CLEARY GOTTLIEB

ALERT MEMORANDUM

Brexit: Frequently Asked Questions

July 2016

The UK voted to leave the EU on 23 June 2016. The terms of the UK's exit from the EU and the UK's post-exit relationship with the EU will not be known for some time. Although it is therefore too early to predict the long-term impact of the "Leave" vote on businesses operating in the UK, this memorandum seeks to answer some of the immediate key questions it raises:

If you have any questions concerning the UK's vote to leave the EU, please reach out to your regular firm contact or the following authors

LONDON

Simon Jay
+44 20 7614 2316
sjay@cgsh.com

Maurits Dolmans
+44 20 7614 2343
mdolmans@cgsh.com

Jonathan Kelly
+44 20 7614 2266
jkelly@cgsh.com

Andrew Shutter
+44 20 7614 2273
ashutter@cgsh.com

Raj Panasar
+44 20 7614 2374
rpanasar@cgsh.com

Richard Sultman
+44 20 7614 2271
rsultman@cgsh.com

David Toube
+44 20 7614 2384
dtoube@cgsh.com

BRUSSELS

François-Charles Laprévote
+32 22 87 21 84
fclaprevote@cgsh.com

PARIS

Amélie Champsaur
+33 1 40 74 68 95
achampsaur@cgsh.com

1. What is the effect of the UK's vote to leave the EU?

   Despite the substantial economic and political consequences triggered by the "Leave" vote, the referendum was, from a legal perspective, a non-binding advisory vote. As such, the referendum result has no immediate legal impact.

   Before the UK can start the formal process of leaving the EU (see question 2), the UK Government and/or Parliament must take a formal decision to leave the EU. It is unclear when, in what form or by whom (UK Government or Parliament) this decision will be taken, but the expectation is that the UK Government will give effect to the referendum result. Although the UK Government typically has the power to enter into and perform treaties pursuant to its "royal prerogative", given that the EU treaties have been given effect in UK law by an Act of Parliament (the European Communities Act 1972), it is strongly arguable that a further Act of Parliament is now required to authorise the Government to give notice to the European Council of the UK's intention to leave the EU under Article 50 of the Treaty on European Union (see question 2 below).

   The UK will remain an EU Member State (with unchanged rights and obligations) and will continue to be subject to EU law until it formally leaves the EU.

2. What is the process for the UK leaving the EU?

   Article 50 of the Treaty on European Union sets out the legal process for a Member State to leave the EU:

   - The UK takes a decision to withdraw from the EU in accordance with its own constitutional requirements (see question 1 above).
   - The UK notifies the European Council of its intention to leave the EU (the "Notification"), likely in the form of a letter, which triggers the Article 50 process. It is unclear at this stage when the Notification will be made. The outgoing Prime Minister, David Cameron, has suggested that the Notification will not be made until a new Prime Minister has been appointed in September 2016 and a number of the candidates to replace David Cameron have said that a Notification will not be made until 2017 at the earliest. Although informal discussions between the EU and the UK could theoretically begin before the Notification is made, certain EU decision-makers have indicated that they are unwilling to enter into such pre-Notification discussions.
   - The European Council provides "guidelines" for the European Commission to negotiate the UK's exit.
   - The UK and EU negotiate and conclude an agreement (the "Exit Agreement") setting out the arrangements for the UK's withdrawal "taking account of the framework for the UK's future relationship with the EU". This suggests that negotiations in relation to both the UK's exit from, and its post-exit relationship with, the EU could, in principle, take place in parallel.
   - The Exit Agreement must be approved by the European Council, acting by a qualified majority (72% of, or 20 of 27, Member States representing 65% of the total EU population), and by the European Parliament, acting by a simple majority.
   - The UK ceases to be a member of the EU on the earlier of (i) the date specified in the Exit Agreement and (ii) two years after the Notification. If an Exit Agreement cannot be negotiated during this two-year period, the UK will automatically cease to be a member of the EU upon its expiry, unless the time period is extended by consent of all Member States.

