No Deal Frequently Asked Questions (FAQs) for corporates As At 24th July 2019

Context and introduction

Financial services are a vital component of businesses' supply chain. Financial institutions have put in place plans to make changes to their business and operations to maintain the continuity of financial services as the UK exits the EU. We have found that other businesses are perhaps less aware of the potential implications of these changes to how they will continue to access financial services.

Most businesses are currently focusing on the commercial considerations and the direct impacts of Brexit, including movement of goods across borders. It is important that they are aware of changes that may take place in the financial services sector, so that they understand what this means for how they access financial services in the United Kingdom (UK) and the European Union (EU), and if necessary, can take action to avoid disruption that may arise.

While the Withdrawal Agreement (WA) has been ratified by the EU with the clause of the transition period running from exit date to the end of December 2020, this is yet to be ratified by the UK parliament, and so these FAQs will focus on a "no deal" outcome, where there is no transition period and the terms of access for financial services between the UK and the EU will fall back on World Trade Organisation (WTO) rules.

In the absence of agreement on a formal transition period, HM Treasury (HMT), the Bank of England (BoE) and Financial Conduct Authority (FCA) have set out plans for a temporary permissions and recognition scheme, which will allow EU-authorised firms currently passporting into the UK who wish to continue serving business clients in the UK, to operate in the UK for a limited period after withdrawal while they seek authorisation or recognition from UK regulators. Alongside the temporary permissions regime, the Government has created further legislation, to ensure existing contractual obligations not covered by the temporary permissions regime can continue to be met. The Government has enacted legislation for the financial services contracts regime (FSCR) which will provide a limited period of time during which EEA passporting firms can continue to service UK contracts entered into prior to exit, in order to wind down their UK business in an orderly fashion.

The Confederation of British Industries (CBI), working closely with Association of Corporate Treasurers (ACT), have developed a set of frequently asked questions (FAQs) that corporate treasurers and those with risk management responsibilities may find helpful to consider in the context of Brexit. We are compiling responses to these questions having consulted members from the FS sector, UK regulators, financial services trade associations and other stakeholder groups with the aim of providing a set of FAQs to inform businesses. This will provide general advice to firms and will not constitute legal advice.

BELOW WE HAVE PROVIDED SOME ANSWERS AS AT 24th JULY 2019 TO AN INITIAL SET OF QUESTIONS FOR CONSIDERATION. PLEASE SEND ANY FEEDBACK, COMMENTS OR ADDITIONAL QUESTIONS YOU WANT ANSWERED TO technical@treasurers.org or Judith.Parsons@cbi.org.uk.

The FAQ schedule will be updated as negotiations continue.

Disclaimer:

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GENERAL NOTES

a. **FCA/PRA Temporary Permissions Regime (TPR)**: see https://www.fca.org.uk/markets/eu-withdrawal/temporary-permissions-regime (https://www.bankofengland.co.uk/news/2018/july/temporary-permissions-and-recognition-regimes). This is intended to enable European Economic Area (EEA) firms which currently operate in the UK (using the EEA passport) to continue to do so if a Transition Period cannot be agreed (that is a no deal Brexit). Firms must apply for their Temporary Permission. A fuller description of the regime appears below.

b. **Withdrawal Act (WA):** see http://www.legislation.gov.uk/ukpga/2018/16/section/13/enacted. The UK complies with EU law through a mixture of directives, regulations and other means. A **directive** is a legal act of the EU which requires member states to pass their own legislation to achieve a result defined in the directive. A regulation is deemed to be implemented in the member state. The WA is intended to bring current EU law into UK law with appropriate adjustment.

c. **Transition Period (TP):** a period, yet to be agreed, from exit date (still to be determined) during which the detail of Brexit can be agreed. Many current arrangements, such as free movement of goods would continue throughout the TP and the UK would remain subject to EU law and its trade deals but is able to start negotiating trade deals independently of the EU. It is assumed that EEA state passporting rights will enable EEA financial services businesses to continue operating in other EEA states throughout the TP. The TPR described in (a) above is intended to offer a means of continuing business by way of contract if a no deal Brexit occurs.

d. **Technical Notes for No-deal Brexit**: the UK government has issued Technical notes on the outcomes of a no deal Brexit for a broad range of circumstances. These are being added to as at the date of writing. Those relevant published notes are quoted in the text below and others will be added in updates as relevant. The Technical notes can be accessed through this link: https://www.gov.uk/government/collections/how-to-prepare-if-the-uk-leaves-the-eu-with-no-deal

