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ARTICLE

Access to the UK Financial Market After the UK Withdrawal from the EU: Disruption, Design, and Diffusion

Niamh Moloney[1]

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Abstract

This article examines the setting of the legal regime governing third country access to the UK financial market, in light of the political, market, and legal disruption associated with the UK withdrawal from the EU. It considers the UK reform context and the priority being given to securing UK financial market competitiveness, identifies a related and significant liberalization of the third country regime, and examines the implications for the UK, the EU, and for international financial market access.

Keywords UK · Equivalence · Third country · Financial markets · Trade and Cooperation Agreement · Brexit · Market access

1 Introduction

This discussion examines the setting of the legal regime governing third country access to the UK financial market, in light of the political, market, and legal disruption associated with the UK withdrawal from the EU. It identifies a significant liberalization of the regime and considers the implications.[1]

Section 2 considers the UK reform context and the priority being given to securing UK financial market competitiveness. Section 3 relates this context to the more restrictive legal setting of the UK's access to the EU financial market following the

[1] The term liberalization is used here to denote an approach oriented to market opening and facilitative of competition. E.g., Dunne (2018).

Niamh Moloney
n.moloney@lse.ac.uk

1 Professor of Financial Markets Law, Law School, London School of Economics and Political Science, London, UK

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UK withdrawal. Section 4 examines the current reforms. Section 5 examines the implications for the UK, the EU, and international financial market access.[2]

2 The Context: Politics, Markets, and Reform

UK financial regulation is at an inflection point with the largest reform exercise since the financial crisis underway.[3] This exercise is distinct from previous large-scale UK reforms in that it is being carried out by the UK outside the EU.[4] It accordingly constitutes a political and technocratic expression of the 'take back control' agenda which animated the Brexit debate.[5] Some of the associated reform rhetoric likely constitutes political positioning. Nonetheless, and while the reforms do not imply normative change to the basis of UK financial regulation,[6] substantial deregulation may follow, certainly if the reforms to the prospectus and listing regimes, in the vanguard of the exercise, are a reliable guide.[7] Relatedly, the massive body of EU financial markets regulation 'on-shored' in the UK to mitigate withdrawal risks[8] will be repealed.[9] Significant institutional reform has already been achieved, with the architecture supporting UK financial regulation being revised to respond to the repatriation of rule-making competence to the UK from the EU.[10]

[2] The discussion is situated in the literature on international financial market governance and third country access which engages, *inter alia*, legal, institutional, finance, and political economy perspectives. For legal and political economy perspectives see, respectively, Lehmann (2017) and James and Quaglia (2020).

[3] E.g., Cheffins and Reddy (2023); Howell (2023); Ferran (2023).

[4] The UK ceased to be an EU member on 31 January 2020. The 2019 Withdrawal Agreement provided for a transition period until 31 December 2020, over which period EU law continued to apply in the UK. The Trade and Cooperation Agreement (TCA) came into effect on 1 January 2021 and into force on 1 May 2021.

[5] Hix (2018).

[6] By contrast, the financial crisis era led to a reconfiguration of financial market regulation, in particular to more fully address financial stability risks (e.g., Anand (2010)).

[7] The reform agenda, under the auspices of HM Treasury and so politically shaped, includes reform of the listing regime (e.g., Hill (2021); reform of the prospectus regime (HM Treasury (2022a)); the Secondary Capital Raising Review (Austin (2022)); and the Wholesale Markets Review (e.g., HM Treasury (2021a)). At the technocratic level, the UK Financial Conduct Authority (FCA) has conducted a series of reviews, including the Primary Markets Effectiveness Review. Related reforms to the listing regime have been adopted, including the introduction of dual-class shares (FCA (2021b)), and more are in train, including to related-party transactions (FCA (2023b)). Further reforms were signaled by the December 2022 'Edinburgh Reform' agenda: HM Treasury (2022b).

[8] Achieved through the European Union (Withdrawal) Act 2018 and the related statutory instruments that remedied any related 'deficiencies' (such as replacement of € references).

[9] Through the Financial Services and Markets Act (2022–2023), which received Royal Assent on 29 June 2023. It is widely regarded as a major reform to UK financial regulation.

[10] The institutional reforms sit under the 'Future Regulatory Framework Review' (FRFR) and were delivered through the related Financial Services and Markets Act (2022–2023) which, e.g., grants more rule-making powers to the UK regulators; revises their mandates, including by the addition of competitiveness objectives; and strengthens their accountability arrangements, including through more extensive parliamentary scrutiny.

The interests and incentives shaping the reforms, which are framed by the political imperative to secure regulatory autonomy post Brexit, are many and various, but the need to strengthen UK financial market competitiveness through regulatory reform recurs. The competitiveness of the UK public equity market, in particular, while long debated,[11] is of acute concern. The equity market weaknesses highlighted by the 2021 Hill Review[12] were brought into sharp relief over 2022–2023, given, *inter alia*, the significant drop in volumes of capital raised in 2022 on the London Stock Exchange,[13] a series of de-listings from the Exchange in 2023,[14] and the 2023 decision by the leading UK chip manufacturer Arm not to seek a primary listing of its much-anticipated IPO on the London Stock Exchange.[15] The public equity market challenges are not unique to the UK,[16] and are not entirely a function of regulation.[17] The securing of competitiveness through de-regulation is, nonetheless, a recurring theme of the UK reform agenda,[18] and has been given normative and operational priority through a change to the FCA's objectives.[19] The fragility in global financial markets arising from tightening monetary policy,[20] exemplified by the early 2023 SVB failure, may moderate the current relating of competitiveness to de-regulation, but the direction of travel is unlikely to change significantly.[21]

[11] E.g., in the context of the financial crisis era, see Kay (2012).

[12] Among its headline findings was that, over 2015-2020, London accounted for only 5% of IPOs globally: Hill (2021), p 1.

[13] 2022 saw a 62% drop in IPO activity on 2021 (45 IPOs v. 119), with the volume of capital raised down to £1.6 bn from £16.3 bn in 2021: EY (2023).

[14] Including by CRH, the world's largest construction materials company, which, in March 2023, announced its de-listing from London and its maintenance of a New York listing only: Asgari et al. (2023).

[15] The March 2023 decision by Arm to list its IPO in New York was widely reported as a blow to London: e.g., Gross et al. (2023). The IPO subsequently took place on the Nasdaq stock exchange in September 2023.

[16] The contraction in public equity markets globally, its drivers, and reform prescriptions have been under review since the financial crisis. E.g., Fox (2016) for a US perspective.