The UK will be the first Member State to leave the EU under Article 50. The process is therefore untested and there is a significant degree of uncertainty as to how it will operate in practice.

3. What is the future UK / EU relationship likely to look like?

   This will depend on the outcome of lengthy negotiations between the UK and the EU over the coming years. Commentators have pointed to the various types of arrangements that the EU has entered into with third countries in the past (summarised below) as possible models for the post-exit UK / EU relationship. However, a number of factors (including the weight of the UK in the EU economy and budget; the strength of UK financial infrastructure and its importance to the EU; and the UK's and EU's respective political positions, in particular in relation to free movement of people) mean that it is likely that a bespoke arrangement will be required, which may incorporate features from a number of the models described below, as well as potentially features that have not been used before.

   - UK joins the European Economic Area ("EEA") – the Norwegian model. The UK would retain access to the single market, but would continue to be subject to EU law in the areas covered by the EEA Agreement, which excludes, for example, the EU common agricultural and fisheries policies and the customs union. However, the UK would no longer be able to participate directly in the making of EU laws; would need to permit the free movement of people; and would need to continue contributing (in a reduced but still significant amount) to the EU budget.
   - UK joins the European Free Trade Association ("EFTA") – the Swiss model. The UK would retain limited access to the single market (and be subject to single market rules) in those areas in which it is able to negotiate bilateral agreements with the EU. Switzerland does not, for example, have access to the single market for financial services. Consistent with Switzerland's agreement with the EU, it is likely that the UK would be required to permit the free movement of people as part of its access to the single market. The UK's contribution to the EU budget would fall significantly.
   - UK joins the EU customs union – the Turkish model. The UK would retain access to the single market for goods (and would need to comply with EU product standards for exports to the EU) and would be required to apply the EU Common External Tariff to third countries. The UK would not have access to the single market for services. The UK would make no financial contribution to the EU.
   - UK negotiates a comprehensive trade agreement with the EU – the Canadian model. Similar to the Swiss model, the scope of the UK's access to the single market and the degree to which the UK would need to agree to be subject to EU rules as a condition of such access (including, for example, free movement of people) would be a function of the agreement reached between the UK and the EU. This type of agreement has, historically, taken a long time to negotiate. The UK would make no financial contribution to the EU.
   - UK trades with EU under WTO rules. The UK would lose access to the single market and UK trade with the EU would be subject to the same framework as other non-EU WTO members without a free trade agreement, including the EU Common External Tariff and non-tariff barriers. However, the UK would not be subject to EU law (but would need to comply with EU product standards for exports to the EU); would not need to permit the free movement of people and would not be required to contribute to the EU budget.

   Depending on the scope of the post-exit agreement reached between the UK and the EU, it may require ratification by individual Member States (which typically requires the approval of the relevant national parliament and may in some Member States require a national referendum), as well as by the European Council and European Parliament.

4. Should this affect any decision to choose English law as a governing law or impact choice of jurisdiction?

No, it is unlikely as a matter of substantive choice to have a material impact on parties' decisions to choose English law as the governing law and/or to choose the English courts' jurisdiction.

The English courts have historically been attractive to contracting parties around the world due to their reputation for impartiality and fairness, the breadth and quality of their judges' experience and training, including specialist commercial judges, and the consistency, predictability and clarity of their judgments. These attributes are unlikely to be affected by Brexit.

The precise impact of Brexit on procedural issues related to governing law and jurisdiction clauses will depend in part on the legal framework put in place to govern the UK's future relationship with the EU, and how this ties in with the existing law and procedure that applies in respect of non-EU parties and disputes.

