

In association with



A&L Goodbody



The likely impact of the 23 June 2016 EU Referendum on UK based asset managers

11 January 2016



Agenda

Part 1: legal and regulatory issues:

- introductory comments from each fund jurisdiction's perspective
- management challenges
- distribution challenges
- options for MiFID services

Part 2: the wider commercial context

Questions and discussion

The UK's preferred approach : setting the scene

- UK negotiating position unknown
- none of the existing third country models would work for us, so a bespoke deal is preferred. How long would it take and what would it look like?
- level of interconnectedness is very significant and so each element of the picture must not be looked at in isolation
- not just financial services issues – consider for example data
- how do we preserve the position where the UK can take the lead in solving new regulatory problems
- Is there a first mover advantage? This UK may be seen as favouring gold plating but its approach also indicates an ability to adapt regulation to suit the purpose, and so to facilitate new business models
- adaptability is key, once full information is available so informed decisions can be taken. Need to devise ways which adapt to new circumstances with minimal cost but maximising ability to meet commercial objectives and client demands

And so to specifics

Passporting issues

Table 1: Number of inbound and outbound²⁰ passports issued by the Financial Conduct Authority and Prudential Regulation Authority

	Total	Inbound	Outbound
Number of passports in total	359,953	23,532	336,421
Number of firms using passporting	13,484	8,008	5,476

Table 2: Number of firms with at least one passport under each directive

Directive	Outbound	Inbound
Alternative Investment Fund Managers Directive (AIFMD)	212	45
Insurance Mediation Directive (IMD)	2758	5727
Markets in Financial Instruments Directive (MiFID)	2250	988
Mortgage Credit Directive (MCD)	12	0
Payment Services Directive (PSD)	284	115
UCITS Directive	32	94
Electronic Money Directive	66	27
Capital Requirements Directive IV (CRD IV)	102	552
Solvency II Directive	220	726

It is however quite difficult to quantify economic activity from the number of passports or firms involved.

Source: House of Lords European Union Committee Brexit: financial services 9th Report of Session 2016-17 - published 15 December 2016 - HL Paper 81

Third country equivalence regimes

- not generally available for all financial services. Prospectively available for AIFMD (not yet switched on) and MiFID (from Jan 2018) .
- even where available, an inadequate substitute for passports?
- variances in equivalence criteria. (For details of the different methodologies which have been used for equivalence assessments see ESMA's website)
- is equivalence feasible – with the clearing houses it took more than three years between the USA and the EU. And of that three years, only six months was on technical aspects.
- possibility for an equivalence decision to be withdrawn makes it an unattractive option?

“[achievement of equivalence] is a Commission decision. The parameters for that decision are not terribly clear; they are quite open. The way the Commission can make the decision is open to interpretation. There are no time limits for how long the Commission has to take to make a decision. Then there is a further process where, if it wants to give equivalence, it has to go through a committee of member states, and then the European Securities and Markets Authority has to [register] each individual firm from that jurisdiction. They do not approve them but they have to register them. That registration can be withdrawn and the equivalence can be withdrawn.”

Katherine Braddick, Director General, Financial Services, HM Treasury in giving evidence to the House of Lords European Union Committee regarding Brexit: Financial Services (Question 63)

Third country equivalence regimes (cont'd.)

- would asset managers prefer current NPPR options to third country AIFMD passports?
- would an effective third country regime help regarding some MiFID activities?
- equivalence should perhaps be a broader concept

It should be more about recognising the equivalence of the outcome than the equivalence of the input? Different ways of achieving the same outcome should be equally viewed as equivalent?

- consider whether developing an equivalence regime should be a necessary part of a globalised financial sector

"As for the specific EU regimes, we do not have much experience of them yet. Equivalence is a decision of the Commission. Conceivably it could be politicised, and we know that equivalence can be reversed. Of course, if you have a global system in which you try to ensure that cross-border activity happens under an umbrella where you are confident in the other jurisdictions' regulatory and supervisory structures, you need to make sure that if you diverge at some point you have a way of dealing with that, and either no longer have the access or settle the divergence in some way. The EU will have to do that."

Source: Sir Jon Cunliffe, Deputy Governor, Financial Stability, Bank of England: evidence to the House of Lords Select Committee on the European Union Financial Affairs Sub-Committee, Brexit: Financial Services , 12 October 2016 (Question 45)

