

# Market Trends 2020/21: Brexit Disclosure

A Practical Guidance® Practice Note by  
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This practice note 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 practice note concludes with recommendations on how to enhance Brexit-related disclosures and how to make these 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 2019/20: 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 new 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 a six-month extension with the option to leave the EU earlier if its prime minister can secure the UK House of Commons' support for the Brexit deal. The EU and UK agreed to another extension on April 10, 2019. 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 Brexit on January 29, 2020.

On January 31, 2020, the UK formally left the EU and entered into an 11-month transition period. During the transition period, most EU law continued to apply to the UK. The transition period expired on December 31, 2020. At that time, the UK-EU Withdrawal Bill took effect. The UK-EU Withdrawal Bill modifies UK law, ensuring that EU law is no longer automatically applied in the UK. Brexit brought considerable uncertainty to the UK's political and trade relationship with the EU and to the terms and conditions of its exit. It raised speculation as to which laws, rules, and regulations the UK will choose to retain or discard in connection with its withdrawal and upon the expiration of the transition period. Both the EU and the UK will need to negotiate 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, access to fishing waters, and supplies of electricity and gas.

The UK economy remains resilient, but experienced little growth from 2016 through 2020. The UK government estimates that Brexit will lower the country's growth by up to 6.7% in 15 years, even assuming free trade with the EU. Financial analysts attribute this slowdown to the effects of Brexit-related uncertainties on business investments and confidence, higher inflation, and the weaker UK pound sterling, which reduced consumer demand and spending power. Additionally, companies have begun relocating their headquarters from the UK to the EU. 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. Immediately following the 2016 Brexit vote, several companies across various industries began 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

lists of risks applicable to almost any company. However, due to recent SEC guidance discussed below, Brexit disclosure has become more specific as to risks relating to the company or business segment, including examples of how Brexit might affect the company, its employees, management, operations, and prospects. This practice note identifies some Brexit-related disclosures that offer more detailed discussions of its 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. Here are some examples of Brexit disclosures in the Business section:

- **Offering Registration**

- o "The application of some of these requirements and regulations to our business will likely change in connection with the exit of the U.K. from the EU, which became official at January 31, 2020. Brexit triggered the commencement of a transitional period, during which, despite the UK no longer being an EU member state, EU law shall continue to apply in the UK as it did pre-Brexit, with firms remaining free to continue passporting services between the UK and other member states. The transitional period is scheduled to expire at December 31, 2020, and should it end without a trade deal being agreed between the EU and UK that enables UK regulated firms to continue to passport their financial services into the EU, there will be direct implications to our business. For example, our subsidiaries that are authorized and regulated by the U.K. Financial Conduct Authority could potentially lose 'passporting' privileges under certain EU directives, such as the AIFMD and the Markets in Financial Instruments Directive II (MiFID II), which certain of our specialized funds and customized separate accounts rely upon for access to markets throughout the EU. In preparation for this, we worked with a third-party alternative investment fund manager (AIFM) based in Luxembourg to replace, prior to Brexit, our U.K.-based AIFM for our funds and certain customized separate accounts for the EU. While we believe that

taking this step will help to ensure that we are able to continue to conduct business in the U.K. and the EU after Brexit, there remains some uncertainty as to the full extent to which our business could be adversely affected by, among other things, the legal status of the U.K. in relation to the EU, the political conditions in the U.K., the trade relations of the U.K. vis-à-vis other countries and the economic outlook in the U.K. In addition, further cost and complexity of operating in the UK may arise from the potential gradual divergence between the UK's and EU's regulatory frameworks, as whilst the UK will incorporate certain EU legislation in to UK law from the end of the transition period, this is subject to certain amendments by the UK and, at the same time, any change to the EU regulatory framework post-transitional period, will not be automatically incorporated into UK law." [GCM Grosvenor Inc., Form S-1 filed December 4, 2020 (SIC 6282—Investment Advice)].