Brexit may require certain changes to the legal framework currently governed by EU legislation:

- Choice of Jurisdiction. The Brussels Regulations (44/2001 and 1215/2012) currently determine which EU Member State has jurisdiction to hear a dispute. These may cease to apply in the UK upon Brexit but could be replaced with a similar or equivalent regime, such as the regime under the Lugano Convention. If the UK (specifically England and Wales for these purposes) does not enter into an alternative arrangement, EU Member States are still likely to recognise jurisdiction clauses in favour of the English courts, but there would be a risk of parallel proceedings in EU Member States and the English courts. English courts might regain and re-assert the power to grant anti-suit injunctions to restrain a party from continuing improperly-brought proceedings in an EU Member State.
- Choice of Law. The EU rules on applicable law are set out in the Rome I and Rome II Regulations (concerning contractual and non-contractual (i.e. tort) obligations respectively). Like the Brussels Regulations, these may cease to apply to the UK upon Brexit. It is unclear what will replace the Rome Regulations but the English courts are likely to adopt a similar approach as today where parties have opted for English law as the governing law. Moreover, the courts of EU Member States will remain subject to the Regulations and will therefore continue to respect the parties' choice of law, including a choice of English law.
- Enforceability of Judgments. Enforceability of judgments is also governed by the Brussels Regulations. The UK could sign up to an existing regime (e.g. the Lugano Convention) to provide for recognition and enforcement of judgments across the EU. Otherwise the position will depend on the law of the Member State where enforcement is sought. Judgments of EU Member States are likely to be enforceable pursuant to common law.
- Service of Proceedings. Subject to the particular legal framework put in place by the UK, it could potentially become more cumbersome to serve proceedings on persons in the EU.

In terms of the legal framework and the impact on arbitration agreements, Brexit should not affect the conduct of arbitrations with their seat in London. Neither should it affect the international enforcement of arbitral awards, as all current EU members (including the UK) are members of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

5. Will potential changes in tax laws impact European group structures?

Many European (and other multinational) groups have top or intermediate holding companies that are tax resident in the UK. Reasons for this may include access to the UK's extensive double tax treaty network and access to the EU Parent-Subsidiary Directive. This Directive can provide exemption from overseas withholding taxes on dividends from another Member State if the UK parent has a minimum 10% shareholding in the EU subsidiary. Groups with UK entities may also benefit from the EU Interest & Royalties Directive which can provide an exemption from withholding taxes on interest and royalty payments made between associated companies in different Member States.

The application of the UK's bilateral tax treaties is not based on EU membership. Following Brexit, UK companies should therefore continue to benefit from existing treaties with EU Member States. However, since those treaties do not all provide full exemption from withholding taxes on dividend, interest and royalty payments, gaps that currently are filled by the two EU Directives could be left exposed were those Directives to cease to apply. By way of example, in the absence of the Parent-Subsidiary Directive, a UK shareholder with a 10 per cent or more shareholding in a German or Italian subsidiary would suffer a 5% dividend withholding tax, even after the application of the relevant treaty.

A related aspect to the question is whether EU parents of UK subsidiaries could suffer in the absence of the separate limb of the Parent-Subsidiary Directive which requires that Member States provide an exemption or method of credit in respect of dividends received by EU parent companies from UK subsidiaries. Although the impact would be limited in the many EU jurisdictions that would offer that kind of relief even in the absence of the Directive, there may well be other adverse effects unrelated to the non-applicability of the Directive, depending on the particular rules of the parent's jurisdiction.

It will be unclear for some time when the Directives or other applicable tax rules will cease to apply, and what (if anything) they might be replaced with, but groups that currently rely on UK membership of the EU or EEA to eliminate what otherwise would be material withholding or other taxes should begin to consider whether to revise their structures.

6. Will there be any impact on the relevant rules governing the insolvency of a counterparty?

Currently, each EU Member State has its own corporate restructuring and insolvency regimes. There is no standard EU restructuring and insolvency regime applicable across all Member States; rather, EU law overlays a framework of mutual recognition of insolvency proceedings across the EU. Depending on the type of entity, the framework is governed by the EC Regulation on Insolvency Proceedings and the EU Directives on the Reorganisation and Winding Up of Credit Institutions and on the Reorganisation and Winding Up of Insurance Undertakings.

