

London Stock Exchange plc Hard Brexit Impact Assessment (28 March 2019)

Summary update

On 11 December 2018, London Stock Exchange plc (the “Exchange”, “London Stock Exchange”) published a Hard Brexit Impact Assessment to support market participants’ contingency planning. Following recent developments, London Stock Exchange has updated this Assessment as set out below.

The key updates are summarised as follows.

1. On 1 February 2019 the FCA announced that it had agreed MoUs with ESMA and EU national competent authorities with respect to regulatory cooperation in the event of a Hard Brexit ([Link](#)). This will assist in enabling European Economic Area (EEA) investment firms to retain trading membership on London Stock Exchange, subject to any local licensing conditions. London Stock Exchange is seeking relevant licences and dispensations in certain EU Member States (Germany, Italy and the Netherlands) and has confirmed that it will not require these for access from France (for non-retail business) and Ireland. Subject to approval of these or other exemptive relief, these arrangements will allow trading membership from these EEA Member States (Designated Member States). Any firms seeking membership access from other Member States should contact the Exchange.
2. London Stock Exchange expects that EEA members from Designated Member States will continue to be able to trade ETFs, ETCs, ETNs, depositary receipts on the International Order Book, as well as derivative and fixed income securities in the event of a Hard Brexit. Continued access to trading of shares on London Stock Exchange for EEA members in a Hard Brexit cannot be assumed given the breadth of the proposed application of the EU Share Trading Obligation (STO) and its unique and untested nature in global equity markets (see paragraphs 4 and 5 below).
3. London Stock Exchange has been in direct dialogue with members and appreciates the substantive efforts undertaken by a large number of member firms to put in place contingency arrangements to ensure access to London Stock Exchange cash equities trading for their firms and clients through alternative means.
4. On 19 March 2019, ESMA published a statement on the application of the STO in a Hard Brexit and should the European Commission not confirm equivalence for UK trading venues under MIFIR Article 23 ([Link](#)). The 19 March 2019 ESMA statement sought to clarify the STO through publication of a list of EU27 and GB ISINs that EU-based investment firms (and certain other firms with MiFID II permissions) would be prohibited from trading on UK trading venues and a statement regarding other ISINs that may be affected. The list is broad and appears to reflect a different legal interpretation of the STO than has previously been taken by EU authorities. The list covers both large and small cap securities from a range of different countries. The list includes over one third of the UK FTSE 100 by market capitalisation, around 10% of other major European benchmarks and some securities which have de minimis or no liquidity on EU27 venues. EU firms subject to the STO would therefore not be able to access primary market liquidity during continuous trading, or in opening and closing auctions for these securities on UK venues. The UK’s FCA issued a statement in response on the same day ([Link](#)) highlighting the risk of an uncoordinated approach, potentially conflicting obligations and stating its readiness to engage constructively with ESMA and other European authorities. London Stock Exchange firmly believes that global capital markets are best served by continued access for all participants and service providers in a non-discriminatory manner.

5. In the absence of an equivalence decision by the EU for London Stock Exchange with respect to the Share Trading Obligation (MIFIR Article 23), all EEA member firms that wish to trade any cash equities/shares are advised to now finalise their contingency plans. The Exchange provides a range of access points from non-EEA jurisdictions as set out below. Member firms should advise their clients of the details of their contingency plans.
6. ESMA also confirmed in its statement of 19 March 2019 that General Clearing Members (GCMs) are not part of the chain of transmission of orders subject to the EU Share Trading Obligation. London Stock Exchange members that use an EEA-based GCM for the purposes of their trading on the Exchange should therefore be able to continue to do so based on the information currently available.
7. The European Commission (EC) has taken a decision with respect to temporary conditional equivalence for UK CCPs and CSDs in the event of a Hard Brexit and ESMA has confirmed temporary recognition for LCH Limited and Euroclear UK and Ireland (including to take account of the extension to Article 50). We anticipate that all market participants can therefore continue to use and access these infrastructures with respect to their Exchange business.
8. London Stock Exchange has produced a guide on transaction reporting for EEA members who will become third country members in a Hard Brexit ([Link](#)).
9. The Exchange notes the European Council decision to extend the date for a possible Hard Brexit to 12 April 2019. We continue to recommend firms maintain or finalise their contingency planning. We will continue to provide updates in light of wider developments.

Further details of the impact assessment are set out below.