- o "The application of some of these requirements and regulations to our business may change in connection with the UK's departure from the EU. The UK left the EU on January 31, 2020 and entered a transition period until December 31, 2020. The nature of the future relationship between the UK and the EU is uncertain. For example, our subsidiary that is authorized and regulated by the UK Financial Conduct Authority could potentially lose 'passporting' privileges under certain EU directives, such as MiFID II, which certain of our SMAs, focused commingled funds and advisory clients rely upon for access to markets throughout the EU. In preparation for this, we expect to engage our affiliate entity, Swiss Capital Invest Holding (Dublin) Limited (SCIHDL), which is based in the EU to replace, if necessary, our UK authorized and regulated entity and allow us to continue to engage in regulated activities within the EU after Brexit. SCIHDL is authorized by the Central Bank of Ireland pursuant to AIFMD and UCITS and authorized to provide certain MiFID II services. We also may establish offices in various EU jurisdictions to employ and supervise operations in such jurisdictions. While we believe that taking these steps will help to ensure that we are able to continue to conduct business in the UK and the EU after Brexit, there remains some uncertainty as to the full extent to which our business could be adversely affected. Further, as described above, the UK's departure from the EU and the potential resulting divergence between the UK and EU regulatory frameworks may result in

additional complexity and costs in complying with regulations across both the UK and EU." [Stepstone Group Inc., Form S-1/A filed September 9, 2020 (SIC 6282—Investment Advice)].

- **Periodic Reports**

- o "In December 2015, WICE began writing business with access to markets across the European Union, targeting both personal lines and commercial lines of P&C insurance, which it distributes through coinsurance relationships and specialized insurance agents (also known as program managers). Following the United Kingdom and Gibraltar's exit from the European Union, WICE now focuses solely on United Kingdom business with all relevant regulatory approvals obtained to run off its remaining European Union exposures. In December 2019, we entered into an agreement to acquire Axeria IARD, a P&C insurance company based in France. The completion of this acquisition is subject to regulatory approval and other customary closing conditions, and is expected to close in the first quarter of 2021." [Watford Holdings Ltd., Form 10-K filed February 26, 2021 (SIC 6331—Fire, Marine & Casualty Insurance)].
- o "As a result of the 2016 Brexit referendum, under which the United Kingdom (UK) exited the European Union effective January 31, 2020, the regulatory approval of RGA International as a reinsurer of insurance business written by UK domiciled insurers remains susceptible to termination after the end of 2020. While it currently appears that any post Brexit insurance regulation in the UK will permit the separate registration of RGA International as a branch in the UK, there exists questions as to what requirements will be imposed upon reinsurers domiciled outside of the UK after implementation of the Brexit initiative." [Reinsurance Group of America Inc., Form 10-K filed February 26, 2021 (SIC 6311—Life Insurance)].

## **Brexit Disclosures in the Risk Factors Section**

Item 105 (17 C.F.R. § 229.105) 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 2020/21: 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](#) and Glossaries in Prospectuses and Annual Reports—Background. Here are some examples of Brexit disclosures in the Risk Factor section:

- **Prospectuses**

- “The exit of the UK from the EU (Brexit) could adversely affect our business and our operations. This is because the UK is both: (i) no longer generally required to transpose EU law into UK law and (ii) has transposed certain EU legislation into UK law subject to various amendments and subject to the UK Financial Conduct Authority’s oversight rather than that of EU regulators. Taken together, this could result in divergence between the UK and EU regulatory frameworks. Outside the UK and EEA, the regulations to which we are subject relate primarily to registration and reporting obligations. It is expected that additional laws and regulations will come into force in the UK, the EEA, the EU, and other countries in which we operate over the coming years. Regulation (EU) 2019/2033 on the prudential requirements for investment firms (IFR) and Directive (EU) 2019/2034 on the prudential supervision of investment firms (IFD) entered into force on December 25, 2019, although many parts of the IFR and IFD will not apply until June 26, 2021. Together the IFR and IFD will introduce a new prudential regime for those of our EU investment firms that are subject to MiFID II, including new requirements, such as general capital requirements, liquidity requirements, remuneration requirements, requirements to conduct internal capital adequacy assessments and additional requirements on disclosures and public reporting. The legislation could hinder our ability to deploy capital as freely as we would wish and to recruit and incentivize staff. Different and extended internal governance, disclosure, reporting, liquidity and group ‘prudential’ consolidation requirements (among other things) could also have a material impact on our EU-based operations. Further, as described above, the UK’s departure from the EU and the potential resulting divergence between the UK and EU regulatory frameworks may result in additional complexity and costs in complying with regulations across both the UK and EU. The UK is also proposing to introduce a new prudential regime for investment firms that are subject to MiFID II (as implemented in the UK), to take effect on January 1, 2022. The exact impact of the new UK prudential regime is currently uncertain.

