Title: European Union (Withdrawal) Act – Financial Services Statutory Instruments (III) **IA No:** RPC-4329(1)-HMT **RPC Reference No:** RPC-4329(1)-HMT **Lead department or agency:** HM Treasury **Other departments or agencies:** Department for Exiting the European Union	Impact Assessment (IA) **Date: 29/01/2019** **Stage: Final** **Source of intervention: Domestic** **Type of measure: Secondary Legislation** **Contact for enquiries:** Sebastian Astin-Chamberlain Sebastian.astin-chamberlain@hmtreasury.gov.uk

Summary: Intervention and Options

RPC Opinion: GREEN

Cost of Preferred (or more likely) Option (£m) (in 2016 prices)				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year**	**One-In, Three-Out**	**Business Impact Target Status**
Unknown: likely significant	Unknown: likely significant	Unknown: likely significant	Not in scope	Non qualifying provision

What is the problem under consideration? Why is government intervention necessary?

These Statutory Instruments (SIs) form part of the wider work the government is undertaking to ensure that there will be a functioning financial services regulatory regime at the point where the UK leaves the EU, in any scenario. They are made using powers under the EU (Withdrawal) Act 2018 to prevent, remedy or mitigate any failure of retained EU law to operate effectively after the UK leaves the EU. The UK and EU have agreed the terms of an implementation period that will start on 29 March 2019 and last until 31 December 2020. However, the government has a duty to plan for all scenarios. Together with the other financial services SIs, these SIs would ensure that a functioning and stable financial services regulatory regime is in place at the point of exit on 29 March 2019, in any scenario, including in the scenario in which there is no deal in place and the UK leaves the EU without an implementation period.

What are the policy objectives and the intended effects?

These SIs are not intended to make policy changes, other than to ensure a functioning financial services framework and to provide for a smooth transition in the scenario where the UK leaves the EU without an implementation period being in place. The government's objectives in laying these SIs are:

- Having a functioning legislative and regulatory regime in place, in particular the financial services regulators' capability to fulfil their statutory objectives as set out in the Financial Services and Markets Act 2000 (FSMA);
- Enabling regulators and firms to be ready – by minimising disruption and avoiding material unintended consequences for the continuity of service provision to UK customers, investors and the market;
- Protecting the existing rights of UK consumers;
- Ensuring financial stability.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

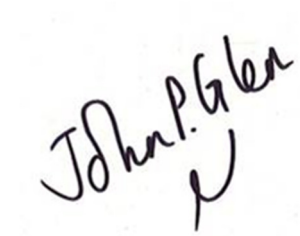
As noted in the EU (Withdrawal) Bill Impact Assessment, 'the Government does not consider that there are alternative ways to prepare the domestic statute book for our exit from the European Union within the timetable dictated by the Article 50 process.' The policy positions presented in these SIs are the result of systematically applying the principles set out above to deficiencies or inoperable provisions in the statute book.

The powers in the EU (Withdrawal) Act 2018 are limited to fixing deficiencies, and cannot be used to develop new policy beyond what is appropriate to address the deficiencies. The aim is to limit the disruption to and burden on firms by maintaining the status quo as far as possible. Most of the changes to retained EU law made by these SIs will not come into effect in March 2019 if, as is the government's top priority, the UK leaves the EU with a deal and enters an implementation period.

Will the policy be reviewed? It will not be reviewed. **If applicable, set review date:** N/A

Does implementation go beyond minimum EU requirements?		N/A		
Are any of these organisations in scope?	**Micro** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)		**Traded:** N/A	**Non-traded:** N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:  Date: 29/01/2019

Summary: Analysis & Evidence Policy Option 1

Description: Proceed with secondary legislation to fix deficiencies in retained EU law relating to financial services.

FULL ECONOMIC ASSESSMENT [1]

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:
NA	NA	-	-	-	-

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	-	-	**-**
High	-	-	**-**
Best Estimate	Unknown: likely significant	Unknown: likely significant	Unknown: likely significant

Description and scale of key monetised costs by 'main affected groups'

The costs incurred by businesses as a result of these SIs are set out in the categories below. Since these SIs aim to broadly preserve the status quo in financial services (FS) regulation, quantifiable costs on business that are directly attributable to these SIs are marginal compared to the overall costs arising from the UK leaving the EU, and mainly consist of familiarisation costs. On the whole, none of the SIs present substantial familiarisation costs, however they have been monetised using a standardised methodology.

Other key non-monetised costs by 'main affected groups'

While the majority of direct costs on business fall under the familiarisation costs category, there will be a limited set of other business costs linked to business operations that will be introduced by these SIs. These other business costs may include transition costs, such as changes to business processes, and reporting requirements. Given the wide range of firms affected by these changes, and differences in their size and the activities they undertake, and the interactions between these SIs and other legislation and regulator rules, some not yet finalised at the time of publication, it has not been possible to monetise these costs.

In addition, HM Treasury intends to legislate to provide the financial services regulators with powers to introduce transitional measures that they could use to phase in any changes to the UK regulatory regime resulting from the UK leaving the EU, which could reduce the costs on business of adjusting to the new regulatory regime. It is not possible to monetise an estimate of the impact of this, as the regulators will have discretion as to how they exercise these powers.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	-	-	-
High	-	-	-
Best Estimate	significant	significant	significant

Description and scale of key monetised benefits by 'main affected groups'

N/A

Other key non-monetised benefits by 'main affected groups'

These SIs (when taken together with the rest of the FS onshoring SIs, and subsequent changes to FS regulator rules and associated legislation) help ensure that there will be a functioning financial services regulatory regime at the point where the UK leaves the EU, in any scenario. They also take action to avoid businesses facing a regulatory cliff-edge. Without these SIs, financial services firms would face much greater costs, and far greater uncertainty.

Key assumptions/sensitivities/risks	**Discount rate**	3.5

[1] Familiarisation costs only – excludes non-monetised impacts. Results given to two significant figures.

A number of assumptions and limitations frame our analysis, these are detailed in section III.1. Further assumptions relating to the quantification of familiarisation costs for these SIs can be found in the Annex.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			**Score for Business Impact Target (qualifying provisions only) £m:**
Costs:	**Benefits:**	**Net:**	
Unknown: likely significant	significant	Unknown: likely significant	N/A

Evidence Base (for summary sheets)

Impact Assessment of Financial Services Statutory Instruments – European Union (Withdrawal) Act 2018

This Impact Assessment is one of a set of Impact Assessments covering Financial Services Statutory Instruments under the European Union (Withdrawal) Act 2018 (EUWA). It sets out the background to the EUWA and the contact for financial services, the overall approach taken by HM Treasury to 'onshoring' legislation through secondary legislation under the EUWA, the approach taken to assessing the costs and benefits of this legislation, and provides an assessment of the impact of 9 statutory instruments:

- The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019
- The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019
- The Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2019
- The Venture Capital Funds (Amendment) (EU Exit) Regulations 2019
- Money Market Funds (Amendment) (EU Exit) Regulations 2019
- Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019
- Market Abuse (Amendment) (EU Exit) Regulations 2019
- Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019
- The Financial Conglomerates and Other Financial Groups (Amendment etc.) (EU Exit) Regulations 2019

This is the final stage Impact Assessment on these SIs. HM Treasury has not undertaken a formal consultation on this legislation, and therefore no Consultation Stage Impact Assessment was prepared.

Contents

1. Overview: the EUWA and Financial Services

1. The Financial Services (FS) industry is highly important to the UK economy: in 2017, it contributed a total £130bn in gross value added (GVA) to the UK economy, 7.1% of the UK's total GVA.[2] Furthermore, a large amount of FS activity happens across borders, and trade between the UK and the rest of the EU represents an important element of this: in 2016, the UK exported £79bn of FS (including insurance & pension funding) in total worldwide, of which £29bn went to the EU (36%).[3]

2. In the context of the UK's withdrawal from the EU, the government recognises that it is important to ensure continuity of the FS regulatory framework. The EUWA repeals the European Communities Act 1972, and converts into UK domestic law the existing body of

[2] 'UK GVA(O) low level aggregates', Office for National Statistics, July 2018 (Current prices)
[3] Geographical breakdown of the current account, The Pink Book, ONS, July 2018

directly applicable EU law (including EU Regulations). It also preserves UK laws made to implement our EU obligations – e.g. legislation implementing EU Directives. This body of law is referred to as "retained EU law".

3. The EUWA also gives Ministers powers to prevent, remedy or mitigate any failure of EU law to operate effectively, or any other deficiency in retained EU law, through Statutory Instruments (SIs). We sometimes refer to these contingency preparations for financial services legislation as 'onshoring'.

4. These SIs are not intended to make policy changes, other than to ensure a smooth transition when the UK leaves the EU, or to reflect the UK's new position outside the EU. The scope of the power in the EUWA is drafted to reflect this purpose, and subject to further restrictions, such as the inability to use the power to impose or increase taxation or fees, or establish a public authority.

5. However, in some cases, adequately addressing a deficiency does require policy changes to be made: for example, where supervisory functions are currently carried out by EU bodies who will not have jurisdiction in the UK after exit, it is necessary to give a UK body responsibility for these functions. This would mean that UK firms may be supervised by a different body after exit, and there will be costs associated with that transfer, but the scope of the supervision, and they way that they are required to engage with supervisors, would be maintained as far as possible.

6. The power under the EUWA is also time-limited: it can only be used for 2 years after exit day. However, any secondary legislation made using the powers is not time-limited (unless it specifically includes provision to that effect) and will remain in place after the end of that 2 year period.

1. The implementation period and contingency planning for a "no deal" exit

7. The UK and EU negotiating teams have reached agreement on the terms of an implementation period that will start on 29 March 2019 and last until 31 December 2020. Therefore, should a deal be approved, the implementation period would provide time to introduce the new arrangements that underpin our future relationship, and provide valuable certainty for businesses and individuals. During the implementation period, common rules would continue to apply, and the UK would continue to implement new EU law that comes into effect. This would mean that access to each other's markets would continue on current terms, and businesses, including financial services firms, would be able to trade on the same terms as now until the end of 2020.

8. However, the government has a duty to plan for all eventualities, including a 'no deal' scenario. The government is clear that this scenario is in neither the UK's nor the EU's interest.

9. To prepare for the possibility of leaving the EU on 29 March 2019 without an implementation period, HM Treasury is using the powers in the EUWA to bring forward legislation (including the SIs covered by this impact assessment) to ensure that the UK continues to have a functioning financial services regulatory regime, by fixing any deficiencies in financial services legislation to ensure that it continues to operate effectively when the UK is outside the EU.

10. These SIs have been prepared solely for a "no deal" scenario. They will not take effect in March 2019 if an implementation period is in place.

11. Some or all of these SIs may come into effect at the end of an implementation period, amended as necessary to reflect the UK's position at that point, including our future relationship with the EU, and to reflect any developments in EU law during the implementation period.

12. In the event that there is an implementation period and these SIs, or some amended version of them, comes into effect at the end of an implementation period, HM Treasury will prepare an impact assessment that considers the impact of the SIs, as amended, and in the specific scenario that is applicable at that point in time.

13. A small number of provisions in these SIs come into effect before 29 March 2019. These are provisions which allow the regulators to make the necessary preparations, but they are also specifically designed to prepare for a "no deal" scenario. Where SIs contain these provisions it is set out in the relevant sections below, it is also summarised in annex B.

2. Context for Financial Services

14. A significant proportion of existing UK FS legislation is currently derived from the EU. There are over 200 pieces of EU legislation that relate to FS, as well over 280 pieces of UK secondary legislation and 24 pieces of UK primary legislation. This Impact Assessment covers 9 SIs that address deficiencies in UK law and retained EU law relating to financial services regulation that arise from the UK leaving the EU.

15. Consistent with the enabling powers in the EUWA which only extend to correcting deficiencies, these SIs are not intended to make policy changes other than to ensure the UK's regulatory framework continues to operate effectively when the UK leaves the EU. In making these SIs, EU-derived laws and rules that are in place in the UK will continue to apply, as far as is practicable. The UK financial services framework on exit day will not deviate from the pre-exit framework other than to ensure a functioning regime.

16. The impact of these SIs on business is best understood when considering them as a package of interlinked reforms. Each SI contributes to the overall objective of ensuring that there is legal certainty and a functioning regulatory regime at the point of exit, but their effectiveness is dependent on other EU Exit-related SIs.

17. In addition to these SIs, there will be amendments to the financial services regulators' rulebooks, and to the EU-derived technical standards.[5] These changes will be made by the regulators, and many of these changes will be consequential to HM Treasury's SIs. Rules made through these sub-delegated powers will be subject to broadly the same constraints as HM Treasury's use of the EUWA's powers, as well as additional mechanisms to ensure robust HM Treasury oversight. The regulators have been consulting on these rule changes since Autumn 2018.

18. There will also be changes to other relevant legislation that is not made by HM Treasury and is not specific to the financial services sector, but will have an impact on it. This includes, for

[5] EU-derived technical standards are a type of EU legislation that sets out the technical details of how requirements set in the parent legislation are to be met.

example, changes to law dealing with insolvency law, data sharing and data protection, and accounting standards.

2. Approach

1. Principles of onshoring

19. Section 8 of the EUWA gives Ministers powers to make regulations to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law arising from the UK leaving the EU.

20. Examples of deficiencies in financial services legislation include:

    - Functions that are currently carried out by EU authorities and would no longer apply to the UK (for example, supervision of trade repositories, which HM Treasury proposes to transfer to the Financial Conduct Authority);
    - Provisions in retained EU law that would become redundant (for example, references to Member States, and European Consumer Credit Information);
    - Provisions that would be inconsistent with ensuring a functioning regulatory framework – for example, requirements regarding automatic recognition by a UK body of an act of an EU body where alternative arrangements for cooperating with EU bodies would be more appropriate;
    - Provisions requiring participation in EU institutions, bodies, offices and agencies (for example, joint decision making in supervisory and resolution colleges) which would no longer work after the UK leaves the EU.

