



THE IMPACT OF

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**BREXIT  
ON EUROPEAN  
DISTRIBUTION**

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2019 UPDATE



## LUDGATE SEARCH | INTERVIEW WITH TARA DOYLE

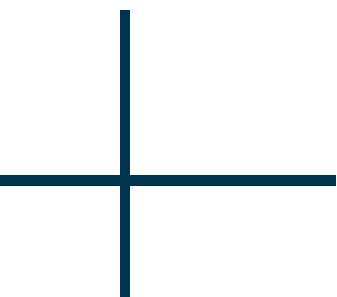
### INTRODUCTION

**In September 2018, Ludgate Search hosted a breakfast seminar for Heads of Distribution focusing on the impact of Brexit on the distribution of investment fund products in Europe. Topics for discussion included European passporting for asset managers, the complexities of marketing fund products in Europe post-Brexit and the requirements surrounding establishing an EU entity to perform distribution activities.**

Discussions were led by Tara Doyle, Partner and Head of the Asset Management and Investment Funds Group, at Irish law firm Matheson. Tara joined Matheson in 1994 and has been a partner in the Asset Management and Investment Funds Group for over a decade, advising many of the world's leading financial institutions, investment banks, asset management companies and broker-dealers. Her team is the number one ranked funds law practice in Ireland, acting for over 29% of Irish domiciled investment funds by assets under management. As one of Ireland's leading investment funds lawyers, Tara is recommended by leading industry directories including Legal 500, Chambers and Partners and IFLR.

With less than 80 days until the 29th March deadline, seemingly in the absence of clear guidelines for a post-Brexit landscape, Tara has kindly provided an update on the topics discussed at our seminar in September and a Q&A session with Ana Maria Tuliak, Principal at Ludgate Search, to give more clarity on other regulatory and legislative developments impacting the Investment management industry.

Our hope is that this provides a timely update into the current landscape for UK and European Heads of Distribution. For further insight on country specific trends in distribution within investment management please contact Ana Maria Tuliak, Principal at Ludgate Search.



# IMPACT OF BREXIT ON EUROPEAN DISTRIBUTION - JANUARY 2019 UPDATE

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## ***With regards to Brexit, what main changes should Heads of Distribution be aware of since our event in September?***

If the Withdrawal Agreement is put in place, there will be a Transition Period until 31 December 2020 and European funds can continue to be sold into the UK until then without any further action being required by managers. If there is no Withdrawal Agreement (ie, a no-deal Brexit), the backstop of the proposed 3 year Temporary Permission Regime (TPR) will come into play. The FCA published revised draft guidance in relation to the TPR on 7 December 2018, clarifying that the TPR would apply not just to existing funds currently marketing to UK investors, but also to new sub-funds of existing umbrellas which are established after 29 March 2019 (Brexit Day). The FCA's notification window for the TPR is now open and will remain open until Brexit Day. In order for the TPR to apply legislation must be passed by the UK parliament prior to Brexit Day.

## ***Will European funds continue to have passports for sale into the UK and vice versa?***

Unfortunately, there continues to be no equivalent of the TPR applicable to UK funds seeking to passport into Europe, nor is there likely to be one. In order for UK funds to have a passport for sale into Europe post-Brexit Day, it will be necessary to have a Withdrawal Agreement in place, which will allow for UK funds to retain their European passports until December 2020. The future status of UK funds post-December 2020 will be part of the UK's negotiation with the EU post Brexit Day.

## ***Can UK sales staff continue to market fund products in Europe?***

There have been no developments since September in relation to marketing activities post Brexit Day, and so it remains as discussed during our seminar, ie a country by country analysis of whether the particular marketing activity is a regulated activity in the relevant EU country. It has become quite common for managers to establish branches in EU countries and many of them propose to use local EU employees as chaperones for their London based staff, who will be "dual-hatted" and will benefit from the local branch's EU passport when marketing in Europe.

