

# Market Trends 2019/20: Brexit Disclosure

A Lexis Practice Advisor® Article by  
Helen Shouhua Yu, Gonzalo Go, and Ana Estrada Mayer Brown LLP



Helen Shouhua Yu  
Mayer Brown LLP



Gonzalo Go  
Mayer Brown LLP



Ana Estrada  
Mayer Brown LLP

This market trends article identifies Brexit-related disclosures that offer detailed discussions of its effects, including how Brexit might impact the company, its employees, management, operations, and prospects. The company name, its industry, and the type of filing are also provided in each sample disclosure for reference. This article concludes with recommendations on how to enhance Brexit-related disclosures and how to make them consistent with SEC's expectations.

For more information on drafting disclosures in general, see [Risk Factor Drafting for a Registration Statement](#), [Top](#)

[10 Practice Tips: Risk Factors, Form 10-K Drafting and Review, Registration Statement and Preliminary Prospectus Preparations for an IPO](#), [Top 10 Practice Tips: Drafting a Registration Statement](#), [Form S-1 Registration Statements](#), [Management's Discussion and Analysis of Financial Condition and Results of Operations](#), [Form 10-Q Drafting and Review](#), [Management's Discussion and Analysis Section Drafting Checklist](#), and [Offering Document Drafting Checklist](#). For additional information regarding Brexit's impact on international capital markets, see [Market Trends 2018/19: International Capital Markets](#).

## Brexit and Its Resulting Uncertainties

The United Kingdom (UK) held a referendum on June 23, 2016, in which a slim majority voted in favor of leaving the European Union (EU) in an action commonly referred to as Brexit. The UK House of Commons passed a bill on February 8, 2017, authorizing the government to proceed with exit talks with the EU. On March 29, 2017, the British government tendered its formal notice to withdraw from the EU pursuant to Article 50 of the Lisbon Treaty. This withdrawal was supposed to take effect on the effective date of the withdrawal agreement, which was initially March 29, 2019, if no agreement had been reached by then. The UK House of Commons rejected the withdrawal agreement on January 15, 2019 (432 to 202 votes), March 12, 2019 (391 to 242 votes), and March 29, 2019 (334 to 286 votes). Since the withdrawal agreement was not approved on March 29, 2019, the Brexit date was set on April 12, 2019 (and later extended to October 31, 2019 and January 31, 2020) pursuant to Article 50 of the Lisbon Treaty. These extensions were the result of a special European

Council summit wherein the EU leaders met and agreed to provide the UK such periods with the option to leave the EU earlier if its prime minister can secure the UK House of Commons' support for his Brexit deal. The UK conducted an early general election on December 12, 2019 affording the prime minister's Conservative party a majority of 80 in the UK House of Commons. The UK's EU Withdrawal Bill was enacted into law on January 23, 2020 and the EU parliament approved the Brexit on January 29, 2020. The UK formally left the EU on January 31, 2020. There is an 11-month transition phase (or until December 31, 2020) to sort out the future EU-UK relationship. During this transition phase, the UK will continue to follow all of the EU's rules and its trading relationship will remain the same. Both EU and UK will have to iron out a new trade agreement and decide on various essential arrangements, such as law enforcement, data sharing and security, aviation standards and safety, licencing and regulation of medicines, aviation standards and safety, access to fishing waters and supplies of electricity and gas.

As Brexit's political, legal, regulatory, and economic effects continue to evolve, companies have the duty to ascertain and disclose the effects these may have on their businesses. Right after the Brexit vote in 2016, several companies across various industries had already begun disclosing Brexit-related risks in their filings with the Securities and Exchange Commission (SEC). These disclosures generally were included in the Business, Risk Factors, and Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) sections of SEC filings. Most of the initial Brexit disclosures were generic boilerplate provisions or laundry list of risks applicable to almost any company. These disclosures simply included general statements about Brexit and its uncertain effects but did not exactly disclose how Brexit might impact the company, its employees, management, operations, and prospects. This article identifies some Brexit-related disclosures that offer more detailed discussions of effects.