Any queries on this Notice should be addressed to your relationship manager or the UK Regulation Team stockexchangenotices@lseg.com

Detailed impact assessment – 28 March 2019

London Stock Exchange is a Recognised Investment Exchange under Part XVIII of the United Kingdom's (UK's) Financial Services & Market Act 2000 (FSMA 2000). The Exchange operates the world's most international capital market, with companies from over 100 countries quoted across our markets. London Stock Exchange's markets include the Main Market – London's flagship venue for equity, debt and exchange traded products and AIM, the world's leading market for growth companies. Issuers accessing our markets access a highly global investor base¹.

London Stock Exchange is a wholly owned subsidiary of London Stock Exchange Group (LSEG). In the context of Brexit, we believe an agreement between the United Kingdom and the European Union would support financial stability, reinforce global regulatory cooperation and reduce uncertainty for our customers around the world. Nevertheless, we continue to work with our customers and market participants as they prepare contingency plans in the event of a no-deal Hard Brexit scenario in line with published statements from the UK and EU authorities.

As a systemically important financial markets infrastructure business, London Stock Exchange is fully committed to maintaining orderly markets and providing continuity of service to its customers and market participants across the UK and internationally. We firmly believe that global capital markets are best served by continued access for all participants and service providers, including from the EEA. This would enable continued interaction of EEA participants with other participants in our market, particularly those from the UK and outside the EEA.

This note provides an update on the latest planning assumptions we are working to in the event that no transitional or other agreement is reached before the UK's withdrawal from the European Union (EU) on 12 April 2019 or that following an extension to Article 50 the UK leaves without another agreement ("Hard Brexit") at a later date. We will keep the market updated should significant new information become available which enables us to change these planning assumptions. Due to the varied nature of our customer base, various participants may be affected in different ways and we encourage participants to familiarise themselves with these planning assumptions when developing their own contingency arrangements. We remain available to discuss any questions you may have on your arrangements.

In line with the European Commission's withdrawal notices for stakeholders, for the purposes of contingency planning for a Hard Brexit, we are assuming in this scenario that London Stock Exchange has no MiFID authorisation and that the UK and the Exchange are not granted equivalence under MiFIR Article 23 (Share Trading Obligation)². An explanation of the implications of this is provided below in the section on Trading Obligations. We note that a number of EU Member States have made provisions to assist access by trading firms located in their jurisdiction to UK trading venues. In addition, many stakeholders have made clear that London Stock Exchange should be granted equivalence including representations in respect of trading firms, investors and issuers.

We appreciate the substantive efforts made by market participants to put in place contingency arrangements to deal with possible scenarios, including a Hard Brexit, based on these assumptions. This together with our own preparations means that London Stock Exchange and the wider ecosystem around our market is well placed to manage a Hard Brexit. Given the proximity of the potential withdrawal date it is important that participants continue with their contingency plans, particularly those participants who may be constrained by the EU Share Trading Obligation. We continue to engage in dialogue with the UK, EU and other regulators and stakeholders.

¹ <https://www.ons.gov.uk/economy/investmentpensionsandtrusts/bulletins/ownershipofukquotedshares/2016#rise-in-uk-shares-owned-outside-of-the-country-continues>

² https://ec.europa.eu/info/sites/info/files/180208-notice-withdrawal-uk-financial-instruments_en.pdf (See page 3)

1. Trading Obligations

1.1 MiFIR

MiFIR Article 23(1) introduced a requirement for EU investment firms (the “Share Trading Obligation”) to ensure that the trades they undertake in shares admitted to trading on a regulated market, or traded on a trading venue in the EU, take place on a regulated market, MTF or systematic internaliser in the EU or a third-country trading venue that is considered to be equivalent to a regulated market by the European Commission. ESMA confirmed in November 2017 that whenever an EU investment firm is part of the transmission of an order in a share subject to the share trading obligation, they should ensure that the ultimate execution of that order complies with the requirement under MiFIR Article 23 [\(Link\)](#).

ESMA published a statement on 19 March about the Share Trading Obligation and a list of EU27 and GB ISINs subject to the Share Trading Obligation. [\(Link\)](#)

In contrast to previous statements put forward by EU authorities, ESMA now considers that all EU27 ISINs admitted to trading on an EU trading venue are subject to the share trading obligation even if there is de minimis or no liquidity on EU venues in those ISINs. Furthermore, GB ISINs which are deemed to be “liquid” on EU27 venues are subject to the Share Trading Obligation, even though the overwhelming majority of liquidity in many of those cases trades on UK markets. For other ISINs, ESMA’s previous guidance continues to apply. The scope of the obligation is now wide ranging and includes 14 FTSE 100 constituents [\(Link\)](#) constituting over a third of the market capitalisation of the FTSE100. The FCA issued a statement in response to the ESMA statement highlighting the risk of an uncoordinated approach, potentially conflicting obligations and stating its readiness to engage constructively with ESMA and other European authorities. We consider there may be many unintended consequences for the ability of market participants, in particular EU27 firms, to manage their portfolios and risk positions and to achieve best execution.