## ***If you choose to establish an entity in the EU to perform distribution activities, what sort of entities are available and what substance is required?***

Pre-Brexit marketing activity was generally carried on by EU MiFID entities, or EU branches of UK MiFID entities. While some managers are now establishing EU MiFID entities, it is more common for the MiFID branches to be transferred to a management company (whether an AIFM, a UCITS or a SuperManCo or a MegaManCo).

The level of substance differs depending on the relevant EU jurisdiction and on the nature, scale and complexity of the relevant manager's activities. There is some degree of harmonisation afforded by the Supervisory Co-ordination Network (SCN) operating under ESMA's auspices, which scrutinises the approach of the different national competent authorities (NCAs), such as the Central Bank of Ireland and the CSSF, to Brexit related applications. It is possible to see consistency of approach from the regulators to the managers who have already been authorised if you are familiar with their activities, but there is little published guidance from the NCAs to date.

Managers looking to establish a branch network from an Irish management company are required by the CBI to have a senior executive in Ireland with responsibility for distribution. When we spoke in September many managers were proposing to have their Irish CEO perform this role, but since then, the CBI has clarified that it generally expects two separate executives to be employed – one as CEO and another as Head of Distribution.

It is noteworthy, in this regard, that most of the managers who have applied for Brexit related licences of extensions to their existing licences are of significant size and scale in terms of their assets under management. The CBI would likely be willing to accept less substance from smaller and less complex managers. It is also noteworthy that many of the licences approved to date have included Day 1 and Day 2 substance requirements, which means a certain minimum level of substance is required to obtain the licence initially with increased substance requirements imposed in order to maintain the licence.

## BREXIT Q&A WITH TARA DOYLE

PARTNER &  
HEAD OF ASSET  
MANAGEMENT,  
MATHESON



**Ana Maria Tuliak (AMT):** Thank you for joining us today Tara, it has certainly been an eventful few months since our seminar. In your opinion has much changed since September with regards to Asset Managers' distribution plans? And if so, what impact might this have?

**Tara Doyle (TD):** Generally speaking overall plans have not changed, in that managers have proceeded with their plans to establish an EU presence with the necessary MiFID or UCITS / AIFMD licences. In our experience managers are getting more comfortable with the individual country analysis and the ability to continue to market funds and products post-Brexit without significant changes in their current operations. Some of this is based on a conservative strategy of focussing on maintaining existing clients, rather than converting new clients in the shorter term. In the longer term, we expect that "dual-hatting" and "chaperoning" will come under greater scrutiny. In the event of a no-deal Brexit we would also expect marketing activity to be significantly reduced in the weeks and possibly months after Brexit Day as people focus on a disorderly transition.

**AMT: What impact has the increase of 'fund hotels' had?**

**TD:** Fund hotels, or third-party manager platforms, have long been a feature of the Irish and Luxembourg funds markets. They have proven particularly attractive to US managers seeking to service European clients without incurring the cost of establishing their own European presence. They allow managers to focus on portfolio management, while the European regulatory compliance burden is met by the hotel or platform. Some hotels or platforms will also offer a distribution service, although with varying degrees of success. We would expect some UK managers to use these services post-Brexit if the costs of establishing their own EU presence are prohibitive. The third party managers who offer these services generally offer a range of options from own-branded umbrella funds to "plug and play" sub-funds on an existing platform.

**AMT: What action has the European Securities and Markets Authority (ESMA) taken in preparation of CCP and CSD applications ahead of a no-deal Brexit?**

**TD:** While the EU has not provided for a funds passport in the event of no-deal, the announcements in December that UK CCPs would be recognised in such an event, and that UK CSDs could continue to service Irish securities, were most welcome. Importantly, the existing legislative framework allowed for this action to be taken and ESMA was very conscious of the risk that would be caused to clearing in European financial markets if these actions were not taken. Unfortunately, this means that the announcements were very limited and focussed in their nature and not indicative of a wider "business as usual / minimum disruption" approach by ESMA. The UCITS, and to a lesser extent the AIFM, framework does not allow for similar action to be taken by ESMA, meaning that a no-deal Brexit has the potential to be very disruptive to managers; it's really a case of ESMA having put all of its eggs in the Withdrawal Agreement / Transition Period basket. There has been no comfort offered to managers that regulatory forbearance will apply in the event of a no-deal Brexit.