## Brexit Disclosures in the Business Section

Item 101(a) (17 C.F.R. § 229.101) of Regulation S-K requires a reporting company to describe the general development of its business, including the material areas specific to it. In their Brexit disclosures in the Business section, companies mentioned that Brexit could materially impact the future regulatory regime that applies to their businesses, products, services, and employees in the UK. Only a few companies specified how, to what degree, and which aspect of their businesses would be affected by

Brexit. Here are some examples of Brexit disclosures in the Business section:

### • Offering Registration

- o "In March 2019, we successfully transferred all current product certificates from BSI-UK to BSI-Netherlands in anticipation of a no-deal Brexit. Our products currently CE marked and distributed in the EU will be subject to the new EU MDR regulations (replacing the current MDD) starting in May 2020 with a transitional period extending to May 27, 2024 or the length of the currently issued Notified Body certification, whichever comes first." [Avinger, Inc., Form S-1/A filed January 24, 2020 (SIC 3841—Surgical & Medical Instruments & Apparatus)]
- o "We are making all reasonable preparations to ensure, in any scenario, that services can continue to be provided in the UK and throughout the EEA, post-Brexit. Accordingly, we have established a legal entity in the Netherlands, Tradeweb EU B.V., and have started to offer services from a new Amsterdam office. We received approval in early 2019 from Dutch regulatory authorities to operate an MTF, an OTF and an APA, essentially replicating our current UK regulatory permissions, including "passports" throughout the EEA. As a result of this approval, we now operate two MTFs, two OTFs and two APAs in Europe, increasing the complexity of the business." [Tradeweb Markets Inc., Form S-1 filed October 15, 2019 (SIC 6200—Security & Commodity Brokers, Dealers, Exchanges & Services)]

### • Periodic Reports

- o "In Europe, uncertainty around Brexit saw customers less confident in economic growth. This was reflected in the purchases and business investment of many of our EEC end users. This in turn limited growth opportunities in these markets while leading to more aggressive pricing from our competitors, which we were forced to meet, resulting in downward pressure on gross margins." [Lakeland Industries, Inc., Form 10-K filed April 15, 2020 (SIC 3842—Orthopedic, Prosthetic & Surgical Appliances & Supplies)]
- o "Pursuant to the formal withdrawal arrangements agreed between the U.K. and the EU, the U.K. will be subject to a transition period until December 31, 2020. During this time, we must register and fulfill new regulatory requirements for continued sales of products in the U.K. beginning on January 1, 2021. If our efforts to obtain new regulatory approval in the U.K. is materially delayed or denied, we may

be required to incur additional expenses in order to develop, manufacture and commercialize our product candidates in the EU and our future sales may be impacted. We opened our Hereford, England office in 2019 largely in response to Brexit.” [Lemaitre Vascular, Inc., Form 10-K filed March 12, 2020 (SIC 3841—Surgical & Medical Instruments & Apparatus)]