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1. TEMPORARY PERMISSIONS REGIME (TPR)	
What is the TPR and how does this work?	EEA firms that enter into the TPR will be able to continue operating in the UK within the scope of their current permissions for a limited period after exit day, while seeking full UK authorisation. It will also allow funds with a passport to continue marketing in the UK while seeking UK recognition. FCA solo regulated firms must notify the FCA that they wish to use the TPR by 30th October 2019. It is no longer possible for Credit Institutions and Insurers to submit a notification to enter the regime. It is not currently possible for EEA authorised payment institutions, EEA authorised payment institutions, EEA registered account information service providers and EEA authorised electronic money institutions to submit a notification to enter the regime. Fund Managers that wish to update their notification should notify the FCA by 16th October 2019. The FCA will only accept new notifications from Fund Managers after the 16th October 2019. After the notification window closes, the FCA will inform solo regulated firms of when they have to submit their application for authorisation – their 'landing slots'. Further details of the scheme and open consultations are available here: https://www.fca.org.uk/markets/eu-withdrawal/temporary-permissions-regime UK firms operating within the EU are not able to rely on the TPR. They will be required to rely on Member States' emergency measures, where those exist. Across the EU, Member States have taken different approaches.
What is the Financial Services Contracts Regime and how does it work?	On 28 February 2019 the Financial Services Contracts Regime (FSCR) Statutory Instrument (SI) became law. This legislation establishes the Supervised Run-Off (SRO) and Contractual Run-off (CRO) mechanisms. These will serve as a backstop to the TPR by allowing firms that do not enter the TPR, or leave it without the necessary permissions, to service their pre-existing contracts for a limited period after exit and wind down their business in an orderly fashion. There are limits to the FSCR regime, for example EEA established fund managers, depositories and trustees will not be able to manage or provide depository services to UK authorised funds, unless they enter the TPR.
How long will the TPR remain in place?	We expect the regime will be in place for a maximum of three years within which time firms and funds will be required to obtain authorisation or recognition in the UK. The SI provides HMT with the powers to extend the length of the regime by no more than 12 months at a time, under certain circumstances. The SI also extends the deadlines for PRA or FCA to make a determination on applications for authorisation for EU firms operating in the UK via a passport to up to three years mirroring the length of the TPR. Once a firm is authorised, it will leave the TPR and become regulated in the UK.
Which firms/funds will be eligible to use the TPR?	The following firms will be able to use the regime: • Firms which have passports in place before exit day, including firms with top-up permission. • Treaty firms which qualify for authorisation before exit day, including firms with top-up permission. • Electronic money and payment institutions who are exercising their passporting rights under the Electronic Money Directive (EMD) or the Payment Services Directive (PSD2) before exit day. • Credit institutions and insurers (the notification period for PRA regulated firms has now passed). The following EEA-domiciled funds will also be able to use the regime, if the FCA has received notification of their intention to market in the UK under the relevant passport prior to exit day: • Undertakings for Collective Investment in Transferable Securities (UCITS) schemes • Alternative Investment Funds (AIFs) Further information: https://www.fca.org.uk/publications/consultation-papers/cp18-29-temporary-permissions-regime-inbound-firms-and-funds.
What if the firm does not enter the TPR or, if it does, has its application declined?	Firms that have not submitted a notification will not be able to use the TPR and thus EU and EEA firms will no longer be able to passport into the UK. As noted above, the SRO and CRO mechanisms will take effect. Most financial services providers will be able to use this regime for five years after entry into the FSCR (whether they enter on exit day, or whether they enter after having been in the TPR for a period of time). This will allow the majority of contracts with UK customers to come to a natural conclusion, meaning there will be no significant impact for UK customers. Where providers have long-term contracts, five years is considered a sufficient amount of time to allow them to take mitigating action by, for example, transferring their contracts to a UK entity, to ensure that any impact on UK customers is minimised. The exception to this five-year time limit is for contracts of insurance. Many long-term policies, such as life insurance, may take more than five years to come to a natural end. There will therefore be a longer time limit, of 15 years, for contracts of insurance, safeguarding UK customers who purchased their policies in good faith. The SI provides HM Treasury the power to extend the length of the FSCR by up to 5 years at a time in certain circumstances.

