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## LAWFLASH

# 'BREXIT' IMPLICATIONS FOR LISTINGS OF SECURITIES ON THE LONDON STOCK EXCHANGE

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If Britain decides to leave the European Union as a result of a "Brexit" vote on 23 June 2016, the effect on the UK and EU financial services sectors could be significant; in particular, there could be effects on the London Stock Exchange (LSE) listing regime, which potentially (but not necessarily) would no longer be subject to the Prospectus Directive and other EU legislation related to securities listings.

## CURRENT LISTING REGIME

As an EU member state, the UK is currently required, through its own legislation, to comply with applicable EU legislation related to listings of securities. Significantly, the Prospectus Directive and Prospectus Regulation apply not only to the 28 EU member states but also to Norway, Iceland, and Liechtenstein (collectively with the EU member states, the European Economic Area or EEA). Consequently, the European listing regime applies EEA-wide.

The EEA listing requirements only apply to EEA "regulated markets", which in the UK currently include the Main Market, the LSE's flagship market.[1] The current requirements for listings of securities (including shares, global depositary receipts (GDRs) and bonds) on the LSE's Main Market are contained in UK laws and rules that implement applicable EU legislation. The principal pieces of EU legislation applicable to listings of securities are the Prospectus Directive[2] and its implementing regulation the Prospectus Regulation.[3]

Under the existing regime, to list securities on the LSE's Main Market, an issuer must, among other things, prepare a prospectus that

- meets the content and format requirements of the Prospectus Directive,
- is approved by the issuer's "home member state" in the EEA, and
- is published in accordance with Prospectus Directive requirements.

Once an issuer has securities listed on the LSE's Main Market, it becomes subject to the UK's Disclosure and Transparency Rules (DTRs), which implement the requirements of the Transparency Directive[4] into UK law and contain a range of continuing reporting and disclosure requirements.

A key feature of the Prospectus Directive regime is that prospectuses that are approved and published by the UK regulatory authority (currently the Financial Conduct Authority) can be “passport” into another EEA member state for listing on a regulated market in that other member state. Conversely, prospectuses approved for listings on regulated markets in other EEA member states may be passported into the UK for listings on the LSE’s Main Market or other regulated markets in the UK.

## **BREXIT IMPLICATIONS FOR LONDON LISTING REQUIREMENTS**

It is currently unclear what type of relationship the UK would have with the EU following a Brexit. One possible outcome would be that the UK leaves the EU but decides to retain access to the EU markets through joining the EEA, which it could accomplish first by rejoining the European Free Trade Association and then acceding to the EEA Agreement. In that scenario, the effect of a Brexit on the UK listing regime would likely be minimal, albeit the UK would no longer have a seat at the EU table for having a say in the future development of the prospectus and listing regulations. Another possible outcome would be that, for political reasons, the UK decides to leave the EU and also decides effectively to exit the EEA by not rejoining it. This scenario would have a significant effect, not only directly on the UK listing regime but also indirectly on the capital markets in the remaining EEA countries (the rEEA).

A Brexit that includes an exit from the EEA would not in itself change the existing UK laws that implement the relevant European legislation related to listings, so it would generally have no immediate direct effect on the requirements for, and the implications of, a UK listing (other than in respect of passporting, as discussed below). The UK could simply choose to keep in place its existing laws related to listings (which implement current EU legislation). This may be the easiest course of action, given the volume and breadth of issues that the UK government will need to address in the event of a Brexit. However, in the event of a Brexit that includes an exit from the EEA, the UK listing rules and requirements will likely deviate over time from the EU requirements in certain respects as any amendments are made to either the UK or the EU requirements. Particular areas in which the UK and EU listing requirements could differ include

- the content requirements for prospectuses,
- the format requirements of prospectuses,
- the procedures for approving prospectuses in connection with listings,
- requirements and procedures related to publication of prospectuses, and
- continuing reporting and disclosure obligations for listed companies.

The current Prospectus Directive requirements (which are implemented in current UK legislation) generally are consistent with international standards for stock exchange listings. As one of the world’s leading financial centres, the UK can be expected to continue to apply international standards in its listing and disclosure regime to maintain its reputation among investors and to continue to attract companies to list on its markets. Accordingly, we anticipate that, in the event that a Brexit occurs and the UK also exits the EEA, the differences between the UK listing requirements and those applicable to rEEA regulated markets would not be substantial.