In addition, there may be changes to the AIFMD and UCITS regimes and also further regulation adopted which may impact those parts of our business operating within the EU.” [Stepstone Group Inc., Form 424B4 filed March 19, 2021 (SIC 6282—Investment Advice)].

- **Periodic Reports**

- “Finally, we anticipate additional regulatory impact as a result of the United Kingdom’s exit from the European Union (Brexit). The U.K. Medicines and Healthcare Products Regulatory Agency (MHRA) has announced that CE Marking will continue to be recognized in the U.K. and certificates issued by EU-recognized Notified bodies will continue to be valid in the U.K. market until June 30, 2023. Going forward, all devices marketed in the U.K. will require U.K. Conformity Assessed (UKCA) Marks certified by a U.K. Approved Body (the re-designation of the U.K. Notified Body). In 2019 we were informed of the cancellation of notified body services by our former Notified Body for BioGlue and PhotoFix, Lloyd’s Register Quality Assurance Limited. The German competent authority, Regierungspraesidium-Tubingen, granted us an extended grace period until December 31, 2021, to complete the transfer of our registration to a new notified body, provided that we meet certain conditions, including the demonstration of adequate progress in the CE Mark certification process with our new Notified Body. If we are delayed or unsuccessful in transferring to a new Notified Body for BioGlue and PhotoFix in the EEA, or if we are otherwise unable to timely meet applicable regulatory requirements, we may be unable to place BioGlue or PhotoFix on the market in the EEA until we resolve the situation.” [Cryolife Inc., Form 10-K filed February 23, 2021 (SIC 3841—Surgical & Medical Instruments & Apparatus)].
  - “The ultimate effects of Brexit on us are difficult to predict; however, we currently conduct a significant part of our business in the U.K. and in the E.U., with customers located in the U.K. accounting for 10% of total revenue for each of the fiscal years ended January 31, 2021, 2020 and 2019. The U.K.’s withdrawal from the E.U. could cause disruptions and create uncertainty to our businesses, including affecting the business of and/or our relationships with our customers and suppliers, as altering the relationship among tariffs and currencies, including the value of the British pound and the Euro relative to the U.S. dollar and creating new regulatory costs and challenges. Any of these effects, among others,
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could adversely impact our financial position and results of operations.” [MongoDB, Inc., Form 10-K filed March 22, 2021 (SIC 7372—Services-Prepackaged Software)].

- o “For example, the UK Data Protection Act, which substantially implements the GDPR, became effective in May 2018. It remains unclear, however, how United Kingdom data protection laws or regulations will develop and be interpreted in the medium to longer term and how data transfers to and from the United Kingdom will be regulated and how those regulations may differ from those in the European Union. Further, the United Kingdom’s exit from the European Union may create increased compliance costs and an uncertain regulatory landscape for offering equity-based incentives to our employees in the United Kingdom. If we are unable to maintain equity-based incentive programs for our employees in the United Kingdom due to the departure of the United Kingdom from the European Union, our business in the United Kingdom may suffer and we may face legal claims from employees in the United Kingdom to whom we previously offered equity-based incentive programs.” [Slack Technologies, Inc., Form 10-K filed March 19, 2021 (SIC 7372—Services-Prepackaged Software)].
- o “Further, there may continue to be considerable uncertainty resulting from a lack of precedent and the complexity of the United Kingdom and EU’s intertwined legal regimes as to how Brexit will impact the life sciences industry in Europe, including our company, including with respect to ongoing or future clinical trials. Given these unprecedented changes and others we may not anticipate, as well as the absence of comparable precedent, it is unclear what financial, regulatory and legal implications the withdrawal of the United Kingdom from the EU would have and how such withdrawal would affect us, and the full extent to which our business could be adversely affected. In addition, as a result of Brexit, the EMA, formerly situated in London, relocated to Amsterdam. As a result of this change and the withdrawal of United Kingdom representation from the EMA, there may be delays and uncertainty in the regulatory approval process could create delays in the EMA issuing regulatory approvals for our product candidates and, accordingly, have a material adverse effect on our business, financial condition, results of operations or prospects.” [Zealand Pharma A/S Form 20-F filed March 26, 2021 (SIC 2834— Pharmaceutical Preparations)].