[17] As examined in the law and finance literature (for a review see Deakin (2015)). Equity market strength is a function of, *inter alia*, macroeconomic conditions; geo-political risks; monetary conditions (which influence the cost of debt-funded acquisitions and so the frequency of de-listings); the fiscal climate (e.g., infrastructure spending)); and market structure (e.g., analyst coverage).

[18] The agenda to repeal EU financial regulation has been characterized as reflecting 'an active choice made by the UK government to de-align from EU financial services regulation, with the aim of boosting international competitiveness': UK in a Changing Europe (2023), p 28.

[19] The Financial Services and Markets Act (2022–2023) imposes a new 'secondary objective' on the FCA to facilitate the international competitiveness of the UK economy, including its financial services sector, and its medium/long-term growth (the FCA's primary objective is to ensure that markets function well). For analysis, and reflection on the fate of an earlier iteration of competitiveness as an objective, in light of its association with the financial crisis, see Ferran (2023).

[20] E.g., IMF (2023).

[21] E.g., the March 2023 Budget saw the Chancellor of the Exchequer commit to making the London Stock Exchange more attractive for listings: Spring Budget 2023 Speech, 15 March 2023. Similarly, the November 2023 'Autumn Statement' saw the Chancellor underline the importance of the financial services sector to the UK economy (representing some 12% of the economy), emphasize the steps being taken to ensure that the UK maintains and enhances 'its world-leading financial services regulatory envi-

The driving concern to support competitiveness through (de-)regulatory reform is also shaping the UK's increasingly liberal posture on third country access to its financial market. These third-country-specific reforms are a function of the incentives and interests shaping the wider reform context, but they can also be associated with specific interests relating to mitigation of the costs arising from the legal frictions on UK access to the EU financial market, as outlined in the following section.

3 UK Access to the EU Financial Market

3.1 Withdrawal Arrangements and the TCA

Access by third country actors to the EU financial market has long been associated with the EU's 'equivalence' regime.[22] The EU's equivalence arrangements, set out in relevant sectoral legislation, operate on a 'deference' basis.[23] Where the third country regime's regulatory (and increasingly supervisory and enforcement) arrangements are 'equivalent to' (broadly, aligned with) the EU's arrangements (in accordance with relevant legislative criteria), and subject to compliance with differing forms of gate-keeping registration/recognition/oversight requirements (typically, but not always, managed supranationally by ESMA), pan-EU access to the EU's financial market opens for the relevant third country's firms. The third country firm can accordingly operate in the 'host' EU market under its 'home' rules/license and so the EU 'defers' to the third country regime. The equivalence decision which unlocks pan-EU passporting benefits rests with the Commission (advised by ESMA) and is, as the Commission often underlines, discretionary and contingent.[24]

The EU's access-related equivalence arrangements are, however, silo-ed and partial and are not available for all financial market sectors. Third country actors must then either engage with each Member State in which they seek to operate and comply with relevant national (and increasingly harmonized) rules, including as regards branch establishment (such actors are accordingly 'landlocked' within the relevant

Footnote 21 (continued)

ronment' (including through the repeal of EU law), and commit to making progress on the 2022 Edinburgh Reform agenda, including through building a 'Smarter Regulatory Framework' tailored to the UK: Autumn Statement 2023 Speech, 22 November 2023.

22 See further Busch (2024); Moloney (2023a), ch. X; and Pennesi (2022). Much of the equivalence regime, however, is not concerned with access but regulates (and can restrict) EU actors' operations in third countries by imposing equivalence conditions on such operations (such as the requirement that execution-only transactions be conducted on 'equivalent' third country trading venues).

23 On access arrangements internationally, see IOSCO's recent analyses (e.g., IOSCO (2015, 2019, 2020)) and Conac (2020).

24 Well illustrated by the Commission's 2019 withdrawal of the equivalence status of Switzerland under the Markets in Financial Instruments Regulation (Regulation (EU) No 699/2014 [2014] OJ L173/84) (MiFIR)) as regards trading venues, and of six jurisdictions under the rating agency regime. While the withdrawals had different contexts (the Swiss decision was linked to the failure to agree with Switzerland on a wider institutional framework for EU/Swiss relations; the rating agency decisions were linked to a lack of alignment between the relevant jurisdictions' rules and subsequent reforms to the EU rating agency regime), they were the first such actions and so underscored the contingent nature of equivalence.

Member State); or 'subsidiarize' by using EU-based subsidiaries which, as EU actors, benefit from EU rights, including passporting rights, but which carry costs, including as regards taxation, risk management, capital and liquidity management, and compliance with the 'single rulebook' that governs EU financial markets.[25]

On 1 January 2021, UK firms lost their EU authorizations, and their access to the EU financial market became dependent on this third country regime. The potential legal frictions and market risks attendant on the adjustment to this new legal setting were, given the extensive UK/EU interdependencies,[26] significant.[27] They engaged, *inter alia*, potential contractual continuity risks, financial stability risks (in particular relating to the inability of UK central clearing counterparties (CCPs) to clear euro-denominated financial derivatives), and liquidity and funding risks relating to the removal of UK dealing capacity from the EU. A series of risk mitigations by regulators and the market followed, including the temporary licensing of UK firms by Member State regulators; two temporary Commission equivalence decisions to minimize 'cliff-edge' disruptions (relating to the UK regime governing CCPs (this arrangement is still in force, until 2025) and to the UK regime governing central securities depositaries (now lapsed)); and a series of market mitigations, including private contracting arrangements such as novation, the establishment of EU subsidiaries, and the use of delegation and outsourcing techniques to channel operations from EU subsidiaries (from which business could be passported) to UK entities.

The changed legal setting also engaged more long-term risks to the sustainability of the UK financial market, given potential threats to market strength (in particular to liquidity) were it to become a less attractive financial centre.[28] These risks could have been mitigated through new UK/EU trading arrangements. But by contrast with the withdrawal-related mitigations, the UK did not secure such bespoke trading mitigations from the EU, reflecting the political setting for the negotiations as well as the asymmetry in negotiating positions. The UK sought a tailored access arrangement for financial markets, based on the UK and EU recognizing their respective regulatory regimes and allowing dynamic regulatory divergence as long as high-level outcomes converged.[29] The EU's position, reflecting a host of interests (including the concern not to allow UK 'cherry picking' of single market access, and the imperative to secure competitive advantage and support Capital Markets Union[30]), was consistent in rejecting any form of tailored UK access to the single financial market, and in making access a function of the third country regime, including its

[25] Alongside, the 'reverse solicitation' regime takes outside the scope of EU law certain transactions initiated by the EU counterparty. Its modalities are a function of national law.