21. If the UK were to leave the EU without a deal, the UK would be outside the EU's framework for financial services with no alternative bespoke arrangements in place. The UK's position in relation to the EU would be determined by the default Member State and EU rules that apply to third countries at the relevant time. The European Commission has confirmed that this would be the case.[6]

22. In light of this, our approach in this scenario cannot and does not rely on any new, specific arrangements being in place between the UK and the EU. As a general principle the UK would also need to default to treating EU Member States (and EEA states) largely as it does other third (non-EEA) countries. However, HM Treasury recognises that in some areas, given the complex and highly integrated nature of the EU financial services system, deficiencies would not be adequately resolved by defaulting to existing third country frameworks alone. In such cases, we might need to take a different approach to manage the transition to a stand-alone UK regime. HM Treasury has identified several principles that would justify taking a different approach, and has worked closely with the financial services regulators to analyse and determine the appropriate approach for each SI:

    - Having a functioning legislative and regulatory regime in place, in particular the regulators' capability to fulfil their statutory objectives as set out in the Financial Services and Markets Act 2000 (FSMA);

[6] European Commission notice: https://ec.europa.eu/info/publications/180208-notices-stakeholders-withdrawal-uk-banking-and-finance_en

- Enabling regulators and firms to be ready – by minimising disruption and avoiding material unintended consequences for the continuity of service provision to UK customers, investors and the market;
- Protecting the existing rights of UK consumers;
- Ensuring financial stability.

23. Wherever practicable, our approach is that the same laws and rules that are currently in place in the UK will continue to apply at the point of exit, providing continuity and certainty as we leave the EU. However, some changes would be required to reflect the UK's new position outside the EU and with no new special arrangements in place, in the event of a 'no deal' scenario. These changes would not take effect in 29 March 2019 if, as is the government's priority, we leave the EU with a deal and enter an implementation period.

24. This general approach was already reviewed by the RPC in its assessment of the Withdrawal Bill Impact Assessment[7].

25. HM also Treasury has confirmed its intention to temporarily empower the Bank of England, the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) to make transitional provision by waiving or modifying changes to firms' regulatory obligations where those obligations have changed as a result of onshoring financial services legislation. For example, the power could be used to delay the application of onshoring changes. The power will enable transitional provisions to be made in response to changes to the regulators' own rules, onshored EU regulations (that will form part of retained EU law) and EU-derived domestic primary and secondary legislation. The power could be used to grant transitional relief in respect of any existing regulatory requirements that would otherwise apply for the first time on exit day to a particular category of firm, for example firms in the temporary regimes referred to above.

26. Transitional relief could be granted to particular firms, classes of firms, or all firms to which a particular onshoring change applies, including firms that have entered into one of the transitional regimes referred to above. Firms would not need to apply for transitional relief in order to benefit from it. Rather, the regulators will issue "directions" that set out the terms of the proposed transitional relief, which would be published on the regulators' websites. It will be within the regulators' discretion how to exercise this power.

Regulatory rules and guidance

27. The financial services regulators provide a range of information and guidance to firms and consumers, including on preparing for the UK leaving the EU.[9] The regulators will continue to provide guidance and information to firms as appropriate in the lead up to and beyond exit day, in line with their statutory objectives. This will include guidance on complying with the onshored regime.

[7] RPC opinion: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/675290/rpc-4105_1_-dexeu-eu-withdrawal-bill-opinion.pdf

[9] An example of information provided by regulators: FCA, 'Preparing your firm for Brexit' (https://www.fca.org.uk/firms/preparing-for-brexit)

2. Alternatives to onshoring

28. As noted in the European Union (Withdrawal) Bill Impact Assessment, 'the Government does not consider that there are alternative ways to prepare the domestic statute book for our exit from the European Union within the timetable dictated by the Article 50 process.'[10] The policy positions presented in these SIs are the result of systematically applying the principles set out above to deficiencies in the statute book.

29. The powers in the EUWA are limited to fixing deficiencies, and cannot be used to develop new policy beyond what is appropriate to address the deficiencies. The aim is to limit the disruption to and burden on firms by broadly maintaining the status quo. Therefore, the only conceivable alternative to laying these SIs would be to do nothing, and leave the statute book unchanged.

30. Generally, fixing deficiencies does not involve different policy options. However, there are a limited number of instances where there may be more than one equally valid way of fixing a deficiency. For example, if powers are being transferred from an EU body to a UK body, there may be a choice of which body it is transferred to. Where provisions are currently EEA-wide in scope, it may be feasible to change the scope in one of two different ways so that the framework is not deficient after exit: the scope could be reduced to cover the UK only, or it could be widened to include "third countries".

31. Where this is the case, HM Treasury has made the decision on which policy approach to take with reference to the onshoring principles set out above: i.e. it has chosen the option that will best ensure a functioning regime where regulators are able to fulfil their statutory responsibilities, that will minimise disruption and promote continuity of service provision, protect UK consumers existing rights, and protect the UK's financial stability.

3. Do nothing

32. If the EUWA came into force but these SIs were not made then the EUWA would transfer EU law at the point of exit into the UK statute book, but it would not be appropriately amended to address deficiencies. Following the UK's exit, that law would, in many areas, fail to operate effectively or otherwise be deficient. Examples of this include:

    - The scope of EU regulations is generally defined with reference to the EU and/or its Member States. Once the UK is no longer a Member State, it would no longer be within scope of the legislation leaving uncertainty about the regulatory requirements that apply to UK firms.
    - UK Credit Ratings Agencies and Trade Repositories, which are currently supervised by EU regulators, would fall out of the EU supervisory framework, but no UK body would have powers to supervise them. This would leave these entities unregulated, causing financial stability risks.
    - EU firms and funds could continue to access the UK market, but the UK would no longer be part of the EU regulatory framework that they were operating under. UK regulators' powers to supervise them would be limited.

[10] EU Withdrawal Bill Impact Assessment: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/628004/2017-07-12_repeal_bill_impact_assessment__1_.pdf

- UK regulators would not be able to recognise third country central counterparties or central securities depositories, as these are currently recognised by EU regulators. These entities would lose access to UK markets, with significant impacts for their business and their customers.

33. These SIs are laid to avoid these and other possible adverse impacts, and ensure that there is a sound regulatory system, which will follow broadly the same rules and standards as now. If we left the EU without an agreement, but took no further action to prepare our domestic statute book, we would have an incomplete and incoherent legal system for financial services.

34. As set out above, the financial services industry is highly important to the UK economy, and the cost of 'doing nothing' both to business directly, and the UK economy as a whole, would far outweigh the costs that business will incur as a direct consequence of these SIs. 'Doing nothing' clearly goes against the government's commitment to prepare for all eventualities and provide business with clarity and certainty as they plan their response to EU exit. It is therefore essential that the appropriate adjustments to legislation are made before we have left the EU.

4. Choice of baseline

35. This Impact Assessment baselines against the UK statute book as it is expected to be before the UK leaves the EU in March 2019. Therefore, the assessment considers what the marginal impact on business will be of the changes made in the SIs to fix deficiencies in the existing legislation. For example, where a supervisory function is currently carried out at EU level, and is being transferred to a UK regulator by these SIs, the relevant impact is the marginal impact of the change of regulator – not the full cost of UK regulation.

36. The impacts presented for each SI are measured against a scenario where all other financial services legislation would function as intended on exit day. This makes it possible to consider the incremental impact of an individual SI on businesses. This IA does not consider the broader impact of the UK's departure from the EU.

37. This Impact Assessment provides an analysis of known costs that businesses will incur as a result of these SIs. Where possible, these costs have been quantified. However, these SIs represent only part of the picture for business impacts. In order to understand the full impact of the regulatory changes that will take place, it is necessary to consider these SIs alongside the rest of the set of financial services onshoring SIs, amendments to the regulators' rulebooks reflecting these SIs, the changes to EU binding technical standards made by regulators, and SIs amending other related legislation that is not specific to financial services.

5. Scope

38. This Impact Assessment measures primarily the impact on UK-based businesses of the changes to legislation resulting from these SIs. As for certain SIs the regulatory impacts stretch to EEA firms that have a branch in the UK, these firms have also been included. The Impact Assessment makes clear where figures refer to UK firms, or to UK and EEA firms.

39. In addition to measuring business impact, this Impact Assessment describes the impact of the onshoring SIs on the UK financial regulators, the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA), and the Bank of England.

3. Assessment

1. Assumptions and limitations

40. As set out above, these SIs have been designed for a "no deal" scenario and this Impact Assessment considers them only from that point of view. If any of the legislation comes into effect at a later date following an implementation period, then HM Treasury will complete new Impact Assessments considering their impact in that scenario.

41. A number of assumptions and limitations frame our analysis.

42. First, the impacts analysed in this document are limited to those that stem directly from these SIs. As explained above, in order to understand the impact on business, these SIs need to be considered alongside all other financial services SIs made under the EUWA, consequential amendments to the regulators' rulebooks, amendments to existing EU technical standards to address deficiencies, and amendments to other related legislation – not all of which had been finalised at the time this Impact Assessment was being prepared.

43. While HM Treasury continues to engage with stakeholders within the financial services industry on the changes being made by these SIs and their impact, time constraints have meant that industry engagement has proceeded largely on an SI by SI basis, and it has not been possible to share the full package of onshoring SIs, along with accompanying regulator rule changes, with industry in parallel – meaning it has not been possible to discuss the impact of the full package of changes with firms as this impact assessment was being produced, and has therefore not been possible to produce a monetised estimate of their full impact at this stage.

44. There are complex interdependencies between these SIs and the changes they make. For example, firms entering into a Temporary Permissions Regime for inbound EEA passporting firms may become subject to the Prudential Regulation Authority's (PRA) rules, and be affected by changes made in the legislation addressing deficiencies in other SIs. These interdependencies make it difficult to separate the effects of different SIs, and to give an assessment of the numbers of firms affected and exactly how they will be affected. In addition to these SIs, there will be amendments to the financial services regulators' rulebooks, and to the EU-derived technical standards.[5]

45. Firms will want to consider the full package of SIs, along with the associated changes to regulator rules, when making changes to business processes, for example deciding what changes to IT systems are required.

46. Secondly, since these SIs are designed only for a "no deal" scenario, the practical impact of these SIs on affected businesses will be significantly influenced by wider factors and, for example, decisions made by the UK and EU in the event of that scenario materialising. Different scenarios and responses could change how firms must respond to the changes made by these SIs.

47.

[5] EU-derived technical standards are a type of EU legislation that sets out the technical details of how requirements set in the parent legislation are to be met.

48. Finally, HM Treasury intends to legislate to provide the financial services regulators with powers to introduce transitional measures that they could use to phase in any onshoring changes. Where the powers are used, this could reduce the costs for business of adjusting to the onshoring changes.

49. For these reasons, in many instances it has not been possible to quantify costs with precision or by estimation. Where this is the case, an explanation has been provided as to why it has not been possible at this stage.

50. Given these limitations, HM Treasury recognises that this impact assessment is not able to fully quantify the potential impact of these SIs on industry. It undertakes that, if the UK were to leave the EU without a deal and therefore these SIs did come into effect in March 2019, it will at the appropriate time complete further analysis considering all of the relevant SIs as a package, once some of the limitations described above are no longer relevant. This would also allow for further stakeholder engagement.

51. A number of these SIs contain temporary transitional arrangements that are designed to allow firms to adapt to the changes made by the UK leaving the EU in a smooth way, rather than facing an immediate change at the point of exit. The SIs specify the length of these temporary arrangements, and in many cases allow the Treasury to extend these temporary arrangements if necessary.

52. Given this, we have considered what the appropriate appraisal period is for these SIs. However, only particular parts of these SIs are temporary: each of them also contains provision with indefinite effect and this is the majority of the content. For this reason, we have concluded that the standard 10 year appraisal period is appropriate.

53. There are further specific assumptions and limitations which pertain to individual SIs. These limitations are detailed in the relevant sections covering each SI.

2. Benefits to business

54. The purpose of these SIs (when taken together with the rest of the FS onshoring SIs, and subsequent changes to FS regulator rules and associated legislation) is to ensure that there will be a functioning financial services regulatory regime at the point where the UK leaves the EU, in any scenario, including where no deal is agreed. They also take action to avoid businesses facing a regulatory cliff-edge.

55. The Impact Assessment for the EUWA set out that the impact of not proceeding with this legislation would be that the UK statute book would no longer function correctly, and this would cause widespread and severe confusion for business, government and wider society.

56. Without these SIs, financial services firms would face much greater costs, and far greater uncertainty. UK legislation would be defective: meaning legislation would at times be contradictory, its scope would be unclear, and the requirements that apply to UK firms would be unclear. This could lead to firms to stop certain activities, to seek costly legal advice on their responsibilities due to the legal ambiguities that would exist, or potentially expose them to legal risks that could mean they incur costs (for example if they continued an activity which they were no longer permitted to do, or failed to alert customers to important changes). As set out in section II(3) 'Do nothing', the impact of not proceeding with this legislation would be to have a defective legislative and regulatory framework for

financial services when the UK leaves the EU. Therefore, the benefits of these SIs to directly affected firms, wider UK business and the UK economy as a whole, are highly significant.

57. In addition to the general benefit to firms from a functioning regulatory regime, these SIs fix deficiencies in ways that include putting in place provisions which will be of specific benefit to firms, as the act to smooth the transition to the post-EU regulatory regime, reducing or eliminating cliff-edge risks, and costs to firms. Examples of these benefits are:

    - The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 will ensure that, post-EU withdrawal, Alternative Investment Fund Managers (AIFMs) located in the EEA that are currently marketing in the UK through the passport will have temporary access under the Temporary Marketing Permissions Regime. This will reduce cliff edge risk for EEA AIFMs operating in the UK, and the investors they serve.

    - The Collective Investments Scheme (Amendment) (EU Exit) Regulations 2019 will create a specific regime that will allow Undertakings for Collective Investment in Transferable Securities (UCITS) that are established in the EEA to continue to be marketed to UK investors for a limited period after exit day provided that the relevant EEA UCITS was notified to the FCA before exit day in accordance the relevant legislation and that it satisfies certain other conditions. This reduces the risk for both issuers and consumers. This SI also establishes an onshored version of the UCITS regime, so that UK-authorised can be operated as UCITS in the UK.

58. Further benefits are detailed by SI in section IV below.

3. Costs to business

59. The costs incurred by businesses as a result of these SIs are set out fall into the categories set out below.

Familiarisation costs

60. These SIs are not intended to make any substantial changes to the legislative framework beyond what is appropriate to address any deficiencies. In a minority of cases, adequately addressing the deficiency does require more substantive changes for businesses, and where this is the case, the costs associated with that are set out in other categories. In the majority of cases however, fixing a deficiency does not substantively change the regulatory regime under which firms are operating, and therefore doesn't change the regulatory requirements of firms, or require them to make significant change their businesses processes. But such cases still give rise to a requirement for impacted businesses to familiarise themselves with the regulatory changes. On the whole, none of the SIs present substantial familiarisation costs. These should be one-off costs as the regulations introduced will not require ongoing updating or monitoring for changes from business.