- o “Several factors which are currently unknown will influence Brexit’s impact on our business, including the form Brexit will take. We operate a staging facility in the UK, where certain core network elements and customer premises equipment is configured before being shipped to both UK and EU locations. The UK is currently also a central repository of our spare parts for use in our European operations. However, we have also recently established a third party sparing facility in Amsterdam which will help mitigate potential disruptions resulting from any restriction on the free movement of goods between the EU and the UK after the end of the transition period. Given the small percentage of our global personnel that are UK or EU nationals, we do not anticipate any adverse impact from Brexit on our workforce. We are currently monitoring Brexit developments, reviewing our supply chain alternatives, and assessing the short and long-term implications of Brexit on our operations. Nonetheless, based on current information, we do not anticipate Brexit will have a substantial impact on our business.” [Level 3 Parent, LLC, Form 10-K filed March 5, 2020 (SIC 4813—Telephone Communications (Except Radiotelephone))]
- o “In 2019, Arch Insurance (EU), based in Dublin, Ireland, received authorization from the Central Bank of Ireland (“CBOI”) to expand its classes of business as part of our plan to address [Brexit]. As of January 2020, all of the insurance business in the European Union (“EU”) previously written by Arch Insurance (U.K.) is now written through Arch Insurance (EU). Arch Insurance (EU) has branches in Denmark, Italy and the U.K.” [Arch Capital Group Ltd., Form 10-K filed February 28, 2020 (SIC 6331—Fire, Marine & Casualty Insurance)]
- o “As a result of Brexit, we have established certain businesses in Amsterdam, a European Union jurisdiction, which will allow us to continue to provide services to European Union clients.” [CME Group Inc., Form 10-K filed February 28, 2020 (SIC 6200—Security & Commodity Brokers, Dealers, Exchanges & Services)]
- o “Uncertainty over the outcome of the [Brexit] negotiations and the possibility of a “no deal” exit

may materially or significantly diminish interest in traveling to the U.K. for study. If the U.K. is no longer viewed as a favorable study destination, KI’s ability to recruit international students will be adversely impacted, which would materially adversely affect KI’s results of operations and cash flows.” [Graham Holding Company Form 10-K filed February 26, 2020 (SIC 8200—Services—Educational Services)]

- o “We have studied and consulted with local experts regarding the potential market and economic impacts of Brexit on the UK, with a particular focus on potential impacts to the waste and energy markets as they might affect our plans to expand our business with GIG.... The government of the UK has shown no indication of an intention to rollback or reverse its policy support for environmental protection generally, the renewables market, or for EfW specifically. As such, while Brexit may have some impact on construction costs for new UK EfW projects, we do not believe Brexit will materially impact the key market and economic drivers for investment in the combined pipeline of EfW projects we are pursuing jointly with GIG.” [Covanta Holding Corporation, Form 10-K filed February 25, 2020 (SIC 4991—Cogeneration Services & Small Power Producers)]
- o “If, after the expiry of the transitional period in December 2020, there is no deal or arrangement covering financial services in place, with no ability to passport, and assuming no third country ‘equivalence’-based recognition in place, the Barclays Bank Group entities in the UK would no longer be able to provide certain if their services from the UK into the EU27 in the way in which these services are currently provided.” [Barclays Bank, PLC, Form 20-F filed February 14, 2020 (SIC 6029—Commercial Banks, NEC)]

## Brexit Disclosures in the Risk Factors Section

Item 503(c) (17 C.F.R. § 229.503) of Regulation S-K requires a description of material risks (including Brexit-related risks, if material) that impact a business, and how these risks affect the issuer or an investment in the securities being offered. For further information, see [Market Trends 2016/17: Risk Factors, Top 10 Practice Tips: Risk Factors](#), and [Risk Factor Drafting for a Registration Statement](#). The disclosure has to be in plain English, and not a sweeping general statement applicable to any issuer or offering. For further information on plain English, see [Top 10 Practice Tips: Drafting a Registration Statement](#). Here

are some examples of Brexit disclosures in the Risk Factor section:

- **Offering Registration**

- “[B]rexit could result in delayed deliveries, which may adversely affect the combined company’s internal supply chain and the combined company’s ability to perform under customer contracts.” [Apergy Corporation, Form S-4/A filed April 17, 2020 (SIC 3530—Construction, Mining & Materials Handling Machinery & Equipment)]
- “Until the ... future relationship [of the United Kingdom and the European Union is] clearer, it is not possible to determine the impact that Brexit and/or any related matters may have on TD, its business, financial condition and/or results of operations or any of TD’s securities, including the market value or the liquidity thereof in the secondary market, or on any of the other parties to any transaction documents related to TD’s securities.” [The Toronto-Dominion Bank, Form F-3/A filed June 18, 2019 (SIC 6029—Commercial Banks, NEC)]