The Exchange continues to seek an appropriate equivalence decision that allows EU based participants full access, avoiding the operational, legal risks and market distortion that would otherwise occur. The Exchange has fully implemented MiFID II / R and this will be reflected in UK law immediately after exit day. An equivalence determination would be straightforward and would recognise that EU firms need to access primary venues such as LSE to fulfil their best execution obligations. Equivalence decisions have already been confirmed for a number of global exchanges including ASX, HKEX, Nasdaq and NYSE.

Whilst Exchange Traded Funds may not be directly within the scope of the Share Trading Obligation, related participants including brokers, liquidity providers and fund managers that are subject to MiFID will need to consider the Share Trading Obligation when trading underlying securities that are subject to the share trading obligation, including in the creation and redemption process and may be constrained in obtaining best execution.

1.2 Share Trading Obligation Impact for Issuers

In the event that London Stock Exchange is not granted equivalence for the purpose of MiFIR Art. 23, EEA MiFID II investment firms will not be allowed to execute trades on the Exchange in securities that are subject to the Share Trading Obligation. They will be required to execute these trades on an EEA venue or equivalent third country venue even if liquidity is thin and the price is less favourable.

1.3 Settlement

All SETS order book business is settled by Euroclear UK & Ireland (EUI) (based in the UK). Most electronic International Order book business and all order book executions on International ETFs are settled in Euroclear Bank in Belgium. EUI also acts as the settlement Central Securities Depository (CSD) for Irish Securities Settlement including those dual listed on London Stock Exchange. UK based-participants (such as UK based banks and custodians) should continue to be able to participate in Euroclear Bank and Euroclear Bank should be able to continue to settle trades in securities executed on the Exchange. On 4 February ESMA announced that it had agreed MoUs with the Bank of England for the recognition of UK CCPs and the UK CSD, that would take effect should the UK leave the EU without a withdrawal agreement.

On 1 March, ESMA recognised Euroclear UK & Ireland as a third country CSD in accordance with Article 25 of the EU CSD Regulation enabling EUI to continue providing the range of services it does today.

1.4 Clearing Inter-operability

The clearing for London Stock Exchange's main SETS securities is on an interoperable basis between LCH Ltd (UK), SIX x-clear (Switzerland) and EuroCCP (Netherlands). We note that on 18 February LCH Ltd received a temporary licence from ESMA to allow it to continue to provide services in the EU in the event of a Hard Brexit. This should allow existing interoperability arrangements to continue for at least a twelve-month period.

2. Ability to access London Stock Exchange markets for trading of securities

Membership of London Stock Exchange provides firms with the ability to trade directly on London Stock Exchange trading services. Clearing brokers are also required to be members of the Exchange. The table below details considerations for member firms.

Members	Hard Brexit Contingency planning assumptions
UK member firms	1 No access change for UK member firms. However, UK member firms that use an EEA firm as their execution broker, can no longer be assured that they will, in all circumstances, be able to do so and should develop contingency plans and notify the Exchange of these, if they have not already done so. The provision of General Clearing Member services to UK member firms by EEA member firms will not be affected by the EU Share Trading Obligation. ³
Non-EEA member firms	2 No access change for non-EEA member firms. However, member firms that use an EEA firm as their execution broker, can no longer be assured that they will in all circumstances, be able to do so and should develop contingency plans and notify the Exchange of these, if they have not already done so. The provision of General Clearing Member services to Non-EEA member firms by EEA member firms will not be affected by the EU share trading obligation. ³
EEA member firms	3 LSE plc has sought the necessary licences to retain existing EEA trading members in a Hard Brexit as detailed below. We expect that EEA member firms will be able to continue to trade ETFs, ETCs, ETNs, depositary receipts on the International Order Book, as well as derivative and fixed income securities in the event of a Hard Brexit. In the absence of an equivalence decision by the EU in respect of Article 23 of MiFIR EEA member firms and their clients should operate on the assumption that they will not be able to trade shares on the Exchange through Exchange membership from an EEA jurisdiction and should therefore develop contingency plans and notify the Exchange of these, if they have not already done so.

