The shape of Brexit and its impact on the UK financial markets

Joanna Perkins FMLC Chief Executive

INTRODUCTION

23 June 2016

Poll Card E.U. Referendum @ Abi Begum / Flickr

24 June 2016?

Brexit @ freestocks.org / Flickr

The Aftermath

- Five of the largest U.S. and U.K. CCPs demanded $27bn in additional collateral across derivatives products on 24 June, according to the CFTC.
- In both the E.U. and U.K., market fluctuations in the immediate aftermath of the referendum were characterised by large currency swings and significant equity price declines, particularly in bank stocks.
- The £ declined sharply to a 31-year low. It recovered slightly but remained lower against the $ and EUR than before the referendum.
- The U.K. stock markets recovered quickly. Over the next six months, the large-cap FTSE 100 index gained 13 per cent, the mid-cap FTSE 250 gained about 4 per cent.
- In the E.U. stock prices dropped by around 10 percent and gradually returned to pre-referendum levels for non-bank stocks over the summer.
- In the U.K., several open-ended property funds suspended redemptions.
- The Bank of England required UK banks to increase their capital and liquidity buffers.
- In August, the Bank of England cut the Bank Rate to 0.25% and introduced a package of measures designed to provide additional monetary stimulus.
- In the rest of the E.U., Monte dei Paschi di Siena and Deutsche Bank suffered the brunt of the impact of Brexit on share prices.

"Brexit means Brexit"

F
M
L
C

Statements by the British Prime Minister, Theresa May, on Brexit:

- 11 July 2016, *Brexit means Brexit—and we're going to make a success of it*
- 19 October 2016, *We are going to be a fully-independent, sovereign country, a country that is no longer part of a political union with supranational institutions that can override national parliaments and courts*.
- December 19 2016,
  - *People talk about the sort of Brexit that there is going to be—is it hard or soft, is it grey or white. Actually we want a red, white and blue Brexit…*
  - *This is more complex than simply saying: 'Are you in or are you out of the customs union?'*
  - *[Businesses] don't want to wake up one morning, having had a deal agreed the night before, and suddenly discover that they have to do everything in a different way.*
  - *What's important is that when we leave the European Union, it's the British government that decides how taxpayers' money is spent.*
- 08 January 2017, *we mustn't think about this as somehow "we're coming out of membership, but we want to keep bits of membership".*
- 09 January 2017, *I don't accept the terms hard and soft Brexit* and *What we are doing is going to get an ambitious, good, best possible deal in terms of trading with and operating within the single European market*.

Tax haven or beacon of social justice?

F
M
L
C

- What does "Brexit" really mean? One reason for all the obfuscation may be that a real political dilemma lies at the heart of government.
- On 09 January, Theresa May gave a speech declaring that her government wants "*real social reform across every layer of society so that those who feel that the system is stacked against them… are also given the help they need*". This is, to some extent, a natural extension of David Cameron's "compassionate conservatism".
- Many Conservative politicians who supported Brexit, however, have endorsed a set of policies explicitly designed to persuade international businesses and well-paid talent to invest in Britain. One advantage of this approach is said to be that it would soften the economic shock of Brexit.
- These policies would involve cutting taxes for companies and high earners, and tearing up regulation.
- Thus, the dilemma (discussed below) whether to maintain E.U. regulatory standards after Brexit in order to preserve access to the single market is merely symptomatic of the larger question of what kind of reform Britain wants outside the E.U.
- Will that reform favour the socially oppressed by making big business accountable, or will it favour business and investment by cutting tax and regulation?

The way ahead

- On 17 January 2016, Theresa May offered an outline for the coming negotiations:
  - No membership of the single market.
  - A customs agreement with the E.U. that leaves the U.K. free to reach individual tariff schedules at the WTO
  - New bilateral trade deals with Third Countries
  - Transitional arrangements for financial services
  - No more consolidated U.K. contributions to the E.U. budget (although contributions to particular projects may be forthcoming)
- This has subsequently become known as the path to "Hard Brexit", one which will cost U.K. financial firms their "passports" into the E.U. single market for financial services.

Article 50(2) TEU

F
M
L
C

- On 24 January, the U.K. Supreme Court dismissed HM Government's appeal in a case about which arm of the constitutional government (Parliament or the Executive) can exercise the right to trigger Article 50 of the Treaty on European Union. This means Parliament will be required to give its approval before official talks on leaving the E.U. can begin.
- Following that decision, on 26 January, HM Government published a legislative measure to trigger Article 50, prompting the Opposition to table a series of proposed amendments, including one seeking to guarantee that Parliament gets a say on the final deal for Brexit.
- The European Union (Notification of Withdrawal) Bill, containing just two clauses and only 137 words long, states that its aim is to "confer power on the Prime Minister to notify, under Article 50(2) of the Treaty on European Union, the United Kingdom's intention to withdraw from the E.U.". It will have just 5 days for parliamentary scrutiny in the House of Commons.
- Although one question about the Article 50 process has been answered, many others remain, including the question whether once the Article 50(2) notice has been given, notice can be revoked by the Member State in question. A court case has been filed in Dublin, Ireland with the objective of referring this point to the CJEU for decision.

BREXIT: A RAPIDLY DIMINISHING ARRAY OF OPTIONS…

The Norwegian Model
E.E.A. Membership

F M L C

Membership of the European Economic Area ("E.E.A.")

One simple Brexit option would have been for the U.K. to join/remain in the E.E.A. There is a live question whether the U.K., which is already a party to the E.E.A. Treaty (qua E.U. Member State), will automatically "fall out of" the E.E.A when it leaves the E.U. The better view is probably that it will.

One option for Brexit would be for the U.K. to re-join the E.E.A via the E.E.A Treaty, this time by virtue of being an EFTA member state. **In order to do this, the U.K. would be legally required to join EFTA (see below).** The E.E.A. legal framework has existed since 1994.

The Norwegian Model
E.E.A. Membership (cont.)

- Britain would then be outside the common agricultural and fisheries policies.
- The U.K. would pay nearly as much into the budget as it does today.
- Free movement of labour would continue.
- The U.K. would have to apply the single market's rules and regulations in non-excluded areas without having a vote on them.
- Membership in the E.E.A. would entitle the U.K. to an independent seat on all global trade and standard-setting bodies.
- However, it would have no representation on the European Council and the European Parliament and Council of Ministers.

The Norwegian Model
E.E.A. Membership (cont.)

