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## Investment Firms Post-Brexit: EU Provisionally Agrees to Regulatory Supervision Framework

EU policy makers recently reached a provisional agreement on a package of measures, which may tighten UK financial services firms' access to EU clients when Britain leaves the EU, setting out legislative proposals for new prudential requirements for investment firms.

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The deal bolsters the EU Commission's powers to determine who will be granted access to EU clients, and will impact investment firms as a result. Central to this agreement is the concept of "equivalence," a process whereby the EU Commission assesses and determines that a third country's regulatory, supervisory and enforcement regime is equivalent to the corresponding EU framework. Where a third country is deemed "equivalent", competent authorities in the EU can rely on that country's entities' compliance with the third country framework.

The agreement demonstrates the move toward the equivalence regime and sets out the specifics for giving third country investment firms access to the single market. The Commission will have increased powers, including the ability to assess capital requirements applicable to firms providing bank-like services to ensure they are equivalent to those applicable in the EU. The Capital Requirements Regulation and Directive ("**CRR/CRD4**"), subjects all investment firms to the same capital, liquidity and risk management rules as banks and the provisional agreement confirms that investment firms will be subject to the same measures as regards capital holdings, corporate governance and remuneration.

The provisional agreement is a further signal that in order to be deemed "equivalent" after Brexit, the United Kingdom will need to comply with the key provisions of EU Directives, and restrict divergence from those aspects of EU legislation the UK disagrees with, or deems anti-competitive. For example, rules under the CRD4 banker's bonus cap (unsuccessfully challenged by the United Kingdom in the European Court of Justice in 2014) will no longer apply to the UK after Brexit as it will be a third country, and no longer subject to EU rules. However, if the UK wishes to access the single market, it will need to meet the equivalence regime that will apply to third country investment firms; it will not be able to dis-apply legislation such as CRD4 that it deems at odds with its domestic regulatory framework.

In what may come as welcome news to many investment firms, the adoption of a proportionate approach to the application of the regime applies, with the requirements varying depending on the nature, size and complexity of firms. Only the largest ("**Class 1**") firms would be subject to the full prudential regime, while smaller firms that are not considered systemic would be subject to new bespoke regime with dedicated prudential requirements.

Further details of the provisional arrangements are yet to be publicised. We are closely monitoring developments in this area and will be providing a series of updates on the arrangements, which will impact investment firms when the UK becomes a third country.