states where counterparties trade in derivatives as a business activity.

While there is some support for the view that simply terminating existing transactions or making scheduled payments under them is less likely to require local authorisation, the issues are complex and wide-ranging and will differ according to the EEA member state(s) in which the activity takes place.

If counterparties wish to discuss these issues with reference to the loss of their own investment services passport, please contact us.

10 Brexit Novations

The EU Commission has published regulatory standards allowing derivatives transactions which are novated solely to avoid Brexit-related issues to benefit from certain exemptions from clearing and margining requirements provided the novations take place within a year of the standards coming into force (which is expected to happen during the first quarter of 2021) or the relevant obligation becoming applicable, whichever is later. Note that there is no general grandfathering of existing derivatives transactions under EU law, and the EU has been clear that it expects unauthorised counterparties that will be caught by EU regulatory provisions as a result of Brexit when conducting investment activities in an EU Member State to novate their derivatives transactions to EEA counterparties.

11 ISDA 2020 UK EMIR PDD Protocol

On 17 December 2020, ISDA published the 2020 UK EMIR PDD Protocol (the "**UK Protocol**"), to assist counterparties to derivatives transactions that are subject to the portfolio reconciliation, dispute resolution and disclosure requirements (the "**UK PDD Requirements**") of UK EMIR in complying with those requirements when they come into force following the end of the Brexit transition period.

The UK Protocol is substantively the same as the ISDA 2013 EMIR PDD Protocol (the "EEA Protocol"). Most of the differences are to ensure that references are to UK EMIR rather than to EMIR, so that parties agree how they will comply with the requirements of the applicable (UK versus EU) ruleset. The UK PDD Requirements will apply to in-scope UK financial and non-financial counterparties where those counterparties trade with EU or other third-country counterparties.

If counterparties adhere to the UK Protocol, it has the effect of amending any ISDA Master Agreement entered between them on or before the date the later counterparty adheres. The UK Protocol therefore applies to existing relationships between counterparties and stipulates the methods by which those counterparties comply with the UK PDD Requirements. However, counterparties can also specify other agreements to be covered by the Protocol and non-ISDA members can also agree the Protocol should govern the relationship between them for the purpose of the UK PDD Requirements.

Counterparties to derivatives transactions should therefore consider whether they wish the UK Protocol to govern how they comply with the UK PDD Requirements. Counterparties that have already adhered to the EEA Protocol may wish to consider adhering to the UK Protocol as derivatives transactions within scope of UK EMIR will not be covered by the EEA Protocol. Counterparties should also consider adhering to the UK Protocol when entering new ISDA Master Agreements (or new derivatives transactions) falling within the scope of UK EMIR. However, there is no requirement to adhere to the UK Protocol, nor does it have to be adhered to by any fixed date (though ISDA does reserve the right to fix a date by which the UK Protocol must be adhered to). Counterparties to

derivatives transactions could, if they so wish, refer to the terms of the UK Protocol by reference or meet the obligations of UK EMIR in another manner.

Investment managers may wish to consider whether they have the necessary authority to adhere to the UK Protocol on behalf of clients. ISDA has provided several options for adherence by investment managers, depending on whether authority has been obtained.

12 ISDA JMP Protocol

Counterparties to derivatives transactions should consider whether they should adhere to the ISDA 2020 UK (PRA Rule) Jurisdictional Module, published by ISDA on 22 December 2020 (the "**PRA Module**"). The PRA Module is a new module within the ISDA Resolution Stay Jurisdictional Modular Protocol and has been published in response to changes made to the PRA rulebook as a result of Brexit.

The ISDA Resolution Stay Jurisdictional Modular Protocol allows counterparties to derivatives transactions to comply with changes to the PRA rule requiring contractual recognition of resolution stays in certain financial contracts governed by the law of a third country. UK counterparties regulated by the PRA (broadly, banks and investment firms) cannot enter contracts covered by the rule unless they explicitly include terms by which counterparties recognise the effect of stays which may apply in the event of the UK firm's resolution. Statutory resolution stays may affect the counterparty's ability to terminate contracts and enforce security.