- **Prospectuses**

- “The unavoidable uncertainties and events related to Brexit could negatively affect taxes and costs of business (including changes to the taxes and costs on imports and exports and the time taken to move goods between the United Kingdom and European Union or changes to product regulation) cause volatility in currency exchange rates, interest rates, and European Union, United Kingdom or worldwide political, regulatory, economic or market conditions; and contribute to instability in political institutions, regulatory agencies, and financial markets. Brexit could also lead to legal uncertainty and politically divergent national laws and regulations as a new relationship between the United Kingdom and European Union is defined and the United Kingdom determines which European Union laws to replace or replicate. These potential developments, or market perceptions concerning these and related issues, could adversely affect the value of euro-denominated notes.” [U.S. Bancorp, Form 424B5 filed March 11, 2020 (SIC 6021—National Commercial Banks)]
- “[P]ost-Brexit ambiguity or changes in regulations could diminish the value of route authorities, slots or other assets owned by us or our joint venture partners and, therefore, could have a material adverse effect on our business and results of operations and financial condition.” [Delta Air Lines,

Inc., Form 424B5 filed March 4, 2020 (SIC 4512—Air Transportation, Scheduled)]

- “[W]e and our contract vendors currently rely on other contractors based in the United Kingdom (UK). If the implementation of new governmental policies associated with Brexit occurs, these governmental policies may affect our UK-based contractors’ ability to comply with applicable regulations, including existing EU regulations. If they are unable to return to compliance, or if an acceptable substitute vendor cannot be identified, it may negatively impact our business. Further, to the extent that our UK-based contractors have supply relationships with vendors in the EU, these contractors may experience difficulties, delay or increased costs in receiving materials from their vendors in the EU, which could have a material adverse effect on our UK-based contractors’ ability to provide the services or materials to us.” [Adverum Biotechnologies, Inc., Form 424B5 filed February 12, 2020 (SIC 2836—Biological Products, No Diagnostic Substances)]

- **Periodic Reports**

- “[P]otentially changing regulatory schemes and tariffs engendered by Brexit may add additional complexity, cost and delays in marketing or selling our products in the United Kingdom. Our revenue and profit, supply and demand for our products, and customer retention and acquisition in both the long term and short term could be adversely affected.... CE Certificates of Conformity issued by a notified body accredited in the EU may no longer be recognized in the UK. Similarly, notified bodies accredited in the UK will no longer be able to issue CE Certificates of Conformity. Obtaining new CE Certificates of Conformity or certification for the UK may have a significant impact on our activities.” [ElectroCore, Inc., Form 10-K filed March 30, 2020 (SIC 3845—Electromedical & Electrotherapeutic Apparatus)]
  - “There is a risk that Brexit may disrupt import and export processes due to a lack of administrative processing capacity by the respective United Kingdom and European Union customs agencies that may delay time-sensitive shipments of equipment and materials from the European Union that are required for GMP manufacturing in our Catapult suite. It is also possible that Brexit may negatively affect our ability to attract and retain employees for our operations at Catapult, particularly those from the European Union.” [Tcr2 Therapeutics Inc., Form 10-K filed March 30, 2020 (SIC 2836—Biological Products, No Diagnostic Substances)]
-

