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# Brexit

Impact of Brexit on Debt Capital Markets

Capital Markets Union

19 July 2016

# Introduction

# Introduction

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- What does Brexit mean for financial services in Europe generally (a summary of conclusions from our FIS Webinar)?
- The free market – services and capital?
- What will Brexit mean for the Capital Markets Union legislative programme (other than securitization)?
- What will Brexit mean for the wholesale and private placements markets?
- The U.S. perspective
- Closing thoughts

# What effect will Brexit have on Debt Capital Markets?

The big picture – a history of commitment to free movement of capital

# Capital Markets and the European Union

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## Free movement of capital is at the heart of the EU

- The free movement of capital – an EU (but also a global?) ambition.
- A consistent theme since Rome Treaty
  - > EMU
  - > Maastricht
  - > Financial Services Action Plan
  - > Lamfalussy protocols
  - > Banking Union and CMU
- An ambition to bring U.S. levels of CM activity to Europe
- All part of Juncker's EUR315bn investment plan to strengthen Europe's economy and stimulate investment to create jobs.

# What is Capital Markets Union?

# Capital Markets Union

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## 18 Feb 2015 Green Paper

- Targets growth and jobs
- Removing barriers to investment from within and without EU
- A single rulebook
- Effective investor protection
- Simplification for SMEs
- An initiative championed by the UK's Lord Green and supported by the UK

## 30 Sept 2015 Action Plan

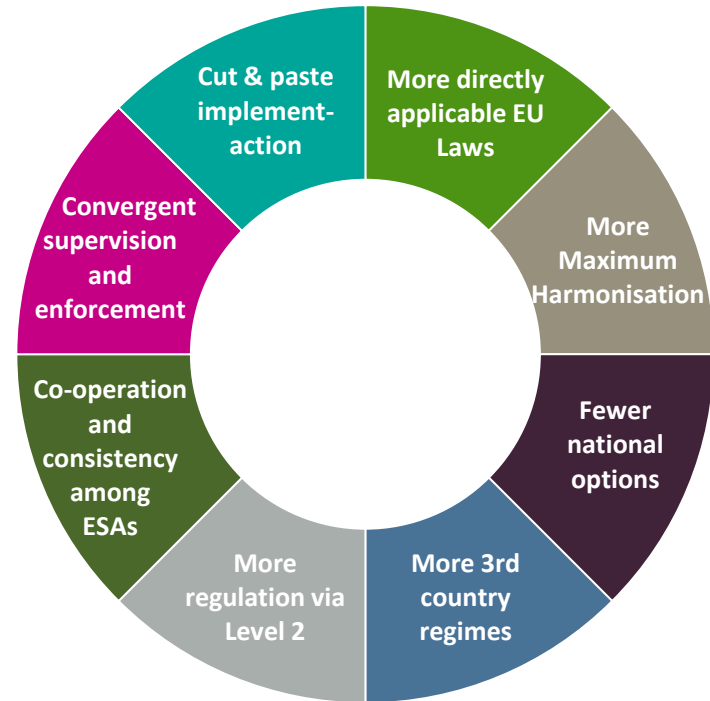
- CMU by 2019
- Long term infrastructure finance
- Improved securitization market
- EU covered bond framework
- Reduced investment barriers
- Amended disclosure rules
- More funding choices for European businesses and SMEs
- Greater choices for retail investors

# Capital Markets Union – focus on DCM

## How will it be achieved

- Immediate goals:
  - New Prospectus regime
  - New Market Abuse regime
  - Assist growth of Private placement market
- Longer term, proponents recognise the need to consider:
  - Tax laws
  - Insolvency laws
  - Capital requirements

## Closer integration





What will Brexit mean for the CMU legislative programme?

# CMU – the legislative programme from now to Brexit

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Continued  
Compliance  
with existing  
EU measures

