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## ESMA issues reminder to investment firms on disclosure obligations under MiFID relating to Brexit arrangements

### Brexit reminder to investment firms and credit institutions

In what has been a busy week in Europe, in which we saw the European Commission publishing a range of contingency measures to mitigate against the most severe consequences of a “no-deal” Brexit, ESMA has also issued a statement to remind investment firms and credit institutions providing investment services (“**firms**”) of their legal obligations under MiFID II to inform clients of (i) the impact that Brexit may have on existing and new contracts and (ii) the impact of Brexit-related measures which the firms have already taken or plan to take. ESMA’s statement will be of interest also to UCITS Management Companies and AIFMs who provide MiFID services to clients.

### Who is the statement addressed to?

The statement is addressed to (i) UK firms which provide investment services to EU27 countries and (ii) EU27 firms that interact with clients based in the UK.

### What does the statement say?

In its statement, ESMA reminds firms of the need to finalise and implement suitable plans in order to mitigate any risks which arise from Brexit. Once finalised, firms should provide appropriate information on such arrangements to clients whose contracts and services may be affected by Brexit as soon as possible.

For further information on any of the issues discussed in this article please contact:



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## What information should be provided to clients whose contracts or services may be impacted by Brexit?

ESMA advises that the information provided to clients should, at a minimum, address the following areas:

**(i) Impact of Brexit:** This should focus on the impact of Brexit for the given firm and its business and the implications that this will have for the relationship between the firm and its clients

**(ii) Actions that the firm is taking:** This should outline the steps being taken to properly inform clients of the impact of Brexit and to prevent any detriment to clients arising from Brexit. In this regard, ESMA notes that clients should be informed of:

(a) organisational arrangements put in place to deal with client inquiries relating to Brexit. Such arrangements may include the publications of FAQ for clients, provision of contact details, helplines etc

(b) if contracts are being transferred to another firm or the firm is relocating to an EU27 country as a result of Brexit, the jurisdiction and contact details of the relevant competent authorities; and

(c) where client contracts are being transferred to a firm located in another jurisdiction, the firm should outline any change in the protection afforded to its clients under the existing national investor compensation scheme.

**(iii) Implications of any corporate restructuring:** Clients should be advised of any change to contractual terms which arise as a result of corporate restructuring which is being implemented in light of Brexit.

**(iv) Contractual rights:** Existing clients should be informed of any contractual and statutory rights of clients in such circumstances, including for example the ability to cancel the contract and, where applicable, the right of recourse. ESMA advises that any changes to contractual terms with the firm resulting from Brexit should also be explained.

## What next?

In its concluding paragraph, ESMA re-emphasises that both it and national competent authorities will continue to engage with firms to assess whether they are “Brexit-ready” and to ensure that clients are provided with appropriate information in respect of Brexit arrangements.

Therefore, once firms have finalised the measures which they intend taking or have already taken to mitigate any risks arising from Brexit, they should then ensure that they communicate these measures to affected clients, having regard to the criteria outlined above. ESMA notes that any such communications should “*be clear and in plain language and should attempt not to cause undue concern*”.

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