2. CONTRACTUAL ISSUES	
a. What is, or will be, the legal basis for cross border documents to remain legally enforceable? • Will parties be able to rely on contract-agreed English Law if one party is not in the UK, or the contract is performed outside of the UK? • Will Rome I and Rome II be enacted in the UK under the Withdrawal Act?	**English Law contracts**: If you are an English or Welsh company, it is most likely that your contracts (extending to loan and derivative agreements for finance) are under English Law. Scottish and Northern Ireland companies may use local law or English law. English Law is often used for agreements between UK and EU27 businesses. REGULATION (EC) No 864/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) enables an EU entity, which the UK remains until either the withdrawal date or the end of the TP, to choose the jurisdiction for its contracts including use of non-EU jurisdictions. Rome II continues to apply to the EU27 following Brexit. Rome II is included in the Withdrawal Act (WA). Less certain is how post Brexit judgements by UK courts will remain enforceable in EU27 member states. The UK Government has indicated that the UK will accede in its turn to the 2005 Hague Convention. This will give a similar result in many cases. The UK Government may also sign up to the Lugarno Convention which would align the position further with the present position. See: https://hsfnotes.com/litigation/2018/09/13/brexit-no-deal-note-on-jurisdiction-and-enforcement-of-judgments/ **No-deal Brexit**: The government published on 13 September 2018 a technical note on "Handling civil legal cases that involve EU countries if there's no Brexit deal": https://www.gov.uk/government/publications/handling-civil-legal-cases-that-involve-eu-countries-if-theres-no-brexit-deal/handling-civil-legal-cases-that-involve-eu-countries-if-theres-no-brexit-deal This contains the following advice: "All parts of the UK would retain the Rome I and Rome II rules on applicable law in contractual and non-contractual matters, which generally do not rely on reciprocity to operate. This would ensure that businesses and individuals could generally continue to use the same rules as at present to determine which law would apply in cross-border disputes."
b. How will existing contracts continue post Brexit? • What are financial services providers doing to mitigate risks on contracts?	Financial services providers can take a number of steps to mitigate the risk of being unable to service cross-border contracts. Those actions may involve setting up entities in other jurisdictions and transferring contracts to those entities or selling books of business to providers who are based in the jurisdiction where the customers are based. See specific notes below on ISDA Agreement, Loan Agreements, and Insurance. In the event of a no-deal Brexit the TPR will enable an EU27 financial services supplier to continue to service its UK contracts, if the service provider applies for permission under the TPR. In the event the WA is ratified, it contains the provision of a transition period during which EU law, and rights and obligations derived from EU law, continue to apply. This includes new EU laws that are agreed and implemented during that period. This means that financial services providers will be able to continue business-as-usual during the transition period. If you are concerned about your provider's ability to continue servicing your contract, in the first instance you should contact your provider. Performance of certain derivative life-cycle events such as roll-over, novation and portfolio compression, may be construed as entry into a new derivative transaction that is subject to either MiFID II passporting or authorisation in the relevant EU member state. More information on the ISDA contracts can be found at https://www.isda.org/2019/01/22/brexit-faq/#_ftnref4. It should be noted that where a contract has a lifecycle event that could be construed as a new contract, then loss of the passport could render such activity illegal in the EU.
• What are regulators doing to mitigate the potential impacts on contract validity?	The FCA and PRA will offer the Temporary Permissions facility for EU27 suppliers of financial services. An EU27 non-financial services provider will need to ensure it is enabled to export from the EU27 and import into the UK. See Technical Notices for industry specific advice. Some EU member states are taking steps at national level to enable continuation of contracts. For example, the French government has passed the French Brexit Act that contains provisions on settlement and contract continuity (details - https://www.lexology.com/library/detail.aspx?g=eb1cc8d9-1513-4993-80a0-856fddeee7b0). Refer to individual member states' guidance on the continuation of contracts.
• Under what circumstances will I need to renew or renegotiate contracts?	In the case of contracts between UK and EU firms, service providers may seek to repaper contracts, where the servicing of the contract under its current terms would be impacted by the loss of passporting. The repapering may be, for example where they are transitioning the contract from one legal entity to another. UK firms with EEA clients may seek to transfer contracts to an EEA entity. We would expect corporates to be contacted by their service provider about this. Your EU27 contract counterparty will need to inform you if it is unable to continue to supply in the UK after the Brexit date, or after the end of the TPR.

