European Securities and Markets Authority

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PUBLIC STATEMENT

Timely submission of requests for authorisation in the context of the United Kingdom withdrawing from the European Union

1. The European Securities and Markets Authority (ESMA) is issuing this Public Statement in order to raise the awareness of all market participants on the importance to prepare for the possibility of no agreement in the context of the United Kingdom withdrawing from the European Union. As there is no assurance that a transition period will be agreed upon, entities need to consider the scenario where a hard Brexit would take place on 30 March 2019.

2. In particular, ESMA emphasises the importance of the timeline to submit requests for authorisation to the National Competent Authorities1 (NCAs) and ESMA for regulated entities2 (entities) wishing to relocate in the context of the United Kingdom withdrawing from the European Union. On 30 March 2019, firms must have a fully authorised legal entity located in the EU27 to continue providing services in the EU27.

3. ESMA has seen an increase in the number of authorisation requests submitted to EU27 authorities. Against this background, ESMA urges entities wishing to relocate to the EU27 to submit their application for authorisation as soon as possible to allow it to be processed before 29 March 2019. Some NCAs have already been clear to entities that, unless an application is received in the month of June/July, there is no guarantee that authorisation will be achievable before 29 March 2019.

4. ESMA reminds entities that the time required to analyse an authorisation request depends primarily on the quality of the application file and encourages entities to be complete and accurate in their filing for authorisation. ESMA invites entities to contact the relevant NCAs, or ESMA in the case of CRAs/TRs, as soon as possible in case they have not yet done so.

[1] National Competent Authorities as defined under Art. 4 of the ESMA Regulation
[2] Entities regulated by reference to Article 1.2 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 including investment firms, asset managers, trading venues, credit rating agencies and trade repositories.

Background

5. On 29 March 2017, the United Kingdom (UK) notified the European Council of its intention to withdraw from the European Union (EU) pursuant to Article 50 of the Treaty on European Union (TEU). The withdrawal will take place on the date of entry into force of a withdrawal agreement or, failing that, two years after the notification on 30 March 2019.

6. As the UK plays a prominent role in the EU Single Market, the relocation[3] of entities, activities and functions following the UK's decision to withdraw requires a common effort at EU level to ensure a consistent supervisory approach to safeguard investor protection, the orderly functioning of financial markets and financial stability.

7. Against this background, ESMA published opinions, which address regulatory and supervisory arbitrage risks that arise as a result of increased requests from financial market participants seeking to relocate into the EU27 within a relatively short period of time.

8. The opinions set out principles based on the objectives and provisions of the European legislation, which are applied to the specific case of relocation of entities, activities and functions following the UK's withdrawal from the EU. ESMA applies these principles as well in its supervisory activities with regard to CRAs and TRs that intend to relocate to the EU27.

9. The Supervisory Coordination Network (SCN) was established in May 2017 in order to provide a forum for reporting and discussions among NCAs regarding market participants seeking to relocate entities, activities or functions to the EU27. The objective of the SCN is to promote consistency of approach and decision-making by NCAs.

10. In the scope of the SCN, NCAs discuss relocation cases on an anonymous basis and noted a significant increase in the number of authorisation requests by firms wishing to be authorised by 29 March 2019. Considering the work required from a NCA in order to analyse an application for authorisation, files should be submitted very shortly to allow meeting all regulatory requirements by 29 March 2019 and receiving an authorisation on time.

[3] Relocation should be understood in a broad sense and includes not only situations where an entity seeks authorisation for the first time in the EU27, but also cases where an existing entity in the EU27 is restructured (e.g. through an increase in the number of personnel) as a result of a transfer of activities and functions from a UK entity.