



BREXIT: ESMA and European Regulators reach agreement on MoUs with the FCA

With just 56 days to go until the UK is expected to leave the European Union on 29 March, 2019, the asset management industry has finally received confirmation that arrangements involving the delegation of portfolio management by EU UCITS management companies, AIFMs, internally / self-managed AIFs and UCITS, and investment firms to UK entities can continue in the event of a 'Hard Brexit'.

As readers will be aware, under the UCITS, AIFMD and MiFID II frameworks, delegation of portfolio management is only permitted to entities located in third countries where a cooperation sharing agreement or memorandum of understanding ("**MoU**") is in place between the competent authorities of the EU firm and the competent authority of that third country delegate.

ESMA has confirmed in a [press release](#) published today that a Multi-Lateral MoU between EU/EEA securities regulators and the FCA has been agreed which covers supervisory cooperation, enforcement and information exchange between individual regulators and the FCA. This welcome development provides much needed certainty to the asset management industry that existing delegation arrangements involving UK investment managers can continue should a hard Brexit come to pass. An MoU between ESMA and the FCA concerning the exchange of information in relation to the supervision of credit rating agencies (CRAs) and trade repositories (TRs) was also agreed.

It is worth noting, however, that the MoUs do not remove the onus on European firms to ensure that they have real substance within the EU/EEA notwithstanding any delegation arrangements in place. Firms should therefore be satisfied that their delegation arrangements will stand up to any scrutiny by both their home regulator and the EU Supervisory Co-ordination Network, taking into

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account, *inter alia*, the guidelines set down in the Brexit Opinions published by ESMA in 2017, which are considered in a previous Dillon Eustace briefing which is accessible [here](#).

Dillon Eustace is working with a number of applicants establishing operations in Ireland while delegating certain investment management tasks to UK based entities. Please contact the authors or your usual contact in the Asset Management team for further information.

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