- o “The United Kingdom will need to negotiate its own tax and trade treaties with countries all over the world, which could take years to complete. The potential impact of Brexit on our market share, sales, profitability and results of operations is unclear. The economic conditions in the United Kingdom, the European Union and global markets may be adversely affected by reduced growth and volatility. We have undertaken, in the share purchase agreement entered into with Tyson International Holding Co., not to do business or otherwise compete in the sale of poultry products for human consumption in certain jurisdictions in Europe, including the European Economic Area (EEA) and the United Kingdom. The non-compete provision has partially lapsed for certain products and channels, and in October 2020, we reached a commercial agreement with Tyson International Holding Co. to accelerate our return to the European continent and regain access to other markets through a phased removal of the non-compete restrictions between 2021 and 2024. While we aim to expand our sales to Europe and other international markets as part of our strategy and Vision 2030 Plan, continued uncertainty and market volatility could undermine those expansion plans and have a corresponding adverse effect on our operations and financial results.” [BRF S.A., Form 20-F filed March 26, 2021 (SIC 2011— Meat Packing Plants)].

## Brexit Disclosures in the MD&A Section

Item 303(b) (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 will likely, or are reasonably likely to, have a material impact on the company’s results of operations, financial condition, and business. 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, including recent amendments, see [SEC Adopts Amendments to MD&A and Financial Disclosures, Management’s Discussion and Analysis \(MD&A\) Resource Kit](#), [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 “The United Kingdom withdrew from the European Union on December 31, 2020. As a result, previous existing rights of freedom of movement of goods, persons, capital and services between the UK and the EU member states have now been removed. The removal of these rights may reduce the demand for our goods and services in the European Union (a major market for our products and services). Although in the areas of our operation we believe, at this stage, that under the new trade agreement between the UK and EU, there are no trade tariffs or quotas applicable to our products or services, our business is adversely affected by the withdrawal by the UK from the European Union. The full impact of the withdrawal is still unknown, however, some of the immediate areas that we have been impacted since withdrawal include: New restrictions which prevent our engineers from working freely in EU member countries. Our business relies on our field engineers going to our customers’ sites and assisting with training and mobilizing our solutions. Under the new arrangement, our engineers will now need a work permit for EU member countries. However, we are unable to assess the true impact of these new requirements for our engineers since there is uncertainty as to the new procedures further compounded by the border restrictions in EU member countries currently due to the Pandemic. Since the withdrawal in December 2020, there has been wide-scale disruption in shipments between the UK and EU member countries with the introduction of significant customs checks or declarations. This has resulted in significant customs procedures to comply with causing increased costs and delays. Increasingly our European customers are requesting for our products to come from within the European Union as a condition of hiring the equipment. If we are unable to address this once the Pandemic is resolved, this will affect the demand for our products in European Union member states. We are unable to recruit staff from European Union member states in certain specialized areas such as engineering and software development. We have taken steps to mitigate some of its impact of the United Kingdom leaving the European Union by establishing a Danish based subsidiary, Coda Octopus Products A/S, to maintain a presence in the European Union. We intend to run a large part of our rental business from this office. However, due to the Pandemic, these activities have slowed. We can give no assurance that this in itself would

be sufficient to soften the impact of the United Kingdom leaving the EU without a trade deal allowing for access to the EU markets.” [Coda Octopus Group, Inc., Form 10-Q filed March 17, 2021 (SIC 3812– Search, Detection, Navigation, Guidance, Aeronautical Sys)].