61. As detailed in the limitations above, HM Treasury continues to engage regularly with the financial services industry on the changes being made by these SIs and their impact. This engagement, along with the publication of SIs in draft, will help mitigate the costs of disseminating regulatory updates to the impacted parties, by giving industry an understanding of the approach that has been taken, and how that will impact on their business.

62. One component of familiarisation costs is the cost of disseminating information about regulatory changes throughout a business. As the SIs under consideration do not make regulatory changes beyond what is appropriate to address deficiencies there will be limited information that needs to be disseminated beyond the businesses' internal EU Exit compliance and legal teams.

63. The familiarisation costs below are therefore not intended to cover any wider costs of disseminating information throughout the business (where necessary), or costs of further discussions with legal advisers following the initial legal advice. They also do not include the costs of implementing changes to business processes following familiarisation. Such costs will be dependent on the nature of the firm in question, and the types of activities they undertake, and it has not been possible for HMT to undertake the level of engagement with firms required to estimate such costs in the time available.

64. Our methodology for quantifying familiarisation costs is presented in the Annex. Given the complex interdependencies between the whole package of financial services EU exit SIs (covered in this any other impact assessments) and the changes they make, it is likely that firms would have to seek legal advice on multiple SIs. For example, many funds will be affected by more than one of the five funds SIs set out below.

Table 1. Quantified Familiarisation costs by SI

SI title	Familiarisation cost per firm (£) (2 significant figures)	Total familiarisation cost to all impacted firms (3) (2 significant figures)
The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019	640	6,100,000
• The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019	850	130,000
The Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2019	150	460
The Venture Capital Funds (Amendment) (EU Exit) Regulations 2019	170	5,200
Money Market Funds (Amendment) (EU Exit) Regulations 2019	340	7,200
Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019	210	27,000
Market Abuse (Amendment) (EU Exit) Regulations 2019	430	650,000
Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019	820	350,000
The Financial Conglomerates and Other Financial Groups (Amendment etc.) (EU Exit) Regulations 2019	270	27,000

Other business costs

65. While the majority of direct costs to business fall under the familiarisation costs category, there will be a limited set of other business costs linked to business operations that will be

introduced by these SIs. These will primarily be one-off costs to adapt to the changes introduced and include changes to business processes and reporting requirements (for example, reporting to a UK regulator when previously firms had reported to an EU regulator).

66. It has not been possible to quantify these costs, as these SIs need to be considered alongside all other financial services SIs made under the EUWA, consequential amendments to the regulators' rulebooks, amendments to existing EU technical standards to address deficiencies, and amendments to other related legislation – not all of which had been finalised at the time this Impact Assessment was being prepared.

67. HM Treasury has considered whether suitable proxies exist that could be used to provide an estimate of these costs – for example by drawing on the impact assessments prepared when this legislation was introduced, where they are available. However, since these SIs generally make changes to the scope of this legislation, then these were not considered suitable proxies and have not been used here.

5. Impacts on the public sector

68. Besides business, the financial services regulators are the other key group impacted by these SIs, along with HM Treasury itself. Where the functioning of the regulatory regime relies on functions currently carried out by EU bodies (the European Commission and the European Supervisory Authorities), these functions will need to be transferred to an equivalent UK body (HM Treasury or the UK financial services regulators).

69. In most cases, the UK regulators are currently responsible for supervising UK regulated firms, so they will not need to take on entirely new regulatory regimes. However, the regulators will need to take on new functions, and make changes to their operations, resulting in costs. An example of this would be transferring responsibility for determining the discount rates (usually updated on a monthly basis) that insurance firms must use to value their liabilities from the European Insurance and Occupational Pensions Authority (EIOPA) to the PRA, so that discount rates reflect market conditions and ensure insurance liabilities are correctly valued.

70. Where these SIs transfer new functions to the regulators, HM Treasury proposes to follow the model outlined in the Financial Services and Markets Act 2000 and allocate functions to UK regulators in a way which is consistent with the responsibilities already conferred on them by Parliament, and the requirements the UK domestic framework places on regulators in relation to consultation and impact analysis, providing certainty and continuity for firms.

71. Where changes to the regulators' rulebooks, or to EU technical standards, are required as a result of leaving the EU, the regulators intend to consult on these changes wherever possible.

72. HM Treasury will also need to take on responsibilities for functions currently being carried out by the European Commission. For example, HM Treasury will take on the function of making equivalence determinations - determining whether a third country's regulatory and supervisory regime is equivalent to the UK's corresponding framework, providing a certain level of market access, or preferential regulatory treatment to the third country being assessed. Where these SIs transfer functions to HM Treasury these functions will be

exercised through legislation, following the usual Parliamentary procedures for secondary legislation, unless otherwise specified below.

6. Indirect impacts

73. Where firms do face increased costs as a result of these changes, they may choose to pass on these costs to their customers, which will include other UK businesses. Since this impact is determined by firm behaviour and not a direct consequence of the SIs, it is not considered further in this Impact Assessment.

7. Post-Implementation Review

74. As set out above, this secondary legislation is being made under the EU (Withdrawal) Act, and follows the approach taken by the Act. As set out in the impact assessment on the EU Withdrawal Bill, the Act disapplies the requirement for post-implementation reviews of the statutory instruments that are brought forward under the Act, given the unique set of circumstances. As set out in that IA, these SIs make corrections to existing laws, meaning any repeal or modification could leave the statute book deficient. In addition, the regulations are being made under a power that will cease to exist after two years and therefore the power would not be available to make any changes following a review.

75. This does not remove the general need to review and improve legislation in due course and where appropriate, however the need for, timing and nature of any such review would be dependent on the circumstances in which the UK leaves the EU.

4. Assessment by SI

1. Summary table

The table below summarises the main types of costs firms will face as a result of these SIs. Where a type of cost is not indicated for a particular SI, it is because HM Treasury is of the view that costs of those type will not arise as a result of the SI.

The types of cost considered are:

Familiarisation costs - impacted businesses will need to familiarise themselves with the legislation, in order to determine whether they need to make further changes as a result of the SI;

- **Transition costs** – impact businesses will incur one-off transitional costs in order to comply with this legislation, e.g. costs of submitting a one-off notification to the UK regulator;
- **Changes to IT systems –** impacted businesses will need make changes to IT systems in order to comply with this legislation;
- **Changes to business processes** - impacted businesses will need to amend back office processes in order to comply with a new requirement caused by the legislation;
- **Changes to reporting requirements** - impacted businesses required to provide additional information to UK regulators as a consequence of this legislation;
- **Capital requirements changes –** the legislation changes the capital requirements for impacted businesses.
- **Other costs** – as described below for the SI in question.

Table 3. Summary of anticipated costs by SI

SI	Familiarisation Costs	Transition Costs	Changes to IT Systems	Changes to Business Processes	Changes to Reporting Requirements	Capital Requirements Change	Other Costs
The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019	X	X	X				X
The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019	X	X	X		X		
The Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2019	X			X			
The Venture Capital Funds (Amendment) (EU Exit) Regulations 2019	X			X			
Money Market Funds (Amendment) (EU Exit) Regulations 2019	X						X
Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019	X	X					X
Market Abuse (Amendment) (EU Exit) Regulations 2019	X	X	X		X		
Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019	X						
The Financial Conglomerates and Other Financial Groups (Amendment etc.) (EU Exit) Regulations 2019	X	X	X		X		

2. The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019

Background: the regulatory regime.

76. The EU Undertakings for Collective Investment in Transferable Securities (UCITS) Directive[23], sets out the common standards for investor protection for regulated investment funds that can be sold to retail investors in the EU, such as individual investors making investments for their savings or retirement. UCITS may also be sold to investors classified as 'unsophisticated investors', such as local governments.

77. The directive was intended to enable the regulation of cross-border fund management and marketing activity between Member States. UCITS is seen to be an EU harmonised fund 'product' as they can be sold on a cross-border basis within the EU and have a high-level of recognition in non-EU countries. The FCA is the UK regulator for the UCITS regime.

78. The UCITS regime currently includes a route through which third countries (currently non-EEA) funds can gain UK recognition to market to UK retail investors (Section 272 of FSMA). Section 272 of FSMA requires the manager or operator of a fund to complete an application to the FCA and requires the FCA to make sure that i) adequate protection is afforded to investors; ii) the arrangements of the fund's constitution and management are adequate; and the powers and duties of the operator, and the trustee or depositary, are adequate.

79. Under Section 272, the fund is also required to appoint a UK promoter, and to notify the FCA of any changes on an ongoing basis. In order to navigate the financial promotions regime, a UK authorised person will need to market the fund or approve the marketing material. Funds, or their operators, must also notify the FCA of any changes to the fund, the operator or the depository on an ongoing basis.

80. The process for authorisation under Section 272 is more time consuming than the process for 'passporting' (passporting in the route through which EEA funds currently access the UK market). The current passporting process takes a maximum of two weeks, whereas the process under Section 272 can take up to 6 months.

81. In addition, there is a UK application fee for third country recognition under section 272, whereas there is no UK fee for inbound EEA passporting firms (though the home state regulator of the EEA firm in question may charge a fee). The current charges for third country (non-EEA) funds using Section 272 range from £1,500 - £8,000 [4]per fund, although any subsequent sub-fund is not charged. However, any additional fees that funds will be subject to will be a consequence of leaving the EU and the EU becoming a third country.

82. To reduce the impact of leaving the EU on funds, the government has committed to reviewing Section 272, further details will be set out in due course. This will be done through a future legislative vehicle.

[23] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)

[4] https://www.handbook.fca.org.uk/handbook/FEES/3/Annex2.html

83. **Size of sector.** The European Fund and Asset Management Association (EFAMA) estimate that there are around 32,000 UCITS funds in the EEA[5], with an approximate combined value of €10 trillion. In the UK, there are around 2,500 authorised UCITS schemes (a combination of stand-alone funds and sub-funds of umbrella structures). There are around 7,000 EEA UCITS passporting into the UK. There are less than 10 EEA UCITS management companies operating UK UCITS.[24]

84. The main industry association for mainstream asset managers is the Investment Association (IA). Their members collectively have £1.8 trillion in funds under management in EEA domiciled UCITS funds[25], of which more than £315 billion is held by UK institutional investors and £60 billion is held by UK retail investors. Of the IA's 250 members, while some utilise UK and non-UK funds as part of their product offering, 63 members do not operate a specific UK fund range, and instead market EEA-domiciled funds into the UK through passporting[26].

Interdependencies with other onshoring SIs

85. Under the EU regime, investment funds fall into two categories, 'Undertakings for Collective Investments in Transferable Securities' (commonly known as UCITS) or 'Alternative Investment Funds (AIFs). Many firms will offer both retail and institutional funds in the form of UCITS and AIFs. Furthermore, the services provided to both types of funds (such as depositaries and management companies) will be undertaken by similar firms. Therefore, many firms affected by this SI will also be affected by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019, described below.

86. Within this EU framework, any fund that is not authorised as a UCITS, is deemed as an alternative investment fund (AIF). Therefore, alternative investment funds tend to be sold to more institutional and sophisticated clients. In 2011, a harmonised regime for alternative investment funds was implemented (AIFM Directive), legislation relating to which is amended separately in the.

87. As a consequence of amending the scope of the framework to apply to the UK only, any fund that is not a UK UCITS will be regarded in the UK as an alternative investment fund , and so subject to the AIFM regime, and The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019.

88. There is a further subcategory - MMFs, which can either be structured as a UCITS or an AIF fund, and therefore will therefore also be affected by the Money Market Funds (Amendment) (EU Exit) Regulations 2019 (described below).

Deficiencies this SI remedies

89. The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 amends legislation relating to the UCITS Directive and related EU regulation, to ensure the regulation of UCITS funds located in the UK will continue to apply and operate effectively post-exit, and the UCITS product will continue to exist in the UK.

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[5] https://www.efama.org/Publications/Statistics/Quarterly/Press%20Realeases%20Quarterly%20Statistics/181204_EFAMA%20%20Press%20Release%20Q3%202018.pdf

[24] Authorised and recognised funds https://www.fca.org.uk/firms/authorised-recognised-funds

[25] Asset Management in the UK 2017-2018: The Investment Association Annual Survey https://www.theinvestmentassociation.org//assets/files/research/2018/20180913-fullsummary.pdf.pdf

[26] According to analysis of the Investment Association's membership profile as at 31 March 2018.

90. **Change to name of UCITS product** As set out above, **'**UCITS' is a label which firms can apply to fund products which are authorised under the EU UCITS regime. After the UK leaves the EU, funds will need to be distinguished between the EU product authorised with an EU regulator, and the UK product, authorised with the FCA, in any communication to customers. In order to distinguish the UK product from the EU product, this SI makes amendments, calling the UK version 'UK UCITS'. However, even without making this change in legislation, fund managers would still have to update their communication materials if their UCITS are located in the UK, to make clear it is no longer regulated under EU legislation.

91. As a consequence of creating a UK-only regime, only funds that meet the new definition will be able to be a UK UCITS (i.e. those funds authorised in the UK). Therefore, any EEA UCITS that continues to market into the UK, will be deemed as an alternative investment fund. Therefore, EEA UCITS that enter the UK would be required to comply with both the EEA UCITS regime, and the Alternative Investment Fund Managers regime. The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019, described below, ensures that such funds are appropriated regulated.

92. **Transfers of functions**. In order to ensure the continued functioning of the regulatory regime, this SI transfers the legislative functions of the European Commission to HM Treasury. Functions relating to preparation and developing of regulatory or implementing technical standards are transferred from ESMA to the FCA.

93. **Change in scope** The EU UCITS regime has an EU-wide scope, meaning funds can 'passport' between member states, without needing to seek authorisation in each member state. Passporting arrangements will cease when the UK ceases to be a member of the EU.

94. This instrument changes the scope to be UK-only. However, it also maintains a route for current EEA funds to access the UK, as outlined below through the Temporary Marketing Permissions Regime.

95. When the UK leaves the EU, the UK will fall outside of EU regulatory structures. This SI makes amendments to reflect this. In particular, the SI makes the following changes in relation to service providers to UK authorised funds (depositary and management companies):

    - **Depositaries branching in from the EEA**[28]: This SI requires that the depositaries of UK authorised funds must be incorporated in the UK. Following the UK leaving the EU, it ensures that the regulators maintain supervisory control over depositaries and can carry their supervisory functions effectively (regulators may have less oversight on EEA firms as we will no longer be part of the EEA framework for supervisory cooperation).