- One of the main principles of the E.E.A. Agreement is "homogeneity": the existence of common rules and equal conditions of competition throughout the E.E.A.
- The EFTA Surveillance Authority monitors the EFTA states which are also party to the E.E.A. Agreement with powers corresponding to that of the European Commission.
- The EFTA equivalent of the European Parliament is the Committee of MPs of the EFTA States where decisions are taken by consensus.
- Where an E.U. policy area falls within the four freedoms or other aims of the E.E.A. Agreement (see above), then it is E.E.A.-relevant.

The Norwegian Model
E.E.A. Membership

- As soon as E.E.A.-relevant E.U. legislation has been adopted in the E.U., a decision shall be taken to amend the E.E.A. Agreement to permit simultaneous application of the legislation across the E.U.
- E.E.A/EFTA states can contribute to the development of legislative proposals on the expert level, where they are on equal footing with the E.U. Member States. According to Article 99(1) of the Agreement on the E.E.A., the "Commission shall informally seek advice from experts of the EFTA States […] for the elaboration of its proposals".
- Reportedly, EFTA states do not make use of this right to the fullest extent possible.

The Norwegian Model
E.E.A. Membership

F
M
L
C

- ECJ decisions are not directly binding. The EFTA Court has jurisdiction with regard to E.E.A. EFTA States.
- There is no written obligation on the courts of last resort of EFTA member states to make a reference to the EFTA Court.
- The preliminary rulings of the EFTA Court are not binding on national courts. They are termed "advisory" opinions. They do, however, have strong persuasive and moral force.
- The E.E.A. Agreement has formulated homogeneity rules which in essence bind the EFTA Court to follow relevant ECJ case law.
- Norway's review of the E.E.A. Agreement found that the EFTA Court is stricter than the ECJ according to a 2012 report by the Norwegian government..

A summary of the Norwegian Model by Open Europe

Included under EEA agreement / EEA access to EU markets	Voluntary add-ons	Norwegian independence / not included in EEA
Goods: Some agriculture and fisheries products; Energy; Competition and state aid; Trade facilitation and technical cooperation. **Services:** Financial services; Transport; Postal services; Electronic communication, audio-visual services and information society; **Capital** **Persons:** Free movement of persons; Social security; Recognition of professional qualifications. **'Flanking and horizontal' policies:** Consumer protection; Cultural Affairs; Education, training and youth; Research and innovation; Public health; Enterprise policy; Civil protection; Health and safety at work and labour law; Environment; Employment and social policy; Company law; Budgetary matters; Gender equality, anti-discrimination and family policy	**Justice and home affairs:** Associate member of Schengen border-free area; Participates in 'Dublin system' for asylum claims; Participates in Europol and Eurojust **Foreign policy:** Norway is actively seeking association with the EU's foreign & security and security & defence policies and participates in EU joint missions	**Agricultural policy** **Fisheries policy** **Regional policy** **External trade policy** **Foreign policy**

oe

The Swiss Model
"Voluntary Alignment"

F
M
L
C

Membership of the European Free Trade Association ("EFTA") and voluntary alignment with single market rules to facilitate market access

The U.K. could join EFTA while staying out of the E.E.A. This is the Swiss model: Switzerland is part of EFTA but not E.E.A. To facilitate trade and market access, Switzerland has negotiated a large number of bilateral treaties and sectoral agreements with the E.U.

The Swiss Model
"Voluntary Alignment" (cont.)

F
M
L
C

- Merely joining EFTA brings with it little economic benefit: membership would not give the U.K. access to the many free trade agreements concluded between the EFTA states and third countries.
- Switzerland has concluded more than 120 sectoral agreements with the E.U.
- There is no agreement on services, in particular financial services, with the E.U., which would be problematic for the U.K.
- Switzerland also contributes to the E.U. budget: its contribution per head is about 55% of the U.K. contribution.
- Switzerland opposes the free movement of people and has raised the issue with the E.U. The E.U. has stipulated that Switzerland must rethink the migration issue or start to lose access to the single market.

The Swiss Model
"Voluntary Alignment" (cont.)

- The E.E.A. principle of homogeneity does not apply directly to Switzerland (which is not a party to the E.E.A. Agreement).
- In practice, Switzerland has to accept E.U. regulations and directives and follow their interpretation by the CJEU/EFTA court in order to be able to export to E.U. states. This is sometimes termed "voluntary alignment".

The Baudenbacher Model
Renegotiation of the E.E.A. Agreement

F
M
L
C

And now for something completely different…

Carl Baudenbacher, Chair of the EFTA Court of Justice has commented that the U.K. could join EFTA and then unite with Norway and, perhaps, Switzerland to secure revisions to the E.E.A. Agreement. Following this, the UK and Switzerland could join the E.E.A. on favourable terms.

The Baudenbacher Model
Renegotiation of the E.E.A. Agreement

F M L C

- This offers an intriguing third way between membership of the E.E.A./EFTA and falling back to a bilateral free trade agreement ("FTA") with the E.U.
- It is not clear, however, what parts of the E.E.A. Agreement might be open to renegotiation or might be prioritised by the states in the new alliance. Popular but controversial suggestions would include:
    - a cap on the free movement of persons;
    - a relaxation of the principle of homogeneity, (in particular in the manner in which ECJ decisions bind the EFTA Court); and/or
    - political influence in the processes of developing and negotiating E.E.A.-relevant E.U. legislation.

The U.S. Model
Third country equivalence

F M L C

The Third Country "Passport"

The E.U. has negotiated an ambitious and balanced trade and investment deal with the U.S.: the Transatlantic Trade and Investment Partnership (TTIP). The future of this trade deal is now highly uncertain under the new U.S. administration. In any event, the deal will not include financial services.

At the moment U.S. financial services providers rely on sectoral Third Country regimes in order to obtain access to the E.U. single market. The best known aspect of these regimes is the concept of "equivalence" (discussed below).

The U.S. Model
Third country equivalence

- The provision of U.S. financial services into the E.U. is increasingly subject to a determination by the European Commission that the U.S. is an "equivalent" regulatory regime.
- This is also the case for any country whose trade arrangements with the E.U. do not cover financial services.
- The U.S. benefits from equivalency decisions in respect of 16 E.U. financial services regulations. (Japan benefits from 17, Canada from 16, Switzerland from 10 and Turkey from 5).
- A significant number of equivalence decisions were taken in the last six months of 2016.
- At the moment there is no standardised template or precedent for equivalence determinations.
- Recently, however, equivalence determination has been linked in E.U. legislation to compliance with international principles (e.g. new E.U. Benchmarks Regulation equivalence provision refers to *IOSCO Principles for Benchmarks*), which sets a useful precedent and implies that the Commission's approach may be subject to greater standardisation in future.