[26] E.g., House of Lords (2016); and European Parliament Briefing (Magnus et al. (2016)). E.g., in 2019, financial services exports to the EU from the UK amounted to £25.7 billion, some 20.5 per cent of all UK services exports to the EU: House of Commons Library Briefing (2020).

[27] E.g., Moloney (2021); Howell (2020); Ferran (2017); and Armour (2017). For political economy perspectives, see James and Quaglia (2020); Howarth and Quaglia (2018); and James and Quaglia (2018).

[28] See the discussions at n. 27.

[29] Set out in Prime Minister May's 'Mansion House' Speech, 2 March 2018 (refined in the 'Chequers Plan' (HM Government (2018)).

[30] Capital Markets Union (CMU) is the EU's flagship financial markets agenda to strengthen market finance and promote integration. For its most recent iteration, see European Commission (2020c).

equivalence arrangements. The Trade and Cooperation Agreement (TCA) accordingly 'covers financial services in the same way as they are generally covered in the EU's other FTAs [free trade agreements] with third countries.'[31] It thus affords UK firms the foundational WTO rights that apply to services generally, particularly as regards establishment and national treatment/non-discrimination.[32] UK firms can establish in the EU, for example, through subsidiaries or branches, subject to the relevant authorization and other EU or national rules which apply.[33] The TCA relatedly applies the WTO 'prudential carve-out' in that nothing in the TCA prevents either party from adopting or maintaining measures for prudential reasons.[34] The parties' respective 'rights to regulate', and accordingly to apply authorization, regulation, equivalence, and other requirements, are thereby protected. UK firms must therefore use the 'standard' equivalence or other establishment-related routes available under EU (and related Member State) law.[35]

The immediate impact of the changed legal setting was muted, given the advance risk mitigations.[36] The most dramatic effect was on share trading, with the first day of trading after the end of the UK transition period seeing a large shift in liquidity from UK trading venues to EU venues as the MiFIR Article 23 'Share Trading Obligation' (which requires certain equity transactions to take place on EU trading venues or venues determined to be equivalent; there was no such determination for the UK) took effect.[37] This shift in liquidity became an early emblem of the impact of the change of legal status, post EU withdrawal, on the UK financial market.[38]

3.2 UK Access to the EU

Despite the high profile in the UK of the EU access/equivalence regime following the 2016 referendum, the UK exit from the EU came and went without the regime being of any real significance. No equivalence decisions of substance were adopted by the Commission as regards the UK, save the temporary and idiosyncratic CCP

[31] European Commission (2020d). This account is a necessarily compressed outline of a period characterized by complex political, market, and legal/regulatory dynamics. See, e.g., James and Quaglia (2020); Moloney (2021).

[32] The TCA's financial services provisions are broadly similar to those of the EU/Japan Trade Agreement.

[33] E.g., Lannoo (2021), Hall (2020).

[34] On the prudential carve-out and the discretion it affords WTO parties, see Lang (2018).

[35] As was repeatedly underlined by the Commission: e.g., European Commission (2020b).

[36] The EY Financial Services Brexit Tracker reported that 44% of monitored firms have moved business and some £1.3 trillion assets have migrated: EY (2022).

[37] Almost €6 billion of share dealing in EU firms moved from the UK to EU trading venues and Amsterdam replaced the City as the major EU share trading centre: Stafford et al. (2021).

[38] The Financial Times described the move of share trading as a 'stunning shift': Fleming et al. (2022). London ultimately reclaimed much of the lost volume (Stafford (2021)), but the end of 2022 saw renewed concern as to London's capacity to maintain its dominant position on share trading given Paris' strengthening position: Flood (2022).

equivalence decision in place until 2025.[39] Other EU access routes were (and had to be) found, two in particular.

First, UK firms established EU subsidiaries (which also provided platforms from which business could be outsourced/delegated to UK group functions), mainly for dealing and risk management business. Second, the outsourcing/delegation arrangements already in common use in the EU collective investment management sphere, and permitted (if regulated) under EU funds legislation, were deployed for funds.[40] Both these access routes are, in principle, relatively stable legal supports for the export of UK financial market services to the EU, albeit that current indications suggest that more stringent controls are likely to be placed on fund delegation practices.[41] Nonetheless, and while the EU equivalence regime is in principle contingent, implies a significant incursion into home regulatory autonomy, and is becoming increasingly restrictive,[42] it has material advantages in that, once equivalence is granted, it supports passporting on the basis of home oversight.[43]

In the immediate wake of the UK withdrawal, equivalence was in principle achievable. The UK financial markets rulebook was more or less identical to the EU single rulebook, being composed of 'on-shored' EU regulation. Further, powerful incentives and interests, not least as regards transaction cost avoidance and given the extent to which the UK had shaped the single rulebook,[44] could be identified to suggest that UK divergence would not be material and so equivalence would be achievable, at least technically. The UK has, however, consistently objected to the dynamic alignment that the equivalence process demands, given its need to secure its post-Brexit regulatory autonomy.[45] Relatedly, it has characterized the equivalence process as requiring 'rule-taking' inimical to its large and systemic financial centre. These objections are political,[46] but they are also technocratic given in particular financial stability risk management concerns.[47] Nonetheless, initial political indications

39 Captured by the 'ship has sailed' comment by City of London Corporation Policy and Resources Committee Chair McGuinness, reported in Thomas (2022).

40 See Donnelly (2023) and Moloney (2023b).

41 E.g., the 2021 AIFMD Review Proposal proposed a tightening of the requirements: European Commission (2021b). Political agreement on the Proposal was reached in July 2023 and included agreement on the imposition of additional reporting requirements on delegation arrangements as part of the fund manager authorization process.

42 See Busch (2024) and Moloney (2023b).

43 By contrast, subsidiarization, in principle, leads to close Member State supervisory attention to the adequacy of local risk management, liquidity, and management capacity in EU subsidiaries and thereby engages significant costs. ESMA has monitored regulators' compliance with related requirements, to mitigate any 'race to the bottom' risks (from attracting UK business), including through soft law, the establishment of a 'Supervisory Coordination Network' on authorization practices, and a peer review of regulators' practices. E.g., ESMA (2022a), raising concerns as to whether the adoption of a risk-based approach led some regulators to require overly limited requirements of smaller EU firms within UK groups.