³ On 13 November 2017, ESMA published a Q&A clarifying the application of the trading obligation for shares where there is a chain of transmission of orders. However, a chain of transmission of orders does not include General Clearing Members, the role of which concerns the post-trade processing of transactions" - ESMA's share trading obligation clarifications in a no-deal Brexit, 19 March 2019 ([link](#))

The provision of General Clearing Member services by EEA member firms will not be affected by the EU share trading obligation as confirmed by ESMA.

London Stock Exchange is seeking licences and dispensations in Germany, Italy and the Netherlands to be able to continue to offer membership to firms located in those jurisdictions. No licensing requirements for London Stock Exchange are expected in France (subject to member firms confirming that they will not provide access to London Stock Exchange for non-professional clients), Ireland and other EU jurisdictions where current EEA members are located. Subject to approval of these licences/dispensations or other exemptive relief these arrangements will allow trading from these EEA Member States (Designated Member States). Any firms seeking access from other Member States should contact the Exchange.

EEA member firms establishing a UK subsidiary company and applying for authorisation from the FCA continue to be welcome to apply for London Stock Exchange membership for their UK entities in advance of their authorisation being conferred. London Stock Exchange also accepts direct trading members from non-EEA jurisdictions such as Australia, Cayman Islands, Dubai, Hong Kong, Israel and Switzerland, and remains willing to consider other jurisdictions should this be of assistance in the contingency planning for any existing EEA member firm.

3. London Stock Exchange Derivatives Market

Other than the issues mentioned in Section 2 in relation to EEA Member Firms, we do not expect any impacts to LSEDM services in a Hard Brexit scenario.

4. TRADEcho

TRADEcho is an Approved Publication Arrangement (APA) service provided by London Stock Exchange Group for the reporting of off-exchange trades and those by Systematic Internalisers (SIs) to allow clients to remain compliant with their MiFID transparency obligations.

London Stock Exchange Group has set up a new EU based APA Service (UVTE B.V.) in the Netherlands to continue to offer TRADEcho's APA services to EU-27 customers from Amsterdam. This received regulatory approval from the Autoriteit Financiële Markten on 27 February 2019. It will operate in addition to TRADEcho's existing UK-authorized APA in the event of a Hard Brexit.

TRADEcho will continue to allow trade reporting services across a single member ID of the combined EU27 and UK instrument universe. Customers will be granted access to the new EU APA service under their current agreements. Customers will need to indicate to which APA they are reporting via a new field (Target APA) in the inbound trade report message.

For market dissemination, the outbound, publishing GTP message will indicate the relevant APA by disseminating its APA MIC code as "Venue of Publication".

The Smart Report Router (SRR) will support both TRADEcho APAs, along with the existing external APAs (including any new EEA APAs being set up). The SRR will be modified to introduce new rules to distinguish reporting obligations in the relevant jurisdiction of the submitter and its counterparty.

5. Transaction reporting

Members should note that in a Hard Brexit scenario, London Stock Exchange will have to report transactions directly to the FCA for trades executed by any firms trading on the Exchange other than those which have a direct reporting obligation to the FCA (e.g. a UK firm or a UK branch of a third country firm that has notified the appropriate UK competent authority that it will use the Temporary Permissions Regime). EEA firms who are members of the Exchange outside these categories will have to establish arrangements with the London Stock Exchange to allow it to undertake transaction reporting for their trades. There will be no change for existing third-country firms based outside the EEA for which the Exchange already conducts transaction reports for their trades.

London Stock Exchange has produced a Third Country Member Transaction Reporting Guide, ([Link](#)), which contains the necessary technical and operational steps for members to provide the London Stock Exchange with transaction reports for their trades. Member Firms who need to set up these arrangements are advised to contact the Membership team.

6. Primary Markets loss of passporting right for EEA Equity and Fixed Income prospectuses

On 21 November 2018, the UK Government confirmed that, in the event of a Hard Brexit, prospectuses approved by an EEA competent authority that have not been passported into the UK before the date of exit will no longer automatically benefit from passporting rights into the UK market⁴. A company wishing to admit to both an EEA Regulated Market and the London Stock Exchange's Main Market would therefore need to ensure that a Prospectus is approved by the FCA and separately by any EEA competent authority, unless the EU and UK take equivalence decisions with respect to prospectuses approved by their respective competent authorities. The content requirements for a Prospectus in the UK would be the same as those required in the EU.

With regard to issuers admitted or considering admission to AIM, we expect the impact of a Hard Brexit to be minimal as issuers usually structure transactions within the parameters of the Prospectus exemptions.

