

Brexit Essentials: What next for debt capital markets?

Questions and answers for issuers

Whatever happens in parliament and even if Brexit continues to be delayed for a period, there are essentially three possible outcomes to Brexit. Either the UK revokes article 50 and remains in the EU, or it ratifies a withdrawal agreement with the EU and leaves pursuant to that withdrawal agreement (a ‘deal Brexit’) or it leaves without a withdrawal agreement (a ‘no deal Brexit’).

As a matter of politics it is not possible to predict the outcome. It is therefore important to understand what a deal Brexit or a no deal Brexit

would mean for you. The work to onshore EU financial services and securities law into UK domestic law undertaken by the UK Government, the FCA and the Bank of England under the EU (Withdrawal) Act 2018 is being updated regularly to reflect EU legislative developments. EU agencies have also now clarified their own position in relation to certain questions. The legal and regulatory consequences for issuers of either a deal Brexit or a no deal Brexit are therefore becoming increasingly clear. We have summarised them in the below table.

QUESTIONS	ANSWERS
A deal Brexit	
What will we need to do if the withdrawal agreement between the EU and the UK is ratified?	Once the UK formally leaves the EU you will need to make some relatively minor technical drafting changes to your issuance documentation to reflect the fact that the UK will no longer be in the EU or EEA. We are in contact with ICMA who is in the process of updating its standard language.
A no deal Brexit	
How will our existing bonds be impacted?	Bonds that have already been issued will continue to be valid, binding and enforceable in the same way that they currently are. The regulatory consequences that flow from your bonds, for example in relation to transparency, financial reporting and market abuse, may change in some respects, as discussed below.
Will we be impacted by loss of ‘passporting’ under the EU prospectus regime?	If you only issue wholesale bonds admitted to trading on a UK regulated market you will not be impacted. You will not be able to use an FCA approved prospectus for cross-border true retail offers or cross border admissions to trading (both of which are relatively unusual).

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<p>What transparency obligations will we be subject to?</p>	<p>If you have securities admitted to trading on a UK regulated market, you will be subject to the UK transparency regime.</p> <p>If you have securities admitted to trading on an EEA regulated market, you will be subject to the EU transparency regime. The detail of your transparency obligations will depend on your home Member State (and if your current home Member State is the UK will need to choose a new one).</p> <p>There will be no significant changes to your substantive obligations in any event.</p>
<p>What accounting standards will we be subject to?</p>	<p>Accounting standards are relevant both for historical financial information in prospectuses you publish and for your on-going financial reporting. They depend partly on where you are incorporated.</p> <p>Because EU IFRS will initially be grandfathered in the UK (for UK issuers) and because the UK will grant equivalence to EU IFRS (for EEA issuers) and onshore existing EU equivalence decisions (for some third country issuers) most issuers will not be impacted in a material way.</p>
<p>What market abuse obligations will we be subject to?</p>	<p>The UK market abuse regime will apply to securities admitted to trading on a UK trading venue. The EU market abuse regime will apply to securities admitted to trading on an EEA trading venue. There will be no significant changes to your substantive obligations.</p>
<p>What about our credit ratings?</p>	<p>If your credit ratings agency is not established in the EEA and registered under the EU CRA Regulation (in the case of an EEA prospectus) or not established in the UK and registered under the UK CRA Regulation (in the case of a UK prospectus) you will need to disclose this in future prospectuses you publish.</p>
<p>Will our bonds be eligible collateral for the Eurosystem?</p>	<p>The London Stock Exchange is creating a system whereby bonds admitted to its Main Market will automatically also be admitted to BondVision, an Italian MTF that is part of the LSE group. This means that bonds that are currently eligible collateral for the Eurosystem will continue to be eligible, other than GBP, USD and JPY denominated bonds issued by UK issuers.</p>
<p>Should we consider changing stock exchange?</p>	<p>The changing EU and UK regulatory landscapes should be kept under review. However, for most issuers there is no immediate Brexit-related reason to change stock exchange.</p>
<p>What about choice of law and jurisdiction provisions?</p>	<p>We are not advising corporate issuers to make changes to choice of law provisions. EEA financial institutions can continue to issue debt for MREL purposes governed by English law, if they include contractual recognition of bail in provisions in their terms and conditions. The Hague Convention and the Brussels Regulation operate in somewhat different ways in relation to choice of jurisdiction agreements and the enforcement of judgments, but in our view a significant change in practice is not required in the majority of cases.</p>
<p>What changes should we make to our prospectuses and other issuance documentation?</p>	<p>Once the UK leaves the EU technical changes will need to be made to prospectus boiler-plate legends to reflect the fact that EU law and UK law will be two different systems. We are in contact with ICMA who is in the process of updating its standard language. Going forwards references to legislation and definitions should be checked carefully to ensure that bond mechanics operate effectively and that representations and covenants are not breached inadvertently.</p>

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What about the recent reform of the EU prospectus regime?	Because Brexit has been delayed beyond 21 July 2019, the date that the new EU Prospectus Regulation took full effect, it will be onshored into UK domestic law via the EU (Withdrawal) Act 2018, with relatively minor amendments so that it operates effectively in a UK domestic context. A majority of issuers will not be impacted.
How will the UK regulatory framework for DCM look generally? How will it be regulated?	At the outset the UK will have a functioning regulatory framework for DCM that will look and feel extremely similar to the EU regulatory framework. The FCA has published extensive guidance on how to comply with it.

The interplay between the EU and UK legal and regulatory frameworks for debt capital markets is incredibly complex. Given this, it is a testament to UK regulators that they have created a UK domestic regime that would function well in the event of a no-deal Brexit. It is hoped that they continue to regulate in a proportionate way: encouraging competition, ensuring that the financial system is safe and remaining open to market participants across the globe.

There is of course a lot of detailed analysis behind the above summary. Different issuers will be impacted by Brexit in different ways, depending partly on where they are admitted to trading, where they are incorporated, the nature of their business and the nature of their investors. If you have any questions about how you will be impacted and how you should plan please contact your usual Slaughter and May adviser.

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