44 Notably the MiFID II/MiFIR investment services regime, of critical importance for the City.

45 James and Quaglia (2022).

46 UK Parliament (2020).

47 UK regulators consistently emphasized the risks of being 'rule-takers'. E.g., Bank of England Governor Bailey (2021).

suggested that any future regulatory divergence would reflect ‘what is right for the UK’ and not constitute large-scale deregulation.[48] Similarly, the UK regulators cautioned against any expectations of a ‘bonfire of regulation’.[49] Since then, however, the scale of the UK reforms and the acuity of the focus on competitiveness suggest that the level of divergence from the EU single rulebook could, certainly over time, be substantial (if technical; the normative basis of both regimes will likely remain aligned). A positive equivalence determination is, accordingly, increasingly looking to be challenging. This is all the more the case as, from the EU side, there were (and are), few indications of either special treatment for the UK or the ‘standard’ equivalence process being opened to assess UK rules. The EU had initially intimated that the UK equivalence assessment should be completed by end June 2020,[50] but progress was minimal,[51] and political tensions related to the Northern Ireland Protocol subsequently put all equivalence-related discussions in abeyance.

The effective irrelevance of the equivalence regime, the costs of subsidiarization, and the risks associated with any changes to the funds delegation/outsourcing regime can, given the frictions thereby placed on UK firms and counterparties, reasonably be regarded as giving rise to incentives to adopt a remedial, liberal approach to third country access to the UK financial market to protect market depth. In practice, such liberalization is following, as outlined in the next section.

4 The Evolving UK Third Country Regime

4.1 The UK Approach to the Withdrawal

As an EU Member State, the UK’s third country access arrangements for financial markets were based on EU requirements but also included UK-specific elements. A patchwork of arrangements accordingly governed third country access. These extended from EU-mandated equivalence and related recognition/registration requirements (such as those of the Prospectus Regulation[52]), to UK-specific requirements for third country investment firm branches, for example, and to the UK exemption regime (or ‘regulatory perimeter’) for specified third country business

[48] UK Parliament (2020)

[49] E.g., Bank of England (2019).

[50] Revised text of the Political Declaration setting out the framework for the future relationship between the EU and the UK (TF50(2019) 65), 17 October 2019, para. 35.

[51] E.g., European Commission (2020a) (on readiness for the withdrawal) in which the Commission warned that the UK’s stated intention to diverge from the EU’s regulatory framework required it to assess equivalence on a forward-looking basis. Similarly, the TCA’s Q&A noted that a series of further clarifications would be required from the UK, including as regards how it would diverge from the EU regime, how it would use its supervisory discretion regarding EU firms, and reciprocal rights for EU firms.

[52] Regulation (EU) 2017/1129 [2017] OJ L168/12.

(including the Overseas Persons Exclusion (OPE) and the Financial Promotion Order (FPO)).[53]

As noted in Section 5 ahead, the UK has tended to adopt a liberal approach to market access. This liberal stance, despite the prevailing EU/UK political tensions, framed the UK's approach to EU firms over the withdrawal process. Prior to the UK withdrawal, the FCA adopted a 'temporary permissions regime' (TPR), designed to ensure that EU firms operating in the UK through passport arrangements could continue to operate in the UK while they sought full UK authorization. The TPR was, however, only available to firms who sought to operate in the UK long term and so were committed to full authorization. EU firms could, accordingly, be asked to stop undertaking new business, or be removed from the TPR, if they missed their 'landing slot' for full authorization,[54] did not intend to apply for full authorization,[55] or if their authorization was refused by the FCA.[56] The TPR (which was used by some 1,500 firms) was to close in December 2023. Alongside, the similar 'temporary marketing permissions regime' (TMPR) facilitated passporting funds in operating in the UK post Brexit under temporary authorizations, pending full authorization. Originally due to close in 2021, it will now apply until the end of December 2025 (in tandem, a new regime is being constructed to support the equivalence of third country funds, as noted below).[57]

In an associated initiative, the FCA set out its approach to the authorization of third country firms, given the significant increase in such authorizations following the UK withdrawal (the majority of third country firms operating in the UK are EU/EEA firms). Its 2021 'Approach to International Firms' did not propose reforms, given the FCA's view that its approach was 'appropriate and proportionate', but, in light of the scale of the new authorizations in progress, it set out the FCA's approach, including for third country branches.[58] A commitment to openness and competitiveness is clear. The FCA emphasized the important contribution made by international firms, its commitment to maintaining 'open and vibrant' markets in the UK, the role played by such firms in supporting the smooth and efficient functioning of UK wholesale markets, and that it would authorize firms where the relevant

[53] The OPE regime, e.g., excludes from the authorization requirement which otherwise applies to overseas persons under the Financial Services and Markets Act 2000 (Regulated Activities) Order a range of activities including dealing in investments as principal or agent and arranging deals in investments.

[54] All firms in the TPR that the FCA expected to apply for full authorization were notified of their 'landing slot', over which period the firm was to apply for a full permission/authorization to operate in the UK: FCA (2023a).

[55] Firms not intending to apply for authorization/operate long term in the UK were required to cancel their temporary permissions and either enter the specific regime made available to firms for the run-off of UK business or leave the UK regulatory perimeter: FCA (2023c). Run-off business is facilitated by the Financial Services Contracts Regime which, subject to the related and time-limited requirements, allows firms to continue to service pre-existing contracts in the UK.

[56] The required commitment to long-term operations in the UK, and related full authorization, was the subject of enforcement action by the FCA, which relatedly cancelled the temporary permissions of four firms: FCA (2022).

[57] The extension was achieved by the Financial Services Act 2021.

[58] FCA (2021a), p 4.

requirements were met and firms had good risk mitigation in place.[59] This is not to say that the FCA applies a light-touch approach. The authorization process, undertaken under the Financial Services and Markets Act and FCA rules, operates on a case-by-case basis, with each third country firm considered on its merits. Specific requirements govern the third country branch process, given the potential risks of harm,[60] including that the FCA may decide that risk mitigation demands that the third country firm's business be conducted through a UK subsidiary.[61]

The UK has also, and by sharp contrast with the EU, adopted (through HM Treasury) a series of equivalence decisions as regards EU regulation.[62] For example, while the UK decided that UK prospectuses must follow UK International Financial Reporting Standards (IFRS) (and not EU-endorsed IFRS), EU IFRS were declared equivalent for the purposes of the use in the UK of EU prospectus and ongoing issuer disclosures. These equivalence decisions, adopted before the end of the transition period to facilitate EU-based business, while operationally important, also suggest an intention to nudge the EU towards reciprocity.[63]

The UK equivalence/access regime is also under review more generally, and is tilting towards an ever more liberal and deferential approach, as noted ahead.