- o “The Company currently has subsidiaries that operate in the United Kingdom and Europe and our UK subsidiary and other European subsidiaries from time to time share employees and equipment. Brexit will make this sharing of employees and equipment more time consuming and expensive, which could cause disruptions and adversely affect the Company’s financial condition, operating results and cash flows.” [Mistras Group, Inc., Form 10-K filed March 27, 2020 (SIC 8711—Services—Engineering Services)]
- o “Particularly in a dynamic regulatory environment, anticipated changes to laws and regulations may require us to invest in compliance efforts or otherwise expend resources before changes are certain. For example, the ongoing uncertainty around Brexit, including relating to the range of possible outcomes as the U.K. negotiates its post-Brexit relationship with the European Union, has required us to consider and in some cases implement strategies for mitigating potential disruptions to our supply chain.” [The TJX Companies, Inc., Form 10-K filed March 27, 2020 (SIC 5651—Retail—Family Clothing Stores)]
- o “Our subsidiary that manages our European business is located in the U.K. and, thus, there are many ways in which our business operations may be impacted by Brexit, only some of which we can identify at this time. Our notified body in Europe was BSI based in the U.K., which will no longer have standing in the EU as a notified body. We subsequently transferred our notified body to BSI in the Netherlands which required that we change product labeling and packaging for all our products and may have other potential implications that have yet to be identified at this time. Financial markets could experience volatility which could negatively impact currency exchange rates and therefore the translated U.S. dollar value of our local currency sales to customers in the U.K. or Europe. We do not hedge our foreign currency transaction or translation risks. Our warehousing and distribution hub for Europe is in the Netherlands and distribution of our products in the U.K. market may be slowed or disrupted and our U.K. sales may suffer as a result. Our efforts to mitigate the risk of this supply disruption to our U.K. customers may not prove sufficient.” [Apollo Endosurgery, Inc., Form 10-K filed March 26, 2020 (SIC 3841—Surgical & Medical Instruments & Apparatus)]
- o “[A]rising from Brexit, the UK enacted a Data Protection Act in May 2018 that is designed to be consistent with the GDPR. Since we act as a data processor for our customers, we are taking steps to cause our processes to be compliant with applicable portions of the GDPR and the U.K.’s Data Protection Act, but we cannot assure you that such steps will be effective.” [Pagerduty, Inc., Form 10-K filed on March 19, 2020 (SIC 7372—Services—Prepackaged Software)]
- o “In conjunction with our Brexit-related preparations, and to mitigate the potential risk that our UK subsidiaries will be unable to retain their EU financial services “passports,” we have implemented certain changes to our organizational structure, including the establishment of an EU-domiciled credit institution in Luxembourg. We have incurred, and may in the future continue to incur, additional costs associated with such measures and unforeseen political, regulatory, or other developments related to Brexit, or operational issues associated with the organizational restructuring related thereto, also may result in additional costs and disruption to our EU banking business.” [Northern Trust Corporation, Form 10-K filed February 25, 2020 (SIC 6022—State Commercial Banks)]

## Brexit Disclosures in the MD&A Section

Item 303(a) (17 C.F.R. § 229.303) of Regulation S-K requires a discussion of a company’s financial condition and changes in financial condition and results of operations, and any known trends or factors that management believes to be important to the company’s results of operations. This includes known trends, commitments, events, or uncertainties that will likely have a material impact on the business. The MD&A discussion should not be merely generic or boilerplate disclosures but should reflect how particular facts and circumstances affect the company and its business. For further information on MD&A, see [Management’s Discussion and Analysis of Financial Condition and Results of Operations](#) and [Management’s Discussion and Analysis Section Drafting Checklist](#). Here are some examples of Brexit disclosures in the MD&A section of periodic reports:

- **Business Trends**

- o “In order to mitigate the risks associated with the United Kingdom’s withdrawal from the European Union, our team is: collaborating across the organization and testing our systems; working with external partners to develop contingency plans for potential adverse impacts; and taking actions to reduce, to the extent possible, the potential impact

of any incremental duty exposure.” [Abercrombie & Fitch Co., Form 10-K filed March 31, 2020 (SIC 5651—Retail—Family Clothing Stores)]

- o “We continue to implement plans for Brexit with our primary goal to continue to serve our existing clients in the United Kingdom and the European Union as well as to continue to meet the needs of our domestic clients as they do business in the United Kingdom and the European Union. We have an existing authorized bank in Ireland and an asset management entity in Luxembourg. We also have established a broker dealer in France. We plan to leverage these entities in order to continue to serve clients in the European Union. In addition, we are implementing actions where possible to mitigate the impact of Brexit on our supplier contracts, staffing and business operations in the European Union.” [Wells Fargo & Company, Form 10-Q filed November 1, 2019 (SIC 6021—National Commercial Banks)]