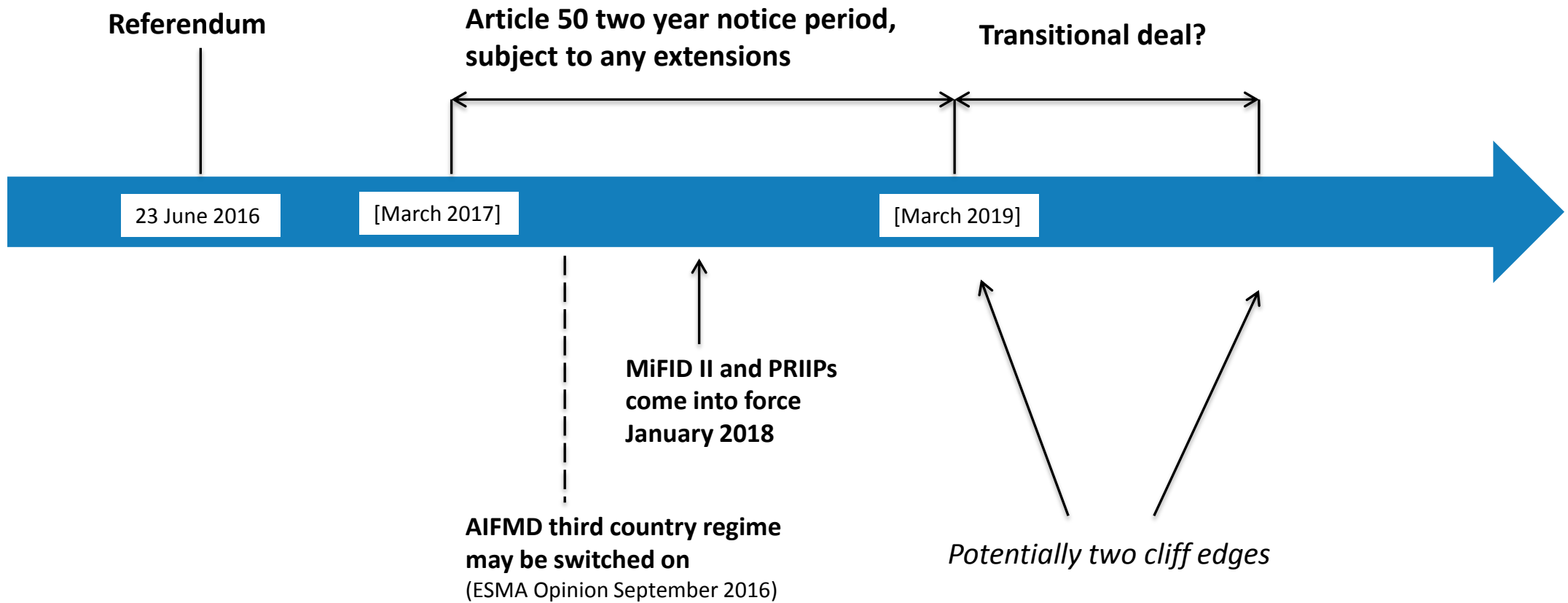
Delegation

- note the differing conditions in UCITS, AIFMD and MiFID
- would be surprising if the outcome for UK were to be less helpful than the position which third countries currently enjoy
- but need to review the issues from the Fund's, the ManCo's and investment manager's perspectives

“Where we would certainly start to struggle would be if there were a physical restriction on what could be done outside the European market. For example, on the delegation point, if someone tried to say that you could not run European money if you sat in London that would be quite an extraordinary reversal of the last 40 years of a global trend. It would certainly cause us a lot of thinking and would be very difficult. In the United Kingdom we look after about £630 billion of European equities on behalf of global, not just European and UK, clients. So you would be talking about a reversal of the way that capital markets have evolved in the last 30 years since exchange controls were removed.”

Elizabeth Corley, Vice Chair, Allianz Global Investors - Oral evidence to House of Lords Select Committee on the European Union Financial Affairs Sub-Committee, 14 September 2016

Brexit timing



What should be the UK's preferred approach?

Task is to devise ways by which each asset manager adapts to new circumstances with minimal cost but maximising ability to meet its commercial objectives and client demands

Common themes:

- ensure delegation to third country provisions are robust and work effectively
- lobby for maintenance of UCITS passports from the UK?
- UK funds for UK investors ? Or is there an increased likelihood of selling into the UK of Luxembourg and Dublin funds – and so a need for a new section 264 regime?
- likely need an EU based firm for segregated mandates?

Consider response to, and potential impact of UK FCA's Asset Management Market Review: should UK authorised funds have gold plating?

The Irish perspective

Observations regarding impact of Brexit from:

- The Central Bank of Ireland
- Minister of State for Financial Services

What we are seeing:

- Case by case analysis required
- Uncertainty
- Other compliance and product challenges

The Luxembourg perspective

- Managers that have established a management company in Luxembourg to manage their UCITS and AIFs are considering using their management company to take over from the UK entity managed account mandates with delegation of portfolio management to the UK.
- Managers that pursue portfolio management and distribution functions through EU branches of the UK entity are considering restructuring these branches to become branches of the Luxembourg management company.
- Alternative managers, under the pressure of their European clients' preference for an EU onshore investment vehicle and the restrictions of reverse solicitation and private placement rules, are considering to establish both their EU AIFM and their AIFs in a single EU jurisdiction to reinforce their substance, strengthen their tax position and benefit of EU passporting.

Discussion points

regarding fund management challenges

- how much can still be carried on in London?
- delegation constraints
- ManCo letterbox issues
- developments in fund governance
- usefulness of Super ManCos
- third party man co services
- new special deal for a product passport for UK UCITS?
- the UK as a third country: is third country status for AIFMs helpful?
- how to sell funds and services into the UK in the future
- approach to fund distribution , and its delegation

Discussion points (cont.)

regarding options for MIFID services

- the exclusive initiative to the client – Article 43 – MiFID – unlikely to be helpful
- utilise Article 39 MiFID II ?– conditions include a co-operation arrangement being in place
- establish a branch utilising Article 46 of MiFIR – which could apply if the Commission makes an equivalence decision in respect of the UK, so can provide services to eligible counterparties or per se professional clients (but not opt up professional clients nor retail clients)
- establish a MiFID firm in another EU Member State –or use a Super ManCo?- and delegate back to the UK
- should we keep the rather generous overseas person exemptions allowing third country firms to provide investment advice and services in the UK without local UK authorisation? The equivalent does not occur in other EU Member States

The wider commercial context

Fidelity's perspective:

- Separate fund ranges with separate ManCos in UK and larger European jurisdictions address local markets.
- UK and Lux product range duplication avoids significant use of marketing passport e.g FIL Lux SICAV has over 150 sub-funds which cover with a few exceptions the UK UCITS and AIF strategies.
- Non-European sales are using SICAV so avoids issues with OEIC registrations.
- Delegation of IM may be a concern depending on the outcome of equivalence - using US and Asia in many cases reduces this issue.

Questions and discussion



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