4.2 The Emerging Regime: Prospectuses

The UK third country prospectus regime is currently based on the on-shored 2017 Prospectus Regulation and so follows the EU's approach.[64] In its initial post-Brexit review of the regime (2021),[65] HM Treasury noted that the Regulation's third country regimes were rarely used, as both routes (where the third country prospectus is based on the Regulation and is approved by the FCA (Prospectus Regulation Article 28: 'rarely used'); and where the third country prospectus is based on third country

[59] The FCA has underlined that 'open and vibrant markets, driven by the ability of international firms to efficiently conduct business in the UK, help us meet our objectives': FCA (2021a), p 5.

[60] The FCA focuses in particular on: the extent to which the firm's operations can be effectively supervised (given, *inter alia*, the complexity of its business); the scale of the firm's presence in the UK (an active place of business is required); management and the adequacy of decision-making structures (including that the FCA's governance and accountability requirements for branch senior managers are met, and that relevant senior managers spend an adequate and proportionate amount of their time in the UK to ensure activities are suitably controlled); systems and controls (including as regards outsourcing dependencies); cooperation arrangements with the home jurisdiction; and insolvency arrangements.

[61] Any such UK subsidiaries (with an overseas parent) are subject to the UK requirements applicable to domestic firms, albeit with accommodations as well as specific requirements reflective of third country status and group operations and related risks.

[62] HM Treasury (2020c).

[63] HM Treasury noted that 'it continues to believe that comprehensive mutual findings of equivalence between the UK and EEA States are in the best interest of both parties, however the UK awaits clarity from the EU about their intentions': HM Treasury (2020c), p 2. A host of equivalence determinations were made, including in relation to EU benchmark administrator, short selling, rating agency, CSD, and (notably) CCP regulation.

[64] The Prospectus Regulation as 'on-shored' and revised by The Prospectus (Amendment etc.) (EU Exit) Regulations 2019, SI 2019 No 34.

[65] HM Treasury (2021b).

rules deemed to be equivalent by the FCA and is approved by the FCA (Prospectus Regulation Article 29: 'never used')) required an FCA review of the prospectus, regardless of whether it had been previously reviewed by the home regulator, and so were cumbersome.[66] HM Treasury also noted that the Article 29 equivalence route was narrowly drawn, being cast entirely in terms of equivalence with the Regulation and not referencing equivalence as regards well-established international standards. In practice, however, the restrictive approach adopted did not have a material impact. Third country issuers in the UK tend not to be subject to the prospectus regime in that they typically use the exemptions available under the regime for wholesale market offers (particularly for offers to 'qualified investors'). Nonetheless, the review argued that a more liberal regime could encourage retail offers by third country issuers, and so afford wider investment and diversification opportunities to retail investors.

Three review options were canvassed: retention of the status quo and so of the requirement for an FCA-approved third country prospectus; a prohibition on all third country prospectuses (and so removal of the equivalence route); and the use of 'regulatory deference.' Under this latter option, the UK would allow a third country offering to take place in the UK market, on the basis of a prospectus approved by the third county authority, and FCA approval would not be required. Investor protection risks would be considered on a 'holistic basis' through a general review of the third country's approach to investor protection, including as regards ongoing issuer disclosures. This high-level, equivalence-light review would be supported by FCA back-stop powers to close an offer to the public where it was detrimental to the interests of investors in the UK. This deference-based approach has resonances with the 'substitute compliance' model trialed by the US SEC immediately prior to the financial crisis but which lapsed following the change in market and regulatory conditions.[67] It is also similar, in its deference to home regulation, to the bilateral US/Canada and Australia/New Zealand mutual recognition regimes,[68] although it has a significantly wider reach, not being restricted to specific bilateral arrangements. Over the review, the regulatory deference option prevailed, without significant contestation. The new deference-based regime will apply to securities listed on certain designated overseas markets (and thereby enrol additional protections, including as regards the admission requirements and ongoing disclosures that apply to listed issuers). The FCA will not review the third country prospectus once the jurisdiction has met high-level equivalence-like requirements regarding its approach to investor protection,[69] but will be empowered with exceptional intervention powers.

This reform to the third country prospectus regime is significant on several grounds. It represents a strong articulation of regulatory deference and a pivot away

[66] The EU is also reviewing these provisions under the 2022 Listing Act reforms.

[67] See Jackson (2007). Framework agreements were entered into with Australia in 2008, but these lapsed in 2013 and the system never became operational.

[68] US/Canada Multijurisdictional Disclosure System and the similar Australia/New Zealand system (ASIC and FMA (2017)). On the merits of deference-based systems, see Lehmann and Schürger (2023).

[69] The new regime will be based on 'an assessment of overall effectiveness of the regulation of the overseas market in question': HM Treasury (2022a).

from the more formal, line-item regulatory equivalence associated with the EU regime. It applies in a global/multilateral setting (by contrast with the similar US/Canada and Australia/New Zealand regimes). It is supported by the gatekeeper function of trading venues in that the offer must be admitted to a designated overseas trading venue (it is not yet clear whether specific equivalence requirements would govern this designation), but, unlike other similar models (chiefly the US/Canada arrangement), it does not, as yet, appear to be restricted to secondary offers. Accordingly, and while the operational detail of the system is awaited, it represents a clear statement of intent as to the openness of the UK financial market, as well as a privileging of investor access to investments and diversification opportunities over more formal, host-based, investor protections.

4.3 The Emerging Regime: Investment Funds

Similar reforms have already been adopted for investment funds. The new overseas funds regime (OFR) contains two outcomes-based regimes for specified investment funds (retail investment funds, and money market funds (MMFs)).[70] Like the proposed prospectus regime, the OFR is not based on line-item equivalence, but on HM Treasury's overall view of the home country's regulatory regime. It accordingly reflects a governing assumption that different approaches to regulation can achieve the same regulatory objective, and that exactly similar regulation is not necessary to support market access.[71] As well as being concerned to support competitiveness, the regime is designed to ensure that investors, and in particular retail investors, have a wide choice of funds, given that many funds (including exchange-traded funds) are domiciled outside the UK.[72]

Taking the retail investment fund example, once an equivalence determination is in place, the relevant fund must be 'recognized' by the FCA; recognition then allows the marketing of the fund to the retail market in the UK. The FCA will, however, rely on self-certification by the fund that it is eligible for recognition.[73] The equivalence assessment which is the gateway to fund recognition is based on the fund's home country providing at least equivalent protection on an outcomes basis, as compared to UK regulation, and on adequate supervisory cooperation arrangements being in place with the home regulator. As with the prospectus regime, exceptional powers are provided for: HM Treasury can impose specific conditions on certain categories of retail funds, as part of the equivalence process. A distinct equivalence regime applies to MMFs, based on ensuring that the regulatory regime of the home country has equivalent effect to the UK Money Market Fund Regulation (which takes the form of the 'retained' 2017 EU Money Market Fund Regulation).