c. Can intra-group transactions between UK and EU entities (FX trades, loans/deposits, interest rate and cross currency swaps etc.) continue to be carried out?	Intra-group transactions between UK and EU entities should not be impacted by Brexit. However, the movement of exposures is dependent on EU and member state supervisors and regulators. Firms should contact their individual supervisors.
d. Can I continue to access loan facilities under contracts agreed pre-Brexit?	As a UK entity, loan documentation will often be based on the forms published by the Loan Markets Association (LMA). These forms of document are used for loans written between UK borrowers and banks' lending in the London markets. Your lawyers will be able to advise if this is correct. The following notes reflect a position where a UK corporate is the borrower, and banks currently lending in the London money markets are the lenders. Some groups may have loan agreements where the lenders are group entities within the EU27. These are likely to be subject to local loan agreement standards. In the event the lenders include UK financial institutions, the no-deal effect of loss of passporting rights for UK lenders in EU27 domiciled loan agreements depends on the specific banks and the approach taken by relevant country (for example the UK, Ireland Netherlands do not regulate lenders). There is a patchwork of regulation across the EU member states with regards to lending. The groups will have to check the rules that apply in each member state that they operate in to understand if they will be able to continue to access loan facilities. English Law: There is no Brexit reason to change the governing law of contract. The ability for EU commercial parties to select the law of commercial contracts is written into Rome II which is set out in more detail in section 2.a. above. EU Law references: Your loan agreements may contain some minor references to EU law, and you may need to consider with your lenders how these remain applicable post Brexit. Clauses to Watch: 1. Illegality: what is the consequence of a Lender's participation becoming illegal due to Brexit? 2. Facility Agent: what is the consequence of the Agent's role ceasing to be legal or operational due to Brexit? 3. Transfer and Accession of New Lenders: How do they function? Must they be triggered pre-Brexit or post? Passporting: Lenders may be non-UK and rely on passporting to lend into the UK market. Passporting rights will cease on exit date unless there is a negotiated withdrawal and TP during which to resolve the loss of passporting. The UK's Temporary Permissions Regime is expected to help EU27 lenders to continue to operate in the UK for up to three years. Potential Outcomes: 1. Ratified WA: Transition period allows passporting to continue till 31 December 2020 2. No-deal Brexit: a. No change takes effect until the withdrawal date; b. An EU27 lender may be able to apply for Temporary Permission to continue for up to three years so that it can continue to act as though it is passported under pre-Brexit practice providing its domestic and EU regulations enable it to continue to do so; and c. Your lender is expected to use the three-year period to seek authorisation as a lender in the UK. Otherwise you may be required to agree to transfer of the loan obligation, drawn and undrawn to another lender. LMA documentation can contain terms to enable and describe the process to do so.
e. What is the impact on ISDA derivative contracts?	**Uncleared OTC Derivatives** On March 13, 2019 the Regulatory Technical Standards (RTS) providing relief from clearing and bilateral margin requirements in event of 'no deal' Brexit, for a period of 12 months post UK departure, for contracts novated from a UK to an EEA entity were published in the Official Journal of the EU: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0397&from=EN Subsequently, the European Commission issued a statement to the effect that these RTS will continue to be of benefit in the event of a 'No Deal' outcome as of 31 October 2019: https://ec.europa.eu/info/brexit-preparedness/brexit-notices-explanation_en The window for the novation of non-centrally cleared OTC derivative contracts which fall under the scope of this amending regulation would be open for 12months following the withdrawal of the UK from the EU. Counterparties can however start repapering their contracts ahead of the application date, making the novation conditional upon a no deal Brexit, given the conditional application date of this amending regulation. • **Available 3rd Party Advice:** ISDA have provided a helpful Brexit Q&A at https://www.isda.org/2019/01/22/brexit-faq/. ISDA and other EU27 organisations have identified certain disruptions that might occur in a no deal Brexit: see https://www.isda.org/2018/10/09/cliff-edge-effects-under-eu-law-in-a-no-deal-brexit-scenario/ . • **No-deal Brexit:** According to the FCA, the performance of many contractual obligations agreed before exit is unaffected by the UK's withdrawal. However, the performance of certain activities that are linked to these contracts may be subject to authorisation in member states. There are also potential risks to financial stability and consumer protection – in the EU - if firms cannot service these contracts. https://www.fca.org.uk/publication/impact-assessments/eu-withdrawal-impact-assessment.pdf

