

Brexit Client Information

December 2020

Bank of America (BofA) Brexit Strategy:

Bank of America's Brexit Strategy has been developed and executed to ensure we continue to seamlessly provide best-in-class banking and markets products to our global, regional and domestic clients.

Bank of America has achieved its target state legal entity structure through the establishment of an EU passported Bank ([BofA Europe DAC](#)) and a new EU passported Broker Dealer ([BofA Securities Europe SA](#)). Further information on the entities can be found on the [Investor Relation website](#) and [MiFID II website](#).

EU Bank ("BofA Europe DAC")

On 1 December 2018, our UK entity Bank of America Merrill Lynch International Ltd ("BAMLI") merged with our Irish entity BAMLI DAC to form a single banking entity, BAMLI DAC (now named 'BofA Europe DAC'). Upon completion of the Merger, BAMLI Ltd business transferred to the DAC entity and BAMLI Ltd ceased to exist. BofA Europe DAC is now Bank of America's primary Europe, Middle East and Africa ("EMEA") bank subsidiary. In addition to the head office in Dublin, Ireland, BofA Europe DAC has a branch in Paris.

EU Broker-Dealer ("BofASE SA")

BofA Securities Europe SA ("BofASE SA") was incorporated in September 2018 and authorised in November 2018 as Bank of America's new EU Broker Dealer, based in Paris. BofASE SA is authorised as an investment firm by the Autorité de Contrôle Prudentiel et de Résolution ("ACPR"), is regulated by the ACPR and the Autorité des Marchés Financiers, and is not a credit institution. BofASE SA is now operational as Bank of America's primary EEA (ex UK) Sales and Trading hub. The major lines of business that are booked into BofASE SA include Equities, FICC and Capital Markets. Some Global Market business will also be conducted through the Irish banking entity, BofA Europe DAC.

Following the operational readiness of both BofASE SA and BofA Europe DAC, the Brexit programme completed all critical activities in late 2019. This has ensured that despite ongoing political uncertainty in the UK and EU, Bank of America will be able to operate its business and service its clients on an uninterrupted basis. Bank of America continues to monitor both political and internal and external developments related to the UK's withdrawal from the EU and will factor these developments into any further Brexit planning, as required.

Updated EEA & UK Legal Entity Structure:

BofA's principal legal entities in the EEA and in the UK, as of the end of Transition Period, will consist of:

- BANA, London branch
- MLI, a broker-dealer incorporated in the UK
- BofA Europe DAC, a bank incorporated in Ireland
- BofASE SA, a broker-dealer incorporated in France

BANA and BofA Europe DAC's branch network remains in place.

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EEA Physical Location:

We have extended our presence in existing locations across the EEA in order to serve our clients as best as possible. Our largest EEA sales and trading concentration is in Paris, where we leased a new building that opened for occupancy in February 2019.

EEA & UK Legal Entities public credit ratings:

BofASE SA, MLI and BofA Europe DAC have been issued public credit ratings, which are published and maintained on <http://investor.bankofamerica.com/phoenix.zhtml?c=71595&p=creditratings#fbid=7SpPg1EeTLi>

As at November 2020, they all have the following ratings as shown in the table below:

BofASE SA

Rating	Moody's	Standard & Poor's	Fitch
Outlook	-	Stable	Stable
Long-term senior	-	A+	A+
Short-term	-	A -1	F1

MLI

Rating	Moody's	Standard & Poor's	Fitch
Outlook	-	Stable	Stable
Long-term senior	-	A+	A+
Short-term	-	A -1	F1

BOFA EUROPE DAC

Rating	Moody's	Standard & Poor's	Fitch
Outlook	-	Stable	Stable
Long-term senior	-	A+	AA-
Short-term	-	A -1	F1+

EEA & UK entity recovery and resolution regime:

The Bank Recovery and Resolution Directive (Directive 2014/59/EU) ("BRRD") has established a common framework for resolution for all EEA incorporated entities, which applies to our existing UK entities as well as our other EEA regulated entities. From a Bank of America Corporation perspective, we have developed a Resolution Plan based around a Single Point of Entry approach, under which, only Bank of America Corporation would enter bankruptcy. The rest of the Company would continue to operate under a new corporate structure.