The U.S. Model
Third country equivalence (cont.)

- The path to an equivalence determination rarely runs smoothly in practice for third countries. Recent examples of difficulties encountered by the U.S. include CCP recognition and the AIFMD marketing passport.
- If the U.K. adopts existing E.U. legislation in force in the U.K. at the point of exit and retains this "acquis" during the period over which equivalence is assessed, it will be virtually impossible to argue that the U.K. framework is not equivalent vis-à-vis the E.U. framework (unless, perhaps, the E.U. has introduced significantly higher standards in the meantime) in the sector concerned.
- Equivalence can only be guaranteed in this way, however, for so long as U.K. law and regulation tracks European law and regulation.

Equivalence decisions taken by the European Commission (as at 21/12/2016)

		Abu Dhabi	Argentina	Australia	Bermuda	Brasil	Canada	Caymans	Chile	China	Dubai	Egypt	Faroe Islands	Greenland	Guernsey	Hong Kong	India	Indonesia	Isle of Man	Israel	Japan	Jersey	(South) Korea	Malaysia	Mauritius	Mexico	Monaco	N. Zealand	Russia	Saudi Arabia	Singapore	S. Africa	Switzerland	Thailand	Taiwan	Turkey	UAE	US
PROSPECTUS	Equivalence of prospectuses: Art. 20(3)																																					
	3rd country GAAP with IFRS: Art. 35 of Regulation 809/2004						Y			Y											Y		Y															Y
TRANSPARENCY DIRECTIVE	3rd country GAAP with IFRS: Art. 23(4) Sub-para 3						Y			Y											Y		Y															Y
	general transparency requirements: Art. 23(4)																																					
ACCOUNTING DIRECTIVE	country-by-country reporting: Art. 46						Y																															
CREDIT RATING AGENCIES	Equivalence - Article 5(6)		Y	Y		Y	Y									Y					Y					Y					Y							Y
STATUTORY AUDIT	Adequacy of audit framework: Article 47(3)			Y		Y	Y				Y				Y			Y	Y		Y	Y	Y	Y								Y	Y	Y	Y			Y
	Equivalence of audit framework: Art.46(2)	Y		Y		Y	Y			Y	Y				Y			Y	Y		Y	Y	Y	Y	Y			Y			Y	Y	Y	Y	Y	Y		Y
	Equivalence- Article 46 (2): transitional period				Y			Y				Y																	Y									
EMIR	central bank exemption: Art. 1(6)																				Y																	Y
	regulated markets: Art. 2a			Y			Y														Y										Y							Y
	transaction requirements: Art. 13																																					
	CCPs: Art. 25(6)			Y		Y	Y				Y					Y	Y				Y		Y			Y		Y			Y	Y	Y				Y	Y
	trade repositories: Art. 75																																					
CSDR	CSDs: Art. 25(9)																																					
SFTR	central bank exemption: Art. 2(4)																																					
	trade repositories: Art. 19																																					
	transaction requirements: Art. 21																																					
BENCHMARKS	Requirements for benchmark administrators: Art. 30(2)																																					
	Specific administrators or benchmarks: Art. 30(3)																																					
SHORT SELLING	Requirements for markets: Art. 17(2)																																					
MAR	Exemption for monetary and public debt management activities: Art 6(3)			Y		Y	Y			Y						Y	Y				Y		Y			Y					Y		Y			Y		Y
	Exemption for climate policy activities: Art. 6(6)																																					
MiFIR / MiFID2	central bank exemption: Art. 1(9)																																					
	trading venues for the purposes of trading obligation for derivatives and shares: Art. 23 and 28																																					
	derivatives: trade execution and clearing obligations: Art. 33																																					
	trading venues for the purposes of clearing access: Art. 38 (1)																																					
	trading venues and CCPs - access to benchmarks and licences for the purposes of clearing and trading obligation: Art. 38(2)-(3)																																					
	investment firms providing investment services to EU professional clients and eligible counterparties: Art. 47																																					
	regulated markets for the purposes of easier distribution in the EU of certain financial instruments traded there: Art. 25(4)																																					
CRR	credit institutions for the purposes of Article 107(4)			Y		Y	Y			Y			Y	Y	Y	Y	Y		Y		Y	Y				Y	Y	Y		Y	Y	Y	Y			Y		Y
	investment firms for the purposes of Article 107(4)			Y		Y	Y			Y						Y		Y			Y		Y			Y				Y	Y	Y						Y
	exchanges for the purposes of Article 107(4)			Y		Y	Y			Y							Y	Y			Y		Y			Y				Y	Y	Y						Y
	exposures to central governments, central banks, regional governments, local authorities and public sector entities for the purposes of Articles 114, 115, 116			Y		Y	Y			Y			Y	Y	Y	Y	Y		Y		Y	Y				Y	Y	Y		Y	Y	Y	Y			Y		Y
	credit institutions for the purposes Article 142			Y		Y	Y			Y			Y	Y	Y	Y	Y		Y		Y	Y				Y	Y	Y		Y	Y	Y	Y			Y		Y
	investment firms for the purposes Article 142			Y		Y	Y			Y						Y		Y			Y		Y			Y				Y	Y	Y						Y
SOLVENCY 2	for third-country reinsurers in the EU: equivalent treatment of their activities and of EU reinsurers' activities: Art. 172				Y																Y												Y					
	for EU insurers in third countries: equivalence of third-country solvency rules for calculation of capital requirements and own funds: Art. 227			Y	Y	Y	Y														Y					Y							Y					Y
	for third-country insurers in the EU: equivalence of group supervision exercised by the third-country supervisory authorities: Art. 260				Y																												Y					

The Canadian Model
Free Trade Agreement

F
M
L
C

Adherence to a bilateral Free Trade Agreement along the lines of the "Comprehensive Economic and Trade Agreement" between Canada and the E.U.

Many who campaigned for the U.K. to "Leave" the E.U. view a bilateral FTA between the E.U. and U.K. as the most likely model for their future relationship. Canada concluded a free trade agreement with the E.U. in 2014 but it has not yet been ratified. On 24 January 2017 the international trade committee of the E.U. Parliament recommended that the trade deal be approved.