The position following Brexit will depend on the terms of the UK's post-exit relationship with the EU. If the UK joins the EEA (the Norwegian model), the UK will have to decide whether the EU-derived insolvency regulations should be retained and, if so, in what form. If, on the other hand, the UK trades with the EU under WTO rules, the current EU framework of mutual recognition of proceedings could theoretically cease to apply or be repealed by the UK to the extent implemented under UK legislation.

In the absence of any framework for mutual recognition between the UK and the EU, it would be more difficult for UK insolvency officeholders to seek recognition of UK insolvency proceedings in the EU. Conversely, an EU insolvency officeholder needing to seek recognition in the UK would have to rely on general English law rules, which are more fragmented and do not guarantee automatic recognition compared to the EU insolvency legislation. This would result in increased time, costs and uncertainty.

Although not necessarily anticipated, the most significant legal change for insolvency situations that might result from Brexit would be a change in the recognition by EU Member States of English schemes of arrangement which have become the preferred method for restructuring mid to large cap EU businesses which have financing agreements governed by, or amended to be governed by, English law.

7. What will be the impact on the ability of banks, investment firms and other financial institutions to passport from the UK into the EU and vice versa?

Currently, financial institutions authorised in an EEA Member State to provide certain regulated services (e.g. deposit-taking, lending, payment services, investment services) can provide these services across the EEA without requiring separate authorisation in each EEA jurisdiction (the so-called "passport").

The position following Brexit will depend on the terms of the UK's post-exit relationship with the EU and, in particular, which of the three financial services sector access models is adopted:

- UK joins the EEA: full EEA-wide access. Financial institutions established in the UK and in other EEA Member States will continue to enjoy passporting rights. Financial institutions will continue to be able to establish a branch and/or to conduct business on a cross-border basis in all EEA Member States.
- UK is determined to be "equivalent": conditional partial EEA-wide access. Both UK and EEA firms will lose passporting rights. However, certain of the Single Market directives and regulations provide for third-country access to EEA markets following a determination by the European Commission that the UK has an equivalent financial regulatory and supervisory regime and subject in most cases to the granting of reciprocal access for EEA firms. On the date that the UK leaves the EU, assuming that it maintains substantially the UK implementation of EU financial services legislation, the UK is in a strong position to be assessed as an equivalent jurisdiction, although concerns regarding reciprocity and competitiveness could prevent or delay recognition. Furthermore, the further the UK departs from the current regime, the longer the assessment process is likely to take, and the greater the risk that equivalence will not be found. Many of the more important pieces of financial services regulation, including the forthcoming MiFID II Directive and the Markets in Financial Instruments Regulation (together, "MiFID II") in relation to investment services and trading venues (including regulated markets, multilateral trading facilities and organised trading facilities), the European Market Infrastructure Regulation ("EMIR") in relation to derivative clearing and reporting requirements, and the Alternative Investment Fund Managers Directive (the "AIFMD") in relation to alternative investment funds (see question 8 below), provide for access on the basis of equivalence. However, the manner in which the equivalence mechanisms operate, and the nature and extent of the access that is provided, varies between regimes. For instance, under MIFID II, a UK firm may provide investment services to eligible counterparties and per se professional clients on a cross-border basis, i.e. without being required to establish branches in each other EEA Member State. This regime is premised on an equivalence decision by the European Commission, the establishment of cooperation arrangements with the UK regulatory authorities, and registration by the European Securities and Markets Authority ("ESMA").
- UK is not determined to be "equivalent" and so is treated as a standard third country: no EEA-wide access. The position will substantially be governed by the requirements of each EEA Member State, which will determine whether cross-border services may be provided, and if so, to which categories of person. Member States will generally permit UK branches to be established, but those branches will not benefit

from the EEA-wide "passport" for branches established in accordance with MiFID II described above. UK firms will also be permitted to provide their services cross-border, at the "exclusive initiative of the client", without solicitation. However, that carve-out is not interpreted in the same manner in all Member States. Other directives, including the Undertakings for the Collective Investment in Transferable Securities ("UCITS") Directive in relation to mutual funds, the EU Capital Requirements Directive IV ("CRD IV") in relation to banking services, and the Payment Services Directive in relation to payment services, contain no provisions for third-country access, although it cannot be excluded that the UK would be able to negotiate an ad hoc recognition regime under these frameworks preserving passporting rights in whole or in part.