#### • Forward-Looking Statements

- o “[W]e depend on the success, popularity and availability of the brands we sell, and adverse conditions affecting one or more vehicle manufacturers, including the adverse impact on the vehicle and parts supply chain due to natural disasters or other disruptions that interrupt the supply of vehicles and parts to us (including any disruptions resulting from the new fuel economy testing and Co2 emissions legislation in the United Kingdom and Europe...), may negatively impact our revenues and profitability.” [Penske Automotive Group, Inc., Form 10-K filed February 21, 2020 (SIC 5500—Retail—Auto-Dealers & Gasoline Stations)]
- o “[E]ffective January 1, 2019, our E.U. business is no longer handled out of our U.K.-domiciled subsidiary, but through our European subsidiary in Luxembourg, which was established specifically to address the departure of the U.K. from the E.U. and to ensure the Company’s ability to operate effectively throughout the E.U. As a result, the complexity and cost of regulatory compliance of our European business has increased and will likely continue to result in elevated expenses.” [CNA Financial Corp., Form 10-K filed February 11, 2020 (SIC 6331—Fire, Marine & Casualty Insurance)] For further information on forward-looking statements, see [Safe Harbors for Forward-Looking Statements](#), and [Forward-Looking Statements Safe Harbor Checklist](#).

#### • General Economic Conditions

- o “[Brexit] could threaten ‘open-sky’ policies under which UK-based carriers operate throughout

the European Union, and European Union-based carriers operate between UK and other European Union countries. Losing open-sky flight rights could have a significant negative impact on the health of the Company’s European lessees and, as a result, the financial performance and condition of the Company.” [Aerocentury Corp., Form 10-K filed March 30, 2020 (SIC 7359—Services—Equipment Rental & Leasing, Not Elsewhere Classified)]

- o “The principal operational risks associated with Brexit continue to be the potential for disruption caused by insufficient preparations by individual market participants or in the overall market ecosystem, and risks related to potential disruptions of connectivity among market participants. Although legislative and regulatory actions taken by the EU and the U.K. have mitigated some of the significant market-wide risks, there continues to be regulatory and legal uncertainty with respect to various matters including contract continuity and access by market participants to liquidity in certain products, such as products subject to potentially conflicting U.K. and EU regulatory requirements in relation to eligible trading venues, including certain cross-border derivative contracts and equities that are listed on both U.K. and EU exchanges.” [JPMorgan Chase & Co., Form 10-Q filed November 4, 2019 (SIC 6021—National Commercial Banks)]

#### • Regulatory and Legal Environment

- o “In preparation for Brexit, we obtained AFM authorizations for our subsidiaries in the Netherlands in 2019 and, during the Transition Period, we are able to provide regulated services to our European clients in reliance on the cross-border services passport held by our Dutch subsidiaries. Brexit is expected to lead to legal uncertainty and potentially divergent national laws and regulations as the U.K. determines which E.U. laws to replace or replicate, which may impact our ability to comply with the extensive government regulation to which we are subject. In addition, the cost and complexity of operating across increasingly divergent regulatory regimes could increase following Brexit.” [MarketAxess Holdings, Inc., Form 10-K filed February 18, 2020 (SIC 6211—Security Brokers, Dealers & Flotation Companies)]
- o “The Company has a London-based business and the ability for it to passport its employees to conduct a financial services business in the EU post-Brexit is in considerable doubt. In addition, a number of its London-based employees do not hold British passports, although a number have applied for and



received the right to continue to be employed in the United Kingdom . . . Given the lack of clarity on the ultimate post-Brexit relationship between Great Britain and the EU, the Company cannot fully determine what, if any, impact Brexit may have on its operations, both inside and outside the United Kingdom. The Company has opened an office in Frankfurt, Germany in the EU for its investment banking business and it will be available in the eventuality that it is needed in order to continue to conduct a securities business in the EU post-Brexit.” [Oppenheimer Holdings, Inc., Form 10-K filed March 1, 2019 (SIC 6211—Security Brokers, Dealers & Flotation Companies)]