- **General Economic Conditions**

- o “On June 23, 2016, citizens of the U.K. voted to exit the European Union (E.U.) (referred to as Brexit). In October 2019, the U.K. and E.U. ratified a withdrawal agreement, and subsequently the U.K. left the E.U. on January 31, 2020. The E.U. rules for trade, travel, and business for the U.K. lapsed on December 31, 2020. In early 2021, the U.K. and the E.U. agreed on a 100% tariff liberalization trade agreement. There will be no tariffs or quotas on the movement of goods produced between the U.K. and the E.U. During this settling in period we could experience extended lead times for raw material imports. Given the lack of comparable precedent, it is difficult for us to predict the future impacts on our U.K. based operations, which accounted for approximately 15% of our total sales for the year ended October 31, 2020. Since we manufacture and sell a majority of our U.K. products within the U.K., there is minimal risk to our ability to physically deliver goods and complete sales. The primary risk mitigation focus for our U.K. operations centers on the availability and pricing of raw materials. While we source the majority of our raw materials from within the U.K., many of the primary upstream raw materials our vendors use are being sourced from outside of the U.K., which could expose us to cross-border issues and raw material price impacts. We will mitigate this potential impact of Brexit on the import of goods to the U.K. by strategically managing our inventory levels and logistical channels.” [Quanex Building Products Corp Form 10-Q filed March 5, 2021 (SIC 3350– Rolling Drawing & Extruding of Nonferrous Metals)].

- **Regulatory and Legal Environment**

- o “Since we have historically provided our Business Management (PSA) and SaaS Protection products to European customers from a U.K. data center and have supported certain older BCDR devices through our U.K. data center, we have taken the following steps to mitigate the potential impact of Brexit on our operations: developed infrastructure that will allow us to provide both our PSA and SaaS Protection products out of our data center

in Germany; permitted European customers to move their PSA, SaaS Protection and BCDR service instances from the U.K. to Germany; published a notice on our website regarding our Brexit preparations and the process to migrate accounts out of the U.K.; sent emails regarding Brexit to our potentially impacted customers; and began implementing a system where new customers will be able to track the region in which data is stored and opt for the desired location.” [Datto Holding Corp., Form 10-K filed March 11, 2021 (SIC 7372— Services-Prepackaged Software)].

- **Results of Operations**

- o “Management believes that Brexit-related issues will not affect our financial statement recognition, measurement or disclosure items, such as inventory write-downs, long-lived asset impairments, collectability of receivables, assumptions underlying fair value measurements, foreign currency matters, hedge accounting or income taxes for the Company and its consolidated financial statements.” [Netpay International Inc., Form 10-K filed October 19, 2020 (SIC 2844— Perfumes, Cosmetics & Other Toilet Preparations)].
- o “The ability to engage investment managers for EU funds and UK funds also could be impacted, resulting in structural and other changes for UK- and EU-domiciled funds. The FCA, ESMA and EU regulators have signed memoranda of understandings (MoUs) covering cooperation and exchange of information in the event that the UK leaves the EU without an agreement. The MoUs will come into effect at the end of the transitional period (i.e., on December 31, 2020). The FCA has implemented a temporary permissions regime that allows EEA-domiciled investment funds that market in the UK under a passport to continue temporarily marketing in the UK, and allows EEA-based firms currently passporting into the UK to continue new and existing regulated business within the scope of their current permissions in the UK for up to three years, while they seek full FCA authorization. On July 1, 2020, the FCA announced that it would reopen the currently closed notification window on September 30, 2020, to allow firms that had not previously notified the FCA of their intention to use the temporary permissions regime to do so before the end of the Brexit transition period. EU governments, such as, among others, France, the Netherlands, Italy and Germany also have adopted similar temporary permission regimes or other laws to permit UK products to be sold, and EU-UK financial