8. What will be the impact on the ability of UK fund managers to market funds that they manage into Europe?

Currently, AIFMD applies to UK fund managers that manage alternative investment funds ("AIFs") and provides a "passport" which enables them to market EEA funds into the EEA under the AIFMD passport regime. Currently, under the AIFMD, only alternative investment fund managers ("AIFMs") registered in the EEA can benefit from the EEA-wide passport to market and manage AIFs in the EEA. However, the AIFMD marketing passport does not yet extend to marketing and management by non-EEA managers. ESMA has issued a first opinion and is expected to issue further opinions on the extension of the AIFMD marketing and management passport to third-country managers.

The impact on the ability of UK managers to market their funds in the EEA will depend on the model adopted to govern their relationship with the EU:

- UK joins the EEA. If the UK joins the EEA, a UK fund manager will continue to be subject to AIFMD and will benefit from the EEA-wide passport for managing and marketing EEA AIFs.
- National Private Placement Regimes ("NPPRs"). If the UK leaves the EEA, it will become a "third country" and UK fund managers would become "third-country managers". In those circumstances, the UK may choose to reform the current AIFMD-derived regime that applies to AIFMs. However, UK managers will no longer benefit from the AIFMD management and marketing passport and will only be able to market their funds in the EEA under NPPRs and would have to ensure compliance with certain minimum AIFMD requirements (mainly disclosure and transparency obligations, which vary between Member States) in each EEA Member State in which they market their funds.
- Third-country passport. A third-country passport is not currently available, but may be introduced by the time the UK leaves the EU. This is subject to ESMA finding equivalence between the EU and the UK. It is unclear how long such an assessment process would take, particularly if the UK reforms its current AIFMD-derived regime. The AIFMD contemplates that the marketing passport for non-EEA fund managers will operate in parallel with NPPRs for three years, after which ESMA will conduct another assessment as to whether NPPRs should be terminated. However, the NPPRs may be terminated early in Germany. Under the German AIFMD implementing law, Germany's NPPR is expected to expire in relation to third-country marketing once the Commission adopts regulations expanding the AIFMD passport to that non-EEA jurisdiction.

9. Will there be any impact on consolidated and conglomerates supervision under CRD IV and the Financial Conglomerates Directive (“FICOD”)?

- UK joins EEA. There would be no significant change from current arrangements.
- UK is not determined to be “equivalent” and so is treated as a standard third country.
  - The UK would no longer be required to apply consolidated or conglomerates supervision to UK subsidiaries of banking/insurance groups. However due to global harmonisation in this area and competitiveness concerns it is unlikely that the UK would entirely repeal this legislation.
  - Banking/insurance groups supervised on a consolidated/conglomerates basis whose top parent company is a UK company would be considered as having a “third-country” parent company, as a result of which the EU consolidated/conglomerates supervisor could request the creation of an EU intermediate holding company or other form of consolidated supervision with respect to EU subsidiaries, as a result of which additional prudential requirements could be applied.
- UK is determined to be “equivalent”. The EU supervisor would have the possibility (but not the obligation) to recognise UK consolidated supervision as equivalent, in which case it would not request the creation of an EU intermediate holding company or other form of consolidated supervision over EU subsidiaries.