	For EEA firms with clients in the UK, the TPR can be utilised. The ability for UK firms to service clients in the EEA is a matter for the European Commission (EC) or a regulator in the local jurisdiction where the business is being performed as per below: **Uncleared OTC Derivatives** The EC is not planning on taking any further action for OTC uncleared derivatives. Instead it calls for firms to prepare for this situation by transferring and seeking relevant authorisations from individual member states. **Cleared Derivatives** In 2018, the UK and EU authorities took action to ensure continuity of access to UK and EU27 CCPs in the case of a no-deal Brexit. In February 2019, the European Securities and Markets Authority (ESMA) announced that in the event of a no-deal Brexit, three central counterparties (CCPs) established in the UK – LCH Limited, ICE Clear Europe Limited and LME Clear Limited – will be recognised to provide their services in the EU. Following the recent Brexit negotiation extension, the recent European Commission statements on March 25 and April 11, 2019 clarified that the CCP and CSD Temporary Equivalence Decisions will continue to be of benefit in the event of a 'No Deal' outcome as of October, 31 2019. https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/communication-preparing-withdrawal-brexit-preparedness-13-11-2018.pdf • Other considerations: a. UK Subsidiaries and branches of EU27 Entities: There has been a process of "domestication" since 2008. Banks, UK and EU27, dependent on their home government for financial support have gradually withdrawn into their national borders. Brexit may enhance this process with the potential for your counterparty to ask for termination, particularly if you are out of the money, or transfer of the transaction to an EU27 entity. Care: the change of residence of the counterparty may trigger gross up clauses for WHT (see following). b. Withholding Tax (WHT): generally, the nature of the parties to derivatives contract are such that WHT is not required to be deducted from interest payments with each party often making a representation to this effect when the derivatives contract is finalised. This cannot be assumed to continue post Brexit because local jurisdictions, EU27 member states or the UK could withdraw the exemptions which enable WHT free payments. Negotiations will be monitored to understand if this is going to occur. We recommend you make your tax advisers aware of the parties with which you have derivatives contracts, so they can keep you informed of the potential to require gross up. You should check the gross up clauses of your derivatives contracts and transactions to understand the consequence of gross up which may include termination. c. Collateralisation: It is expected that cash collateralisation would be no different in treatment to periodic payments under the transaction. Settlement with non-cash collateral may require that the provider possesses certain authorisations to be able to do so and these may change as the Brexit process develops. d. AFME have created a guide for clients on the potential implications of repapering (https://www.afme.eu/en/reports/publications/how-might-wholesale-financial-services-contracts-be-impacted-by-brexit/). This set out a number of FAQs as to how contracts could be impacted. • Requirement to Novate: On February 12, 2019 ISDA sent a letter to ESMA and the European Commission commenting on technical standards on Brexit-related novations and the relief from the margining and clearing requirements to OTC derivative contracts that are transferred (novated) from a UK to an EU counterparty. However, the fact that the relief is contingent on the event of a no-deal Brexit makes it operationally difficult for firms to enter into agreements to novate contracts. ISDA has concerns that EU counterparties are therefore required to wait until closer to exit day before carrying out the novations. https://www.isda.org/a/7SiME/ISDA-Comments-on-the-proposed-technical-standards-on-Brexit-related-novations.pdf Both RTS for the margining and clearing requirements have now been published in the Official Journal of the EU and can be found below. The OJEU states that "counterparties should be able to replace counterparties established in the United Kingdom with counterparties in a Member State without being required to exchange collateral in respect of those novated contracts": https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0397&from=EN https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.071.01.0011.01.ENG&toc=OJ:L:2019:071:TOC
f. How will insurance contracts be affected? Will my existing insurance contract with an EU27 FI continue without intervention from me?	**No-deal Brexit:** *UK customers of EEA firms* The UK government is legislating to ensure that 16 million insurance policies that UK households and businesses have with EEA insurance companies can continue to be serviced by EEA companies after Brexit. The UK government has announced the TPR, which will allow inbound EEA firms to continue to operate as before exit, including carrying on new business, while applying for the UK authorisation. As noted above, there is a 15-year run off period for contracts with firms outside the TPR. *EEA customers for UK firms*