#### • Results of Operations

- o “With the uncertainty associated with [Brexit], we have begun preparations to proactively prepare for the potential adverse impacts of Brexit, such as delays at ports of entry and departure. As a result, we incurred pre-tax charges of \$9 million in 2019 and a pre-tax charge of \$3 million in 2018.” [Kellogg Company, Form 10-K filed February 24, 2020 (SIC 2040—Grain Mill Products)]
- o “Our evaluation of potential OTTI of structured credit securities with collateral in the U.K. and continental Europe takes into account the outcome from the Brexit referendum and other geopolitical events, and assumes no disruption of payments on these securities.” [State Street Corporation, Form 10-K filed February 20, 2020 (SIC 6022—State Commercial Banks)]

## Market Outlook

### Brexit Disclosure Enhancements

On December 6, 2018, [SEC Chair Jay Clayton](#) remarked that “the potential effects of Brexit on U.S. investors and securities markets, and on global financial markets more broadly, is a matter of increased focus” for the SEC. On March 15, 2019, SEC Division of Corporation Finance Director [William Hinman](#) noted that “investors are better served by understanding the lens through which each company’s management looks at its exposure” and advised that in crafting Brexit disclosures one has to “satisfy the curiosity of a thoughtful, deliberative board member considering the impact of Brexit on the company’s business, operations and strategic plans.”

Brexit undeniably brought significant uncertainties to the future relationship between the UK and the EU, including as to how the UK’s withdrawal terms (or the lack thereof)

may adversely affect global economic conditions and financial market stability, liquidity, and operations. The following steps may be helpful in preparing the required Brexit-related disclosures in SEC-filed documents:

**1 Identify Brexit-perceived effects.** A company should specify which Brexit-perceived effects during the transition period may have an impact on it. At present, it is prudent to monitor:

(a) How foreign direct investments in the UK will be affected by tariffs, trade, regulatory, tax, and other free trade agreements to be entered into by the UK –and–

(b) The post-Brexit laws and regulations on intellectual property rights, immigration, employment, environment, supply chain logistics, data protection, and health and safety.

Similarly, for financial services companies, it will be essential to monitor whether the UK will continue to follow post-financial crisis regulations and whether selling services across the EU (known as passporting) will continue to be available.

**2 Link these effects to potentially affected business segments.** A company should point out what parts of its business are expected to be affected by the Brexit impact it earlier identified. It may be:

(a) A business operation in a certain geographic region that may be affected if there will be a significant disruption in the free movement of goods, services, and people between the UK and the EU

(b) A product formulation being tested and patented in the EU that will be subsequently used in the UK

(c) A critical group of personnel who may be forced to migrate –or–

(d) Any of its entities that will likely be affected by increased legal and regulatory complexities, potential disruption to the UK’s access to its free trade agreements, consequent changes in tariffs on exported and imported goods, or similar impacts.

If a company has previously anticipated and prepared for these effects, it should disclose that these will be immaterial or have no effects on its business.

**3 Describe what and how long the anticipated Brexit effects will last.** A company should thereafter provide a reasonable estimate on how each anticipated effect will affect that business segment and for how long. It should not only focus on the negative effects on

financial condition, operating results, and cash flows, but also should underscore any favorable effects Brexit may have on the company.