Implementation  
of new EU  
measures

Reduced UK  
influence over  
EU policy

A chance for the  
UK to establish  
equivalence

July 2016  
Market Abuse  
Regulation

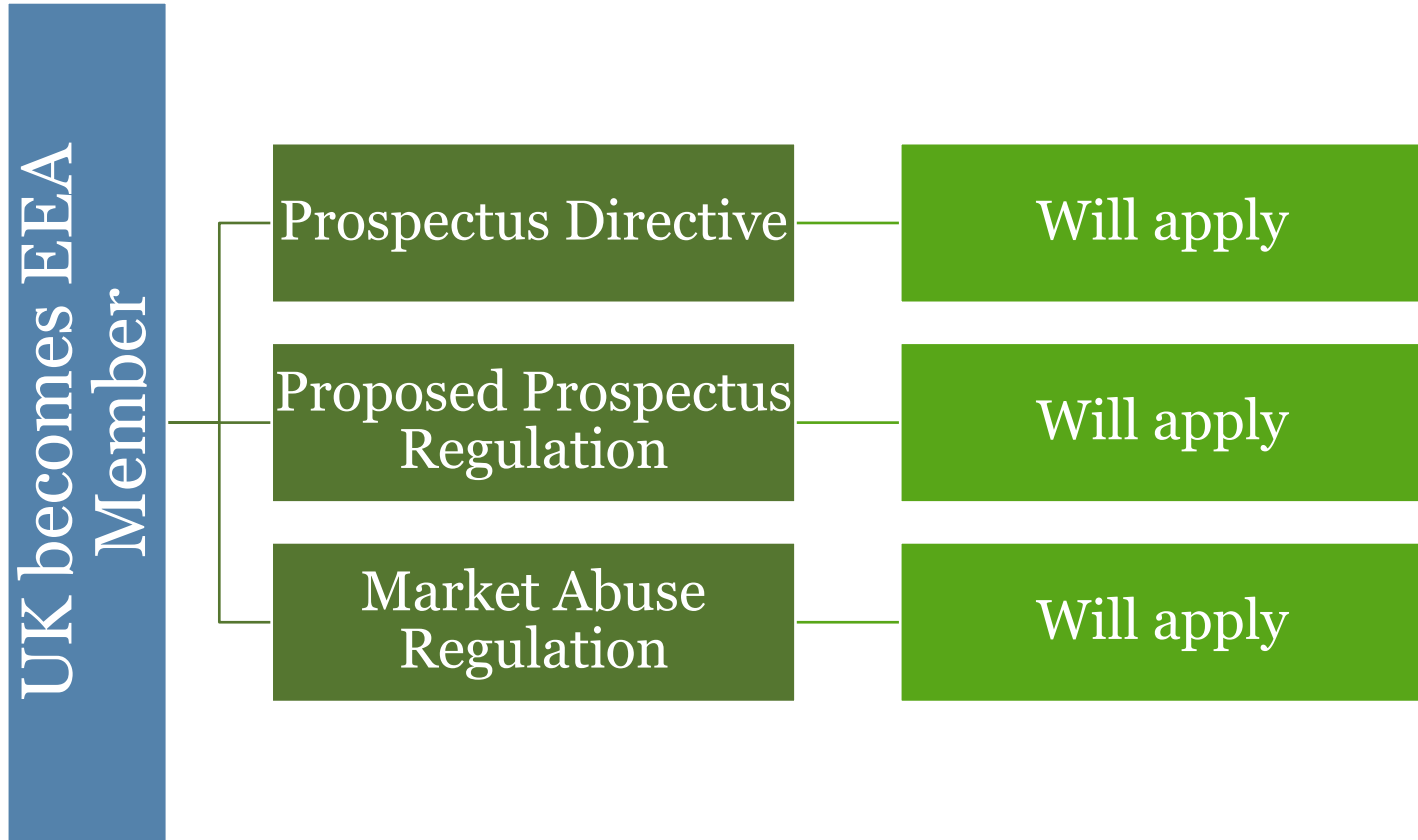
Q4 2016  
PDIII in EU  
legislative  
process

