



Brexit and the Capital Markets - does equivalence need to be mutual?

Beyond Brexit – Part of the Horizon Scanning series

August 2020

In the non-binding Political Declaration that accompanied the Withdrawal Agreement, the UK and the EU committed, in relation to their respective financial services regulatory frameworks, to “*start assessing equivalence with respect to each other under these frameworks as soon as possible after the United Kingdom's withdrawal from the Union, endeavouring to conclude these assessments before the end of June 2020.*”

The end of June deadline has now come and gone, but questions over equivalence remain. What equivalence assessments are possible in relation to the capital markets? And what are the implications for market participants if they are not in place once the Implementation Period expires?

There are two distinct equivalence frameworks that impact the capital markets: (1) accounting standards equivalence for financial disclosure and reporting; and (2) prospectus regime equivalence for non-exempt public offers and admissions of securities. These are considered separately (and summarised in tables in the appendix).

Accounting standards equivalence for financial disclosure and reporting

What are the general requirements (for EEA issuers)?

The EU accounting standards framework requires an EEA issuer to prepare consolidated financial information according to EU-endorsed IFRS in two scenarios:

- i) for historical financial information, if it prepares a prospectus for a non-exempt offer of securities to the public or an admission to trading on a regulated market in the EEA. This is a prospectus regime obligation (deriving from the relevant annexes to the PR Delegated Regulation).
- ii) for ongoing annual and half-yearly financial reports, if it has equity securities or retail debt securities admitted to trading on an EEA regulated market. This is a transparency regime obligation (deriving from the Transparency Directive as implemented in the issuer's home Member State). Wholesale debt issuers are exempt from this obligation.

An EEA issuer that does not produce consolidated financial statements has the option of complying with these requirements by preparing its financial information according to either EU-endorsed IFRS or its national GAAP.

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What are the equivalence provisions (for third country issuers)?

In relation to both the prospectus and transparency requirements, there is a useful exception for third country issuers, which have the option of preparing financial information according to national GAAPs that the European Commission has formally recognised as equivalent to EU-endorsed IFRS. Currently, these comprise the national GAAPs of the United States, Canada, China, Japan and South Korea and - critically - also IFRS as adopted by the IASB, provided that the notes to the audited financial statements state that they comply with IFRS in accordance with IAS 1 (presentation of financial statements).

Given that many jurisdictions around the world now permit or require IFRS reporting, issuers established in such jurisdictions are able to comply with their EU financial disclosure and reporting obligations by preparing their accounts in accordance with IFRS as adopted by the IASB and including the relevant compliance statement. Issuers established in such jurisdictions do not, therefore, typically need the European Commission to have recognised their national GAAP as equivalent to EU-endorsed IFRS.

What about third-country issuers whose financial information is not equivalent?

For third country issuers that prepare their financial information under a national GAAP that the European Commission has not recognised as equivalent, if they produce an EU prospectus they must: (i) in the case of a wholesale debt prospectus, include a prominent statement that their financial information has not been prepared in accordance with (and therefore that there may be material differences from) EU-endorsed IFRS and provide a narrative description of the differences between EU-endorsed IFRS and the issuer's national GAAP; and (ii) in the case of an equity or retail debt prospectus, restate their financial information in accordance with EU-endorsed IFRS.

Once admitted to trading on an EEA regulated market, wholesale debt issuers are exempt from the Transparency Directive requirement to publish annual and half-yearly financial reports. However, equity issuers and retail debt issuers are required to publish annual and half-yearly financial information in accordance with EU-endorsed IFRS (unless the issuer's home Member State national competent authority recognises the issuer's national GAAP to be equivalent to EU-endorsed IFRS: something which few national competent authorities have done).

Beyond Brexit: the distinct UK and EU accounting standards regimes, from IP Completion Day

During the Implementation Period, the EU's prospectus and transparency regimes and accounting standards framework continue to apply in the UK in much the same way as they did prior to exit day.