## **BREXIT IMPLICATIONS FOR DUAL AND MULTIPLE LISTINGS**

One significant change that would occur immediately in the event of a Brexit that includes an exit from the EEA is that the UK would no longer be a participant in the Prospectus Directive’s passporting regime for prospectuses. In such a scenario, if a prospectus were approved in an rEEA member state in connection

with a listing on a regulated market in that rEEA member state, in order for that prospectus to be approved in the UK, the listing authority in the UK (currently the Financial Conduct Authority) would need to apply its own standards to determine whether to approve it for UK listing purposes. Conversely, prospectuses approved in the UK would need to be approved afresh by the regulatory authority in an rEEA member state under applicable Prospectus Directive standards for the prospectus to be used for a listing on a regulated market in that rEEA member state.

It is possible that the inability to passport approved prospectuses to and from the UK and rEEA member states following a Brexit and an exit from the EEA could have a negative effect on the volume of issuers that choose to list their securities on the LSE. However, depending on the nature of the new relationship that the UK establishes with the EU following a Brexit, there could nonetheless be arrangements established that provide a certain level of reciprocity regarding prospectuses going forward. In particular, under the Prospectus Directive, an EEA member state regulator is able to approve a prospectus approved in a “third country” (i.e., a non-EEA member state, such as what the UK would be after a Brexit, assuming it does not join the EEA) if the European Commission were to be satisfied that the prospectus was drawn up in accordance with international standards and that the relevant third country’s prospectus content requirements were equivalent to those in the Prospectus Directive.[5] As long as the UK’s prospectus approval requirements do not change dramatically from what they are now, we believe that the UK’s requirements should be considered equivalent to the Prospectus Directive requirements for this purpose. However, in the wake of a Brexit, EU decisions about UK equivalence could acquire a political dimension that renders the outcome of EU deliberations uncertain. To the extent that UK-approved prospectuses were accepted for listings by rEEA member state regulators on the foregoing basis, we expect that the UK would establish (or would already have had to establish) a similar reciprocal policy of accepting prospectuses approved by regulators in rEEA member states for listings in the UK.

## **CONCLUSION**

Because it is unclear what type of relationship the UK would have with the EU following a Brexit and how the UK or the EU may amend their listing requirements going forward, there is uncertainty about how a Brexit would affect the LSE listing regime. Immediately following a Brexit, dual and multiple listings that involve the UK and rEEA regulated markets would potentially be more time consuming and/or costly than they currently are under the passporting regime, but, at least in the medium term, we do not expect that there would be major differences in the requirements for and process of listing securities on the LSE following a Brexit as compared with the current LSE listing regime. However, unless the UK rejoins the EEA, prospectuses approved in the UK could no longer be passported into the rEEA countries for admission to trading on their markets, and similar consequences would flow with respect to prospectuses approved in the rEEA countries for passporting into the UK.

In light of the effects and uncertainties discussed above, companies that have securities currently listed on the LSE or that are planning LSE listings in the future should monitor Brexit developments and be prepared for possible changes to the LSE listing regime going forward.

## **RESOURCES**

Morgan Lewis has set up a dedicated Brexit Resource Center to provide up-to-date news and industry contacts to answer any questions you may have about the implications for you or your business in the event

of a Brexit.

## **CONTACTS**

If you have any questions or would like more information on the issues discussed in this LawFlash, please contact any of the following Morgan Lewis lawyers:

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[1] Other regulated markets in the UK are the BATS Europe Regulated Market, CME Europe Limited, Gibraltar Stock Exchange, ICE Futures Europe, ISDX Main Board, Euronext London, and London Metal Exchange. Certain other UK securities markets, such as the Alternative Investment Market (AIM) and the Professional Securities Market, are operated by the LSE but are not themselves “regulated markets” for purposes of the Prospectus Directive.

[2] Directive 2003/71/EC.

[3] Regulation 809/2004 of 29 April 2004.

[4] Directive 2004/109/EC.

[5] Prospectus Directive, Article 20(1).

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