transactions to continue, for a period of time in their countries. UK and EU industry groups have been asking regulators to adopt an EU-wide temporary permissions regime to avoid having to comply with requirements imposed by each EU country. In March 2020, HM Treasury released a consultation paper proposing an overseas fund regime which is targeted at Undertakings for the Collective Investment in Transferable Securities (UCITS) and will enable Federated Hermes’ Irish UCITS funds to continue to be marketed in the UK after the expiration of the transitional period and the temporary permissions regime. HM Treasury proposes an equivalence regime which will determine countries which are equivalent to the UK and will work with the FCA to determine countries of equivalence. The consultation closed to responses on May 11, 2020. HM Treasury intends to use the Financial Services Bill 2019–2021 to introduce the Overseas Funds Regime (OFR)—an equivalence regime for overseas retail funds to be able to market to UK retail investors. HM Treasury has also proposed a separate regime for money market funds to be able to market to all investors, noting that the process will be different if the fund wants to market to retail or professional investors. These regimes will function similarly to the existing EU approach to equivalence. Federated Hermes has received permission from the FCA to allow certain Irish-domiciled UCITS fund and Luxembourg-based direct lending funds to continue to be marketed in the UK post-Brexit. Federated Hermes is monitoring the impact of Brexit, and, while Brexit has not had a significant impact on Federated Hermes’ business as of September 30, 2020, given the ongoing transition period and potential impact of Covid-19, Federated Hermes remains unable to assess the degree of any potential impact Brexit, and resulting changes, may have on Federated Hermes’ business, results of operations, financial condition and/or cash flows. Federated Hermes continues to expend internal and external resources on planning relating to Brexit. The Hermes Acquisition increased the potential impact Brexit, and resulting changes, may have on Federated Hermes’ business, results of operations, financial condition and/or cash flows.” [Federated Hermes, Inc., Form 10-Q filed October 30, 2020 (SIC 6282— Investment Advice)].

- o “European stock indices benefitted from signs of progress for a successful Brexit (the UK divorce from the European Union) with the Euro Stoxx 50 and the French CAC 40 producing some of the greatest sector returns. . . . Long positioning on the United Kingdom (UK) gilt (10-year note) contributed

the largest losses to the sector. Signs of positive progress on Brexit and hawkish comments from the UK central bank head Mark Carney conspired to send gilt prices down sharply from near-term highs. In the foreign exchange sector, gains in developed market currencies were almost equally offset by losses in the emerging market currencies, leading to negligible P&L for currencies overall. . . . Long positioning on the UK gilt provided the biggest gain as investors sought safe havens amidst Brexit gridlock.” [Campbell Strategic Allocation Fund LP, Form 10-K filed March 26, 2021 (SIC 6221– Commodity Contracts Brokers and Dealers)].

## 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 potential impact of Brexit on the company’s business, operations and strategic plans.” On November 18, 2020, Director Hinman further noted that reporting companies should focus on the quality of disclosure concerning the material impact of Brexit on their specific industry or sector, stating “ . . . I believe that our principles-based requirements, which articulate an objective and allow companies to satisfy the objective by providing disclosure appropriately tailored to their facts and circumstances, in most cases are the ones that provide investors with the most meaningful information.”

Brexit undeniably brought significant uncertainties to the future relationship between the UK and the EU, including addressing how the UK’s withdrawal terms 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:

- **Identify Brexit-perceived effects.** A company should specify which Brexit-perceived effects may have an impact on its business and operations and the steps it is taking to mitigate those risks. At present, it is prudent to monitor:

- 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
- 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. Currently, there is a temporary permissions regime in place and passporting will only continue beyond the expiration of the permissions regime if the EU grants equivalence to the UK.

- **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, for example, any of the following:
  - 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
  - A product formulation being tested and patented in the EU that will be subsequently used in the UK
  - A critical group of personnel who may be forced to migrate
  - 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
- **Describe, if any, 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.
- **Mention planned and actual action steps to manage Brexit effects.** A company should also specify:
  - Whether it will seek to obtain new licenses or establish new headquarters or move employees
  - If it has any plans for managing Brexit-related risks, such as possible hedging activity for the anticipated foreign currency exchange rate fluctuations or currency devaluation

- o The probability of inventory write-downs, fixed asset impairments, or fair market value measurement modifications
- o 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 whether 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 ultimately be 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 2019/20: International Capital Markets – Legal and Regulatory Trends](#).

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