Under the EU (Withdrawal) Act 2018, the on-shoring of EU financial services regulation onto the UK statute book will take place on IP Completion Day (scheduled for 31 December 2020). This will create parallel UK prospectus, transparency and accounting standards frameworks that initially mirror their respective EU frameworks. This will mean that issuers preparing a prospectus for a non-exempt offer of securities to the public or admission of securities to a regulated market in the UK, and issuers with securities admitted to trading on a regulated market in the UK, will need to ensure that their financial statements are prepared either in accordance with UK-endorsed IFRS or non-UK accounting standards that the UK recognises as equivalent.

Given that the distinct UK and EU regulatory frameworks will initially mirror each other, on a purely technical basis mutual equivalence assessments might be expected prior to IP Completion Day, at

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least initially. However, [it is worth noting that from the EU perspective an ‘equivalence assessment’ is the initial step without a formal legal consequence](#). It is the next step, the ‘equivalence decision’, that amends legal obligations - and this latter step was not mentioned in the Political Declaration.

The UK position: equivalence granted to EU-endorsed IFRS, but not EEA national GAAPs

On the UK side, early in 2019, in contemplation of a potential ‘no deal Brexit’, [HM Treasury made a unilateral equivalence direction that from ‘exit day’ the UK would recognise EU-endorsed IFRS as equivalent to UK-endorsed IFRS](#). This direction remains in place and is now due to commence on IP Completion Day. The equivalence decisions that the EU has made in relation to the national GAAPs of the United States, Canada, China, Japan, South Korea and IFRS as adopted by the IASB will also be on-shored, making those accounting standards ‘equivalent’ for the purposes of the new UK accounting standards framework. The UK’s equivalence direction does not extend to EEA national GAAPs (see further below).

The UK’s equivalence direction in relation to EU accounting standards (together with the on-shored equivalence decisions in relation to other third countries) means that EEA issuers that prepare financial information in accordance with EU-endorsed IFRS (and other rest of the world issuers) will be able to meet their UK financial disclosure and reporting obligations after IP Completion Day without making any changes to their current practices.

UK issuers preparing consolidated financial information will need to prepare it in accordance with UK-endorsed IFRS for financial periods commencing after IP Completion Day. UK issuers preparing consolidated financial information for financial years that straddle IP completion day or which have a financial year ending before IP completion day but file their accounts after that date, must use EU-endorsed IFRS but have the option of applying any additional UK-adopted international accounting standard on top of that.

The EU position: currently no specific equivalence decision relating to the UK

The EU’s position is less clear. In its ‘no deal Brexit’ preparations in 2019 the EU did, in the area of financial services, provide for grandfathering and transitional arrangements in relation to some regulations, but not in relation to accounting standards equivalence. Looking forward, the extent to which the EU might make an equivalence decision in relation to UK accounting standards might be a political question rather than a legal one. But what are the consequences of the EU not making an equivalence assessment or decision in relation to UK accounting standards on those UK issuers that intend to publish an EU prospectus or obtain a new or maintain an existing admission of securities to trading on an EEA regulated market post IP Completion Day?

UK issuers that will prepare their financial statements in accordance with UK-endorsed IFRS will be able to use them to meet their EU financial disclosure and reporting obligations, on the basis that their auditors will be able to state that the financial statements comply with IAS 1 (and are thus ‘equivalent’ for EU purposes). These issuers will not notice any impact.

Mind the GAAP

The position will be more complex for UK and EEA issuers that prepare their financial information according to their national GAAPs and are subject to each other’s regulatory frameworks, as these will be outside each other’s equivalence regimes.

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In relation to wholesale debt, where a UK GAAP issuer publishes an EU prospectus it will have to include a narrative description of the differences between UK GAAP and EU-endorsed IFRS; and where an EEA GAAP issuer publishes a UK prospectus it will have to include a narrative description of the differences between the relevant EEA GAAP and UK-endorsed IFRS. Market practice for this disclosure may develop and not represent a significant additional burden.