    - **EEA management companies**: This SI requires that so that the management companies of UK authorised funds must be incorporated in the UK, ensuring the FCA can continue to supervise them effectively. However, this SI puts in place a transitional arrangement disapplying this requirement to firms that enter into the Temporary Permissions Regime, giving these firms more time to adapt.

[28] A depositary branching in from the EEA has to have the right of establishment as a CRD/MiFID firm, and have Part 4A permission to provide depositary services in the UK.

96. However, such service providers (depositary and management services) passporting into the UK will be able to make use of the Temporary Permissions Regime for inbound EEA passporting firms (as set out in the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018), which will grant the firms UK authorisation for up to 3 years.(This instrument has now been made, and a separate impact assessment was undertaken[6]). This SI puts in place a transitional arrangement disapplying these requirement to firms that enter into the Temporary Permissions Regime, giving these firms more time to adapt.

97. There are currently only 10 firms that offer depositary services. They are large banks, and depositary services do not form the main part of their overall business. HM Treasury has engaged with these firms, and understands that any necessary restructuring would take less than the 3 years provided by the transitional arrangement (the length of the Temporary Permissions Regime).These transitional arrangements will therefore mitigate the impact on firms, as it allows them sufficient time to adapt.

Transitional regime: Temporary (Marketing) Permissions Regime (T(M)PR. UCITSs can currently be marketed across the EU under the EEA passporting system. If the UK leaves the EU without a deal, the UK's participation in the EEA passporting system will cease and any references in UK legislation to the EEA passporting system will be deficient at the point of exit. The consequence of this would be that any EEA fund managers marketing funds in the UK would either need to become recognised through the third country current process (Section 272 of FSMA) by 29 March 2019, or cease to market in the UK from this point. This ordinarily would require the FCA to undertake an individual authorisation process for all approx. 7,000 funds, which can take up to 6 months. Given the volume of applications the regulators would receive across all types of financial services firms and funds, there is a significant risk that they could not all be processed ahead of March 2019.

98. In order to mitigate the impact of funds needing to notify to the FCA directly after exit day, and its potential consequence to UK customers, this SI creates a Temporary (Marketing) Permissions Regime (T(M)PR) enabling EEA funds that market in the UK via a passport before exit day and have notified the FCA of their intention to enter the T(M)PR, to continue to access the UK market for a limited period after exit day. Funds that choose to enter the T(M)PR will be treated as a recognised scheme and can continue to be marketed to retail investors in the UK, those that choose not to will need to wind down their UK business. This SI sets out the design and structure of such a regime for EEA UCITS (including Money Market Funds which use a UCITS structure).

99. **Length of the T(M)PR.** The T(M)PR will last for three years from exit day, with a power for HM Treasury to extend the regime by no more than 12 months at a time in certain circumstances. HM Treasury will able to extend the T(M)PR by further legislation through a negative statutory instrument, if it considers it necessary to do so, and only if the FCA has submitted an assessment on the effect of extending/not extending the T(M)PR.

100. **Entering the T(M)PR** To enter the regime, the operator of an EEA UCITS which markets into the UK before the UK leaves the EU will need to inform the FCA prior to exit

[6] European Union (Withdrawal) Act – EEA Passport Rights (Amendment etc., and Transitional Provisions) (EU Exit) Regulations 2018 (https://www.legislation.gov.uk/ukia/2018/166/pdfs/ukia_20180166_en.pdf)

day that it wishes the relevant fund(s) to have temporary permission to be marketed in the UK. The FCA has published information online indicating that this will be done by a simple notification form online.[7] There are no fees for funds entering the temporary marketing permission regime[8].

101. EEA UCITS can operate different fund structures, known as 'umbrella and sub-fund' structures, or standalone schemes. An umbrella fund is a single fund that has different compartments referred to as sub-funds, but which remain part of the overall fund structure and legal entity. This allows sub-funds to share governance arrangements but follow different investment strategies. 'New' sub-funds, which are part of an existing umbrella structure with at least one sub-fund which notified to enter the T(M)PR before exit day, will be able to subsequently notify to enter the regime after exit day, and will be able to access the UK market while in the T(M)PR. 'New' is defined as being authorised by its home state regulator on or after exit day. This ensures the T(M)PR enables firms to continue their business activities throughout the period.

102. **Leaving the T(M)PR** While they are in the T(M)PR, funds will be directed by the FCA to seek recognition under section 272 of FSMA. Firms that enter the T(M)PR but do not become authorised under section 272 will need to cease doing business in the UK.

103. This SI give the FCA the power to direct fund managers to go through this process, this will ensure that the FCA can adequately resource the transition and also give the fund manager adequate time to prepare applications. Therefore, the introduction of the regime will ensure a smooth transition to fund recognition under section 272. the government has also committed to reviewing the process through which firms apply for recognition under section 272 of FSMA process[9].

104. **Number of funds entering the T(M)PR.** HM Treasury does not hold data on the number of funds that will enter the Temporary Marketing Permissions Regime. However, the FCA's working assumption is that 1300 firms will enter the Temporary Permissions Regime implemented by the EEA Passport Rights (Amendment etc., and Transitional Provisions) (EU Exit) Regulations 2018[10]. Just over half of these firms will be fund managers, who will manage funds eligible for the T(M)PR, some of whom have expressed an interest to enter the funds they manage into the regime.[11]

105. **FCA supervision during the T(M)PR.** To ensure that the FCA continues to receive information regarding the EEA UCITS during the T(M)PR, this SI will require the operator of the EEA UCITS to provide the following:

- a notification if the authorisation of the scheme in the home state is varied or cancelled;

[7] Temporary marketing permission regimes, FCA, 7 January 2019 (https://www.fca.org.uk/brexit/temporary-permissions-regime/temporary-marketing-permission-regimes)
[8] https://www.fca.org.uk/brexit/temporary-permissions-regime
[9] https://www.gov.uk/government/publications/draft-eu-exit-sis-for-investment-funds-and-their-managers/the-collective-investment-schemes-amendment-etc-eu-exit-regulations-2018-explanatory-information
[10] Impact Assessment: European Union (Withdrawal) Act – EEA Passport Rights (Amendment etc., and Transitional Provisions) (EU Exit) Regulations 2018 (https://www.legislation.gov.uk/uksi/2018/1149/impacts)
[11] FCA survey data

- information that they are currently required to provide to the FCA as the host state competent authority; and
- information that they would have previously had to notify to the home state competent authority, which would then have been shared with the FCA.

106. The SI will also require the operator of EEA UCITS with temporary permissions to continue to comply with duties imposed on it by the UCITS Directive, but which were previously implemented by their own regulator. These are requirements that the UCITS fund will already have to comply with as a result of the UCITS Directive, although the fund operator will have to provide the information to the FCA rather than their own regulator. This is to ensure the FCA continues to receive the information required to supervise the funds.

107. **Pre-exit provisions** In order to ensure the proper functioning of the regime, provisions in this SI relating to the T(M)PR for standalone EEA UCITS and sub-funds come into force before exit day. This SI also gives the FCA the power to open its notification window for alternative investment funds before exit day, providing time for those funds to notify their intent to enter the regime before exit day, and for the FCA to process the notifications.

108.

Impact on firms

109. The T(M)PR represents a significant benefit for EEA UCITS and their customers, allowing them to continue to market in the UK while they to apply for UK recognition, reducing risk and disruption for both issuers and consumers.

110. **Familiarisation costs.** Impacted firms will need to understand these changes to the regulatory environment. This will involve legal experts examining the SI, and the relevant sections of legislation amended by this SI, to advise firms of the impact on their business, and how they should respond. This will be a one-off cost.

111. **Transition costs.** In deciding whether to enter the T(M)PR, funds will need to inform themselves of the new regime, take decisions on how respond appropriately, there will therefore be some one-off cost to taking this decision, for example, resourcing costs and potentially costs of external legal counsel.

112. The need for EEA firms to gain permission to market under Section 272 arises as a result of the UK leaving the EU and EEA countries becoming third countries, not as a result of this SI, and so is outside the scope of this Impact Assessment.

113. **Reporting requirements** As set out above, this SI places reporting requirements on firms in the T(M)PR, complying with these requirements will result in one-off costs to firms to put in place the processes to meet these requirements, for example staff training and IT systems changes, in recurring costs to firms in meeting the requirements on an ongoing basis.

114. **Other costs.** As set out above, this SI requires will require management companies and depositories of UK UCITS to be incorporated in the UK, and firms providing these services may decide to restructure their businesses. Firms managing UK authorised UCITS

may be required to appoint a new management company or depositary, if their existing management company or depositary does not meet the requirements.

3. The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019

Background: the regulatory regime.

115. The Alternative Investment Fund Managers Directive (AIFMD)[29] is the regulatory framework for Alternative Investment Fund Managers (AIFMs) and relates to the management, administration and marketing of Alternative Investment Funds (AIFs). AIFs are funds that are not regulated at EU level by the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive. These funds are usually aimed at professional and institutional investors, although it is possible for AIFs to be marketed to retail investors. AIFMD established an EEA-wide framework for regulating, monitoring and supervising risks posed by AIFMs and the AIFs they manage. It also established a 'passporting' system that enables 'full-scope' EEA AIFMs (those with assets under management above the specified size threshold) to market and manage AIFs in any other member state. AIFMD came into force in the EU in 2011. The FCA is the UK regulator for the AIFM regime.

116. The AIFM regime includes an existing framework for third countries to access the UK market – the National Private Placements Regime (NPPR), legislated for in the Alternative Investment Fund Managers Regulations 2013. This is a one-off notification and allows fund managers to market funds into the UK to institutional or sophisticated investors. The fee for a NPPR notification is £125 or £250 depending on the type of fund. The NPPR includes requirements for the AIFM to provide specified information to investors, and report periodically to the FCA.

117. **Size of the sector.** This SI will primarily impact fund managers and funds that operate under the AIFMD. Hedge funds, private equity funds, and most kinds of unregulated investment funds are traditionally considered AIFs. These funds are mainly aimed at institutional investors (organisations making investments on behalf of its members, for example pension funds, insurance companies and corporates).

118. The SI will also have an impact on fund managers that market Undertakings for Collective Investment in Transferable Securities (UCITS) located in the EEA into the UK. As a consequence of creating a UK-only framework, any fund that is not a UK UCITS, including all EEA UCITS, will be regarded in the UK as an AIF.

Interdependencies with other financial services EU Exit SIs

119. Under the EU regime, investment funds fall into two categories, 'Undertakings for Collective Investments in Transferable Securities' (commonly known as UCITS) or 'Alternative Investment Funds (AIFs). Many firms will offer both retail and institutional funds in the form of UCITS and AIFs. Furthermore, the services provided to both types of funds (such as depositaries and management companies) will be undertaken by similar firms.

[29] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 Text with EEA relevance

Therefore, many firms affected by this SI will also be affected by The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019, described above.

120. Within this, there are further sub categories of alternative investment funds: EU Venture Capital Funds, EU Social Entrepreneurship Funds, and EU Long Term Investment Funds. These funds will also be affected by the Venture Capital Funds (Amendment) (EU Exit) Regulations 2019, and Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2019 (described below), and the Long-term Investment Funds (Amendment) (EU Exit) Regulations 2019 (on which a de minimis impact assessment has been prepared, as there are currently no long-term investment funds within the UK).

121. There is a further subcategory - MMFs, which can either be structured as a UCITS or an AIF fund, and therefore will therefore also be affected by the Money Market Funds (Amendment) (EU Exit) Regulations 2019 (described below).

Deficiencies this SI remedies

122. This SI amends legislation relating to the AIFMD, to ensure it operates effectively when the UK leaves the EU.

123. **Transfers of functions.** In order to ensure the continued functioning of the regulatory regime, this instrument transfers the legislative functions of the European Commission to HM Treasury. The functions relating to preparation and developing of regulatory or implementing technical standards are transferred from ESMA to the FCA.

124. **Change in scope** The EU AIFM regime has an EU-wide scope, which will no longer be appropriate once the UK leaves the EU. This SI therefore amends the scope of the regime to apply to the UK only. Included in this change in scope is a change in the reporting requirements on firms. Currently, under AIFMD, an AIFM has to report and make certain disclosures when it acquires control of an EEA (including UK) non-listed company as part of an AIF's investment portfolio. This SI removes this requirement, reflecting the wider change in scope of the regime.

125. **Transitional regime: Temporary Marketing Permissions Regime (T(M)PR).** AIFs can currently be marketed across the EU under the EEA passporting system. If the UK leaves the EU without a deal, the UK's participation in the EEA passporting system will cease and any references in UK legislation to the EEA passporting system will be deficient at the point of exit. The consequence of this would be that any EEA fund managers marketing funds in the UK would either need to notify the FCA under the NPPR by UK 29 March 2019, or cease to market in the UK from this point.

126. In order to mitigate the impact of funds needing to notify to the FCA directly after exit day, and its potential consequence to UK customers, This SI creates a Temporary (Marketing) Permissions Regime (T(M)PR), enabling EEA AIFMs that have notified the FCA of their intention to market funds in the UK via a passport before exit day to continue to access the UK market for a limited period after exit day, while they submit their notifications to the FCA – thus ensuring a smooth transition to individual fund notification under the NPPR.[30] Funds will have a choice as to whether to enter this regime. This SI sets out the design and

[30] HM Treasury legislated for a Temporary Permissions Regime for EEA passporting firms through the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018

structure of such a regime for AIFs and AIFMs (including EuVECAs, EuSEFs, ELTIFs and MMFs which use an AIF structure).

127. **Length of the T(M)PR.** The regime will last for three years from exit day, with a power for HM Treasury to extend the regime by no more than 12 months at a time in certain circumstances. HM Treasury will able to extend the T(M)PR by further legislation through a negative statutory instrument, if it considers it necessary to do so, and only if the FCA has submitted an assessment on the effect of extending/not extending the T((M)PR.

128. **Entering the T(M)PR.** To enter the regime, an AIFM of an eligible AIF will need to inform the FCA prior to exit day that it wishes the relevant fund(s) to have temporary permission to be marketed in the UK after exit. The FCA have provided further details to fund operators on how and when to do this. During the T(M)PR, the AIFM will be able to market the relevant fund in the UK on the same terms and subject to the same conditions as it could before exit day. This transitional arrangement will allow for funds to familiarise themselves further with NPPR before they need to notify.