**4 Mention planned and actual action steps to manage Brexit effects.** A company should also specify:

(a) Whether it will seek to obtain new licenses or establish new headquarters or move employees

(b) If it is necessary to manage Brexit-related risks, such as possible hedging activity for the anticipated foreign currency exchange rate fluctuations or currency devaluation

(c) The probability of an inventory write-downs, fixed asset impairments, or fair market value measurement modifications –and–

(d) How it plans to address the possible higher potential costs of conducting business in Europe.

It could also show how its provisions for doubtful accounts will be recalibrated in case of an economic downturn and if the ability of its customers to pay for the products and services they already have purchased is compromised.

While the global business community awaits how Brexit will be fully implemented, a company may be guided by the foregoing in carefully evaluating and disclosing in its SEC filings Brexit's potential and actual effects on its business and risk profile.

For a further discussion of Brexit, see [Market Trends 2018/19: International Capital Markets – Legal and Regulatory Trends](#).

---

**Helen Shouhua Yu, Counsel, Mayer Brown LLP**

Helen Yu is counsel in Mayer Brown's New York office and a member of the Capital Markets practice. She focuses on debt securities offerings by financial institutions under continuous offering programs that are registered under the Securities Act or that are exempt from registration under Rule 144A and Section 3(a)(2) of the Securities Act. Helen has extensive experience with debt securities offerings, including investment grade securities and structured products linked to equities, commodities, currencies and interest rates. Helen also has experience in public offerings of equity securities and warrants.

Earlier in her career, Helen served for more than six years as legal counsel for a Chinese national non-profit social and economic organization in Beijing, advising organization members on compliance issues and handling commercial disputes.

Helen has Chinese Lawyer and Chinese Legal Counsel Qualification Certificates. She is fluent in Mandarin Chinese.

**Gonzalo Go, Associate, Mayer Brown LLP**

Gonzalo D.V. Go III is an associate in Mayer Brown's Corporate & Securities practice. He advises issuers, investment banks and sponsors in public and private offerings of equity and debt securities, including initial public offerings; follow-on offerings; investment grade, high-yield debt offerings; covered bonds; real estate investment trusts and structured products linked to equities, commodities, interest rates, currencies and other underlying assets.

G earned his LLM from Columbia Law School, where he served as a student senator and graduated as the class speaker, a Harlan Fiske Stone scholar and a recipient of the Parker School Recognition of Achievement in International and Comparative Law. He earned his JD, with honors, from the Ateneo Law School and his BS in Accountancy, with honors, from De La Salle University.

G's prior professional experiences include being (i) a capital markets associate in another global law firm in New York, (ii) the legal director of a multinational fast-food chain headquartered in the Philippines, where he gained extensive experience in managing legal risks in various business activities such as business development and expansion, customer relations, operations, real estate, franchising, marketing, human resources, purchasing, finance, corporate communications, tax and government relations, (iii) a member of the faculty of the Ateneo Law School and (iv) a tax associate in a tier-one law firm in the Philippines. G is also a lawyer and a certified public accountant in the Philippines.

**Ana Estrada, Associate, Mayer Brown LLP**

Ana Estrada is a Corporate & Securities associate in Mayer Brown's Houston office. She represents publicly held and privately owned companies on a variety of domestic and cross-border transactional matters, including mergers, stock and asset acquisitions, joint ventures, venture capital, private equity investments, securities offerings and general corporate matters, with an emphasis on Latin America and the Caribbean.

Ana earned her JD from the University of California-Berkeley School of Law. She also earned her Bachelors in Art from Northwestern University. She is fluent in English, Spanish and proficient in Portuguese.

This document from Lexis Practice Advisor<sup>®</sup>, a comprehensive practical guidance resource providing insight from leading practitioners, is reproduced with the permission of LexisNexis<sup>®</sup>. Lexis Practice Advisor includes coverage of the topics critical to practicing attorneys. For more information or to sign up for a free trial, visit [lexisnexis.com/practice-advisor](http://lexisnexis.com/practice-advisor). Reproduction of this material, in any form, is specifically prohibited without written consent from LexisNexis.