Will my insurance policy issued by a UK insurer to cover my EU27 activities remain valid? If my insurer does not receive permission to operate in the UK, will my policy become null and void?	EIOPA has issued recommendations for all Member States to foster convergence and consistent supervisory approaches in the treatment of UK insurance undertakings and distributors: https://eiopa.europa.eu/Publications/Standards/EIOPA-BoS-19-040_Recommendation_Brexit_final.pdf#search=brexit The recommendations cover the following: 1. General objective that in their treatment of cross-border business of UK insurance undertakings, competent authorities should aim to minimise the detriment to policyholders and beneficiaries, based on the applicable EU and national laws. 2. Orderly run-off 3. Authorisation of third country branches 4. Lapse of authorisation 5. Portfolio transfers 6. Change in the habitual residence or establishment of the policyholder 7. Cooperation between competent authorities 8. Communication to policyholders and beneficiaries 9. Distribution activities The key elements of the recommendations are: • Competent authorities should apply a legal mechanism to ensure an "orderly run-off" of existing contracts; and • For life insurance contracts and some general insurance policies, where there has been a change in the habitual residence or establishment of a policy-holder, competent authorities should take into account, in the supervisory review, that the insurance contract was concluded in the UK and the UK insurance undertaking did not provide cross-border services for the EU27 for this contract. National competent authorities will need to confirm whether they comply or intend to comply with the recommendations. If an insurer is not authorised or permitted to operate in the UK, it will need to follow the SRO or CRO regimes for run-off. **WA ratified:** In the case of WA being agreed and ratified there will be a TP until December 2020 during which all current passporting arrangements will continue to work. However, there is a risk of failure to agree arrangements after the end of TP, hence there will be another cliff-edge post 2020.
3. CASH AND LIQUIDITY MANAGEMENT	
Will existing cross-border cash pooling arrangements with: (a) EU27 corporate entities and UK banks and (b) UK corporate entities and EU27 banks be impacted in any way?	For UK based clients of either UK or firms based in the EU/EEA there should be no impact. For clients based in the EU/EEA, including subsidiaries or branches of UK based companies, the ability to benefit from cross border cash pooling or other liquidity management products provided by UK based firms will depend on national access rights of the member state they are based in and the structure of the firm and provider as there is no existing equivalence regime covering deposits, lending or related products. It is possible therefore that existing cash pools may need to be split into two – one with a UK domiciled bank and another with an EU27 domiciled bank. Payments, collections, sweeps and transfers between accounts themselves should not be affected (see section 4 below) as long as they are within the same banking entity. Where relevant national regulation or member state emergency measures permits it, EU/EEA based clients of UK based firms may still be able to benefit from liquidity management products (including cash-pooling) provided by UK based firms. However, our understanding is that this is limited to a small number of member states and subject to different conditions between them. Likewise, the ability of UK clients obtaining these services from EU/EEA based providers to continue benefiting from their liquidity management products may depend on their individual providers' circumstances. We recommend that clients based in the EU/EEA using liquidity management products provided by UK based firms, and UK based clients using liquidity management products provided by EU/EEA firms, contact their providers and discuss the options available to them.
Will UK and EU27 SMEs be able to continue to access trade finance credit and support for cross border transactions?	In the event of a ratified WA, there will be a transition period allowing firms to operate under current rules of business as usual until the end of the transitional period. In a no-deal Brexit, a UK based SME will be able to continue to access trade finance credit for cross-border transactions from their UK based service provider. In a no-deal Brexit, in order to operate in the EU, relevant financial institutions will be required to have an EU authorised license. Many of the current institutions already have a license or have applied for it. Post-Brexit UK institutions will be able to utilise their licensed presence in the EU to continue to serve their EU clients for trade finance access. The TPR will allow EU27 corporate entities to continue to utilise cross-border trade finance arrangements within the UK in a no-deal Brexit. Firms are advised to contact their trade finance providers to understand how they are managing the process.