129. **Leaving the T(M)PR.** To continue marketing the relevant AIF after the end of the Temporary (Marketing) Permissions RT(M)PR, the AIFM must notify the FCA under the NPPR, the process through which non-EEA AIFMs can market funds into the UK.

130. This SI gives the FCA the power to direct fund managers to go through the NPPR process, in order to ensure that the FCA can adequately resource the transition, and give the fund manager adequate time to prepare their notification. The FCA will direct AIFMs to make a notification under the NPPR within two years from exit day, which will allow them to continue marketing into the UK.

131. Firms that have entered the T(M)PR, but then chose not to notify under the NPPR when directed by the FCA, will then need to cease to market in the UK.

132. **Expected number of funds entering the T(M)PR.** HM Treasury does not hold data on the number of funds that will enter the Temporary Marketing Permissions Regime. However, the FCA's working assumption is that 1300 firms will enter the Temporary Permission Regime. Just over half of these firms will be fund managers, who will manage funds eligible for the T(M)PR, some of whom have expressed an interest to enter the funds they manage into the regime.[12]

133. **FCA supervision during the T(M)PR.** To ensure that the FCA continues to receive the necessary information to supervise the AIFMs marketing AIFs in the UK during the T(M)PR, this SI will require the AIFM to continue to comply with duties imposed on it by specific the AIFMD, and which were previously implemented its own regulator. This includes notifying the FCA of any changes to the documentation for the AIF, and changes to the AIFM's programme of operations.

134. The FCA will have the same power to revoke or suspend an AIFM's entitlement to market an AIF during the T(M)PR as it does to revoke or suspend the entitlement of an AIFM to market an AIF under the NPPR.

[12] FCA survey data

Impact on firms

135. The T(M)PR represents a significant benefit for EEA AIFM and their customers, allowing them to continue to market into the UK in the UK while they notify under the NPPR, reducing risk and disruption for both issuers and consumers.

136. **Familiarisation costs.** Impacted firms will need to understand the changing regulatory environment. This will involve legal experts examining the SI, and the relevant sections of legislation amended by this SI, to advise firms of the impact on their business, and how they should respond. Firms that have not previously used the NPPR will also have to familiarise themselves with it using the manual available in the FCA's Handbook. We expect these familiarisation costs to be one-off costs.

137. **Transition costs.** As set out above, the SI makes provision for a T(M)PR. Firms will need to familiarise themselves with this regime, and take a decision as to whether to enter the regime – these will be some costs associated with this process, including resource costs and potentially costs of external legal counsel.

138. By the end of the T(M)PR they will have to submit a one-off notification under the FCA's NPPR to continue to access professional investors in the UK market. EEA AIFMs that are marketing in the UK for the first time after exit day will have to notify the FCA under the NPPR, with no temporary provision. The need for EEA firms to submit a notification under the NPPR arises as a result of the UK leaving the EU and EEA countries becoming third countries, not as a result of this SI, and so is outside the scope of this Impact Assessment.

139. As described above, this instrument amends the scope of the AIFM regime to apply to the UK only. Therefore, any fund which is not authorised as a UK UCITS (including EEA UCITS), will be regarded an alternative investment fund. However, requiring fund managers which market retail funds (including EEA UCITS) into the UK to be subject to additional reporting requirements would impose disproportionate regulation. To reduce the regulatory burden on businesses, this SI will disapply the reporting requirements under the NPPR if a fund is recognised under section 272 of the Financial Services and Markets Act for marketing to UK retail investors. T(M)PR.

140. **Reporting requirements.** Some impacted firms (EEA AIFMs marketing funds into the UK) will have to provide additional information to the FCA through their notification, as required under the NPPR. They will also have to inform the FCA of any material change to the information they submitted on the notification on an ongoing basis, which may result one-off costs to firms to put in place the processes to meet these requirements, for example staff training and IT systems changes, in recurring costs to firms in meeting the requirements on an ongoing basis. The SI will also duplicate certain reporting obligations under AIFMD, which were previously implemented by the EEA fund manager's regulator. Firms will incur costs in managing these dual reporting requirements.

141. This SI will provide benefit to some firms through a reduction in reporting requirements in relation to the control of companies. As set out above, this SI removed requirements for AIFM to report and make certain disclosures when it acquires control of an EEA (including UK) non-listed company as part of an AIF's investment portfolio. This will be a recurring reduction in cost to firms that manage AIFs with an investment aim that includes acquiring control of EEA (non-UK) companies.

4. The Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2019 and The Venture Capital Funds (Amendment) (EU Exit) Regulations 2019

Background: current regulatory regime. T

142. These SIs make changes to two pieces of EU legislation: the EU Social Entrepreneurship Funds Regulation (EuSEF) [32] and the EU Venture Capital Funds Regulation (EuVECA)[33]. These EU Regulations relate to types of Alternative Investment Funds that direct investment into social and venture capital investments. These regulations enable funds to use the label "EuSEF" and "EuVECA" when marketing in the EU. The EuSEF regulation provides for a type of AIF that directs investment in social investments, and the EuVECA Regulation provides for a type of AIF that directs investment into small and medium-sized enterprises. The FCA is the UK regulator for the EuSEF and EuVECA regimes.

143. **Size of the sector.** Both these SIs will affect asset management firms (specifically the venture capital sector), as well as legal and professional services firms. However, the take-up of EuVECAs and EuSEFs by the asset management sector has been slow, with the vast majority of venture capital funds choosing not to take up the label. There are few European Venture Capital Funds (EuVECAs) and European Social Entrepreneurship Funds (EuSEFs) in the UK. FCA estimates from April 2018 indicates there are around 30 EuVECAs and EuSEFs in the UK, the majority of which are EuVECAs (this is compared to over 7,000 UCITS funds[34]).

Interdependencies with other financial services EU exit SIs EuVECAs and EuSEFs are subcategories of Alternative Investment Funds, and therefore these SIs overlay with The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019, with which any EuVECAs or EuSEFs would also need to comply with.

As Alternative Investment Funds, EuVECAs and EuSEFs will be eligible to join the Temporary (Marketing) Permissions Regime, described above.

Deficiencies these SIs remedy

144. These SIs amend legislation relating to the EuSEF and EuVECA regulations, to ensure they operate effectively when the UK leaves the EU. They create a UK-version of the EuSEF and EuVECA "product" and ensure that the regulation of any EuSEFs or EuVECAs located in the UK continues to apply and operate effectively post-exit.

145. **Change of scope**. Reflecting the UK's position outside of the EU, this SI will change the scope of the retained EuSEF and EuVECA Regulations to apply to EuSEFs and EuVECAs established in the UK only.

146. **Transfers of functions.** In order to ensure the continued functioning of the regulatory regime, these SIs transfer the powers of the European Commission to make delegated acts and implementing acts to HM Treasury, and the powers of the European Securities and Markets Authority (ESMA) to make Binding Technical Standards (BTS) to the Financial Conduct Authority (FCA).

[32] Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds

[33] Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds

[34] Information from FCA's internal register

147. **Changes to name of products.** The SI will change the name of these funds to "Social Entrepreneurship Funds" (SEF) and "Registered Venture Capital Funds" (RVECA) respectively, as the reference to the EU will no longer be appropriate once the UK has left the EU. It is also appropriate to signify that UK funds will no longer be covered by the EU regulatory regime, or subject to EU regulatory oversight.

148. **Maintaining continuity for managers and eligible investments.** The following provisions introduced by these SIs mean that there will be no change to regulatory burdens imposed on businesses:

- Existing managers of EuVECAs and EuSEFs that have been registered with the FCA (i.e. been informed by the FCA that the manager has been registered as a manager of a qualifying venture capital fund) will be automatically transferred and registered under the new UK regime.
- The eligible investments of EuVECAs and EuSEFs located in the UK will remain the same and will not be changed by these regulations.

Impacts on firms

149. The impacts of these SIs on firms are summarised below, however, in practice, the very low level of take-up of EuVECAs and EuSEFs means there should be minimal change to regulatory burdens on UK businesses.

150. **Changes to business processes.** As set out above, these SIs will change the name of EuSEF and EuVECA funds to "Social Entrepreneurship Funds" (SEF) and "Registered Venture Capital Funds" (RVECA) respectively. This change will have impact on firms who will need to change how they advertise their funds and the need to re-issue materials indicating the transition from EuSEF and EuVECA to SEF and RVECA respectively. However, even if this SI did not change the names of these funds, firms would still have to update their marketing material to clarify that whilst the funds maintained the original labels, they are no longer subject to EU regulation. Costs related to these changes therefore arise result of the UK leaving the EU, not just of this particular SI.

151. **Familiarisation costs.** Impacted firms will need to understand these changes to the regulatory environment. This will involve legal experts examining the SI, and the relevant sections of legislation amended by this SI, to advise firms of the impact on their business, and how they should respond. We expect this will be a one-off cost.

5. Money Market Funds (Amendment) (EU Exit) Regulations 2019

Background: current regulatory regime.

152. This SI relates to the EU Money Market Funds (MMF) Regulation[60]. The EU MMF Regulation applies to MMFs that are established, managed, or marketed in the EU. MMFs are funds that invest in highly liquid assets such as government and corporate debt to provide a stable cash and liquidity management function to large organisations (e.g. corporates and local governments). The objective of the Regulation is to make the funds more resilient and mitigating risks to financial stability. This is achieved by restricting the

[60] Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds

assets in which MMFs may invest and imposing requirements related to liquidity, valuations, stress testing and transparency. It aims to ensure that MMFs are able to meet redemption requests from investors, especially under stressed market conditions. The FCA is the UK regulator for the MMF regime.

153. **Size of the sector** There is a sizeable MMF market in the EU, with UK investors accounting for almost £250bn of total assets under management. Almost all MMFs are located in the rest of the EU, with over 95 per cent of all EU MMFs domiciled in Ireland, Luxembourg or France. There are very few MMFs located in the UK - as of 21 January 2019 21 MMFs had applied to the FCA for authorisation under the MMF Regulation.[13]

Interdependencies with other financial services EU exit SIs

154. MMFs can be established using either of the fund structures in the EU legislative framework: Undertakings for Collective Investments in Transferable Securities funds (UCITS) or Alternative Investment Funds (AIFs). Therefore, in addition to complying with this SI, they will also need to comply with either the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 (for UCITS) and Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2018 (for AIFs), described above.

Deficiencies this SI remedies

155. This SI ensures that the regulation of MMFs in the UK will continue to apply and operate effectively when the UK leaves the EU.

156. **Change in scope** Presently, the MMF Regulations apply only to schemes established in the EEA. Reflecting the UK's position outside of the EU, this SI will change the scope of the retained MMF Regulations to apply to MMFs established in the UK only. Only UK authorised MMFs or MMFs managed by UK fund managers will be allowed to market in the UK, with the temporary exception of EEA MMFs currently marketed in the UK via the Temporary (Marketing) Permissions Regime, as described below.

157. **Transfers of functions.** In order to ensure the MMF regime continues to function effectively when the UK has left the EU, this SI transfers the European Commission powers to make delegated acts and implementing acts to HM Treasury, as a power to make regulations. Power of the European Securities and Markets Authority (ESMA) to make Binding Technical Standards (BTS) are transferred to the Financial Conduct Authority (FCA), giving the FCA the power to make rules and technical standards.

158. **Pre-exit provisions** This SI also includes a provision allowing the regulators to fix deficiencies in MMF Binding Technical Standards before exit day.

159. **Marketing of non-UK MMFs, and access via Temporary (Marketing) Permissions Regime** Only MMFs authorised under the EU MMF Regulation can be marketed in the EU. To operate as an MMF under the MMF Regulation, the fund must be either be authorised in the EEA or have an EEA manager. Amendments made by this instrument will change the scope, and require that either the MMF is in the UK, or that it has a manager in the UK.

160. However, as described above, Temporary (Marketing) Permissions Regimes (T(M)PR) have been created under the Collective Investment Schemes (Amendment etc.) (EU Exit)

[13] FCA data

Regulations 2019 and The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019. To ensure compatibility between the legislation, this SI makes amendments to allow EEA MMFs in the T(M)PR to be marketed in the UK, despite the restrictions.

Impact on firms

161. **Familiarisation costs.** Impacted firms will need to understand these changes to the regulatory environment. This will involve legal experts examining the SI, and the relevant sections of legislation amended by this SI, to advise firms of the impact on their business, and how they should respond. This will be a one-off cost.

162. **Other costs to business.** As the majority of MMFs are domiciled outside of the UK, will therefore be relatively limited familiarisation costs to UK firms as a result of this SI. However, there are a substantial number of UK investors who are heavily reliant upon EU-domiciled MMFs, and some of those funds, in turn, are dependent upon this cross-border business.

163. We would expect MMFs to contact investors to inform them of any changes resulting from the UK leaving the EU, including changes resulting from the SI. Therefore, whilst we would not expect investors to directly familiarise themselves with the legislation, there is still likely to be an impact on investors as a result of changes introduced by this SI, as they would need to read, understand, and potentially take decisions as a result of information communicated to them by MMFs. There could potentially be longer term impacts, depending on commercial decisions of firms, particularly by fund managers on whether to set up UK funds. However, these impacts would be as a result of the UK leaving the EU, not of this SI, and so is out of scope of this impact assessment and therefore has not been quantified.

6. Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019

Background: the regulatory regime

164. The Settlement Finality Directive (SFD)[14] is an EU wide regime providing protections for transfers of payment and securities in financial market infrastructure (systems) and central banks. These protections ensure that if a system user is subject to insolvency proceedings, transactions in the system cannot be unwound. Systems can only benefit from these protections if they are designated under their domestic settlement finality law. The UK implemented the SFD via the Settlement Finality Regulations (SFR)[38]. SFR provides that the Bank of England can designate systems governed by UK law, and the UK being subject to SFD extends insolvency protections to all EEA systems that have been designated by an EEA state, and EEA central banks.

[14] Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems

[38] The Financial Markets and Insolvency (Settlement Finality) Regulations 1999

165. Other relevant EU law is found in the Financial Collateral Arrangements Directive, the European Market Infrastructure Regulation, the Markets in Financial Instruments Directive and the Banking Recovery and Resolution Directive.

166. **Affected firms.** This SI will affect the financial services sector as a whole. It will specifically affect financial market infrastructure firms, mainly Central Counterparties (CCPs), Central Securities Depositories (CSDs), payment and settlement systems, and central banks.