The Canadian Model
Free Trade Agreement

F
M
L
C

- There is no existing E.U. FTA on a scale which would match the existing export/import levels reflected in dealings with the U.K. on which the relationship could be modelled.
- A FTA doesn't necessarily mean eliminating tariffs and quotas, nor does it guarantee harmonised standards.
- Canada's FTA with the E.U., agreed in 2014 but not yet ratified has fallen short of harmonising regulations and standards even in the areas included in the agreement, some of these constitute some of the larger barriers to trade.
- The agreement says there will be more co-operation on future regulations but cars and chemicals made to meet Canadian standards may not be sold in the E.U.
- **Crucially, financial services are also excluded from the CETA**.

The Turkish Model
Customs union

Entering into a customs union

A customs union eliminates internal tariffs and requires the participating countries to agree on common external tariffs.

The Turkish Model
Customs union

- If the U.K. accepted a customs union with the E.U., it would have to follow decisions on tariffs made by the E.U.
- **The U.K. would not have full access to the E.U.'s internal market, unless the agreement was extended to cover services**, which is not the case for Turkey.

The "Rest of the World" Model
WTO Rules

F
M
L
C

Relying on membership of the World Trade Organisation ("WTO")

All 173 members of the WTO are parties to the General Agreement on Tariffs and Trade ("GATT") and the General Agreement on Trade in Services ("GATS").

The "Rest of the World" Model
WTO Rules

- The basic WTO principle of most favoured nation ("MFN") requires that a WTO member must apply the same conditions on all trade with other WTO members.
- MFN applies to GATS as well as to GATT. However, upon accession, members may introduce temporary exemptions to this rule where services are concerned.
- National treatment is a parallel principle and an integral part of many WTO agreements. It is found in all 3 of the main WTO agreements (GATT, GATS and TRIPS) and means that imported goods/services should be treated no less favourably than domestically produced goods (at least after the foreign goods have entered the market). It was introduced to tackle non-tariff barriers to trade.

The "Rest of the World" Model
WTO Rules

- The U.K. would have to re-establish customs controls at borders with E.U. member-states.
- The U.K. would be subject to the E.U.'s common external tariffs.
- Trade between the E.U. and Russia, for example, relies heavily on WTO rules and principles. (Russia benefits from only one equivalence decision—on statutory audit).

SUPER- AND SUPRA-EQUIVALENCE

Hard Brexit, hard choices

- With the U.K.'s departure from the single market, the U.K. will become a Third Country as far as European markets are concerned.
- The UK's ability to provide financial services into the E.U. will depend on the various regimes for Third Countries that are written into key regulations, unless it can cut a "bespoke" deal with the E.U. The best- known Third Country regimes are those which depend on the E.U. Commission adopting an "equivalence" decision.
- More about these regimes below but the first point to observe is that the U.K. is now facing the "*Third Country bind*":
  - *the advantage of leaving the E.U. is (arguably) reducing the burden of regulation so as to attract the economic benefits of foreign investment; <u>but</u>*
  - *reducing the burden of regulation will almost certainly cause the U.K. to be excluded from the economic benefits of trade with E.U. markets on the grounds that it is non-equivalent.*
- The second point to note is that, in many instances, the choice itself, may be to all intents and purposes illusory because the regulatory standards in question are set internationally (e.g. by BIS, IOSCO, the FSB, IFRS etc.) rather than regionally.

Being a Third Country

- The E.U.'s framework for Third Country financial services providers is not a panacea for any disruption caused by the loss of passporting.
- For a former Member State., there is uncertainty as to timing. Without transitional arrangements, the E.U. Commission will not make any equivalence determinations—and the ESAs will not take any consequential recognition or registration decisions—until the U.K. has already left the E.U., leading to a "cliff edge" effect on Day One of Brexit.
- Even if the U.K. begins by being "super-equivalent" (see below), it will soon fall victim to the *Third Country bind* mentioned above. Do future U.K. Governments spend public resources to replicate E.U. laws in order to remain super-equivalent? Or do they take a different path—there has been talk of a "bonfire of the regulations"—without any guarantee of remaining equivalent?
- For those who would wish to preserve access to the E.U. single market as a Third Country, there are very real questions about how existing E.U. laws can and should be transposed and adapted into U.K. law (see "Standstill" below).
- The U.K. will lose its role in the co-operative institutions of the E.U. It may lose oversight of security, stability and conduct risks which arise in neighbouring jurisdictions.
- Some regulations (BRRD, CIWUD, EUIR, Brussels I) establish a mutual enforcement regime between Member States which cannot easily be replicated in favour of a Third Country. Transposition of E.U. laws will not overcome this difficulty.

Equivalence

- There are many misconceptions about equivalence. Contrary to popular belief:
  - Regulations applying in many areas of market activity have no concept of equivalence: some offer an alternative regime (e.g. the MiFID II "passport"), some have no regime for cross-border business other than by means of authorisation in the host state (e.g AIFMD).
  - Many financial services business lines (e.g. retail investment business) are excluded *ab initio* from any regime permitting the cross-border provision of services into the E.U. other than by branch or authorised subsidiary.
  - Equivalence is not a unitary concept, it means different things in relation to different market activities.
  - The E.U. Commission can rescind a favourable equivalence decision, once granted.
  - No country has an automatic right to a favourable equivalence decision.
  - Equivalence can require more than an alignment of core legislative rules (see next slide).
  - Equivalence is not a "maximum harmonisation" decision. Some Third Country regimes permit Member States to impose optional additional constraints on Third Country service providers.

Super-equivalence?

- Some commentators have suggested that the U.K. will be not merely equivalent post-Brexit but "super-equivalent" because, under plans for the transposition of existing E.U. laws into the U.K. legal system, it will have identical laws to other Member States.
- If this is intended to reflect the idea that the UK is guaranteed to benefit from equivalence decisions across the board, then it is probably not accurate.
- A positive equivalence determination can require more than an alignment of core legislative rules. It may require:
  - an alignment of incidental rules (e.g., on the conflict of laws)
  - a synchronisation of regulation by national competent authorities
  - an alignment of prudential regulation to support an equivalence decision on conduct regulation (and *vice versa*), close coordination of supervisory practices and/or
  - adherence by the Third Country in question to shared international commitments and standards.
- There is, however, little clarity on these questions at this time: a consistent jurisprudence of equivalence decisions has not been established.
- In any event, the more pressing question is likely to be: how long will the U.K. remain equivalent or "super-equivalent" going forward.