The PRA has required a provision to this effect since 2016 but, following the end of the Brexit transition period, contracts governed by the law of an EU Member State fall within scope of the rule. The clause must be included where banks and investment firms regulated by the PRA create obligations or materially amend existing obligations following the end of the Brexit transition period.

The PRA rule also requires banks and investment firms to apply the requirement to derivatives transactions entered by certain subsidiaries and not just the PRA-regulated entity. While the PRA Module is not the only method by which compliance with the PRA rule may be achieved, it may facilitate compliance for banking groups. Investment firms that are subsidiaries of PRA-regulated entities should therefore discuss the need for adherence with their group PRA-regulated entity.

It should be noted that, because English-law governed agreements will now be governed by the law of a third country from an EU law perspective, the converse of the PRA rule will apply to EEA banking group counterparties. Recent amendments to the Bank Recovery and Resolution Directive[viii] require EEA banks and investment firms to include a similar clause recognising resolution stays in certain financial contracts governed by non-EU law. Draft regulatory standards setting out the content of the recognition clause have been published by the European Banking Authority and are expected to come into force in early 2021. EEA firms that are part of a banking group will need to consider this issue. After the regulatory standards come into force, UK-based counterparties to EEA banks and investment firms may expect those EEA banks and investment firms to require provisions reflecting these requirements in new ISDA Schedules and trade confirmations.

13 Exclusive Jurisdiction Clauses in English-law governed ISDA Master Agreements

In the EU, the recast EU Brussels Regulation[ix] determines which court has jurisdiction in the event of a private law dispute and also provides for reciprocal recognition across the EU of judgments handed down in Member States (other than in insolvency proceedings, for which the EU has separate regulations). One effect of the recast EU Brussels Regulation is that the courts of Member States will recognise contractual choice of jurisdiction clauses in favour of a Member State, such as those in the English law ISDA Master Agreements. As the UK is no longer a Member State, the market has considered whether it may be possible to re-create some of the effect of the recast Brussels regulation using other methods.

The Hague Convention on Choice of Court Agreements[x] (the "**Hague Convention**") requires that where the parties have agreed an exclusive jurisdiction clause, contracting states must give effect to that clause where it purports to give exclusive jurisdiction to the courts of a contracting state.

During the transition period the UK deposited an instrument of accession to the Hague Convention, which became effective on 1 January 2021, and from that date the UK is a signatory in its own right. However, the Hague Convention only gives effect to clauses agreed from the effective date of accession of the state of the chosen courts, so exclusive jurisdiction clauses in favour of the courts of the UK which were agreed prior to 1 January 2021 may not be given effect under the Hague Convention. This does not mean that such clauses would be unenforceable, but rather that enforcement will be determined in accordance with local law.

ISDA is in the process of publishing an Amendment Agreement allowing contracting parties to the 1992 or

2002 ISDA Master Agreements governed by English law to amend the jurisdiction clause (which in the standard forms of ISDA Master Agreement is non-exclusive) so that the parties submit exclusively to the jurisdiction of the English courts.

Parties may therefore wish to consider using the Amendment Agreement published by ISDA, to ensure that a choice of exclusive jurisdiction clause will be enforceable under the Hague Convention.

14 Contractual Recognition of Bail-in

Since 2016, under Article 55 of the Bank Recovery and Resolution Directive, banks and certain investment firms within the EEA that enter financial contracts governed by the law of a third country have been required to include clauses by which the counterparty recognises the bail-in powers of the banking entity's resolution authority. "Bail-in" powers allow resolution authorities to write down or convert to equity certain liabilities of a failing institution. Although fully-secured liabilities are generally exempt, derivatives transactions generally include the clause as full compliance with the security requirements cannot be assured.