Interaction with other financial services EU exit SIs

167. Financial market infrastructure firms, such as Central Counterparties (CCPs), Central Securities Depositories (CSDs), payment and settlement systems, and central banks will be affected by financial services EU exit SIs, covered in this and other impact assessments. Which SIs will depend on the activities undertaken by the entity in question.

168.

Deficiencies this SI remedies

169. The SI amends UK insolvency law, consisting of the SFR, Part 7 of the Companies Act 1989, the Financial Collateral Arrangements Regulations (FCAR)[39] and the Banking Act 2009 so that these regimes continue to operate once the UK leaves the EU. The majority of changes are technical fixes, including the removal of references to EU legislation or entities and their replacement with UK equivalents.

170. **Scope of the regime.** In a no deal scenario, it would not be appropriate for the UK to maintain special treatment regarding settlement finality for EEA systems and EEA central banks only. However, reverting to a UK only scope would have significant impact on UK participants in EEA systems, and central banks, as they would face additional costs or other difficulties in accessing those systems, including trades being unwound and services being withdrawn.

171. This SI therefore amends the scope of the SFR to enable the Bank of England to designate systems not governed by UK law and central banks outside the UK. Given the potential impact of reverting to a UK scope, or maintaining a UK and EEA scope, extending the Bank's powers to all non-UK systems is the most appropriate option to avoid disruption to the continuity of service provision to UK customers, investors and the market – in line with the HM Treasury's overall approach to financial services EU exit legislation, and the framework set out in the EUWA.

172. Extension of the scope does not impact market access to the UK and is places no obligation on non-UK systems, which are not obliged to apply for UK designation. However, systems without UK designation would open themselves up to the risk of claims from UK insolvency practitioners when servicing UK firms. Extending the Bank's powers to enable it to designate all non-UK systems will not expose UK firms to additional risk as the regime creates greater legal certainty in respect of transactions with systems and therefore decreases the risk to the system being used by UK firms. It is judged that this would assist UK firms in accessing systems in other markets, because they would present a lower risk to the system.

[39] The Financial Collateral Arrangements (No. 2) Regulations 2003

173. **Temporary designation regime.** When the UK leaves the EU, EEA systems that have been designated by an EEA regulator will no longer be designated for UK purposes, and so will no longer be protected from UK insolvency law. Any EEA system which wants to continue to benefit from such protection would need to be designated by the Bank of England after exit.

174. It would not be possible for the Bank to process applications from all EEA systems in time for exit day, so in order to provide a smooth transition for EEA systems which want to continue to benefit from these protections in the UK, this SI introduces a temporary designation regime. This regime allows EEA systems to benefit from UK protections on a temporary basis whilst their full application is considered by the Bank of England.

175. The regime will last for three years from exit day, with a power for HM Treasury to extend the regime by no more than 12 months at a time if it is deemed necessary and proportionate to avoid disruption to UK financial stability. It is judged that three years is needed to allow time for the Bank to consider and make a decision on applications from EEA systems.

176. These EEA systems will be required to notify the Bank of England before exit day to enter the regime. After exit day, these systems will have 6 months to make a full application under the SFRs to continue to benefit from SFR protections. Around 126 EU systems that currently benefit from protection under the SFD may require designation and as of 24 January 2019, 26 systems have indicated their intention to enter the UK post exit regime[15].

177. **Pre-exit provisions** This SI gives pre-exit powers to the Bank of England to receive notifications from systems who wish to enter the Temporary Designation Regime. It is important that the Bank has this power so it can ensure continuity of protections for these systems so that UK participants can continue to access them from exit day.

Costs to firms

178. This SI does not introduce new regulatory burdens for UK systems, as existing UK designations will be unaffected. If non-UK systems apply to be designated by the UK, UK firms will benefit from settlement finality protections being applied to these systems, as the stability of non-UK systems, UK participants in those systems and the broader financial system is also supported. It may also facilitate UK firms' access to non-UK systems, as these UK firms will continue to present a lower risk because their payments continue to be protected from UK insolvency claims. It is not possible to estimate the number of UK firms that may be impacted because a large number of firms have direct or indirect membership of these systems.

179. **Familiarisation costs.** Impacted firms will need to understand these changes to the regulatory environment. This will involve legal experts examining the SI, and the relevant sections of legislation amended by this SI, to advise firms of the impact on their business, and how they should respond. We expect this will be a one-off cost.

[15] Bank of England Interim list of EEA systems whose operators have indicated their intention for such systems to receive settlement finality protection in the UK pursuant to the draft Temporary Designation Regime (TDR) of the Draft Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 if the UK leaves the EU with no implementation period, 24 January (https://www.bankofengland.co.uk/-/media/boe/files/financial-stability/financial-market-infrastructure-supervision/interim-list-of-eea-systems.pdf?la=en&hash=FE6435210318889854965FFD57C26F4A207E0F55)

180. **Transitional costs.** Under this SI, a temporary regime is put in place to allow these firms to continue to receive protections without creating an authorisation cliff edge before exit day. Firms will incur some costs in deciding whether to enter this temporary regime, for example resourcing costs associated with taking the decision through their internal governance, and potentially costs of external legal counsel.

181. **Other costs.** The requirement for EEA systems to seek designation arises as a result of the UK leaving the EU and the reciprocal arrangements under the SFD regime, not as a result of this SI, and so costs incurred in doing so are outside the scope of this impact assessment.

182. Systems outside the EU will be able to apply for designation under the SFR for the first time. It is not yet known how many non-EU systems may seek designation UK designation will protect the FMI from their funds being clawed back if the counterparty they are trading with defaults. This protection ensures the UK remains an attractive place to do business in a global context and supports the stability of non-UK systems. These benefits outweigh the minimal burdens associated with systems applying for designation under the UK regime. These burdens consist of a full application to the Bank of England and the associated one-off cost.

7. Market Abuse (Amendment) (EU Exit) Regulations 2019

Background: the regulatory regime

183. The Market Abuse Regulation (MAR)[46] aimed to increase market integrity and investor protection, thereby enhancing the attractiveness of securities markets for capital raising, by establishing a common regulatory framework on insider dealing, the unlawful disclosure of inside information, and market manipulation.

184. MAR broadened the scope of the market abuse framework, extending the regime to new markets, platforms and behaviours, strengthening, in particular, the regime for commodity and related derivative markets. It explicitly banned the manipulation of benchmarks (such as LIBOR, the London Interbank Offered Rate) and reinforced the investigative and sanctioning powers of EU regulators. The FCA is the UK regulator for MAR.

185. Under MAR, EU firms are required to report certain information either publicly or to their national regulator:

- Firms with financial instruments trading on EU trading venues must publicly disclose inside information, such as financial statements, that could impact on those financial instruments.
- All firms must maintain an insider list of persons, which states the employees with access to inside information. This list should be updated frequently, as firms are required to submit these lists to regulators on request.
- Firms are required to report manager transactions, which are personal transactions – carried out by employees with managerial responsibilities – that relate to the issuer's

[46] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC Text with EEA relevance

shares, debt instruments, derivatives or other linked financial instruments if the total amount of transactions per year has reached EUR 5,000.
Market participants trading financial instruments are requires to report a suspicious transaction or order – one where there are 'reasonable grounds' to suspect it might constitute market, through Suspicious Transaction and Order Reports (STORs)[16].

186. **Firms affected/Scope of regime.** MAR applies to any financial instrument traded anywhere in the world that may have a price or value relationship with an instrument traded on an EU or UK trading venue, therefore all UK and EU markets in financial instruments are affected. The scope of MAR is potentially global, should certain market abuse impact on EU markets. For example, market abuse related to an instrument trading in South Korea could be captured by EU MAR, if that behaviour might affect the price of an EU instrument. Legal firms, professional service firms and any natural or legal person who obtains access to the inside information of an issuer are also within scope of MAR.

187. While estimating the number of firms impacted by MAR is not possible, roughly 1,500 firms report to the FCA under the regulation[17]. It will be these firms that are primarily impacted by this SI.

Interaction with other financial services EU exit SIs

188. Given the wide scope of MAR, firms affected by this SI will likely be affected by other financial services EU exit SIs, covered in this and other impact assessments. Which SIs will depend on the activities undertaken by the entity in question.

Deficiencies this SI remedies

189. This SI amends MAR, and related legislation, to ensure it operates effectively once the UK leaves the EU.

190. **Scope of the regime.** In order to ensure the FCA retains the ability to prohibit, investigate and take enforcement action against cases of market abuse which could impact UK markets and cause harm to UK consumers, this SI maintains the existing, UK+EU27, scope of the regime. This means that after the UK leaves the EU, the UK MAR will govern conduct related to instruments admitted to trading or traded on both UK and EU trading venues. This includes retaining the FCA's ability to take enforcement action against the abuse of EU Emissions Trading System (ETS) emission allowances. The ETS sets a cap on the total amount of greenhouse gases emitted by installations under the system. Within the cap, firms buy or receive emission allowances, and they can also trade emission allowances with other firms. This will ensure continued regulatory oversight of trading in these allowances on UK secondary markets after UK withdrawal from the EU.

191. **Transfers of functions.** In order to ensure the FCA can enforce MAR to the extent necessary for a functional UK regime, this SI transfers functions relating to preparation and developing of regulatory or implementing technical standards from the European Securities and Markets Authority (ESMA) to the FCA, including developing technical standards, obligations to publish lists of notifications, or to set out what may be acceptable market

[16] FCA definition: https://www.fca.org.uk/markets/market-abuse/suspicious-transaction-order-reports
[17] FCA data

practices. The SI also transfers the legislative functions of the European Commission under EU MAR to HM Treasury, for example.

192. **Reporting requirements.** The SI retains EU MAR's reporting requirements for firms to report certain information to the relevant national regulators. The one change in reporting requirements for firms will be for those with financial instruments on UK and EU trading venues, where they will be required to report information to both UK and EU regulators. Firms with financial instruments traded just on UK trading venues will continue to be required to report information to the UK regulator only (i.e. the FCA) under the UK version of MAR as amended by this SI. Firms with financial instruments traded just on EU trading venues will continue to be required to report information to the EU regulator only, under the existing EU version of MAR.

Impacts to firms

193. Market participants are familiar with the present EU market abuse regime. The SI makes only limited and necessary changes to the regime to ensure a functioning market abuse regulatory framework after EU withdrawal. Firms' familiarity with the EU regime, and therefore the UK equivalent, will help minimise costs to firms by avoiding the need to build new systems, significantly revise business processes or carry out extensive staff training.

194. It has not been possible to quantify these impacts on firms. HM Treasury has considered whether the 2015 analysis on the technical standards relating to EU MAR[18] could be used as a basis for estimating the impact on firms. However, a cost analysis of implementing a new EU technical standard did not provide a useful proxy for the costs of adapting the Regulation to ensure that it continues to operate effectively when the UK leaves the EU.

195. Changes **to reporting requirements** Firms with financial instruments trading on both UK and EU trading venues will be required to report inside information disclosures to two separate authorities (to comply with UK and EU MAR) instead of one as currently. As the reporting requirements in both MAR regimes will be the same, these reports will contain identical information, so there should be limited impact to the way that firms generate these reports.

196. This dual-reporting requirement will, however, create some **transitional costs** - one-off changes to firms' IT systems, which will need to be calibrated to enable reporting to two separate authorities, to business processes and costs for training staff to report this information to different regulators. There will be ongoing administrative burdens for firms to maintain dual reporting, however, we have looked to limit these burdens as far as possible by maintain identical requirements in UK MAR.

197. **Familiarisation costs.** Impacted firms will need to understand these changes to the regulatory environment. This will involve legal experts examining the SI, and the relevant sections of legislation amended by this SI, to advise firms of the impact on their business, and how they should respond. We expect this will be a one-off cost for the impacted firms and, given the similarity between the MAR and the UK regime, for this cost to be limited.

[18] Data Gathering and Cost Analysis on Draft Technical Standards Relating to the Market Abuse Regulation (https://www.esma.europa.eu/sites/default/files/library/2015/11/cost_analysis_u_for_final_report_on_mar_technical_standards_0.pdf)

8. Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019

Background: regulatory regime.

198. The European Markets Infrastructure Regulation (EMIR) [52]has several important functions. Firstly, it aims to reduce counterparty credit-risk by requiring standard derivatives contracts to be cleared through central counterparties (CCPs), and requiring counterparties to comply with risk mitigation requirements including the exchange margin (collateral) for trades not cleared through CCPs. Under EMIR, CCPs stand between parties trading over-the-counter or 'OTC' derivative contracts, becoming the buyer to every seller, and the seller to every buyer.[19] They guarantee that transactions will be honoured, even if one party defaults on the agreement, reducing counterparty risk.

199. Secondly, EMIR makes OTC derivatives markets more transparent for participants and regulators by ensuring that information about all European derivative transactions are reported to trade repositories (TRs). TRs are data centres that collect and maintain the records of derivatives. EMIR also sets standards for the regulation of CCPs and TRs. The Bank, PRA and FCA all have regulatory responsibilities under EMIR.

200. EMIR also makes provisions for 'intragroup transactions'. The exact legal definition of an intragroup transaction in complex, but, broadly, an intragroup transaction is a transaction between counterparties that are part of the same corporate group. EMIR provides for intragroup exemptions, allowing parts of a corporate group to trade with each other without having to go through clearing at a CCP and other regulatory requirements, such as those concerning margin, reducing burden for the counterparties in the trade. Under the current version of EMIR, intragroup exemptions may be granted between groups trading between member states if national regulators agree and for EU firms trading with third country group entities if there is an equivalence decision in relation to the third country from the EU Commission. At present, the FCA has the power to grant intragroup exemptions, and will continue to do so after exit day.[20]

Interdependencies with other FS EU Exit SIs.

201. This SI (OTC SI) is one of three SIs that address deficiencies within EMIR. It follows two SIs that have already been made: the Trade Repositories (Amendment, and Transitional Provision) (EU Exit) Regulations 2018 (TR SI) and The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (CCP SI). These instruments put in place the authorisation framework for UK TRs, and the equivalence process for non-UK CCPs.

202. When the UK leaves the EU, the FCA will become the UK regulator of trade repositories (TRs) and any TR wishing to offer its services in the UK will need to be registered with, or recognised by the FCA The TR SI put in place the framework for TRs to be authorised. Costs arising from this change are set out in the Impact Assessment covering the

[52] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

[19] 'OTC' derivatives are derivatives which are privately negotiated and not traded on an exchange or through an intermediary such as a CCP.