Supra-equivalence

- Several interest groups have recommended that the U.K. should adopt as its negotiating objective a more robust, bespoke equivalence regime.
  - *A Blueprint for Brexit: The Future of Global and Financial Services and Markets in the UK* by Barnabas Reynolds on behalf of Politeia, advocates for "Expanded Equivalence" as one possible way forward.
  - *The EU's Third Country Regimes and Alternatives to Passporting* by Hogan Lovells on behalf of the International Regulatory Strategy Group, advocates for a bespoke market access regime between the U.K. and E.U. based on mutual recognition and, in the alternative, for "extending and enhancing" existing Third Country Regimes.
- A new "supra-equivalence" regime would ideally provide more predictability than the current patchwork of sectoral Third Country regimes. It might, for example, include a guarantee that an equivalence determination could not be withdrawn without notice and it might vest the U.K. with a right to refer an equivalence decision to a diplomatic joint committee established for the purpose.

"Fourth Country" anyone?

- One aspect of the U.K.'s hard Brexit will be the loss of the E.U.'s mutual recognition arrangements with other Third Countries.
- For example, U.K. CCPs may not automatically qualify for the substituted compliance concessions awarded recently to E.U. CCPs by the CFTC.
- It will be necessary to start from scratch and for U.K. competent authorities to negotiate bilateral mutual recognition arrangements for each Third Country jurisdiction in each area of market activity.
- For some period, then the U.K. may be in a less advantageous position than other Third Countries, given that it must renegotiate financial markets access with both the E.U. and with other Third Countries. (Would this make it a "Fourth Country"?)

Transition

- Given the uncertainties inherent in the U.K. falling back on Third Country regimes, market participants are keen that the U.K. and E.U. should agree transitional arrangements as early as possible.
- From the U.K.'s perspective this should include a continuation of passporting rights until an alternative basis for access to the single market can be negotiated.
- Given the complexity of the issues and markets at stake, it seems likely that a staged approach will be taken to negotiating transitional arrangements, starting with areas where the mutual benefit in preserving current arrangements is clearest or the issue is otherwise uncontroversial. (One example of an early deal that could usefully be made is over the use of London-based financial benchmarks for valuation and reference rate purposes by E.U. supervised entities.)

STANDSTILL

Theresa May, 2 October 2016

The U.K. must now determine its future relationship with the E.U. The final thing I want to say about the process of withdrawal is the most important. And that is that ***we will soon put before Parliament a Great Repeal Bill****, which will remove from the statute book—once and for all—the European Communities Act.*

This historic Bill—which will be included in the next Queen's Speech—will mean that ***the 1972 Act, the legislation that gives direct effect to all E.U. law in Britain, will no longer apply from the date upon which we formally leave the European Union****. And its effect will be clear. Our laws will be made not in Brussels but in Westminster. The judges interpreting those laws will sit not in Luxembourg but in courts in this country. The authority of E.U. law in Britain will end.*

As we repeal the European Communities Act, ***we will convert the "acquis"—that is, the body of existing E.U. law – into British law****. When the Great Repeal Bill is given Royal Assent, Parliament will be free—subject to international agreements and treaties with other countries and the E.U. on matters such as trade—to amend, repeal and improve any law it chooses.*

Department for Exiting the European Union, 2 October 2016

F
M
L
C

The European Communities Act ("ECA") has meant that if there is a clash between an act of the British Parliament and E.U. law, E.U. law prevails. The European Court of Justice (ECJ) has interpreted E.U. law and delivered judgments that were binding on the U.K. and other member states. ***The repeal Bill will end ECJ jurisdiction in the U.K.***

The Repeal Bill will include powers for ministers to make some changes by secondary legislation*, giving the Government the flexibility to take account of the negotiations with the E.U. as they proceed.*

It will also ensure that the Government can establish new domestic regimes in areas where regulation and licensing is currently done at an E.U. level*, and amendments are required to ensure the law operates effectively at a domestic level. The ECA created a power which currently exists for Ministers to make secondary legislation to give effect to E.U. law. […]*

In order for the U.K. to withdraw in an orderly way, ECA repeal will ensure that legislation is passed in advance so that E.U. law ceases to apply and domestic law can take its place on the day of exit.

The Great Repeal Bill
What we do know about it…

F
M
L
C

- The Bill will be included in the Queen's Speech next spring (May 2017).
- That means it is scheduled to come after the Prime Minister's March 31 deadline for triggering Article 50
- It will repeal the European Communities Act 1972.
- It will take effect on the day the U.K. ceases to be part of the E.U.
- E.U. law will then, by virtue of the new provisions, cease to apply in the U.K.
- The new Act will transpose the E.U. *acquis* into U.K. law.
- It will include powers for ministers to alter the *acquis* by secondary legislation.
- And it will establish a new domestic platform for regulatory agencies.

The Great Repeal Bill
What we don't know about it…

F
M
L
C

- Will the U.K. transpose the entire *acquis* on Brexit day, or just those parts regarded as favourable or essential? (For reasons discussed below, it may not be practicable to incorporate the entire *acquis* "at the stroke of a pen".)
- How will the new Act impact on the wider exit negotiations both before and after it is enacted?
- What sort of Parliamentary scrutiny will there be (a) of the new Act; (b) of the exercise by ministers of their legislative powers to alter the *acquis* under the new Act?
- How will the devolved parliaments/assemblies interact with the legislative process?
- Will the new Act indicate that rules of the *acquis* are no longer be required to be interpreted in a manner consistent with ECJ case law? If so, will new guidelines on the interpretation of the *acquis* be included?

We do not yet have any clarity on the draft Bill, nevertheless on the little we know about the new Act, there are several significant issues which arise…

The Great Repeal Bill
Issues and challenges I

F
M
L
C

- First, section 2(1) European Communities Act currently provides that provisions of E.U. law which are directly applicable or have direct effect, including certain articles of the E.U. Treaties, are automatically binding "without further enactment". So, when an E.U. Regulation enters into force, it automatically becomes part of national law, without the need for implementing legislation, as would usually be required for obligations assumed under international law.
- When section 2(1) is repealed, rules of E.U. law which have not been separately implemented—e.g. Regulations like EMIR and MiFIR—will disappear, unless a "standstill" provision is enacted incorporating them into national law.
- The simplest "standstill" provision would incorporate Regulations wholesale—*including references to the secondary jurisdiction of E.U. institutions*. This is likely to be politically unacceptable but a more bespoke solution will be time-consuming and complicated. (One suggested solution is to append a schedule to the Act for each E.U. Regulation in force!) Can it be done in the seven months from October 2016 to May 2017?