In relation to retail debt and equity, where a UK GAAP issuer publishes an EU prospectus it will have to restate its financial information in accordance with EU-endorsed IFRS; and where an EEA GAAP issuer publishes a UK prospectus it will have to restate its financial information in accordance with UK-endorsed IFRS. This is a new cost that in some cases may outweigh the benefit of extending the offer to investors in the relevant country, or getting the securities admitted to trading on a regulated market in that country. Similarly, a UK GAAP issuer that has equity or retail debt admitted to trading on an EEA regulated market will have to publish annual and half-yearly financial information in accordance with EU-endorsed IFRS; and vice versa. The additional costs of complying with this requirement may prompt the issuer to review whether the benefits of maintaining a listing in the relevant market continue to outweigh the costs.

The extent to which this might cause a problem should not be overstated. The number of UK and EEA issuers that both use national GAAP and have a real commercial or regulatory reason for an overseas equity or retail debt prospectus or regulated market admission is very small. Offers may be structured to be exempt from the requirement to publish a prospectus (for example, using the 150 persons per member state exemption) and admissions may move to an MTF rather than a regulated market (with financial reporting obligations being set by the relevant stock exchange, which typically allow national GAAP).

Prospectus regime equivalence for non-exempt public offers and admissions of securities

Is a prospectus required? Does the prospectus need to be passported?

The Prospectus Regulation is broadly neutral as to an issuer's jurisdiction of incorporation. Other than in relation to financial disclosure (as discussed above) and to a limited extent in relation to an issuer's choice of home Member State (which determines the national competent authority responsible for approving the prospectus) EEA issuers and third country issuers have the same obligations and rights under the Prospectus Regulation.

Under the Prospectus Regulation, an issuer is required to publish a prospectus approved by an EEA competent authority if it either (i) offers securities to the public in an EEA state or (ii) admits securities to trading on an EEA regulated market. There are helpful exemptions to both limbs: for example, an offer is an 'exempt public offer' if the securities have a minimum denomination of at least €100,000 or equivalent; the securities are offered only to qualified investors; or the securities are offered to fewer than 150 persons per Member State (excluding qualified investors). Many debt capital markets transactions can therefore be structured to avoid the requirement to publish a prospectus by ensuring that the offer is an exempt public offer and that the debt securities are admitted to trading on a multilateral trading facility rather than a regulated market. For equity capital markets transactions, the decision as to which market a company should list its securities on is typically driven by commercial considerations, such as the depth of capital available, the perceived status of companies with shares listed on the market and the extent to which the market is associated with an index such as FTSE. Larger companies therefore usually list on a regulated market and have to publish a prospectus both on IPO and, typically, on any large secondary offer.

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The passporting provisions within the Prospectus Regulation allow a prospectus approved by a competent authority in one EEA state (the home Member State) to be used in another EEA state (the host Member State) without further regulatory approvals being required. Passporting can be used in two distinct scenarios: (i) cross-border non-exempt offerings of equity or retail debt, to enable an issuer with a prospectus approved in one EEA state to offer equity or retail debt to non-qualified investors in another EEA state; and (ii) cross-border non-exempt admissions to trading, to enable an issuer with a prospectus approved in one EEA state to admit securities issued under that prospectus to trading on a regulated market in another EEA state. Passporting is not relevant for cross-border offerings of wholesale debt as these benefit from the 'high denomination' exemption.

After IP Completion Day, the UK will no longer be treated as if it were an EEA state, so it will no longer be possible to passport a prospectus approved in the UK into an EEA state for use there, or vice versa. However, in principle a similar effect could be achieved if the EEA were to recognise a UK-approved prospectus as equivalent to an EU prospectus and/or (conversely) the UK were to recognise an EU-approved prospectus as equivalent to a UK prospectus.

Does the Prospectus Regulation have an equivalence framework? Will the UK benefit from this?

The EU prospectus regime has had a theoretical equivalence framework since the Prospectus Directive in 2005, but this has never really worked in practice. [In 2011, ESMA put in place a framework for third country prospectuses, but only in relation to equity rather than debt.](#) Under this framework, recognising the differences between third country regimes and the EU prospectus regime, EEA competent authorities were able to approve disclosure documents prepared under third country regulatory regimes if they were accompanied by an 'EU wrap', so that the combined document met the requirements of the EU prospectus regime. Once approved by an EEA competent authority, the combined document could also be passported within the EEA for securities EEA-wide offerings and admissions. But only the securities offerings regimes of Israel and Turkey were ever judged to be equivalent under this framework and it was not widely used in practice.