4. PAYMENTS	
Can a UK business continue to make and receive euro payments between the UK and the EU?	Yes, the European Payment Council has confirmed continuing membership of SEPA.
5. CAPITAL MARKETS	
Will existing debt programmes (for example, Euro Medium Term Note programmes) approved either in the UK or in the EU27 remain fully operative? Will there be new "frictional costs" of operation? Will securities issued thereunder continue to be eligible for any index or receive the same regulatory treatment as they do now?	A new Prospectus Directive (PR) came into force on 21 July 2019. The outcomes will differ depending on whether the debt issue is exempt or non-exempt: exempt being bonds issued in denominations of €100,000 or greater. Smaller denomination bonds are colloquially known as Retail Bonds marketed to retail investors. • We would expect that most members are engaged in the issue of exempt bonds and that their outstanding issues are exempt bonds. • Issuers will continue to be able to make *exempt* offers of bonds in EEA Member States without needing to publish an approved prospectus in accordance with the PR, so issuers with prospectuses approved by the FCA in the UK will be able to make *exempt* offers of bonds in EEA Member States after Brexit. • In the event of a no-deal Brexit and no other transitional or other arrangement, issuers would need to have a prospectus approved by an EU27 national competent authority and published in accordance with the PR in order to make a *non-exempt* offer of bonds to the public in one or more EEA Member States after exit date. • The PR also prohibits the admission to trading on a regulated market situated or operating within the EEA unless a prospectus has been published in accordance with the PR. • So, absent any transitional or other arrangement, an issuer's non-exempt securities could not be admitted to trading on a regulated market situated or operating within the EEA after exit date unless the issuer has published an approved prospectus in accordance with the PR. **Frictional costs** Indices are a matter for index operators. Otherwise, FCA would expect that these securities would generally continue to receive the same regulatory treatment as they do now – FCA are not making policy changes to their rules beyond what is necessary to ensure rules are functional as a result of Brexit. The government and regulators are seeking to ensure as much continuity in the UK as possible after exit. Any frictional costs in the EU are a matter for EU27 governments and regulators. The onshoring process under the WA seeks to remove or minimise 'frictional' matters by 'onshoring' EU-derived domestic legislation and directly applicable EU legislation.
6. CREDIT RATINGS	
Can my company continue to use credit ratings issued in the UK or the EU?	**Use of ratings in the UK** Firms that are using credit ratings, but not for regulatory purposes may continue to use credit ratings issued in the UK and EU27 (regulatory purposes cover banks and insurers calculating capital requirements under the EU capital requirements regulation and Solvency II rules). Firms using credit ratings for regulatory purposes will only be able to do so where they are issued or endorsed by credit rating agencies (CRAs) registered or certified with the FCA. Following draft legislation from HM Treasury, the FCA is providing conversion and TPR for CRAs to facilitate continuity of ratings availability in the UK. A transitional period will also allow ratings issued before exit day in the EU by firms who register with the FCA or apply for registration with the FCA to be used in the UK for regulatory purposes for up to one year. After this time, all ratings will need to be issued or endorsed into the UK for them to continue to be eligible for regulatory use. UK firms are encouraged to contact their CRAs to understand their intentions to offer ratings in the UK after Brexit. See here for further information from HM Treasury and the FCA. **Use of ratings in the EU** Firms using credit ratings for regulatory purposes in the EU will only be able to do so where they are issued or endorsed by CRAs registered or certified with ESMA. https://www.esma.europa.eu/sites/default/files/library/esma80-187-149_public_statement_brexit_cras_trs.pdf Both ESMA and FCA have announced that they deem each other's regulatory and supervisory regime 'as stringent as' their own for the purposes of allowing registered CRAs to endorse ratings into the UK / EU from affiliated EU / UK CRAs for regulatory purposes. https://www.fca.org.uk/news/statements/endorsement-eu-credit-ratings-no-deal-brexit https://www.esma.europa.eu/sites/default/files/library/esma33-5-735_public_statement.pdf
7. RELATIONSHIPS WITH PROVIDERS	