The Great Repeal Bill
Issues and challenges II

F
M
L
C

- Second, the Bill will contain provisions for the government to repeal or amend primary law using subordinate legislation.
- These are commonly known as "Henry VIII clauses" following the Statute of Proclamations of 1539, which gave King Henry VIII power to legislate by proclamation. Modern governments have relied on these clauses sparingly and only for tightly-circumscribed purposes. (A ministerial power to make regulations amending the law on financial collateral is set out in section 255 of the Banking Act 2009.)
- Using such clauses to amend the vast E.U. *acquis* could become a thorny constitutional and political issue.

The Great Repeal Bill
Issues and challenges III

F
M
L
C

- Third, the E.U. *acquis* is a "living" body of law which, even in the absence of new legislative proposals by the E.U. Commission, is frequently consolidated, amended and/or supplemented by legislative activity at all three levels of authority (primary, secondary and tertiary). E.U. measures which are already in existence at the date of Brexit will soon begin to look different from the *acquis* adopted by the U.K. In some cases the policy behind the changes will be rejected the U.K. but in large numbers these legislative "refreshers" are likely be formal, sensible or uncontroversial. There is a risk that U.K. ministerial resources will be unnecessarily monopolised by the activity of assessing each update to see whether it should be reflected in U.K. law.
- If the U.K. is hoping to establish "equivalence", the process of keeping up-to-date may be particularly important.
- The challenges are more acute in relation to Regulations (in respect of which changes can take effect without any further implementation process owing to their "direct effect") than in relation to Directives.

The Great Repeal Bill
Issues and challenges IV

F
M
L
C

- Fourth, a closely related point is the challenge of dealing in the draft Bill with legislative references to the powers of institutions such as the European Commission, the ECJ, ESMA and the EBA, which won't have jurisdiction over the U.K.
- These latter two issues are closely inter-related in relation to the powers of the European Commission to adopt delegated and implementing measures. In financial markets law, Level 2 Measures are normally informed by technical standards specified by ESMA or the EBA under a legislative mandate. This is the process by which the European Union tackles the uncertainty which would otherwise result from a lack of detailed provisions.
- If the jurisdiction of E.U. institutions is to be fully abrogated in the U.K., the Great Repeal Bill must incorporate bespoke versions of existing Regulations which make sense without these legislative mandates. Doing so will be time-consuming and complicated.
- Even then, the challenges and resource-implications of remaining aligned with the "living" laws of the European Union, for the purposes of remaining equivalent, will be considerable. The alternatives are to accept the risk of non-equivalence or to submit to the continuing jurisdiction of E.U. institutions for limited purposes.

European Union Legal Acts: extract from the official website of the European Union

EU legal acts and their classification

Under Article 288 of the Treaty on the Functioning of the European Union (TFEU), the European institutions may adopt 5 types of legal acts:

- the regulation;
- the directive;
- the decision;
- the recommendation;
- the opinion.

Regulations, directives and decisions are binding legal acts, while the recommendation and the opinion are not.

A decision can specifically address one or more addressees (EU countries, businesses or individuals). There are also decisions with no specific addressee, particularly in the area of the Common Foreign and Security Policy (CFSP).

Delegated acts

Article 290 of the TFEU allows the EU legislator (generally, the European Parliament and the Council) to delegate to the Commission the power to adopt non-legislative acts of general application that supplement or amend certain non-essential elements of a legislative act.

For example, delegated acts may add new (non-essential) rules or involve a subsequent amendment to certain aspects of a legislative act. The legislator can thus concentrate on policy direction and objectives without entering into overly detailed and often highly technical debates.

The delegation of power to adopt delegated acts is nevertheless subject to strict limits. Indeed, only the Commission can be empowered to adopt delegated acts. Furthermore, the essential elements of an area may not be subject to a delegation of power. In addition, the objectives, content, scope and duration of the delegation of power must be defined in the legislative acts. Lastly, the legislator must explicitly set in the legislative act the conditions under which this delegation may be exercised. In this respect, the Parliament and the Council may provide for the right to revoke the delegation or to express objections to the delegated act.

This procedure is widely used in many areas, for example: internal market, agriculture, environment, consumer protection, transport, and the area of freedom, security and justice.

Implementing acts

Responsibility for implementing legally binding EU acts lies primarily with EU countries. However, some legally binding EU acts require uniform conditions for the implementation. In these cases, the Commission or, in duly justified specific cases and in cases provided in the Articles 24 and 26 of the Treaty on European Union, the Council is empowered to adopt implementing acts (Article 291 of the TFEU).

Key EU legislation affecting the financial markets

Industry Activity	EU Legislation relied on/applied	Derives from global (G20 or other) commitments?	Implemented in UK law? If so, how?	Introduces equivalence concept and/or third country rules?	Refers to organs of EU (ESAs, Commission)	Establishes reciprocity between Member States' authorities?	Uncertainty issues	Comments
Derivatives Clearing	EMIR	Yes – G20	In part – Part VII Companies Act	Yes – for CCP recognition	Yes, ESMA to establish RTS	Yes – regulatory authorities, through supervisory colleges	EMIR will lose "direct effect", replicating it would be tricky in view of role of ESMA and supervisory colleges	Core infrastructure regulation
Litigation	Brussels I Regulation	No.	In small part – Civil Jurisdiction and Judgments Act replicates reciprocity for 4 UK jurisdictions, see also Civil Procedure Rules ("CPR")	No.	Yes – EU Commission has small administrative role.	Yes - courts	Brussels I will lose direct effect, will the UK be able to accede to Lugano or Hague Choice of Courts Convention? There may be a loss of reciprocity on the enforceability of judgments.	Supports London as popular destination for corporate resolution, reciprocal enforcement of UK judgments enhances legal certainty and effectiveness
Corporate insol.	EUIR	No	In small part – see CPR		Yes – EU Commission has small administrative role.		Risk to reciprocity in respect of decisions taken by the courts of the UK where it is the insolvency forum.	Reciprocal enforcement of UK judgments enhances legal certainty and effectiveness
Bank resolution	BRRD	Yes – G20	Yes, through amendments to the Banking Act 2009	Yes, contains detailed provisions for relations with third countries.	Yes – EU Commission to adopt secondary legislation. The EBA to prepare draft RTS and ITS.	Yes – resolution authorities through resolution colleges.	If the UK becomes a third country, EU financial institutions would be required to apply Article 55 (contractual recognition of bail-in) to contracts entered into with UK counterparties. There is also the question of reciprocity and the degree to which resolution action undertaken by the UK resolution authorities will be recognised by EU Member States as well as the question of the role of the UK authorities in resolution colleges.	
Securities issuance	Prospectus Directive/ Regulation	No	Yes – through changes to the Financial Services and Markets Act 2000 ("FSMA"), the Prospectus Rules and consequential amendments to the Listing Rules and the Disclosure and Transparency Rules. The Prospectus Amending Regulation has direct effect in Member States.	Yes – equivalence decisions to be taken by the Commission. EU Member States to conclude cooperation arrangements with supervisory authorities of third countries.	Yes, EU Commission to adopt secondary legislation, ESMA to develop draft RTS and ITS and deliver opinions on third country prospectus regime.	No	Loss of "passporting" rights.	The Prospectus Directive provides for a single regime throughout the EU governing the requirement for a prospectus and its content, format, approval and publication.

