Carolyn Jackson Explores What a No-Deal Brexit Means for Derivatives Contracts

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Financial Services Partner Carolyn Jackson was interviewed by LexisNexis's *Banking and Finance Blog* on the implications for the derivatives market if there is a no-deal Brexit. Carolyn notes that the European Commission, the European Securities and Markets Authority (ESMA) and the European Economic Area (EEA) Member States have all been drafting legislation to prepare for this scenario to ensure that UK and EEA cross-border derivatives activity can continue. She added, "Even if such additional measures are ultimately in place before 29 March 2019, they too will most likely be temporary. Thus, UK participants that will want to continue to enter into derivatives contracts with EEA counterparties beyond these temporary no-deal Brexit grace periods will most likely need to restructure their businesses during such time period to include an establishment in the EEA." Carolyn notes, "One of the greatest concerns for the derivatives marketplace arising under a no-deal Brexit has been whether EEA counterparties could continue clearing derivatives on a UK central counterparty (CCP). On 18 February 2019, ESMA adopted recognition decisions for the following three UK CCPs—LCH Limited, ICE Clear Europe Limited and LME Clear Limited. These recognition decisions followed the 19 December 2018 Implementing Decision by the European Commission whereby it granted an equivalence decision on the regulatory framework applicable to UK CCPs. The equivalence and recognition decisions are temporary and will end on the one-year anniversary of a no-deal Brexit. Thus, if the equivalence and recognition decisions are not renewed, EEA clearing members may be required to restructure their existing clearing arrangements to clear on EEA CCPs."

EEA, as well as UK derivatives market participants will face challenges in a no-deal Brexit. "Should a no-deal Brexit occur, just as UK firms will have lost the right to passport into the EEA, EEA firms will lose the right to passport their investment activities and services into the UK. To prepare for such eventuality, the UK has passed the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018, which introduces a temporary permission regime (Temporary Permissions Regime) to enable EEA firms to continue to conduct derivatives activity, among other regulated activities, in the UK for a limited period of up to three years after exit day." However, it's important to note that EEA firms continuing derivatives activity in the UK only need to consider one jurisdiction, as opposed to 30. Trade repositories also need to make no-deal Brexit preparations. "Even if UK trade repositories are able to set up affiliates in the EEA, the process will involve new contractual relationships between the EEA firms and the EEA affiliate trade repository as well as the onboarding of open transactions into the EEA trade repository." ("The Impact of a No-Deal Brexit on Derivatives Contracts," March 11, 2019)

CONTACTS

For more information, contact your Katten attorney or any of the following attorneys.

Carolyn H. Jackson
+44 (0) 20 7776 7625
carolyn.jackson@katten.co.uk