[20] It will grant these subject to the decision of the relevant EU regulator in the scenario where the intragroup transaction is between a UK counterparty and an intragroup counterparty in another EU state.

TRs SI. This Impact Assessment[21], confirmed we anticipate IT costs for TRs will be at an approximate cost of £10,000-15,000 per TR, although this cost is also dependent on the size of the TR and for firms £5,000 per firm. The Impact Assessment also confirmed that costs associated with the new supervision of TRs as well as new IT systems to connect to TRs would cost approximately £500,00 per TR, although this cost is also dependent on the size of the TR. The impact assessment also acknowledged there may be other costs associated with TRs connecting to the Bank of England.

203. **Affected firms.** This SI will affect CCPs, CCP clearing members, clients, TRs, TR users and counterparties who enter into derivative transactions. It is difficult to quantify the size of the market affected as the SI covers the financial and non-financial counterparties. Additionally, the three UK CCPs have a total of 425[53] clearing members as of 31 December 2017. However, this number includes both UK *and* non-UK financial institutions (not in scope of this assessment), but does not capture clients and indirect clients of the clearing members.

Deficiencies this SI remedies

204. This SI amends aspects of the UK retained EMIR and related legislation to ensure that the UK continues to have an effective regulatory framework for OTC derivatives, central CCPs and TRs.

205. **Transfers of functions.** Certain functions for supervising TRs and recognising non-UK TRs will be transferred from the European Securities and Markets Authority (ESMA) to the FCA. The Bank of England, rather than ESMA, will be responsible for setting the product scope of the clearing obligation. The powers of the European Commission to make delegated acts and implementing acts, in particular those related to equivalence decisions concerning trade repositories, clearing, reporting and risk mitigation requirements, including intragroup exemptions and determining non-UK markets as recognised for the purpose of trading exchange traded derivatives[22],will be transferred to HM Treasury. The responsibility for drafting Binding Technical Standards (BTS) will be transferred from ESMA to the Bank of England, the PRA and the FCA.

206. **Transitional regime: Temporary Intragroup Exemptions Regime.** When the UK leaves the EU, UK firms will fall outside of the EU EMIR intra group exemptions regime., Permanent intragroup exemptions between UK and EU firms (which will become third-country firms), and all temporary intragroup exemptions granted to third countries before exit day, will no longer apply in the UK. This would impact UK firms who are currently trading via intragroup exemptions as it would disproportionately increase costs and would put UK firms at competitive disadvantage.

207. This SI therefore establishes a Temporary Intragroup Exemption Regime ("the intragroup regime"), lasting three years after exit, with the option for HM Treasury to extend. The intragroup regime will allow: (i) 'permanent' intragroup exemptions between UK and EU firms granted before exit, (ii) 'temporary' intragroup exemptions granted between UK and non-EU third country firms before exit, and (iii) new 'temporary' intragroup

[21] European Union (Withdrawal) Act – Financial Services Statutory Instruments (II) (http://www.legislation.gov.uk/ukia/2018/168/pdfs/ukia_20180168_en.pdf)
[53] Clearing members listed on: https://www.lch.com/membership/member-search, https://www.theice.com/clear-europe/membership, https://www.lme.com/en-GB/Trading/Access-the-market/Find-a-member, correct as of August 2018
[22] Exchange traded derivatives are derivatives traded on a regulated exchange.

exemptions between UK and non-UK firms applied for after exit, to benefit from exemptions for a three-year period after exit. Firms will not be required to re-apply or notify the FCA of any intragroup exemptions that have already been granted under (i) and (ii) above – they will automatically enter the intragroup regime from exit day.

208. The intragroup regime does not cover that Permanent Intragroup Exemptions granted before exit for UK to UK intragroup trades, and trade between UK and third country firms determined equivalent by the Commission (i.e. the USA), as these exemptions will be grandfathered by the EU (Withdrawal) Act, and will not fall away on exit.

209. During the intragroup regime, equivalence decisions will be considered by HMT allowing for the establishment of, permanent exemptions by the FCA. If a regime of permanent exemptions were not established, the intragroup exemptions covered by the regime would cease to apply, and firms would incur costs as a result. However, this SI gives HM Treasury the power to extend the Intragroup Exemptions regime through secondary legislation. For example, this power could be used if equivalence decisions were not reached within the three year duration of the regime, to avoid such costs being incurred by firms before a permanent exemption could be granted.

210. **Supervisions and enforcement provisions.** This SI stipulates different supervision and enforcement provisions for TRs than those currently in EMIR, reflecting the wider remit of the FCA as a UK supervisor relative to ESMA. Specifically, EMIR provisions will be replaced by the equivalent Financial Services and Markets Act 2000 (FSMA) provisions. As these provisions relate only to TRs, they will not affect TRs users. Supervisory provisions relating to TR appeals, fines, supervisory fees, penalties and other supervisory requirements are being omitted and replaced with provisions that align with those already contained in the FSMA. Regarding enforcement provisions, part 4 of the instrument expands the criminal offence of misleading the FCA to UK and non-UK trade repositories that apply for registration and recognition from the FCA after exit. This is necessary to ensure that the trade repositories comply with the various authorisation requirements and will bring the requirements on trade repositories in line with the requirements on other authorised firms.

211. **Reporting obligations on firms.** This SI makes changes which follow from the TR SI, and the requirement that any TR wishing to offer its services in the UK will need to be registered with, or recognised by the FCA. It amends the obligations of firms to report OTC derivative trades to TRs, ensuring the relevant legislation is compatible with the UK TRs regime – replacing references to ESMA with references to the UK regulators. These amendments have the effect of requiring that reporting should be made to a FCA recognised or authorised TR rather than ESMA recognised or authorised TR, as currently stated in EMIR. As these changes are follow from the changes made by the TR SI, they do not impose any additional burdens on firms over and above those set out in the Impact Assessment on the TR SI, summarised above. For this reason, they have not been included in the summary of impacts on firms below.

Impacts on firms.

212. This SI will not introduce new regulatory burdens for UK firms, though TRs will incur familiarisation costs in regard to the complying with the UK supervisory framework.

213. This intragroup regime represents a benefit to UK firms, providing for additional time for equivalence determinations to be made and to provide continuity for UK firms who

currently benefit from exemptions for the intragroup transactions. As firms will automatically enter the intragroup regime, they will not incur any entry costs. They will however need to familiarise themselves with the regime and understand how it affects their business.

214. **Familiarisation costs.** Impacted firms will need to understand these changes to the regulatory environment. This will involve legal experts examining the SI, and the relevant sections of legislation amended by this SI, to advise firms of the impact on their business, and how they should respond. We expect this will be a one-off cost.

9. Financial Conglomerates and other Financial Groups (Amendment) (EU Exit) Regulations 2019

Background: the regulatory regime

215. A financial conglomerate is a group with activities in more than one financial sector- a group with at least one entity in the insurance sector, and at least one entity in the banking or investment services sector.

216. The EU's Financial Conglomerates Directive[37] (FICOD) was developed to address the lack of specific prudential treatment for financial conglomerates, spanning the insurance, banking and financial services sectors. The UK regulation that implemented the Directive is the Financial Conglomerates and other Financial Groups Regulations 2004 (FICOR).

217. In order to be captured by FICOD, one of these entities must be located within the EEA. FICOD sets out specific requirements on solvency, specifically to prevent the same capital being used more than once as a buffer against risk in different entities in the same conglomerate. It also sets out requirements related to conglomerates' management, risk management, and requirements for information sharing with relevant regulators.

218. In particular, FICOD requires the European Supervisory Authorities (the ESAs) - particularly the European Banking Authority, EBA, and the European Securities and Markets Authority, ESMA - to publish and maintain a list of financial conglomerates operating across the EU. In order for this to happen, financial conglomerates are required to report certain information to the ESAs. In addition, both the PRA and FCA have regulatory responsibilities under FICOD/FICOR.

219. **Number of firms affected** Based on the list of financial conglomerates published in 2017 by the European Supervisory Authorities Joint Committee[38], 22 firms have at least one entity located in the UK. 16 of these 22 have the UK as their lead coordinator.

Interaction with other financial services EU exit SIs

220. Financial conglomerates are large corporate groups, for example, large banks with an international reach. Such groups will likely undertake a range of regulated activities, meaning they would be affected by other financial services EU exit SIs, covered in this and

[37] Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council

[38] ESAs Joint Committee List of Financial Conglomerates 2017: Financial conglomerates with head of group in the EU/EEA https://esas-joint-committee.europa.eu/Publications/Guidelines/List%20of%20financial%20conglomerates%202017.pdf

other impact assessments. Which SIs will depend on the activities undertaken by the entity in question.

Deficiencies addressed by this SI

221. This SI makes the necessary changes to FICOR to ensure it continues to function as intended when the UK leaves the EU.

222. **Change of scope** This SI amends the definition of a financial conglomerate. Currently, a financial conglomerate is captured within the definition if one of the entities set out above is located within the EEA, with the others located anywhere in the world. Reflecting the UK's position outside the EU, this SI will amend the geographical restriction in the definition so that one entity must be located within the UK, rather than the EEA, while the other(s) may be located anywhere in the world.

223. **Transfer of functions**. In order to allow the FICOR regime to operate effective outside of the EU, his SI transfers the role of the ESAs to publish a list of conglomerates to the PRA and FCA, meaning UK regulators will be required to publish a list of all conglomerates with one or more entities operating within the UK. In order to allow the PRA and FCA to carry out this function, this SI removes the requirement on firms to report to the ESAs, and replaces it with a requirement to report to the UK regulators. This SI does not change the reporting requirements themselves, only the authority receiving the reports.

Impact on firms

224. In practice, the change in the scope of FICOR this SI makes will not impact financial conglomerates already operating in the UK. A financial conglomerate with at least one entity operating in the UK before exit met the FICOD requirement for having at least one entity operating in the EEA. Post-exit, the same financial conglomerate will continue to meet the new requirement in the SI. For example, if a bank located in the UK owned an insurance company in Spain, the group would be classified as a financial conglomerate – both currently and after exit. This SI therefore does not change requirements related to conglomerates' management and risk management.

225. **Change in reporting requirements.** As set out above, this SI transfer of reporting and publishing requirements that currently sit with the ESAs to the FCA and PRA. There will be some one-off transitional costs to firms of making this change – this will include some staff training costs, and potentially some changes to IT systems. However, we have limited these impacts as far as possible by maintaining the current reporting requirements, meaning the only changes required will be to submit the reports, which under the EU FICOD must be submitted at least annually, to a different authority.

226. Where a financial conglomerate has one entity based in the UK, and one (or more) entities based in the rest of the EU, they will continue to fall within EU FICOD after the UK leaves the EU, as well as being subject to the requirement under FICOR (as amended by this SI) in the UK. Based on the list of financial conglomerates published in 2017 by the European Supervisory Authorities Joint Committee[38], there are 9 conglomerates with one entity based in the UK and one in the rest of the EEA.

[38] ESAs Joint Committee List of Financial Conglomerates 2017: Financial conglomerates with head of group in the EU/EEA https://esas-joint-committee.europa.eu/Publications/Guidelines/List%20of%20financial%20conglomerates%202017.pdf

227. For these firms there will be some to some duplication in regulatory requirements, as groups will be required to report in to the UK authorities and the ESAs. In addition to the transitional costs set out above, there will be some ongoing burden on groups in maintaining this dual reporting. Industry have not raised any concerns about this.

228. **Familiarisation costs**. Impacted firms will need to understand these changes to the regulatory environment. This will involve legal experts examining the SI, and the relevant sections of legislation amended by this SI, to advise firms of the impact on their business, and how they should respond. We expect this will be a small one-off cost.

229. **Regulating small business.** The legislation does not apply to activities that are undertaken by small businesses, as financial conglomerates are large groups with activities in more than one of the insurance, banking, or investment services sectors.

5. Small and Micro Business Assessment (SaMBA)

230. As set out above, our approach is that, wherever possible, the same laws and rules that are currently in place in the UK will continue to apply at the point of exit, providing continuity and certainty as we leave the EU. These SIs are not intended to make policy changes, other than those that are appropriate to ensure a smooth transition when the UK leaves the EU, or to reflect the UK's new position outside the EU. As such, where the existing framework includes exemptions, or other provisions, for small and micro businesses, these SIs do not remove these provisions but maintain them. Equally, they do not place new requirements on Small and Micro Businesses (SMBs), beyond those changes required to fix deficiencies arising from the UK's exit from the EU, in line with powers in the EUWA.

231. As the intention of these SIs is to prepare a workable regime for financial services firms, exempting SMBs would leave small and micro businesses disadvantaged when compared to larger businesses, as the regulations they would be subject to would not have been amended to reflect the UK's position outside of the EU and would therefore continue to be deficient. This would cause significant disruption to SMBs.

232. These SIs will indirectly impact a large number of small businesses who use financial services firms and funds in order to do business. These firms will indirectly benefit from these SIs due to the fact that they will ensure that there is a clear and workable financial services regulatory regime in "no deal" EU exit scenario, limiting disruption to firms and customers and enabling financial services firms to continue operating. The Government has also published a series of information for firms and customers on banking, insurance and other financial services if there's no Brexit deal.[23]

1. Information for firms, including SMBs

233. The government's Technical Notice on Banking, Insurance and Other Financial Services, published on 23 August 2018[11], provided information for personal and business customers of financial services firms and funds, and financial services firms, funds and financial market infrastructure) with information about the impact of the UK leaving the EU

[23] https://www.gov.uk/government/publications/banking-insurance-and-other-financial-services-if-theres-no-brexit-deal

[11] Banking, insurance and other financial services if there's no Brexit deal, 23 August 2018, https://www.gov.uk/government/publications/banking-insurance-and-other-financial-services-if-theres-no-brexit-deal/banking-insurance-and-other-financial-services-if-theres-no-brexit-deal

without a deal, and the government's approach to ensuring that we have a functioning financial services regulatory framework in any scenario.

234. HM Treasury has published the SIs covered in this impact assessment in draft, in order to provide Parliament, firms and other stakeholders with further details on our approach to onshoring financial services legislation. These publications[24] are accompanied by explanatory information, setting out the key changes made by SI.

235. The financial services regulators provide a range of information and guidance to firms, an example of which is the FCA's guidance for firms on preparing for Brexit[12]. The regulators will continue to provide information and guidance to firms, including SMBs, in the lead up to, and beyond, the UK leaving the EU as appropriate and in line with their statutory objectives. Subject to circumstances in which the UK leaves the EU, this will include guidance on complying with the onshored regime.