10. Will there be any impact on market infrastructure such as central counterparties (“CCPs”)?

- UK joins EEA: full EEA-wide access. There would be no significant change from current arrangements.
- UK is not determined to be “equivalent” and so is treated as a standard third country: no EEA-wide access.
  - The UK would cease to be required to apply the EMIR framework for CCPs, although it is unlikely that the UK would repeal this framework entirely due to global harmonisation in this area. UK CCPs could continue to be supervised by the UK competent supervisor.
  - EU firms would no longer be able to be direct clearing members of UK CCPs or to use UK CCPs to comply with mandatory clearing requirements. However, UK CCPs could still have access to the EU market through UK subsidiaries of EU banking groups. Indirect access (i.e. access to EU clients of UK clearing members) would also remain possible.
  - Third-country (e.g. US, Asian, Latin American) CCPs recognised as equivalent in the EU would retain access to the EU market but would need to also apply to be recognised by the UK in order to have access to the UK market for clearing services.
- UK is determined to be “equivalent”: conditional partial access.
  - UK CCPs would be able to maintain access to EU clearing members through recognition as a third-country CCP.
  - The Commission can determine the UK to be an equivalent jurisdiction if it finds it has equivalent legislation and supervision, and grants reciprocity to the EU. UK CCPs recognised by ESMA under this regime would be entitled to provide clearing services to EU firms while remaining subject to supervision by the UK supervisor.
  - Currently, the following countries have been determined to be equivalent to the EU: Switzerland, the U.S., Canada, Hong Kong,

Singapore, Australia, South Africa, South Korea, Japan, Mexico; a total of 19 CCPs established in these countries have been recognised and therefore granted access to the EU market for clearing services.

- Given concerns expressed by the ECB with respect to euro clearing, it is possible that the Commission would decline to recognise the UK as an equivalent jurisdiction. If so, EU firms would not be permitted to be direct clearing members of UK CCPs and would have to clear their trades through EU CCPs (or CCPs recognised by ESMA in the above-mentioned jurisdictions).

11. How will Brexit affect bank resolution issues for a bank operating in the UK and in continental Europe?

- UK joins EEA. There should be no significant change from current arrangements.
- UK is treated as a standard third country.
  - The UK would cease to be required to apply the Bank Recovery and Resolution Directive ("BRRD") framework. However, due to global harmonisation in this area it is unlikely that the UK would entirely repeal this legislation. As a result, UK credit institutions/investment firms would likely continue to be subject to a broadly similar framework on an individual basis.
  - EU branches of UK banks would continue to be subject to the BRRD but under the specific third-country branch regime.
  - UK credit institutions/investment firms that are subsidiaries of EU banking groups would be treated as third-country entities for the purposes of the BRRD, as a result of which group recovery and resolution plans may need to be amended.
  - The UK resolution authorities would no longer be part of the resolution colleges and therefore no longer have a say through such colleges in the resolution strategies of EU banking groups having UK branches and subsidiaries.
  - Contracts governed by English (or another UK) law would fall within Article 55 of the BRRD, which would require contracts to be amended to include a bail-in recognition clause (to ensure effective recognition of bail-in).
  - The UK could no longer be required to automatically recognise the effect of resolution proceedings and actions (such as resolution stays) taken by EU resolution authorities, and in particular the effectiveness of transfer of contracts and assets governed by English (or another UK) law in the context of good bank/bad bank structures, which could threaten the effectiveness of resolution of EU banks that have a large volume of English law governed contracts. Conversely, the EU Member States would no longer be required to recognise UK resolution proceedings and actions. Industry-wide protocols may be required to address these gaps in mutual recognition.
- The UK and the EU enter into cooperation arrangements. It is possible for the EU to recognise equivalence or enter into a cooperation agreement with the UK ensuring effectiveness of Article 55, which would avoid the need to amend English (or another UK) law–governed contracts. It is also possible for the EU Member States (either through the Commission or on a bilateral basis) and the UK to enter into cooperation agreements providing for reciprocal recognition and enforcement of resolution proceedings, although no such agreements have been entered into to date.

12. Will there be any impact on antitrust or state aid rules?

Until the UK formally withdraws from the EU, there is no impact on the EU antitrust or state aid rules, which continue to apply as normal. Once the UK has formally withdrawn from the EU, and assuming the future arrangements between the EU and the UK do not cover antitrust or state aid rules:

Antitrust. UK companies would continue to be subject to the EU's merger control and antitrust enforcement regimes, just as non-EU companies are subject to these regimes today. Some of the EU's largest antitrust fines, in both cartel and abuse of dominance cases, have been levied on non-EU companies, and the EU has blocked notable mergers between non-EU companies. The UK will continue to have its own domestic merger control and antitrust enforcement regime, which will apply to UK and foreign companies as today.