The Prospectus Regulation, which replaced the Prospectus Directive, also contains equivalence provisions on its face, but in order to operate these would need to be 'switched on' by (i) a new delegated act establishing general equivalence criteria and (ii) an equivalence decision by the European Commission relating to one or more particular countries. [On 31 January ESMA wrote to the Commission about prospectus regime equivalence, concluding that "the operation of an equivalence regime under Article 29 of the Prospectus Regulation would raise serious practical challenges"](#). For the foreseeable future, therefore, and well beyond IP Completion Date, it seems that EU prospectus regime equivalence provisions will remain switched off, in relation to both the UK and the rest of the world, even though, in relation to the UK at least initially, its prospectus regime is a copy and paste of the EU prospectus regime. In other words, the EU is unlikely to recognise a UK prospectus as equivalent to an EU prospectus.

Unlike the UK (see below) it also seems likely that the EU will not make any specific grandfathering arrangements in relation to those prospectuses that straddle IP Completion Day ([this was the position in Q104 of ESMA's prospectus regime questions and answers in relation to a 'no deal Brexit'](#)). On this basis, if an issuer has made an offer to the public in an EEA state based on a prospectus that was approved in the UK and passported to the relevant EEA state before IP Completion Day, because it will not be possible to supplement the prospectus after IP Completion Day the issuer will need either to close the offer in that EEA state on IP Completion Day or draw up a new EU prospectus and get it approved by the relevant EEA state.

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Assuming that the EU does not recognise UK prospectuses as equivalent to EU prospectuses, how much will this matter? In the wholesale debt markets, the answer is not much. In such markets, neither passporting nor equivalence for prospectuses is typically relevant. The cross-border (from UK to EEA) retail debt market is very small, partly because issuers are faced with onerous PRIIPs and MiFID II product governance obligations which act as a disincentive to the issuance of retail debt.

In the equity markets, the problem is somewhat more complex because it is more common for prospectuses to be passported. Usually this occurs where an issuer wants to extend an offer to retail investors in one or more EEA states, as well as the UK (a cross-border retail offer), or, rarely, where an issuer wants to get its shares admitted to an EEA regulated market at the same time as the UK Main Market (a cross-border IPO). According to ESMA, in 2018 the UK passported out 43 prospectuses; and 183 prospectuses were passported into the UK. (Although ESMA does not specify the type of securities to which the passported prospectuses related, it is likely that most related to equity securities.) Generally, the number of prospectuses passported each year has been in steady decline since 2011.

After IP Completion Day, if an issuer wants to do a cross-border retail offer into an EEA state, or get its securities admitted to an EEA regulated market at the same time as the UK Main Market, it will need either to: (i) draft both a UK prospectus and an EU prospectus (with the approval processes running concurrently); or (ii) draft an EU prospectus and, once it has been approved by the relevant EEA regulator, ask the FCA to treat it as equivalent to a UK prospectus (i.e. take advantage of 'inwards equivalence': see below). The latter option will likely make sense for most issuers.

The UK position: equivalence granted to EU prospectuses, but some additional work required

In its on-shoring work in contemplation of a 'no deal Brexit' in 2019, the UK put in place grandfathering arrangements covering those prospectuses and base prospectuses that are passported into the UK prior to exit day, allowing them to continue to be supplemented and used for offerings, admissions and drawdowns under programmes until their normal one-year life-span expired. This arrangement will now apply from IP Completion Day and is a helpful solution to 'inwards passporting' for prospectuses whose life straddles IP Completion Day.

In addition to this (and just as in relation to accounting standards), the UK's unilateral equivalence direction covered the EU prospectus regime. [This has now been amended to reflect the Prospectus Regulation replacing the Prospectus Directive and will commence on IP Completion Day](#). In other words, the UK will in principle recognise an EU prospectus as equivalent to a UK prospectus. While this is designed to be helpful in relation to offers and admissions of securities in the UK that are based on an EU prospectus, a little more work is required before it will operate effectively.