2. Impact of individual SIs on SMBs

236. The below table outlines whether SMBs are directly in scope of these SIs, and, where that is the case, provides some further information on the provisions made for SMBs in the regulations these SIs amend. In many cases, HM Treasury, the FCA and Bank of England/PRA do not have access to data needed to determine the number of SMBs affected on an individual SI basis, in particular, data on number of employees. Due to the nature of the activities undertaken by the firms affected, other data, such as turnover or balance sheet data, does not provide a reasonable proxy (for example, funds that may meet the headcount definition of SMB would not fall within other thresholds due to the volume of assets under management). Where these figures are available for numbers of SMBs, or previous analysis is available, this is detailed below.

Table 2. Impact on SMBs

SI title	Applicable to small (inc. micro) businesses?
The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019	Yes
The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019	Yes
The Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2019	Yes
The Venture Capital Funds (Amendment) (EU Exit) Regulations 2019	Yes
Money Market Funds (Amendment) (EU Exit) Regulations 2019	Yes
Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019	Yes
Market Abuse (Amendment) (EU Exit) Regulations 2019	Yes
Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019	Yes
The Financial Conglomerates and Other Financial Groups (Amendment etc.) (EU Exit) Regulations 2019	No

[24] https://www.gov.uk/government/collections/financial-services-legislation-under-the-eu-withdrawal-act
[12] FCA, 'Preparing your firm for Brexit' (https://www.fca.org.uk/firms/preparing-for-brexit)

The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019

237. The legislation applies to activities that are undertaken by small and micro businesses, if they are currently in scope of the Alternative Investment Fund Managers Directive (AIFMD). This SI does not affect existing measures to address the possible impact on small businesses, such as the provision of simplified requirements in AIFMD for "small" AIFMs with assets under management below the specified threshold in Article 3 of AIFMD of less than €500 million or less than €100 million depending on whether the AIFM meets certain other characteristics (although a small AIFM could opt-in to the full requirements). The FCA estimate that there are 512 small authorised AIFMs (as of January 2019).

238. The intention of this SI is to ensure that the regulatory regime for fund managers within the UK continues to operate effectively in a UK context and to minimise the impact of the UK's withdrawal from the EU on all firms, including small business. An impact assessment was published in 2013 regarding the transposition of the underlying Alternative Investment Fund Managers Directive.[13]

The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019

239. The legislation applies to activities that are undertaken by small and micro businesses if they are currently in scope of the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive. The intention of this SI is to ensure the regulatory regime for investment funds in the UK continues to operate effectively in a UK context and to minimise the impact of the UK's withdrawal from the EU on all firms, including small business.

240. Collective investment schemes are aimed at retail investors, and the UCITS Directive contains a single set of regulations for firms. As such, in order to ensure regulatory alignment, there are no derogations for small business contained within this SI. An impact assessment was published in 2010 regarding the transposition of the underlying Undertakings for Collective Investments in Transferable Securities (UCITS IV) Directive[14]. This impact assessment reports that the underlying UCITS IV Directive does not contain any thresholds for small businesses, and so requirements apply equally to all firms. This impact assessment did not quantify how many small or micro businesses may be affected by the Directive.

The Venture Capital Funds (Amendment) (EU Exit) Regulations 2019 and The Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2019

241. The legislation applies to activities undertaken by small and micro businesses if they manage European Venture Capital Funds (EuVECAs) or European Social Entrepreneurship Funds (EuSEFs). Registration as an EuVECA or EuSEF manager has in the past only been available to managers with assets under management below the specified threshold in Article 3(2)(b)[15] of the Alternative Investment Fund Managers Directive (AIFMD), although

[13] Impact Assessment: Alternative Investors Fund Managers Directive
https://www.legislation.gov.uk/ukia/2013/84/pdfs/ukia_20130084_en.pdf
[14] Impact Assessment: Consultation on the Transposition of the Recast Undertakings for Collective Investments in Transferable Securities (UCITS IV) Directive 2009 https://www.legislation.gov.uk/ukia/2010/255/pdfs/ukia_20100255_en.pdf
[15] This threshold is defined in AIFMD as AIFMs whose assets under management do not exceed €500 million

recent changes to the EuVECA and EuSEF Regulation has opened up this label to fund managers of all sizes. This SI does not affect previous measures that were taken to address the possible impact on small businesses, including reduced fees[16] and reduced reporting requirements[17]. The intention of this SI is to ensure that the regulatory regime for investment funds in the UK continues to operate effectively in a UK context and to minimise the impact of the UK's withdrawal from the EU on all firms, including small and micro business.

Money Market Funds (Amendment) (EU Exit) Regulations 2019

242. There is a relatively small number of UK-domiciled MMF , and the regulators do not hold data on whether they are SMBs. However, there are a substantial number of UK institutions, including charities and local authorities, which who benefit from being able to invest in EU-domiciled MMFs, and some of these investors will be SMBs. These UK institutions will benefit from the transitional regime created in other SIs covered in this IA (which outline the Temporary (Marketing) Permissions Regime for AIFs and UCITS), and implemented by this SI, to ensure that MMFs domiciled in the EU that are already marketed in the UK can continue to be marketed here after exit day. This SI will therefore minimise disruption to UK institutions that invest in EU-domiciled MMFs.

Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019

243. The legislation applies to activities that are undertaken by small and micro businesses if they are members of or access systems designated under the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (SFR), on which there was no associated impact assessment. The intention of this SI is to ensure that the current regulatory regime for SFR continues to operate effectively in a UK context. Consequently, the SI amends UK settlement finality protections to extend the scope from only UK systems to non-UK systems as well.

244. The SI also introduces a Temporary Designation Regime (TDR) to allow EEA systems already benefitting from UK settlement finality protections to continue to do so for a temporary period while the Bank of England assesses their application to become a designated system. The purpose of the TDR is to ensure continuity of settlement finality protections for designated EEA systems. The SI also confirms that UK systems who benefit from these protections will be unaffected by the amendments to the legislation.

245. We anticipate this would require minimal operational and administrational changes to small businesses as this SI mainly allows the continuity of protections to systems, such as Central Counterparties and Central Securities Depositories who are being accessed already by small businesses, Businesses, including small and micro businesses, will benefit from the continuity this SI provides.

Market Abuse (Amendment) (EU Exit) Regulations 2019

246. The legislation applies to small and micro businesses, principally where they issue financial instruments to raise capital on the financial market. However, the UK Market Abuse

[16] Small AIFs are only subject to a £750 application fee.

[17] Small AIFs only are required to report annually, whereas full scale AIFs are required to report annually, half-yearly and quarterly. Source: Reporting transparency information to the FCA: Questions and answers https://www.fca.org.uk/publication/documents/aifmd-reporting-transparency-information-q-a.pdf

Regime (MAR) will be closely based on the EU's Market Abuse Regulations, and therefore current reporting requirements will be maintained for all affected firms. Moreover, as the FCA currently enforces MAR, UK businesses will not see a change in the reporting process post-exit. An impact assessment was published in 2011 regarding the implementation of the EU Market Abuse Directive (MAD) [18], the directive which preceded the Market Abuse Regulations (introduced in 2015). This impact assessment did not quantify the number small and micro businesses affected, but did conclude that the "vast majority" of small and micro businesses would not be affected by the measures. While the Market Abuse (Amendment) (EU Exit) Regulations 2019 do not fix deficiencies in the MAD, but MAR which replaced it, both pieces of legislation shared a similar scope. Therefore, the impact assessment for MAD could be used as a reasonable proxy given the difficulty in estimating the market impacted by MAR.

Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019

247. The legislation applies to activities that are undertaken by small and micro businesses if they are subject to clearing, reporting or risk mitigation requirements under the scope of the European Market Infrastructure Regulation (EMIR). The intention of this SI is to ensure that the current regulatory regime continues to operate effectively in a UK context. The EU over the counter (OTC) Derivatives, Central Counterparties (CCPs) and Trade Repositories (TRs) Regulations do not provide any basis for excluding small or micro businesses from the regulation. Consequently, the SI largely replicates requirements in existing EU legislation to ensure that UK requirements are aligned with those in the EU. This SI is therefore aimed at minimising the impact of these regulatory changes on all firms, including small businesses.

[18] Impact Assessment: FSMA market abuse regime: evaluating the sunset clauses (2011) https://www.legislation.gov.uk/ukia/2011/437/pdfs/ukia_20110437_en.pdf

A. Annex A

1. Familiarisation Costs

Method:
The following formulae are used to estimate familiarisation costs consistently across all SIs:

$$\boldsymbol{Familiarisation\ cost\ of\ SI\ for\ 1\ firm} = \frac{N^o\ of\ words\ in\ SI}{words\ read\ per\ minute} \times \frac{1}{60} \times hourly\ wage\ rate$$

$$\boldsymbol{Familiarisation\ cost\ of\ SI\ for\ all\ firms} = \frac{N^o\ of\ words\ in\ SI}{words\ read\ per\ minute} \times \frac{1}{60} \times hourly\ wage\ rate \times N^o of\ businesses$$

Assumptions and evidence base:

1. It is assumed that the affected business population will evenly incur costs (time and labour) in familiarising themselves with the relevant SI, specifically reading and comprehending the SI.
2. Information regarding the number of businesses affected by relevant SIs has been provided by the financial regulators (the Prudential Regulation Authority, the Financial Conduct Authority, and the Bank of England) or is based on Treasury estimates.
3. In calculating the labour cost of reading the SI, it is assumed that affected firms will procure the services of an external solicitor or legal expert to read the SI. We have based the cost of this legal advice on the government guidelines on solicitors' hourly rates, using an hourly rate of £330, based on the following assumptions:
    a. As legal expertise in financial services resides predominantly among City law firms, we have used a London, rather than UK-wide value for legal costs.
    b. As this work will be undertaken by a variety of individuals with varying levels of experience at different firms. Therefore, we have used the middle range value (i.e. the value for solicitors and legal executives with over 4 years' experience)
    c. As these rates are based on 2010 figures, so we have adjusted the 2010 figure of £296, to account for inflation.[68]

Under this assumption, these hourly rates would reflect the full cost incurred by businesses: no non-wage costs would be incurred since it is assumed the work is not carried out in-house. It is assumed that one professional per business is reading the SI and disseminating legal advice to firms' internal EU exit compliance and legal teams, and that this work will be billed to the firm on a per-minute basis.

Solicitors and legal executives with over 4 years' experience	
Hourly wage rate	£330

[68] https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp

The time spent reading and familiarising is based on the word length of the SI and the difficulty of the text based on the Flesch Reading Scale.

It is assumed that, as legal experts, readers will generally be familiar with this type of literature so we have taken the upper bound of the reading speed of difficult text, i.e. 100 words per minute. Furthermore, it is assumed that this form of familiarisation will be undertaken on a one-off basis.

Assumed reading speed (wpm) by Flesch Reading Score:

Fleisch Reading Ease	Level of difficulty	Words per minute assumptions
90–100	Very easy	250-300wpm (assume similar reading speed as prose)
80–90		
70-80	Fairly easy	
60–70	Standard	Around 200wpm (assume average reading speed)
50–60	Fairly difficult	50-100wpm (assume similar reading speed as technical text)
30–50	Difficult	
0–30	Very difficult	

Breakdown of Familiarisation Costs:

Time spent on familiarisation (hrs)	Hourly rate (£)	Number of businesses affected	Familiarisation cost per firm	Total familiarisation cost to all impacted firms
(Number of words in SI) / (words read per minute) * 1/60	£330	Dependent on SI	(Time spent on familiarisation) * (Hourly rate)	(Familiarisation cost per firm) * (Number of impacted firms)

Monetised Familiarisation Costs by SI:

SI	Number of words in SI (rounded up to nearest 100)[69]	Words read per minute	Number of businesses affected[70]	Familiarisation cost per firm (£) (2 significant figures)	Total familiarisation cost to all impacted firms (£) (2 significant figures)
The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019	11,700	100	9510^	640	6,100,000
The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019	15,500	100	150^	850	130,000
The Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2019	2,900	100	3^	150	460
The Venture Capital Funds (Amendment) (EU Exit) Regulations 2019	3,200	100	30^	170	5,200
Money Market Funds (Amendment) (EU Exit) Regulations 2019	6200	100	21^	340	7,200

[69] (i) approximate length, as SI was undergoing final legal checks at time of publication.

[70] ^Information provided by the Bank of England, FCA and PRA, *HM Treasury estimates.

Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019	3,900	100	126^	210	27,000
Market Abuse (Amendment) (EU Exit) Regulations 2019	7,900	100	1,500 ^[72]	430	650,000
Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019	14,900	100	428^ (including non-UK financial institutions)	820	350,000
The Financial Conglomerates and Other Financial Groups (Amendment etc.) (EU Exit) Regulations 2019	5,000	100	22*	270	27,000

B. Annex B – Summary of SI provisions which come into force pre-exit

As set out in section I (2), a small number of provisions in these SIs come into effect before 29 March 2019. These are provisions which allow the regulators to make the necessary preparations, but they are also specifically designed to prepare for a "no deal" scenario. The table below summarises these provisions.

SI	Pre-exit provisions
The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019	Provisions relating to the T(M)PR for standalone EEA UCITS and sub-funds come into force before exit day. Provisions giving the FCA the power to open its notification window for alternative investment funds before exit day, providing time for those funds to notify their intent to enter the regime before exit day, and for the FCA to process the notifications. Minor and technical amendments to ensure cross-references to other legislation work effectively.
The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019	None
The Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2019	None
The Venture Capital Funds (Amendment) (EU Exit) Regulations 2019	None
Money Market Funds (Amendment) (EU Exit) Regulations 2019	A provision allowing the regulators to fix deficiencies in MMF Binding Technical Standards before exit day
Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019	Provisions giving pre-exit powers to the Bank of England to receive notifications from systems who wish to enter the Temporary Designation Regime.
Market Abuse (Amendment) (EU Exit) Regulations 2019	Minor and technical amendments to ensure cross-references to other legislation work effectively.
Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019	None
The Financial Conglomerates and Other Financial Groups (Amendment etc.) (EU Exit) Regulations 2019	None

[72] The market abuse regime applies to financial instruments traded on UK and EU trading venues and related financial instruments. This figure represents the number of firms that report to the FCA under MAR, and so will be primarily affected by this legislation.