Key EU legislation affecting the financial markets

Industry Activity	EU Legislation relied on/applied	Derives from global (G20 or other) commitments?	Implemented in UK law? If so, how?	Introduces equivalence concept and/or third country rules?	Refers to organs of EU (ESAs, Commission)	Establishes reciprocity between Member States' authorities?	Uncertainty issues	Comments
Benchmarks	BMR	Yes – but only EU has implemented	In part – through FCA Handbook	Yes, establishes three routes to the recognition of "third country" benchmarks	Yes, ESMA to maintain register and prepare RTS.	Yes through supervisory colleges	BMR will only just have come into application after two years, only to lose direct effect in the UK. Replicating it would be tricky in view of role of ESMA and supervisory colleges	
Investment services	MiFID/MiFIR	Yes, in part.	Entry into force of MiFID II and MiFIR delayed to 3 January 2018.	Yes, access dependent on the type of client a third country investment firm intends to provide services to.	Yes, ESMA and the Commission	No	If the UK triggers Article 50, it is likely that MIFID II/ MiFIR will enter in to force before the UK's exit under that procedure. The UK could choose to implement MiFID II or introduce alternative legislation.	MiFID II and MiFIR are designed to take into account developments in the trading environment since the implementation of MiFID in 2007 and, in light of the financial crisis, to improve the functioning of financial markets making them more efficient, resilient and transparent.
Securities Markets	MAR/ Directive on Criminal Sanctions for Market Abuse ("MAD")	In part – MAR introduces a trading obligation for derivatives which are eligible for clearing under EMIR in accordance with G20 commitment.	Being a regulation, MAR takes direct effect in the UK (entered into force on 3 July 2016 with certain provisions delayed to 3 January 2018). Substantial amendments made to the FCA Handbook including Chapters 2 & 3 of the Disclosure and Transparency Rules The UK chose to opt out of CSMAD.	No but has extraterritorial impact – it captures any actions and omissions in the EU and also in a third country where they relate to financial instruments captured by under it.	EU Commission and ESMA	No	MAR will lose "direct effect" in the UK but will continue to confer a degree of extra-territorial jurisdiction on EU Member States in respect of UK-traded securities with a connection to EU-traded securities. This may mean that EU competent authorities levy penalties on UK firms for market abuse in respect of UK securities exclusively admitted to trading in the UK.	Market abuse regulation facilitates fair and effective markets and enhances reputation of participants.
Banking (prudential supervision)	CRR/CRD IV	Yes – G20	CRR is directly applicable in the UK. CRD IV is implemented in the UK by Treasury Regulations and rules made by the PRA and the FCA.	For CRR – Commission to adopt implementing acts on the equivalence of third country regimes. For CRD IV, Commission to negotiate agreements with third countries re supervision on a consolidated basis.	CRR/ Commission, EBA and the ESRB CRD IV/ Commission and the EBA	For CRD IV, yes through colleges of supervisors. Reciprocity for firms incorporated in EEA states that have adopted and implemented CRD IV.	Would CRR cease to have effect in the UK following formal withdrawal/exit from the EU?	CRR and CRD IV form the legal framework governing banking activities, the supervisory framework and the prudential rules for credit institutions and investment firms.
Financial contracts	Rome I Regulation	No	Implemented through two statutory instruments.	No, Commission to make a proposal to the EU Parliament and Council on the procedures under which Member States are able to negotiate and conclude agreements with third countries.	No	Yes, courts		Rome I sets out EU-wide rules for determining which national law should apply to contractual obligations in civil and commercial matters involving more than one country.

Key EU legislation affecting the financial markets

Industry Activity	EU Legislation relied on/applied	Derives from global (G20 or other) commitments?	Implemented in UK law? If so, how?	Introduces equivalence concept and/or third country rules?	Refers to organs of EU (ESAs, Commission)	Establishes reciprocity between Member States' authorities?	Uncertainty issues	Comments
Alternatives	AIFMD	In part- G20	Through the Alternative Investment Fund Managers Regulations 2013 and policy statements from the FCA.	Third country AIFM is required to comply with the Directive and certain other requirements, depending upon whether the AIF is EU or non-EU including cooperation arrangements, tax information sharing, and the third country AIFM must not be established in a jurisdiction that is designated as non-cooperative by the FATF.	Commission, ESMA, EBA	No	Loss of passporting rights. Will there be transitional arrangements for AIFs already in the market and fully passported prior to the date of Brexit?	The AIFMD provides an EU framework for the regulation and oversight of alternative investment fund managers (AIFMs).
OTC Derivatives	FCAD	No	Implemented in the UK by the Financial Collateral Arrangements (No. 2) Regulations 2013	No	No	No	It remains to be seen whether the UK will retain extant protections for financial collateral arrangements.	FCAD provides a harmonised EU regime for the receipt and enforcement of financial collateral.
Securities settlement	SFD	No	By the Financial Markets and Insolvency (Settlement Finality) Regulations 1999.	No	Commission in an administrative capacity.	No	Whether the UK will retain protections for transfer orders in payment and securities settlement system and whether it will disapply insolvency law from interfering in the insolvency of a participant in such a system.	The SFD is aimed at reducing the systemic risk associated with participation in payment and securities settlement systems, and in particular the risk linked to the insolvency of a participant in such a system.
Securitisation	Forth-coming…	No but Commission will consider if and how to incorporate criteria developed by the BCBS and IOSCO	Regulation yet to be adopted by the EU.	No	ESMA, EBA, EIOPA and the Commission	No		The proposed Regulation provides a framework to identify simple, transparent and standardised securitisations and to allow investors to analyse associated risks.
Money Markets	MMFs Regulation	No	Regulation yet to be adopted by the EU.	No	Commission, ESMA, ESRB	No		The Proposed Regulation introduces new rules aimed at making MMFs more resilient to future financial crisis and at the same time securing their financing role for the economy.
Securities Financing	SFTR	Yes, follows the FSB Policy Framework	Directly applicable	Yes, it does provide for equivalence and recognition of trade repositories and equivalence of reporting.	Commission, ESMA, EBA, EIOPA, ESRB, ESCB including the ECB	No	SFTR will lose direct effect.	The SFTR provides a set of measures for enhancing regulators' and investors' understanding of securities financing transactions