Under article 29(1) of the [on-shored UK Prospectus Regulation](#), the FCA will be able to 'approve' a prospectus drawn up under the EU Prospectus Regulation, but the FCA has not confirmed what this approval will involve. Given HM Treasury's equivalence direction, it would seem appropriate for this to involve a simple notification and confirmation by the issuer, rather than a requirement to complete checklists and undergo an extensive scrutiny process, but it would be helpful if the FCA would confirm this.

Further, under article 29(1)(b), the FCA can only approve an EU prospectus on this basis if it has concluded cooperation arrangements with the supervisory authorities of the non-UK issuer and under [the draft Equivalence Determinations for Financial Services \(Amendment etc.\) \(EU Exit\) Regulations 2020](#), this cooperation arrangement must, at least "*concern the exchange of information between the FCA and the relevant supervisory authority and the enforcement of*

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obligations arising under the Prospectus Regulation; and (b) ensure an efficient exchange of information that allows the FCA to carry out its duties under the Prospectus Regulation.” It is not clear why a cooperation arrangement is really necessary in these circumstances and if the relevant supervisory authority will not conclude a cooperation arrangement with the FCA, on the face of it the FCA will not be able to treat the EU prospectus as equivalent to a UK prospectus - which would seem to undermine the policy intention.

It is also not clear why this option seems to be restricted to EEA issuers given that it may also be useful to UK and other rest of the world issuers. In our view, this requirement should be reconsidered or dropped.

In summary, after IP Completion Day, provided certain problems can be ironed out the UK will recognise an EU prospectus as equivalent to a UK prospectus; but the EU is unlikely to recognise a UK prospectus as equivalent to an EU prospectus. The lack of ‘outwards equivalence’ is unlikely to cause significant difficulties in debt capital markets; in equity capital markets, the potential problem is slightly greater but, provided inward equivalence works as intended, issuers should not face significant difficulties.

Conclusion

Arguably equivalence assessments and decisions should be a straight-forward technical matter. But both the UK and the EU want to guard their regulatory autonomy and respective equivalence frameworks tightly - commitments in the Political Declaration may therefore have limited value. Even if the EU does not make any equivalence assessments and decisions in relation to the UK, it would still make sense for the UK to make unilateral equivalence determinations in relation to the EU (and ideally these will be finalised and confirmed as soon as possible).

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Table 1 - accounting standards for financial disclosure and reporting after IP Completion Day		
Issuer jurisdiction	Financial disclosure in EU prospectuses, financial reporting for EEA regulated markets	Financial disclosure in UK prospectuses, financial reporting for UK regulated markets
EEA	EU-endorsed IFRS or national GAAP (as now)	<p>EU-endorsed IFRS will be ‘equivalent’ for UK prospectuses and UK financial reporting</p> <p>EEA national GAAPs will not be ‘equivalent’ for UK prospectuses and financial reporting:</p> <ul style="list-style-type: none"> Prospectuses: wholesale debt issuers will be required publish a narrative description of differences between their national GAAP and UK-endorsed IFRS. Equity and retail debt issuers must restate financial statements in accordance with UK-endorsed IFRS Transparency: wholesale debt issuers may report to national GAAP (LR17.3). Equity and retail debt issuers must restate financial statements in accordance with UK-endorsed IFRS
UK	<p>UK-endorsed IFRS will effectively be ‘equivalent’ for EU prospectuses, provided that the notes to the audited financial statements state that they comply with IFRS in accordance with IAS 1 (presentation of financial statements)</p> <p>UK GAAP will not be equivalent for EU prospectuses and financial reporting:</p> <ul style="list-style-type: none"> Prospectuses: wholesale debt issuers will be required publish a narrative description of differences between UK GAAP and EU-endorsed IFRS. Equity and retail debt issuers must restate financial statements in accordance with EU-endorsed IFRS Transparency: wholesale debt issuers are exempt under the Transparency Directive. Equity and retail debt issuers must restate financial statements in accordance with EU-endorsed IFRS 	<p>If IFRS is required:</p> <ul style="list-style-type: none"> for financial periods commencing after IP Completion Day, UK-endorsed IFRS for financial periods that straddle IP Completion Day or that end shortly before but file their accounts after IP Completion Day, EU-endorsed IFRS, with the option of applying any additional UK-adopted international accounting standard on top of that <p>Otherwise UK GAAP (as now)</p>