With respect to issuers listing solely on London Stock Exchange, we anticipate minimal impact. For example, of the 187 equity IPOs on the London Stock Exchange in the last two years, none used an outbound EU equity prospectus passport from the UK.

Furthermore, the UK Government has confirmed its intention in a Hard Brexit to issue an immediate equivalence decision enabling issuers to continue to use EU-adopted IFRS for the purposes of preparing financial statements used in a prospectus for the UK market.

7. Primary Markets - Listing requirements for ETFs

Currently, all London Stock Exchange Main Market admitted exchange traded funds (ETFs) utilise the Undertakings for Collective Investment in Transferable Securities (UCITS) EU harmonised regulatory framework. All UCITS ETFs established in another EEA country must be recognised under section 264 of the FSMA 2000 before they can be passported for UK retail investor distribution.

The FCA temporary permissions regime will permit existing UCITS ETFs (listed before a Hard Brexit) to continue to be marketed in the UK. The FCA expects 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 FCA has stated that they expect the temporary permissions regime will work in a similar way for investment funds with fund managers notifying them in relation to those funds they plan to continue to market in the UK. Notifications should be submitted to the FCA before the end of 28 March 2019. Further details of the FCA temporary permissions regime can be found at [\(Link\)](#).

It is our current understanding that new funds created after Hard Brexit will require recognition under section 272 of the FSMA 2000 before being able to be admitted to the Main Market and distributed to UK retail investors. Further details of The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2018: explanatory information can be found at [\(Link\)](#).

⁴ <https://www.gov.uk/government/publications/draft-official-listing-of-securities-prospectus-and-transparency-amendment-eu-exit-regulations-2019/draft-official-listing-of-securities-prospectus-and-transparency-amendment-eu-exit-regulations-2019-explanatory-information>

8. Quoted Eurobond Exemption

Issuers on London Stock Exchange's Main Market, Professional Securities Market (PSM) and International Securities Market (ISM) will continue to benefit from the Quoted Eurobond Exemption. The UK Government is empowered to make minor adjustments to tax legislation to ensure references to EEA/EU are amended to incorporate a reference to the UK with respect to MTFs.

9. London Stock Exchange rulebooks

The UK's withdrawal from the EU requires technical changes to London Stock Exchange rulebooks to reflect the UK's new legal and regulatory framework in event of a Hard Brexit and follow the amendments the UK Government is proposing to make under the European Union (Withdrawal) Act 2018. Revised rulebooks were published on 7 March 2019 and can be found here ([Link](#)). These will apply in the event that no transitional or other agreement is reached before the UK's withdrawal from the EU.

10. Qualification of bonds listed on London Stock Exchange as ECB eligible collateral

London Stock Exchange published [guidance](#) related to contingency planning for qualification of bonds admitted to London Stock Exchange's Main Market as European Central Bank (ECB) eligible collateral in a hard Brexit scenario.

Assuming the ECB [criteria](#) do not change, issuers of existing and new bonds listed on London Stock Exchange's Main Market will be able to maintain ECB collateral eligibility via admission to MTS BondVision Europe ("BondVision"), subject to the securities meeting the MTS admission criteria⁵ and satisfying all the other ECB eligibility criteria.

Further to the information in the guidance, MTS S.p.A. has confirmed it has received the relevant approvals from its Board to amend its rule book to admit financial instruments on London Stock Exchange to BondVision Europe MTF, an acceptable non-regulated market ([Link](#)).

BondVision is organised by MTS S.p.A, majority-owned by LSEG, and operates as an MTF under the supervision of the Italian regulator, Consob.

The process of admission of bonds is automatic and without recourse to the issuer. We therefore do not expect that issuers will become subject to continuing obligations from the perspective of the EU Market Abuse Regulation. Issuers with securities admitted to trading on a UK regulated market after the exit date will only be subject to the UK transparency regime, which ensures that markets continue to benefit from the level of disclosure which is equivalent as of today and is in accordance with the EU transparency regime. As the securities are also listed on London Stock Exchange's Main Market, and so in any event subject to rigorous disclosure requirements which mirror EU requirements, this means that there is already "sufficiently publicly available information" for market operators to enable users to form an investment decision (Article 18(2) MiFiD II). This ensures that issuers will not be subject to any additional disclosures on BondVision.

Note, in order to qualify for ECB eligibility, bonds must meet all the ECB eligibility criteria. Admission to trading on a regulated market or an acceptable non-regulated market, such as BondVision Europe MTF, is only one of the general criteria that need to be satisfied.

⁵ BondVision Europe Market Rules can be found [here](#). MTS can apply additional criteria.

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