**AMT: Speaking of a no-deal Brexit, what might this mean for Heads of Distribution? And what would you suggest in terms of contingency plans?**

**TD:** For Heads of Distribution that have been planning for an EU 27 presence, the threat of a Hard Brexit means that they need to be sure that the relevant licence is granted in time and that all necessary passports have been activated.

The time frame for the granting of licences and the activation of passports can differ between jurisdictions, so it would be important that their lawyers are sharing a clear timetable with them. They will also need clear advice from local counsel on what they can or cannot do after Brexit Day if they do not have all the necessary licences or passports in place. If their plans are not sufficiently advanced, they may want to consider the services of a third-party management company, some of whom have the necessary marketing licences to be able to chaperone marketing staff from client managers.

# INSIGHTS

**AMT: Almost a year on from MiFID II implementation, does the legislation provide a viable option for Investment Managers as part of their Brexit planning?**

**TD:** *MiFID II continues to provide headaches for investment managers a year after it entered into force. While MiFID II is a European regulation, the FCA has been very clear that it intends to continue to apply MiFID II to UK investment managers post-Brexit, regardless of how hard that Brexit may be. Significantly, some of the most troublesome aspects of MiFID II in relation to the unbundling of research costs were a UK initiative, so even if some aspects of UK and EU financial services regulation begin to diverge, there is little ground for hope of a less onerous investment management regime in the UK.*

*As we discussed in September many UK managers opted to obtain MegaManCo licences, rather than MiFID licences as part of their Brexit planning. In other words, rather than obtaining a MiFID licence which would permit them to provide individual portfolio management (IPM) services to European clients, they have opted to seek extensions to AIFM or UCITS management company licences to provide IPM services. One of the benefits of this approach is that MiFID II does not apply to MegaManCos. Given the take-up of this solution by UK managers we can expect the gap to close between MiFID and ManCo regulation in the coming years and so ManCos will have to overcome the same regulatory obstacles as MiFID firms have with MiFID II implementation.*

**AMT: What Brexit decision, and in particular any associated regulatory changes, should the Heads of Distribution watch out for in H1?**

**TD:** *The most important Brexit decision for Heads of Distribution to monitor is the Withdrawal Agreement. If there is a Hard Brexit the TPR will become relevant and it would be prudent to register funds before Brexit Day in anticipation of a Hard Brexit. If there is a Withdrawal Agreement there will be some breathing room as the current status quo for distribution will continue until December 2020.*

*The other significant Brexit decision is whether Memoranda of Understanding (MoUs) are put in place between the FCA and the EU 27 NCAs, most importantly the Central Bank of Ireland and the CSSF. While individual NCAs are entitled to agree their own MoU with the FCA, as a matter of practice (and politics) they are waiting for the ESMA to agree terms which they will then individually sign up to. The significance of the MoU is that it will provide for delegation of portfolio management activities to UK investment managers post-Brexit. Without a MoU in place, European funds are not permitted to delegate their portfolio management activity to a non-EU investment manager.*



# LUDGATE SEARCH

## KEY CONTACT

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Ana Maria holds a 1st class degree in International Business and speaks Italian, French, Croatian, and Slovenian.

Ana Maria began her career at a boutique search firm where she was responsible for developing their Distribution, Asset Management desk. In 2012, she joined BRUIN Financial, sister company to Ludgate Search, to grow and lead their European Distribution team, focused specifically on senior assignments in Asset Management, Alternatives and Wealth.

In 2017, Ana Maria was mandated to grow Ludgate Search, the Executive Search arm of The FISER Group. She focuses on senior distribution mandates, specifically capital raising roles in Europe including roles based in UK, Nordics, Germany & Austria, Benelux, France, Switzerland, Italy and Spain.