The Great Repeal Bill
Issues and challenges V

F
M
L
C

- The Great Repeal Bill will "*end ECJ jurisdiction in the U.K.*".
- This raises the question of whether, and to what extent, CJEU case decisions will retain the force of precedent or persuasive authority in the English and Scottish legal systems: a) in relation to the transposed acquis; and b) in relation to any new rules of U.K. statute law that are aligned, for reasons of equivalence or otherwise, with E.U. laws brought into force after Brexit.
- On the one hand, following CJEU jurisprudence arguably amounts to giving continued effect to decisions of the CJEU, and to do so in a situation where the U.K. will not have been able to nominate judges to the court or advocate for its preferred approach.
- On the other hand, abandoning any expectation that CJEU jurisprudence is binding, or at the least heavily persuasive, would leave a disconcerting and possibly disruptive legal vacuum. It would also allow divergences to grow between E.U. and U.K. law in areas where there might be much to be said for trying to maintain consistency.

WHAT LIES AHEAD?

The pressure point: authorisation

- Without a passport, U.K. firms will need to obtain authorisation to do business in the E.U.—as a subsidiary or *via* a branch ("direct authorisation", this is less common).
- For a large group to establish and resource a subsidiary large enough to do the volume of business currently passported out of London is likely to take a significant length of time. Drawing up an application for authorisation, and the determination itself may take many months more, particularly in a bottleneck situation.
- The direct authorisation process typically requires the participation of the "home" supervisory authority (an MoU between home and host authorities may be required), and can take even longer.
- These processes could become more fraught in the context of the Article 50 negotiations. For example, the status of U.K. staff wishing to work in the E.U. may be unclear.
- Some applications for authorisation could be slowed by discussions about the extent to which functions can be outsourced to London (see next slide).
- Additional sectoral restrictions may apply: e.g. insurers wishing to transfer risks between group companies must comply with Part VII of the Financial Services and Markets Act.
- Firms may find that these processes, aimed at obtaining comprehensive authorisation within the E.U. for business lines currently provided out of London, take more than two years. For that reason, many U.K.-based firms are already in discussion with authorities in other Member States regarding shifting operations out of London.

Uncertainty ahead

- A number of legal and practical uncertainties have come to the fore as financial institutions consider their group structure and the conduct of cross-border business after Brexit:
  - Which cross-border activities, if any, can be carried on in the E.U. without authorisation?
  - To what extent might a banking licence in an E.U. Member State allow financial products which are "fronted" (marketed, sold, traded, advised upon and reported) by an authorised entity to be "backed" (invested, collateralised, underwritten etc) by an entity in the U.K.? Or would this run contrary to E.U. capital adequacy rules?
  - Can products sold by an authorised entity in the E.U. be serviced by U.K. servicers under outsourcing arrangements?
  - What is the minimum presence that must be established in a Member State for authorisation to be obtained?
  - Can legacy business with E.U. clients continue to be serviced by U.K. financial institutions after Brexit? Will the answer vary from jurisdiction to jurisdiction?
  - To what extent, if any, do WTO rules guarantee freedom to financial service providers to conduct cross-border business between WTO member states?
  - What will be the role of the ESAs regarding U.K. entities after Brexit?

A thorny issue: Euro clearing

- London is the world's biggest centre for clearing EUR derivatives.
- In 2015, the ECB lost a case at the CJEU over whether clearers of EUR derivatives should be located in the Eurozone. Since then the ECB has set up a swap line with the Bank of England, where sterling can be exchanged for euros, should liquidity shortages occur.
- Since the referendum result, the ECB has warned that it will be difficult for the U.K. to retain this role after Brexit. Benoît Coeuré, a member of the ECB's executive board, said it would be "challenging" for Britain to devise post-Brexit regulations that would provide sufficient confidence for UK-based CCPs to continue to process trades in EUR.
- The ECB has also called for E.U. institutions to seek more oversight of EUR trade in London.
- A letter from Mario Draghi to a member of the European Parliament, sent on 10 January 2017, noted that E.U. financial regulations give the ECB "broadly appropriate guarantees for the supervision and oversight" of UK CCPs, including participation in supervisory colleges. He wrote that "It will be important to find solutions that at least preserve, or ideally enhance, the current level of supervision and oversight".
- Xavier Rolet, CEO of the London Stock Exchange, has said recently, speaking before the Treasury Select Committee, that 232,000 U.K. jobs are at stake if clearing of EUR derivatives moves out of the U.K.

CONCLUSION

Postscript
London—the investment banker of Europe

- On 30 November 2016 the Governor of the Bank of England observed that the UK was "effectively the investment banker for Europe".
- The impact of Brexit on U.K. financial institutions is likely to be severe for the reasons outlined above but the impact of Brexit on the E.U. (and indeed the global economy) should not be ignored.
- One of the consequences of the restructuring of U.K. banks and infrastructure bodies so as to conduct business, in part, through E.U. authorised entities is likely to be a fragmentation of pools of liquidity. This in turn is likely to lead to increased costs, risks and volatility in E.U. financial services.
- The fragmentation is likely to be all the more severe because it appears unlikely that any other city could, in the short term, absorb the City of London ecosystem wholesale, meaning that institutions and markets are likely to be divided up piecemeal among financial centres in, say, Dublin, Paris, Luxembourg, Frankfurt and Amsterdam.
- Foreign exchange and fx derivatives, large risk insurance and reinsurance, and interbank lending are examples of markets likely to suffer significant negative effects from this fragmentation.

The End

Financial Markets Law Committee
contact@fmlc.org
+44 (0)20 7601 5118