January 2018  
MiFID II /  
MiFIR

2019?  
PDIII in force

# Summary of the effect of EU regimes for an EEA Member

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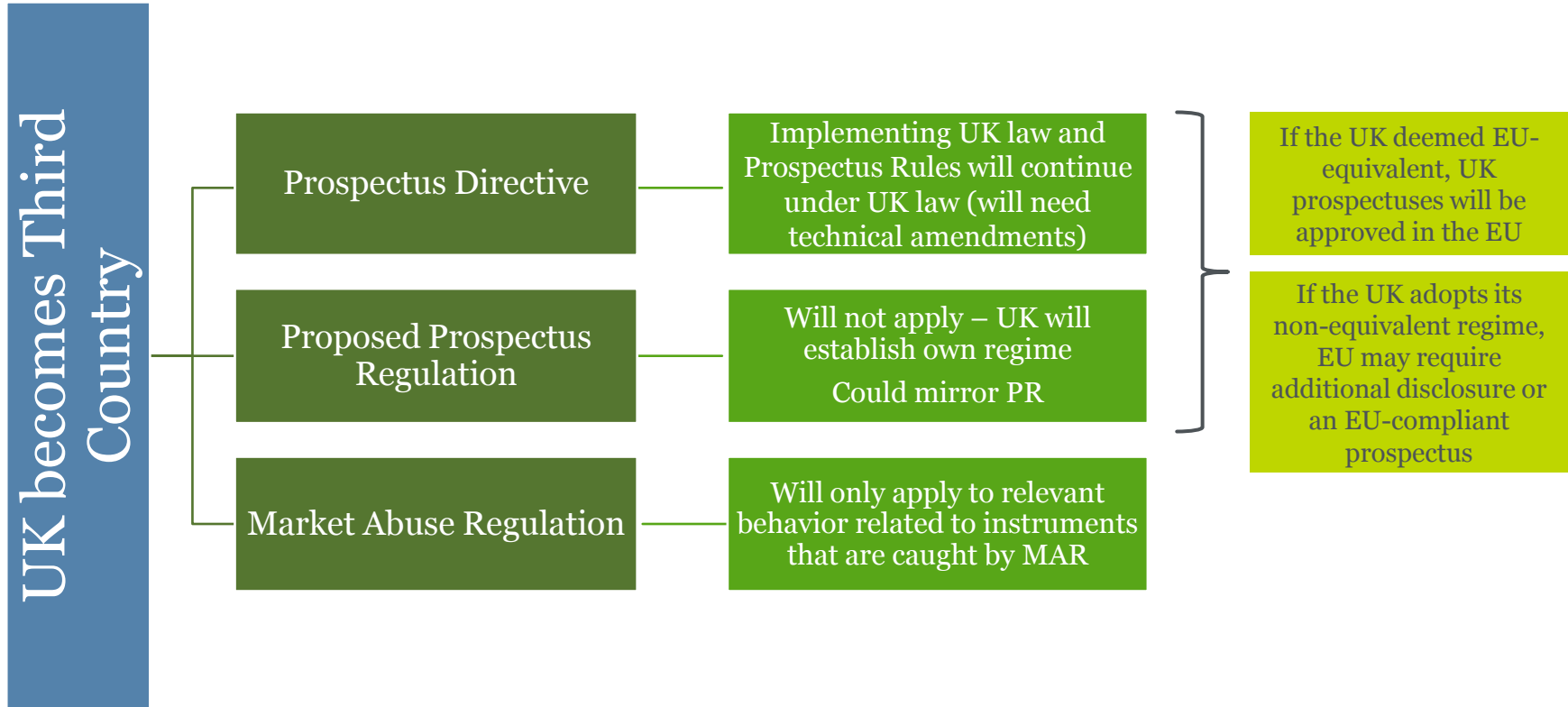


# Options outside EEA

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- Co-Operation Agreements (Swiss Model)
  - Bilateral agreements between UK and EU on specific topics
  - Time consuming to implement
  - Fragmented
  - Likely to require free movement of persons in any event (Swiss model under threat after referendum limiting free movement)
  - Unlikely to be contemplated by the EU
- Comprehensive Free Trade Agreement
  - Bilateral agreement between UK and EU, covering wide range of trade and services (including financial services)
  - Unlikely to result in level of cross-border access available under EEA
  - Unlikely to be put in place quickly
- Third Country

