13 DECEMBER 2016

Hogan Lovells Capital Markets

2016 saw seismic political change - what's next for the UK's capital markets in 2017?

What a year it has been. The UK's referendum vote to leave the European Union, the US election results and the Italian referendum result all continue to dominate the global headlines – but how has the political backdrop affected the UK's capital markets?

Market regulators - business as usual

Despite the significance of these political events, the UK and European market regulators have continued to pursue their regulatory objectives and have carried on their business as usual. 2016 saw the implementation of key regulation, together with proposals for new and revised regulation for the European markets. We take a look at the significant highlights from 2016 and set out some key items to note on next year's regulatory agenda.

The new Market Abuse regime

The Market Abuse Regulation has been in effect for almost six months and its extensive reach has meant that some market participants are having to consider Europe's market abuse regime for the first time. The new regime has sparked increased interest in listing on non-EU stock exchanges, such as the Channel Islands Stock Exchange. From implementing new market sounding procedures to overhauling policies on inside information and insider lists, the new regime has had real practical significance for issuers, banks and investors. The regime is still in its infancy however, and during the course of 2017, we may see further guidance and commentary from regulators as market participants navigate and interpret the new rules. For our overview of the new market abuse regime, click here.

The new Prospectus regime

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We are edging closer towards a new prospectus regime which has been designed to facilitate greater access to raising finance on Europe's capital markets, particularly for smaller businesses. Some of the key features of the new Prospectus Regulation, which will amend the Prospectus Directive, include a simplified disclosure regime for SMEs and less bureaucracy for frequent issuers. Political agreement between the European Parliament, Council and Commission on the final rules was reached on 8 December 2016. The press release states that an alleviated corporate bond prospectus will be available for admission to the wholesale debt markets. The final text is expected to be adopted in the first half of 2017. The new Regulation will enter into force 12 or 24 months after its publication during which time we can look forward to a number of consultations on subsidiary regulations. For more information on the proposed changes for debt and equity issues, click here and here for our summaries of the draft Prospectus Regulation.

Enhancing competition in the UK markets

In October 2016, the FCA announced a package of remedies to boost competition in the primary market activities in the UK, being equity capital market services, debt capital market services and mergers and acquisition services. The measures, which were published in the FCA's final report of its 'Investment and corporate banking market study', include a proposed ban on restrictive contractual clauses in investment banks' engagement letters and further proposals to investigate and improve the IPO process. Click here for our summary of the proposals.

In 2017, we expect that the FCA will continue to monitor competition in the markets, particularly in light of any Brexit developments. The FCA is due to reveal and implement its proposals to improve the IPO process. Such measures will be designed to address the concern that there is a lack of available information to independent research providers and investors during the early stages of the IPO process. Additionally, the FCA is expected to propose measures to address any risk that connected research made available in the IPO process is biased in favour of the issuer. These changes will be significant to how issuers and advisers structure their deal timetables and manage the IPO process.

Green Bonds

Green finance has grown in significance at both an EU and global level in the course of 2016 - and it will remain a key priority in 2017. The European Commission has highlighted that one of its priorities is the implementation of the Paris Agreement on climate change. In October 2016, the European Commission decided to establish a High Level Expert Group (HLEG) on sustainable finance, building on the Commission's goal to develop a comprehensive EU strategy to support investment in projects involving environmental, social and governance considerations as part of the Capital Markets Union. The HLEG is expecting to commence its work in January 2017 and to deliver a comprehensive policy roadmap for related EU financial policy reforms by end-2017. The G20 has also emphasised the importance of green finance and has welcomed options put forward by the Green Finance Study Group to develop proposals for scaling up private capital for green investment.

ICMA has recently updated the Green Bond Principles (GBP), its voluntary process guidelines that recommend transparency and disclosure and promote integrity in the development of the Green Bond market. The updated principles go beyond purely environmental objectives to include social objectives as well. ICMA has also established its online GBP

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Resource Centre, which contains standardised disclosure templates on green bonds. Some of the rating agencies have also prepared green bond evaluation frameworks and scoring methodologies which consider a company's impact upon its environment and the measures it has in place to monitor those effects.