Table 1 - accounting standards for financial disclosure and reporting after IP Completion Day		
Issuer jurisdiction	Financial disclosure in EU prospectuses, financial reporting for EEA regulated markets	Financial disclosure in UK prospectuses, financial reporting for UK regulated markets
Rest of world	<p>National GAAPs of US, Canada, China, South Korea, Japan or IFRS as adopted by IASB provided that the notes to the audited financial statements state that they comply with IFRS in accordance with IAS 1 (presentation of financial statements)</p> <p>Otherwise:</p> <ul style="list-style-type: none"> Prospectuses: wholesale debt issuers will be required publish a narrative description of differences between national GAAP and EU-endorsed IFRS. Equity and retail debt issuers must restate financial statements in accordance with EU-endorsed IFRS Transparency: wholesale debt issuers are exempt under the Transparency Directive. Equity and retail debt issuers must restate financial statements in accordance with EU-endorsed IFRS (as now) 	<p>National GAAPs of US, Canada, China, South Korea, Japan or IFRS as adopted by IASB provided that the notes to the audited financial statements state that they comply with IFRS in accordance with IAS 1 (presentation of financial statements)</p> <p>Otherwise:</p> <ul style="list-style-type: none"> Prospectuses: wholesale debt issuers will be required publish a narrative description of differences between national GAAP and EU-endorsed IFRS. Equity and retail debt issuers must restate financial statements in accordance with EU-endorsed IFRS Transparency: wholesale debt issuers may report to national GAAP (LR17.3). Equity and retail debt issuers must restate financial statements in accordance with UK-endorsed IFRS

Table 2 - prospectuses for non-exempt ¹ offers to the public / admissions to trading after IP Completion Day		
Jurisdictions of public offer / admission to trading	Which prospectus regime applies? / Which competent authority approves prospectus?	Contents requirements / comments
UK only	UK prospectus regime / FCA	<p>Contents for a UK prospectus are set out in the UK Prospectus Regulation², the UK PR Delegated Regulation³ and the UK PR RTS⁴. See also the Prospectus Regulation Rules⁵ chapter of the FCA Handbook.</p> <p>The distinct UK and EU prospectus regimes will be substantively identical from IP Completion Day until such time that they diverge.</p> <p>Both pre-IP Completion Day EU non-legislative guidance⁶ (ESMA guidelines on risk factors, ESMA guidelines on alternative performance measures, ESMA Q&A on the prospectus regime etc) and UK non-handbook guidance that relates to EU law⁷ (material within the FCA knowledge base, Primary Market Bulletin) will continue to be relevant, as now.</p>
EEA only	<p>EU prospectus regime / EEA national competent authority depends on home Member State (Prospectus Regulation Article 2(m)).</p> <p>UK issuers will be able to choose from among jurisdictions of offer / admission to trading.</p>	<p>Contents for an EEA prospectus are set out in the EU Prospectus Regulation, the EU PR Delegated Regulation and the EU PR RTS.</p> <p>Consider also EU non-legislative guidance (including ESMA guidelines on risk factors and alternative performance measures, ESMA old Q&A and new Q&A on the prospectus regime).</p> <p>A prospectus approved by one EEA national competent authority can be passported for public offers and admissions to trading in other EEA Member States (EU Prospectus Regulation, Articles 24 and 25).</p>

¹ Both the UK prospectus regime and the EU prospectus regime have a number of helpful exemptions, including the ‘high denomination’ exemption, the ‘qualified investor’ exemption and the ‘150 persons’ exemption.