[70] It was adopted under the Financial Services Act 2021.

[71] HM Treasury (2020a, b).

[72] HM Treasury (2020b), p 5.

[73] A two-month time limit applies to recognition, to allow the FCA to consider whether any additional requirements should apply to the fund, including as regards investor protection. The FCA may also require ongoing reporting by the fund.

A distinct recognition process applies, depending on whether the fund is to be recognized under the retail regime or as a wholesale market fund.

The equivalence assessment and the related fund recognition processes are underway, with the FCA estimating that it will take two years or so to process the 8,000 funds eligible for treatment under the OFR.[74]

4.4 The Emerging Regime: Overall Design

The UK third country regime is also being reviewed more generally, including as regards, *inter alia*, the exemptions for specified third country business from UK regulation, such as the previously noted OPE regime, as well as certain sector-specific equivalence arrangements.

This review has been prompted by the UK withdrawal from the EU and the related 'opportunity to look at [the] overseas framework, and the regimes within it, to ensure that they continue to work effectively and support UK consumers, firms, and markets' and as part of the process of considering 'how we best move forward as an independent nation and as a global centre for financial services'.[75] It is focusing on the overseas 'regulatory perimeter' (which sets the boundary for when financial market business is within and without UK regulation) and on its resilience in light of the UK withdrawal. While large-scale deregulation is unlikely given the need to secure financial stability and investor protection (a theme which recurs across the FCA's related 2021 'approach document'), the review has a tilt towards liberalization and facilitation which chimes with the current privileging of competitiveness in UK financial regulation policy.[76]

Some indication of the potential direction of travel can be drawn from the emerging approach to the crypto-asset market, although caution is needed as this market segment is idiosyncratic, in particular as it sits outside the 'financial instruments' perimeter that sets UK financial regulation and also as it forms a key element of the UK's post-Brexit strategy for financial services. Nonetheless, current indications suggest a liberal approach. Notably, and by contrast with the new EU MiCAR regime,[77] the UK regime is likely to contain equivalence arrangements to facilitate international business.[78]

[74] The process was to start by December 2023. The FCA has provided 'landing slots' for the recognition of funds that are currently in the TMPR.

[75] HM Treasury (2021c), p 2.

[76] The review is to consider 'whether the operation of the regime appropriately balances openness while mitigating risks to the resilience and safety of financial markets, the protection of consumers, and market integrity, and the promotion of competition': HM Treasury (2021c), p 7.

[77] Regulation (EU) 2023/114 [2021] OJ L150/40.

[78] HM Treasury (2023).

5 The Implications

What, if any, conclusions can be drawn from how the UK third country regime is evolving? Any conclusions must be tentative given the dynamic context and as the reforms have a way to go. But some modest observations can be hazarded and, given the international setting of these reforms, within three concentric spheres—the UK, the EU, and global financial markets—albeit with diminishing levels of certainty in each case.

As regards the UK, the reforms are emerging from a period of disruption, including to the UK's position as a leading global financial centre.[79] They do not, however, represent first-order, normative change to the third country regime but rather a refinement, if a significant one, of a longstanding approach.[80] Historically, the UK, reflecting its facilitative, 'market-making' approach to financial markets,[81] has tilted towards a permissive approach to third country access and it adopted this posture, as an EU Member State, in related negotiations on the EU equivalence regime.[82] Relatedly, securing the competitiveness of the UK financial market has long been a priority of UK financial regulatory policy. This is well illustrated by the 2006 reforms to the regulation of trading venues. Amidst concern at the time that the London Stock Exchange could be acquired by a US exchange, and so become subject to onerous US regulatory requirements, the 2006 Investment Exchanges and Clearing Houses Act, enacted at speed, empowered the then Financial Services Authority (now the FCA) to veto any adoption by a UK exchange of 'excessive' rules, not required under UK law and not justified as pursuing a reasonable regulatory objective, or disproportionate to the end sought.[83] While an idiosyncratic reaction to the deep political concern at the time, it remains in force, and provides a useful example of the longstanding concern of the UK to ensure its international competitiveness through regulation.

Nonetheless, the current reforms appear to engage a materially more liberal approach than that previously adopted, given the extent to which they have

[79] It was reported in 2023 that London had lost its sole position as the world's top global financial centre, to share with New York (City of London (2023)), increasing concerns as to competitiveness risks: Thomas (2023).

[80] Regulatory change can engage third-order technical revisions to rules and practices; second-order institutional reforms and changes to the nature of regulatory intervention; and first-order alterations to the normative basis of regulation (e.g., Black (2005)). While the UK withdrawal has elsewhere generated legal disruption of a scale that can be associated with normative change (e.g., Zglinski (2023) in the context of the UK internal market), the third country reforms can be primarily associated with technical revisions.

[81] EU economies' preferences as regards financial market governance have (very broadly) been classified as those of the more liberally oriented 'market-making' Member States and those of the more interventionist 'market-shaping' Member States. These classifications derive from the varieties of capitalism analysis which examines how institutional settings shape economies, including as regards the extent to which economies rely on and support financial market funding models v. bank funding models and, relatedly, are oriented to less or more regulatory intervention in financial markets. See, e.g., Burns et al. (2018).

[82] E.g., on the AIFMD negotiations: Ferran (2011).

