

## Statement

### **Reminder to firms on their MiFID obligations on disclosure of information to clients in the context of the United Kingdom withdrawing from the European Union**

1. The European Securities and Markets Authority (ESMA) is issuing this Statement to remind investment firms and credit institutions providing investment services (collectively referred to as "firms") of their obligations to provide clients with accurate disclosure on the impact on the provision of services and investors' rights that may emerge from the withdrawal of the United Kingdom from the European Union (EU).

### **Background**

2. On 29 March 2017, the British government notified the European Council of its intentions to withdraw from the European Union. From that day, a two-year process has started to reach an agreement on the terms of the UK's departure from the EU (so called 'Brexit'). This process is currently on-going.
3. In preparation for Brexit, ESMA has issued:
  - In May 2017, an Opinion<sup>1</sup> on the general principles to support supervisory convergence in the context of the United Kingdom withdrawing from the European Union.
  - In July 2017, three Opinions setting out sector-specific principles in the areas of investment firms<sup>2</sup>, investment management<sup>3</sup> and secondary markets<sup>4</sup>, aimed at fostering consistency in authorisation, supervision and enforcement related to the relocation of entities, activities and functions from the United Kingdom. These three Opinions provide guidance to NCAs aimed at ensuring a consistent interpretation of the requirements relating to authorisation, supervision and enforcement in order to avoid the development of regulatory and supervisory arbitrage risks.
  - In July 2018, a Statement<sup>5</sup> on the timely submission of requests for authorisation in the context of the United Kingdom withdrawing from the European Union. Within this Statement, ESMA has already reminded firms that, as there is no assurance that a transition

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<sup>1</sup> Ref: ESMA42-110-433

<sup>2</sup> Ref: ESMA35-43-762.

<sup>3</sup> Ref: ESMA35-45-344.

<sup>4</sup> Ref: ESMA70-154-270.

<sup>5</sup> Ref: ESMA42-110-998.

period will be agreed upon, entities need to be prepared for the scenario where a no-deal Brexit would take place on 30 March 2019.

4. In order to increase investors' awareness in this unprecedented situation, ESMA believes that, beyond the Opinions and Statement that have already been issued, it is important to remind firms of their legal obligation to provide clients with (i) information on the implications of Brexit on existing and new contracts and (ii) the impact of Brexit-related measures that a firm has taken or planned.
5. In this regard, ESMA has also conducted analyses, in cooperation with national competent authorities, on the state of preparedness of firms whose activity might be impacted by the UK withdrawal from the EU. In light of these observations, ESMA believes that there is a need to remind relevant firms to finalise and implement suitable plans in order to mitigate any risks stemming from the UK withdrawal in a suitable timeframe and to provide appropriate information to their clients.
6. This Statement is addressed to the UK firms that provide services to the EU-27 countries (whether directly or through a branch), as well as to EU-27 firms that interact with clients based in the UK (whether directly or through of a branch).

### **Relevant MiFID requirements**

7. ESMA notes that MiFID II<sup>6</sup> and the MiFID II Delegated Regulation<sup>7</sup> contain several requirements related to the provision of information to clients and potential clients, which are relevant in the context of the preparation for Brexit. These include
  - Article 24 of MiFID II on General principles and information to clients;
  - Article 44 of the MiFID II Delegated Regulation on Fair, clear and not misleading information requirements;
  - Article 46 of the MiFID II Delegated Regulation on General requirements for information to clients;
  - Article 47 of the MiFID II Delegated Regulation on Information about the firm and its services for clients and potential clients; and
  - Article 49 of the MiFID II Delegated Regulation on Information concerning safeguarding of client financial instruments or client funds

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<sup>6</sup> Directive 2014/65/EU.

<sup>7</sup> Commission Delegated Regulation (EU) 2017/565.

## Information to clients

8. In order to avoid any potential disruption arising from client confusion, firms that will be impacted by Brexit should ensure that they provide clear information to clients whose contracts and services may be affected. The information should be provided as soon as possible, once available, and should cover at least the following areas:
- *Impact of UK departure:* the specific implications of the departure of the UK from the EU for clients, based on the circumstances of those clients (e.g. specific investment services provided), should be covered. Messages should focus on the impact of the departure of the UK from the EU for the given firm and its business, and the implications this has for the relationship between the client and the firm.
  - *Actions the firm is taking:* the firm should provide information on the actions that are being taken to properly inform clients and prevent any detriment to them; for instance:
    - organisational arrangements to deal with client inquiries related to the withdrawal of the UK from the EU (e.g. publication of FAQs for clients, contact details, helpline etc.);
    - jurisdiction and contact details of the competent authority following any permitted transfer of investment service contracts to another firm or the relocation of a firm;
    - change in the protection provided by any existing national investor compensation scheme due to the transfer of investment service contracts to a firm located in another jurisdiction.
  - *Implications of any corporate restructuring:* the implications for the clients arising from any corporate restructuring should be covered. In particular, any relevant changes to contractual terms should be clearly communicated and explained, taking into account any relevant national provisions, where appropriate;
  - *Contractual rights:* firms should provide information on any contractual and statutory rights of clients in these circumstances, including the right to cancel the contract and any right of recourse, where applicable. In particular, existing clients should be informed of any changes to their contractual relationship with the firm or of any impact on specific contracts that may occur as a result of the action taken by the firm (e.g. relocation to a group entity or to a branch of another group entity based in an EU-27 country).
9. Any communication to clients should be clear and in plain language and should attempt not to cause undue concern. Within these communications, clients should be informed of whom they can contact for further information.



10. ESMA and NCAs will continue to monitor developments, including by engaging with firms to assess the level of firms' preparedness and to ensure that their clients are appropriately informed in the context of the firms' preparation for Brexit, as outlined above.