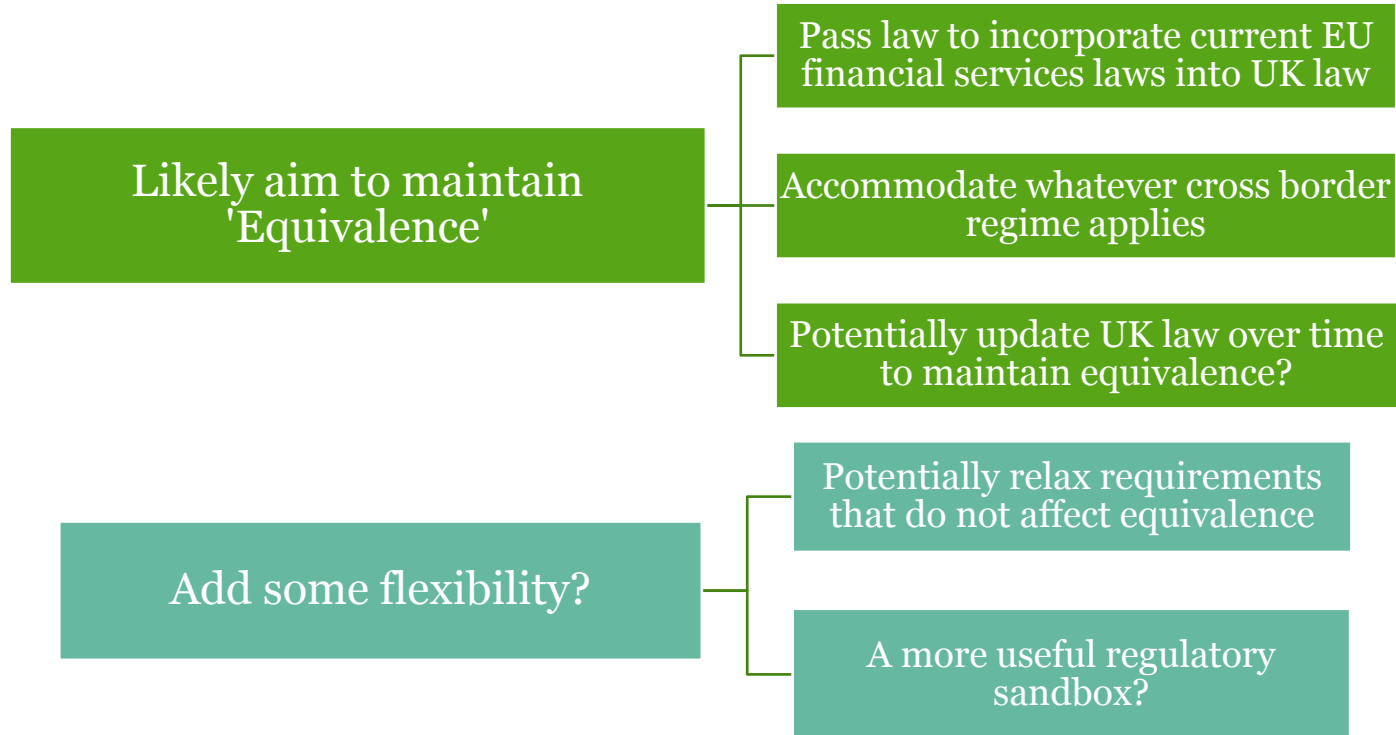
# UK as a Third Country post Brexit



# What will the UK regime look like?

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UK will have a choice to maintain equivalence with EU law or to diverge.  
Lack of equivalence would likely negatively affect UK access to the EU single market



# Equivalence under the Prospectus Directive

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Equivalence regime already exists under PD – currently it is not used frequently practice but it may become more important post-Brexit

- Third country prospectuses can be approved by competent authorities
  - Drawn up in accordance with international standards and information requirements that are equivalent to the PD
  - Commission can adopt equivalence decisions
- ESMA Framework and Opinions
  - Framework for third country equity prospectuses: Category A or Category B information that must be included in a wrap to ensure equivalence
  - Opinions on Turkish and Israeli share prospectus rules: specific information that must be included in the wrap for the prospectus to be considered equivalent
- Prospectus Regulation
  - International standards requirement dropped, but information requirements of third country must be equivalent to PR

# CMU beyond the immediate legislative programme

"Legislation is not the alpha and omega of the CMU project."

*Ugo Bassi, DG for Financial Stability, Financial Services and Capital Markets  
Union: IFLR 11 July 2016*



# Wholesale Market – Listed debt

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## Business as usual?

- Prospectus typically prepared not for public offer but for listing purposes only:
  - Investor expectations of listing
  - UK quoted Eurobond exemption
- Pan-European marketing under exemptions for EU-wide wholesale offers:
  - €100,000 minimum denomination – likely to be removed by PR
  - €100,000 minimum commitment
  - Qualified investors.
- Short term paper
  - typically unlisted
- MIFID2/MIFIR
  - 3<sup>rd</sup> country provisions for investment services

# Private Placements - Unlisted debt

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Barriers to a uniform pan-EU market may persist regardless of Brexit:

- Divergent documentation:
  - Per governing law
  - Per market-norms
  - PEPP/LMA initiatives
  - Established French and German markets
- Withholding tax – opportunity for EU-wide rules?
- Solvency II currently penalises unrated long term corporate debt and infrastructure

Other issues

# Eligibility of securities for Eurosystem and BoE collateral

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## ECB and BoE need to decide

- ECB does not currently automatically admit 3<sup>rd</sup> country securities so will need to re-examine:
  - London listed securities
  - UK SPV issuers
  - U.S. assets – backed securities
- ...and vice versa for BoE

# How might sovereign exemptions apply post Brexit

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rEU would need to decide how to treat the UK and the Bank of England

- PD does not apply to securities of or guaranteed by Member States, and regional and local authorities; also certain international bodies and central banks but this exemption does not extend to third parties
- MAR makes special allowance for behaviours related to the debt and exchange rate management policies of member states, EU central banks and others named entities
  - This does include certain 3<sup>rd</sup> countries' finance ministries and central banks

# Brexit from the U.S. perspective

Focus on debt capital markets

# Closing Thoughts

Coming soon



# Coming soon

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Events on Brexit's application across the sector:

- Derivatives Webinar – Friday 22 July, 2pm (BST)
- Securitization Webinar – Wednesday 27 July, 2pm (BST)
- Market Infrastructure Webinar – Wednesday 3 August, 2pm (BST)

# Contact Us

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- If you have any questions, you can email us on:  
[FISBrexit@hoganlovells.com](mailto:FISBrexit@hoganlovells.com)
- Access our latest thinking on our Brexit hub at:  
[www.hoganlovells.com/Brexit](http://www.hoganlovells.com/Brexit)
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