[83] Financial Services and Markets Act 2000 ss 300A-E.

embraced deference as a design principle. They accordingly suggest that the UK does not seek to deploy ‘bonding’ by third country actors to its rules as a means for securing competitiveness.[84] The articulation in practice of deference, however, in the new reforms, suggests a more nuanced reading of the UK’s approach. The more liberal approach that can currently be identified is limited to the retail/MMF fund and the prospectus sectors. With the exception of MMFs, these are market segments not prone to financial stability risks and so more conducive to liberal treatment. Further, the funds regime is, in practice, directed to EU funds[85] and, accordingly, the UK regime is, in practice, deferring to the sophisticated and mature EU ‘UCITS’ regime (a global benchmark for high-quality fund regulation) and MMF regime (a highly detailed, and frequently refined system).[86] And, as regards prospectuses, there is a strong logic to using prospectus regulation as a test bed for deference, given the relatively sophisticated state of harmonization internationally[87] and the successful examples of prospectus mutual recognition already in place (albeit on a bilateral basis).[88]

Whether or not this approach endures and/or is extended is hard to predict. The UK’s incentives to liberalize access in order to deepen its market will, however, likely remain strong given the probability of ongoing frictions to EU access. The EU’s incentives to secure competitive advantage over the UK, not least to progress the CMU agenda, are significant and so caution against predictions of speedy EU engagement with the equivalence process for the UK, particularly given the UK’s current deregulatory turn.[89] Further, the UK rulebook will meet a more stringent EU equivalence process than that in place at the time of the Brexit referendum in 2016. The EU equivalence regime, particularly since a swathe of legislative reforms in 2019, is becoming increasingly prescriptive as regards the extent of the alignment required, as well as more contingent and less deferential.[90] It is also not expanding significantly and is, thereby, excluding activity of direct relevance to the UK market.[91] Alongside, the Commission has shown an appetite for withdrawing

84 Competitiveness and market strength have been identified as a function of firms’ voluntarily ‘bonding’ (i.e., through stock exchange admission) to high regulatory standards and, relatedly, of a restrictive third country regime which demands compliance with the full weight of ‘host’ rules, and so not necessarily as a function of deregulation (e.g., Coffee (2007)).

85 Of the 10,500 or so retail funds marketed in the UK, 8000 are EU-domiciled UCITS funds, while ‘the vast majority’ of MMFs marketed in the UK are domiciled in the EU: HM Treasury (2021c), pp 2 and 4.

86 See Moloney (2023a), ch. III.

87 E.g., IOSCO (1998).

88 See further Armour et al. (2017).

89 See also Petit and Beck (2023).

90 See Busch (2024) and Moloney (2023b).

91 The recent review of the securitization regime, e.g., concluded that an equivalence regime was not appropriate for the Securitization Regulation (Regulation (EU) 2017/2402 [2017] OJ L347/35) given that few countries had regimes aligned with the EU approach: European Commission (2022a). Similarly, the MiCAR regime for crypto-assets (an area in which the UK is seeking strategic advantage) does not contain an equivalence regime.

equivalence decisions[92] while, at the gatekeeper level, ESMA has been similarly robust.[93]

Ultimately, while the observation that the EU will act in its strategic interests is a trivial one, the reality is not, as the differential treatment of two forms of UK market infrastructure, CCPs and trading venues, as regards equivalence, underlines. The adoption by the Commission of a temporary equivalence decision for UK CCP regulation (after a series of extensions, this decision applies until 2025)[94] was a *force majeure* response to financial stability risks,[95] given the EU's strategic dependence on UK clearing for euro-denominated financial derivatives.[96] The adoption of this decision was accompanied by an acute EU political and policy focus on the adoption of measures that would secure EU oversight over UK clearing activity in the EU (these measures have also transformed the CCP third country regime generally),[97] and to promote an autonomous EU clearing capacity which would remove the need for the UK equivalence accommodation.[98] A sharply different approach was taken with the equivalence of UK trading venues. Notwithstanding that the absence of an equivalence decision could have generated market disruption on the UK's withdrawal, not least given the impact of the MiFIR Share Trading Obligation[99] (although, in the end, the absence did not), the Commission did not adopt a temporary equivalence decision. The contrast in interests appears clear: the CCP temporary equivalence decision was taken to secure EU financial stability; the trading

[92] *Supra* n. 24.

[93] In 2022, ESMA withdrew a series of equivalence-related 'recognition' decisions for third country CCPs registered in India, as the required supervisory cooperation arrangements with local regulators were not in place: ESMA (2022b). The decisions were deferred until 30 April 2023 to mitigate market disruption, on which date ESMA's recognition decisions were withdrawn: ESMA (2023). Significant increases in capital charges were expected in relation to Indian trades as a result, albeit that counterparties were given 18 months 'forbearance' by the French and German regulators (whose markets were most impacted) to accommodate their withdrawal from Indian trades: Noonan (2023), describing ESMA's approach as 'hardline'.

[94] The European Market Infrastructure Regulation (EMIR) governs CCPs and clearing: Regulation (EU) No 648/2012 [2012] OJ L201/1. Implementing Decision 2022/174 [2022] OJ L28/40 currently grants equivalence status to the UK until 2025.

[95] E.g., the Commission noted that 'should the Commission need to act, it will only do so to the extent necessary to address financial stability risks': European Commission (2018).

[96] See, e.g., Thomadakis and Lannoo (2021).

[97] Through the large-scale 2019 EMIR 2.2 reforms to provide for an escalator from ESMA oversight of the least systemically significant 'tier 1' CCPs, to direct ESMA supervision of more systemically significant 'tier 2' CCPs, and on to the highly contested EU re-location requirement for the most systemically significant 'tier 3' CCPs. See Lehmann (2023). The tiering process was conducted by ESMA and led to 'tier 2' status for LCH Ltd (as regards interest rate derivatives) and ICE Clear Europe Ltd (as regards interest rate derivatives and credit default swaps (CDSs)): ESMA (2021). Subsequently, ICE Clear Europe signaled its intention to withdraw from clearing CDSs in the UK and move this business to Chicago: Jones (2022).

[98] A series of closely followed reviews culminated in the Commission's December 2022 clearing proposal which, in an interventionist requirement, proposed that counterparties subject to the EMIR CCP clearing obligation hold 'active accounts' at EU CCPs for specified classes of derivatives of substantial systemic importance to EU financial stability; and clear at least a certain proportion of such derivatives through EU CCPs (the proportion to be specified by ESMA): European Commission (2022b).

[99] See, e.g., Bank of England (2019), p 6.

venue equivalence decision was not taken given lower financial stability risks and, impliedly, the prospect of a repatriation of trading to the EU.