The PRA has therefore required the contractual recognition of bail-in since 2016 where the contract is governed by the law of a non-EEA state. From the end of the Brexit transition period, the clause must now be included where banks and investment firms regulated by the PRA, and certain of their subsidiaries, enter contracts governed by non-UK law. The PRA rule does not require firms to repaper existing contracts, but the clause must be in contracts entered or materially amended following the end of the Brexit transition period. Again, investment firms that are subsidiaries of an institution regulated by the PRA should consider whether they need to take any action if contracting under non-UK law.

The converse applies in the EEA, and EEA banks and investment firms and their subsidiaries entering or materially amending financial contracts governed by English law will need to consider whether they must include a bail-in recognition clause. UK-based counterparties to such EEA banks and investment firms may therefore expect those EEA banks and investment firms to require provisions reflecting these requirements in new ISDA Schedules and trade confirmations.

Reporting under UK STFR

This section is relevant to securities financing transactions ("**SFTs**"), and may not be applicable to all users of derivatives. It is included because certain users of derivatives will use SFTs in connection with their derivatives, for example to repo securities for cash in order to collateralise their derivatives

Under UK SFTR[xi] (i.e. the Securities Financing Transactions Regulation[xii] ("**SFTR**") as 'on-shored' into UK law), financial counterparties must report securities financing transactions, such as repo and stocklending, to an FCA-registered trade repository (or a repository using a Temporary Registration until its application is passed) from the end of the Brexit transition period.

EEA counterparties that are required to make such reports under SFTR will no longer be able to comply with their obligations by reporting to UK trade repositories and will need to make arrangements to report to EEA trade repositories instead. UK entities that are already reporting to UK trade repositories will be unaffected.

UK branches of EEA financial counterparties will have to report under the UK SFTR regime, as will EEA branches of UK financial counterparties. This may lead to double reporting for firms operating through branches, as branches are also caught by the EEA SFTR reporting requirements. However, the FCA has confirmed that financial counterparties that are AIFs not in scope of UK STFR reporting requirements, even where managed by a manager authorised or registered in the UK, unless the AIF is itself acting through a UK branch.

Removal of UK STFR reporting for NFCs

HM Treasury has stated that it will not take steps to apply in UK law the reporting requirements to NFCs which apply under SFTR from January 2021. NFCs and their branches do not therefore have to report SFTs to UK trade repositories following the end of the Brexit transition period. This means that the position in the UK differs from the position under SFTR where EEA NFCs are required to report their SFTs to an EEA trade repository from 11 January 2021.

By its nature, this checklist is not comprehensive and so should not be viewed as a substitute for considering in detail the impact of Brexit on your derivatives arrangements. The regulatory environment is developing and there may be further changes, including divergence between EMIR and UK EMIR. This checklist is accurate as of its date of publication (January 2021), but it may not be thereafter.

If any of the points identified in this checklist impact your business (or if you are unsure whether they might impact your business) and you would like to discuss further, please contact a member of the Derivatives & Structured Products practice or your usual Travers Smith contact.

REFERENCES

[i] EMIR has been on-shored by a number of statutory instruments, including the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019/335
[ii] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories
[iii] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012
[iv] MiFIR has been on-shored by a number of statutory instruments, including the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018/1403
[v] This exemption is created under Article 72 of the Financial Services and Markets Act 2000 (Regulated Activities) Order, and allows certain overseas persons to be deemed, where certain conditions are fulfilled, to not be carrying on certain 'regulated activities' as defined under that order. Where this exemption applies, the overseas person does not breach UK financial services legislation.
[vi] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EU and Directive 2011/61/EU (recast)
[vii] This power is created under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019/632.
[viii] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council
[ix] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
[x] Hague Convention on Choice of Court Agreements, concluded 30 June 2005
[xi] SFTR has been on-shored by a number of statutory instruments, including the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018/1318
[xii] Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012

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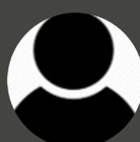

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