² On-shored version of Regulation (EU) 2017/1120. [This is set out in Part 5 Chapter 1 of the Prospectus \(Amendment etc.\) \(EU Exit\) Regulations 2019.](#)

³ On-shored version of Commission Delegated Regulation (EU) 2019/980. [This is set out in Part 5 Chapter 2 of the Prospectus \(Amendment etc.\) \(EU Exit\) Regulations 2019.](#)

⁴ On-shored version of Commission Delegated Regulation (EU) 2019/979. [The draft of this is set out in Appendix 5 of FCA CP 19/27.](#)

⁵ As amended post IP Completion Day. [The draft of this is set out in Appendix 5 of FCA CP 19/27.](#)

⁶ See FCA’s publication [Brexit: our approach to EU non-legislative materials](#) and note that these materials are specifically referred to in the Prospectus Regulation Rules chapter of the FCA Handbook. The FCA may consider materials produced by ESMA post-exit, including where pre-exit material is updated. Where it considers it appropriate to do so, it will set out its expectations as to how such material should be treated. However, new ESMA guidelines and recommendations will no longer be addressed to the FCA and the FCA will no longer have an EU law obligation to comply with them.

⁷ See FCA’s publication [Brexit: our approach to non-Handbook guidance where it relates to EU-law or EU-derived law.](#)

Table 2 - prospectuses for non-exempt ¹ offers to the public / admissions to trading after IP Completion Day		
Jurisdictions of public offer / admission to trading	Which prospectus regime applies? / Which competent authority approves prospectus?	Contents requirements / comments
Both UK and EEA	<p>Both UK prospectus regime and EEA prospectus regime apply:</p> <ul style="list-style-type: none"> - FCA to approve the prospectus for UK prospectus regime purposes. - National competent authority of home Member State (EU Prospectus Regulation Article 2(m) to approve the prospectus for EU prospectus regime purposes. 	<p>Grandfathering of prospectuses approved pre-IP Completion Day?</p> <p><u>From EEA to UK?</u> Yes, EEA prospectuses passported into the UK prior to IP Completion Day can be used for new offers and admissions in the UK until they expire (Regulation 74 of the Prospectus (Amendment etc.) (EU Exit) Regulations 2019). The FCA will be responsible for approving supplements.</p> <p><u>From UK to EEA?</u> No, FCA approved prospectuses passported into the EEA prior to IP Completion Day cannot be used for new offers or admissions in the UK (Q&A 104 of the ESMA Q&A on the prospectus regime).</p> <p>Passporting of prospectuses approved post-IP Completion Day?</p> <p>There will be no passporting of prospectuses either from the EEA to the UK or from the UK to the EEA post-IP Completion Day. Passporting of prospectuses within the EEA will not be impacted.</p> <p>Equivalence of prospectus regimes post-IP Completion Day?</p> <p><u>Of EEA by UK?</u> Yes, under Article 29 of the UK Prospectus Regulation, the FCA may approve an EEA-approved prospectus post-IP Completion Day.⁸</p> <p><u>Of UK by EEA?</u> No, the EU equivalence regime for prospectuses is not operative.⁹</p>

⁸ [Regulation 54 of the Prospectus \(Amendment etc.\) \(EU Exit\) Regulations 2019](#), [the Prospectus Directive and Transparency Directive Equivalence Directions 2019](#) and [the Prospectus Directive and Transparency Directive Equivalence \(Variation\) Directions 2019](#). There are some open questions about how this will operate and further clarification from HM Treasury and/or the FCA would therefore be welcome.

⁹ [Letter from ESMA to the European Commission \(31 January 2020\)](#).

Table 2 - prospectuses for non-exempt ¹ offers to the public / admissions to trading after IP Completion Day		
Jurisdictions of public offer / admission to trading	Which prospectus regime applies? / Which competent authority approves prospectus?	Contents requirements / comments
		<p>Therefore:</p> <p>In relation to transactions involving <u>both</u> a UK public offer or admission <u>and</u> an EU public offer or admission post IP Completion Day (for which grandfathering is not available) the issuer will have the following options:</p> <p>(1) Draft both a UK prospectus and an EU prospectus (approval processes to run concurrently); or</p> <p>(2) Draft an EU prospectus and once approved use the UK equivalence provisions for the UK approval.</p> <p>The latter option will likely make sense for most issuers.</p>