Given, therefore, the likely persistence of legal frictions to its access to the EU financial market, the UK's incentives to adopt a liberal approach to access to its market, in order to strengthen competitiveness and so market liquidity and efficiency, can be expected to remain strong in the short term. This is all the more the case given Brexit-related changes to the organization of global markets.[100] But how the UK's third country arrangements will evolve in the medium to long term can be expected to be shaped by three forces in particular: market conditions; how the UK regulators deploy their (new) powers and manage any conflicts between their investor protection/financial stability and competitiveness objectives; and prevailing political conditions, particularly as regards UK/EU relations. While modest,[101] this is not a trivial observation, particularly as regards political dynamics. Politics always matter in international financial relations,[102] as witnessed by the failure of the UK financial services industry to get traction on the UK negotiating position until the later stages of the withdrawal process, which failure can be associated with political attention being elsewhere.[103] Hitherto, however, UK and EU third country arrangements (UK arrangements being up to now mainly based on the EU regime) have, with some flashpoints, been largely a function of technocratic regulator-regulator engagement, reflecting also the post-financial-crisis development of international financial market governance and the increasing influence of technocracy.[104] Since the Brexit referendum, however, these arrangements have become heavily freighted with UK/EU political interests and they have relatedly become a proxy for wider political contestation as both parties have re-set their political and trading relationships.[105] Accordingly, the setting for UK third country access requirements may change as the UK/EU political environment evolves. The operational management of the UK third country regime for the UK financial market is primarily in the hands of the FCA, and so is largely depoliticized, but it remains dependent in many places on a gateway equivalence determination being made by HM Treasury—and the EU example shows how such gateways can be blocked. Some signs augur well. The June 2023 adoption of a Memorandum of Understanding (MoU) for EU/UK financial

[100] Including as regards the trading of euro-denominated swaps. It has been reported that, given the failure by the EU and UK to agree on the equivalence status of their respective markets as regards their respective requirements regarding the MiFIR 'Derivatives Trading Obligation' (which requires specified derivatives to be traded on specified, liquid trading venues), business has moved to US venues which are regarded as equivalent by both the EU and the UK: Asgari (2023) (reporting that the US now has 51% of trades in the $100 trillion euro swaps market).

[101] These forces are classically associated with regulatory change. E.g., Moschella and Tsingou (2013).

[102] Reflecting the well-charted enmeshing of political and technocratic interests in the organization of financial market access globally: Drezner (2007); Verdier (2013); Mügge (2014).

[103] For contrasting political economy perspectives on the City's Brexit-era influencing capacity, see Kalaitzake (2020) and James and Quaglia (2019).

[104] Helleiner and Pagliari (2011), albeit that state power and so political preferences have been dominant in certain segments, notably derivatives markets: Quaglia (2020).

[105] On the political context, see Hix et al. (2022).

services cooperation,[106] previously committed to in the TCA,[107] followed a period of stalemate associated with the political tensions generated by the UK government threatening to suspend the Withdrawal Agreement's Northern Ireland Protocol.[108] The normalization of political relations in February 2023 with the adoption of the 'Windsor Framework'[109] unlocked the MoU.[110] Nonetheless, the episode stands as a reminder of the acute importance of live political conditions to the arcana of financial market access.

As regards the EU sphere, as previously noted, a decisive tilt towards a more restrictive, less deferential approach to third country access can be observed in the EU over the period since the Brexit referendum, a development which is hard to disassociate from Brexit effects.[111] Certainly, in the application of the EU's equivalence regime to the UK, there is, so far, little evidence of EU reciprocity as regards the UK's facilitative approach to the EU. Alongside, the EU's 'open strategic autonomy' priority,[112] while so far primarily being articulated in relation to the imperative to develop an EU clearing capacity for certain euro-denominated financial derivatives,[113] cautions against predictions of a significant change in direction, particularly in the contested area of clearing. The recent shift in EU/UK political dynamics may, however, lead to a more facilitative approach, which may be further supported if discussions become more technocratic and so somewhat depoliticized.[114] The MoU represents a key step in this regard.[115] Technocratic engagement may also intensify given the prevailing uncertainty as to how changing global financial market risks,

[106] Memorandum of Understanding establishing a framework for financial services regulatory cooperation between the European Union and the United Kingdom of Great Britain and Northern Ireland (June 2023).

[107] Joint Declaration on Financial Services Regulatory Cooperation Between the European Union and the United Kingdom. The EU and UK had earlier agreed to establish 'structured regulatory cooperation' on financial services and to put in place, by March 2021, an MoU establishing a framework for this cooperation (including as regards equivalence determinations).

[108] On the Protocol, see Hayward and Komarova (2022). The UK's attempts to resile from the Protocol became associated with a wider loss of trust between the EU and the UK and a consequent EU reluctance to progress financial services discussions.

[109] Windsor Political Declaration by the European Commission and the Government of the United Kingdom, 27 February 2023.

[110] The MoU establishes arrangements to allow the parties to pursue a 'robust and ambitious bilateral regulatory cooperation in the area of financial services', and to establish a Joint EU–UK Financial Regulatory Forum (similar to the long-established EU–US Financial Regulatory Forum). Although the MoU identifies 'dialogue' on 'autonomous' decisions by the parties to adopt, suspend, or withdraw equivalence decisions, the Commission was careful to note that the MoU does not address single market access or 'prejudge the adoption of equivalence decisions': European Commission (2023).

[111] *Supra* n. 90.

[112] A series of initiatives have been developed to promote the EU's 'open strategic autonomy', including as regards trade policy and digital and industrial strategies: e.g., European Commission (2020a).

[113] European Commission (2021a).

[114] The importance of structured EU/UK cooperation has been emphasized by the IMF: IMF (2022).

[115] Relatedly, ESMA has adopted MoUs with the Bank of England (on the monitoring and supervision of CCPs established in the UK) and with the FCA (on cooperation and information exchange generally).

notably as to non-bank financial intermediation,[116] are to be managed, and so may moderate political interests.[117]

Finally, as regards international financial market governance, there is little evidence of a setting conducive to the wider 'up-loading' of the UK's evolving approach.[118] It remains to be seen how the UK's capacity to influence the international standard-setters will change now that it is operating outside the EU. And more generally, while the major international standard-setter for financial markets, IOSCO, is reporting on increasing reliance internationally on deference to manage access, regulatory and market fragmentation remain significant.[119] Further, the regulatory uncertainties associated with how to contain the risks of the ongoing restructuring of financial markets as non-bank financial intermediation continues to grow and monetary policy remains dynamic, suggest that appetite for a more pervasive reliance on deference, certainly in sectors of systemic significance, may remain limited. The EU's more restrictive approach, while a function of EU specificities, might better represent future developments.

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[116] E.g., FSB (2022).

[117] See Lehmann (2017) on how the uncertainties associated with financial market regulatory design, and not necessarily regulatory competition and related political interests, can lead to rule fragmentation internationally.

[118] Up-loading, down-loading and cross-loading effects are used to examine the relative strengths of states' capacities, including through their regulators, to shape international financial governance: Quaglia (2014).

[119] See *supra* n. 23.

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