Possible implications of Brexit, depending on the terms of the UK's post-exit relationship with the EU, may include the following:

- Mergers qualifying for review by the European Commission may no longer benefit from the "one-stop shop" regime, meaning a parallel UK merger review may be necessary (if the jurisdictional thresholds are met).
- A European Commission antitrust investigation may no longer preclude the UK Competition and Markets Authority ("CMA") from investigating the same conduct.
- The European Commission may no longer have the power to conduct dawn raids in the UK.
- The UK would have greater freedom to interpret UK competition rules differently from equivalent EU competition rules.
- European Commission cartel (and other antitrust infringement) decisions may not be binding on English courts, in particular in follow-on damages claims.
- Legal advice on EU competition law (or other EU law) rendered by UK-qualified external counsel may not be treated as privileged from inspection by the EU institutions.

State aid. The UK would no longer be prevented by EU law from offering aid (or other preferential treatment) to UK businesses on the basis that it restricts competition between EU Member States - although UK companies receiving aid from EU Member States would still be covered by EU state aid rules.

The extent of these changes will ultimately depend on the post-exit relationship negotiated between the UK and the EU. If, for instance, the UK joins the EEA, the EEA Agreement largely replicates the competition rules of the Treaty on the Functioning of the European Union, minimising the extent of any changes.

13. What should an issuer think about if contemplating a London listing of securities?

The process for a UK listing application has not changed as a result of the "Leave" vote. Similarly, the continuing obligations of a listed company will not, for at least the period it takes to negotiate the UK's exit from the EU, change as a result of the "Leave" vote. Once the UK formally leaves the EU, the impact on a listed company will depend on the terms of the UK's post-exit relationship with the EU:

- At one end of the spectrum, for example if the UK joins the EEA, there would be no impact, because the UK would retain and be subject to all the capital markets laws and regulations derived from EU law.
- At the other end of the spectrum, for example if the UK trades with the EU under WTO rules, all the EU-derived laws will cease to have effect, in which case the impact will depend on the content of the UK laws that replace the EU-derived laws. Even at that end of the spectrum, it seems unlikely to us that there would be a fundamentally different approach to the ongoing obligations of London listed companies, particularly given that so many aspects of the current raft of EU capital markets laws were driven by UK practice and the strength of the UK's voice in the capital

markets space, and especially if the UK seeks a post-exit relationship with the EU based on the equivalence of its laws.

The ease with which issuers will be able to conduct capital markets transactions seamlessly across the UK and EU post-exit will also depend on the terms of the UK's post-exit relationship with the EU. Today, an issuer can "passport" a prospectus approved in one EU Member State into another Member State in order to publicly offer and/or list securities in that Member State. The extent to which passporting will continue to be available will depend on the terms of the UK's post-exit relationship with the EU. Passporting into and out of the UK would continue to be available, for example, if the UK were to join the EEA.

UK listed companies should bear in mind that the EU Regulation on Market Abuse ("MAR") will have direct effect throughout the EU from 3 July 2016, and will therefore apply in the UK from that date until the UK formally leaves the EU. UK listed companies will therefore need to continue their preparations for the changes under MAR notwithstanding the "Leave" vote. Please see our previous alert memoranda in relation to MAR for further details.[1]

We hope this memorandum helps answer some of the immediate questions raised by the UK's "Leave" vote. If you would like to discuss any of the issues raised by this memorandum in more detail, please reach out to your regular firm contact or any of the authors whose contact details are set out above.

…

CLEARY GOTTLIEB

[1] (1) "FCA Consultation Paper on the implementation of the Market Abuse Regulation in the UK", January 14, 2016 is available here; (2) "The New Market Abuse Regime: The Framework So Far", March 15, 2016 is available here; and (3) "Market Abuse Regulation: Impact on U.S. Public Companies", June 13, 2016 is available here.