Private Placements

The European corporate private placements (ECPP) market continues to be an evolving market. ICMA has published an updated version of its European Corporate Debt Private Placement Market Guide, which contains a widely recognised voluntary framework for common market standards and best practice for the ECPP market. The revised guide includes elements relating to the German Schuldschein market and an appendix on general principles of, and best practice applicable to, ECPP deal amendments and waivers. The German Schuldschein market continues to expand beyond investment grade German companies to include smaller lower rated non-German companies as well. Although precise figures are hard to come by it appears that the Italian mini-bond and French private placement markets have continued to develop. Nevertheless, the market remains a fragmented one. There is little sign that attempts to create standardised and scalable models for pan-European market practice and documentation have yet reached the tipping point where we can expect to see the kind of US-like levels of take up that policy makers would like.

Blockchain

Blockchain has generated a lot of interest within the capital markets community, as FinTech start-ups, market infrastructure providers and global banks evaluate technology and potential use cases. However, many unanswered questions remain as to how blockchain fits into the current capital markets regulatory and legal landscape. For blockchain (or other forms of distributed ledger technology) to evolve, it will need to comply with the regulatory and legal framework in which it operates.

No doubt 2017 will see increased discussion and developments in this area. Indeed, ESMA has already produced a discussion paper on the use of distributed ledger technology applied to the securities markets and the European Commission has recently announced that it is launching an internal task force on financial technology which will present policy suggestions in the first half of 2017. Hogan Lovells collaborated with Innovate Finance and EY on a report designed to help progress understanding of the legal issues to be navigated in order to build viable and valuable blockchain solutions in capital markets, as well as to support policy-makers in this area.

For more information on blockchain, click here to read our report produced with Innovate Finance and EY: Blockchain and the Capital Markets Journey: Navigating the Legal Landscape. Please also see our Blockchain: Linked Ledgers Topic Center.

Brexit

The impact of Brexit on the capital markets will depend on whether the exit will be "hard" or "soft". If it is soft, then it is likely to involve a commitment to maintain alignment with existing EU law and regulation or at least "equivalence of outcomes". If Brexit is at least somewhat "hard", the impact will depend on whether the UK decides to mirror existing EU law and regulation or diverge to form an independent regulatory regime. The UK Government has indicated that it intends to import EU law into UK law on Brexit through the Great Repeal Bill so, at least initially, the content of EU rules should continue to apply. Maintaining equivalent rules going forward should assist the UK in establishing that it satisfies equivalence standards. If the UK regulatory framework is kept equivalent then that may enable UK financial services firms to retain cross-border access to the EU either under a bilateral arrangement with the EU or through its third country regimes (sometimes referred to as "equivalence"), though the coverage available under those regimes is limited and the process for obtaining access is complex.

For more information on equivalence, please see our note which explores the key differences between the status quo of "passporting" and relying on "equivalence".

The Supreme Court's judgment in the case to determine whether the UK Government can invoke Article 50 without the consent of the British Parliament is expected in early 2017 and Theresa May has said that Article 50 will be triggered by the end of March 2017.

We have developed a Brexit Toolkit “Brexit: a practical response strategy” to help guide businesses on the key elements of a practical response strategy. For more information, or advice on developing your practical response strategy contact your usual Hogan Lovells contact or email Brexit@hoganlovells.com

For more resources on readying your business for Brexit, and our latest thinking, visit our Brexit Hub at: www.hoganlovells.com/brexit

Season's greetings

If you would like to know more about the impact of any of the key regulatory initiatives on your capital market transactions, please do contact your usual Hogan Lovells contact or one of the listed contacts.

In the meantime, we would like to wish you and your families a wonderful festive season and our very best wishes for 2017. We look forward to updating you with further developments in the New Year.