How will the pricing and availability of products be impacted post-Brexit? When will I be informed by providers of these changes?	We recommend a pro-active relationship with service providers. Define the services you use and seek confirmation from your service providers that they will continue to offer those services or the alternative arrangements they can offer within their group. Providers are generally seeking to ensure continuity for their clients. In the FCA's Dear CEO letter, FCA have said that when providers are designing structures they should assess whether the proposed changes are in the best interests of their clients and where providers intend to make changes to existing contractual agreements with clients, they should make clients aware in good time, in line with the relevant regulatory obligations. Corporates should seek advice from their financial services providers as to how they expect to service extant issues: for example, for periodic settlements
8. PENSIONS	
My company has a cross-border pension fund arrangement, for example, a pension fund manager in the Netherlands currently manages UK-based pension funds. Will this be allowed to continue post-Brexit?	We would expect defined benefit pension schemes or defined contribution occupational pension schemes to be affected by Brexit where the manager is based in the EU and passports into the UK. In the event of no agreement being reached between the UK and the EU, the TPR would allow a pension fund manager in the EU to continue to manage UK-based funds (where it presently passports into the UK and it notifies the relevant regulator of its wish to use the TP scheme). For UK firms with customers in EEA member states, if the firm does not take any contingency actions, it may need to make arrangements to continue servicing contracts with customers resident in EEA member states (e.g. making annuity payments). Whether or not the UK firm can continue to make payments to EEA residents depends on the local laws and regulations in member states. EIOPA recommends that competent authorities should apply a legal mechanism to ensure an "orderly run-off" of existing contracts. Corporates should contact their pension providers, if they have any questions.
9. TAXATION	
What effect will any changes in payment and timing of payment of VAT will have on my business and cash flow?	Government has issued Technical Note on VAT for businesses if there is a no deal Brexit: see https://www.gov.uk/government/publications/vat-for-businesses-if-theres-no-brexit-deal/vat-for-businesses-if-theres-no-brexit-deal in which it states: "If the UK leaves the EU without an agreement, the government will introduce postponed accounting for import VAT on goods brought into the UK. This means that UK VAT registered businesses importing goods to the UK will be able to account for import VAT on their VAT return, rather than paying import VAT on or soon after the time that the goods arrive at the UK border. This will apply both to imports from the EU and non-EU countries." You should maintain contact with your tax advisers and HMRC/ Government to be aware when these changes are made, if required. This is intended to ensure there is no adverse cash flow effect due to a Hard Brexit.
10. REGULATION	
What EU legislation is brought into UK law under the Withdrawal Act and what changes will there be to the role of UK regulators?	The UK currently complies with EU law through Directives, Regulations and other means. The Withdrawal Act is intended to bring current EU law into UK law with appropriate adjustment, for example substituting the FCA for ESMA as the regulating authority in EMIR. The Treasury has laid legislation in Parliament which would give the FCA, the PRA, the Bank of England and the Payment Systems Regulator (PSR) responsibility for amending and maintaining existing on-shored EU binding technical standards so that they can operate after Brexit. The Treasury has also stated that it intends to provide the FCA with functions and powers for UK and non-UK credit-rating agencies and trade repositories. In the event that the UK leaves the EU with no agreement, the UK Government has laid before Parliament the Financial Services (Implementation of Legislation) Bill – all relevant documentation can be found at https://services.parliament.uk/Bills/2017-19/financialservicesimplementationoflegislation.html. This Bill, should it pass through the Parliament, would provide HM Treasury with a power to implement specific 'in-flight' EU legislation (or parts/subsets thereof) for a non-extendable period of two years post-exit. The power would also allow HM Treasury to amend said legislation in implementation beyond deficiency fixes, within specified parameters. However, it should be noted that the power provided by this Bill would give HM Treasury the option to implement legislation in a no-deal scenario, the Bill does not necessitate its implementation.
If I have a complaint about an EEA firm, who can I speak to?	We advise checking with the relevant regulator of the firm in question.
11. MISCELLANEOUS	

12. GLOSSARY

ACT	Association of Corporate Treasurers
AIFs	Alternative Investment Funds
BoE	Bank of England
CBI	Confederation of British Industries
CRO	Contractual Run-off
CVA	Credit Valuation Adjustment
EBA	European Banking Authority
EC	European Commission
ECB	European Central Bank
EEA	European Economic Area
EIOPA	European Insurance and Occupational Pensions Authority
EMD	Electronic Money Directive
EMIR	European Market Infrastructure Regulation
EPC	European Payments Council
ESMA	European Securities and Markets Authority
EU	European Union
FCA	Financial Conduct Authority
FSCR	Financial Services Contracts Regime
HMT	HM Treasury
LMA	Loan Markets Association
NCA	National Competent Authorities
NCB	National Central Bank
NFC	Non-Financial Counterparty
PD	Prospectus Directive
PRA	Prudential Regulation Authority
PSD	Payment Services Directive
SEPA	Single Euro Payments Area
SI	Statutory Instrument
SRO	Supervised Run-Off
SSM	Single Supervisory Mechanism
TP	Transition Period
TPR	FCA/PRA Temporary Permissions Regime
UCITS	Undertakings for Collective Investment in Transferable Securities
UK	United Kingdom
WA	Withdrawal Agreement
WHT	Withholding Tax
WTO	World Trade Organisation