Booking Model:

EEA clients:

Where we consider that an EEA client is our regulatory counterparty, that client now faces one of our EEA entities. This is because interactions between EEA clients and MLI may be subject to cross-border licensing requirements post the transition period.

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UK and Non-EEA Clients:

UK and non-EEA counterparties will continue to face MLI for their Global Markets business.

Please note this booking model does not apply to Transaction banking services (deposit taking and associated payments) for EEA, UK and non-EEA clients.

Client Communication:

We have been communicating Brexit strategy via a dedicated site: www.bofam.com/brexit and via direct outreach to impacted clients. Further queries around BofA's Brexit strategy can be directed to bofam_brexitoutreach@bofa.com or via the primary BofA relationship manager.

Clearing/Venue Access

I. Clearing

1. **There was a risk that UK-based central counterparties (CCPs) may not be permitted to clear for EU27 clearing members or EU27 trading venues post transition. What is BofA's current view on this risk?**

Provision of clearing services in the EU is governed by the European Market Infrastructure Regulation ("EMIR"). When the Brexit transition period ends on 31 December 2020, UK CCPs (ICE Clear Europe, LCH Ltd and LME Clear) will cease to be "authorised" CCPs under EMIR and will become third-country CCPs. EMIR Article 25 requires third-country CCPs to be formally "recognised" by ESMA in order to provide clearing services into the EU.

In anticipation of a "hard" or "no deal" Brexit prior to the original Brexit date of 30 March 2020, the European Commission adopted a temporary and conditional equivalence determination with respect to the UK regulatory framework for UK CCPs, which permitted ESMA, in turn, to adopt temporary recognition decisions for LCH Ltd, ICE Clear Europe Limited and LME Clear Limited for a period of 12 months. The temporary and conditional equivalence and temporary recognition decisions were updated when the original Brexit date was postponed, but eventually fell away when we went into a transitional period on 1 February 2020.

In acknowledgement of the financial stability risks addressed by central clearing of derivatives as a result of the scheduled end of the Brexit transitional period¹, the EU Commission has granted a time-limited equivalence to UK CCPs², which will come into effect on 1 January 2021, for an 18 month period, expiring on 30 June 2022. The time-limited equivalence has enabled ESMA to grant temporary recognition to the three UK CCPs³, LCH Ltd, ICE Clear

¹ European Commission, "Communication on Readiness at the end of the Transition Period between the European Union and the United Kingdom", Brussels, 9.7.2020 COM(2020) 324 final, page 14:

https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/com_2020_324_2_communication_from_com_mission_to_inst_en_0.pdf

² Commission Implementing Decision (EU) 2020/1308 of 21 September 2020

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020D1308>

³ ESMA Public Statement dated 28 September 2020, ESMA77-99-1403

<https://www.esma.europa.eu/press-news/esma-news/esma-recognise-three-uk-ccps-1-january-2021>

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Europe and LME Clear, which will also remain in place until 30 June 2022, as long as the time-limited equivalence remains in place.

The combination of the temporary equivalence and recognition for UK CCPs means that they can continue to provide clearing services to EU clearing member and EU trading venues post-end of transition until 30 June 2022 and market participants can satisfy both the EMIR mandatory clearing obligation and the onshored UK EMIR mandatory clearing obligation on the UK CCPs (as appropriate).

For the BofA EU legal entities (BofASE SA and BofA Europe DAC), this also means that there will be no disruption to the continuity of access to the UK CCPs at the end of the Brexit transitional period, until 30 June 2022.

2. Can I still clear on an EU CCP if my clearing relationship is with Merrill Lynch International?

Non-UK CCPs, including EU CCPs, that wish to continue providing clearing services to UK clearing members post Brexit, have applied to the Bank of England to participate in the Temporary Recognition Regime (“TRR”) for non-EU CCPs, with a view to applying to be permanently recognised by the Bank of England to offer clearing services in the UK. The TRR lasts for a period of three years from the Brexit date. As at 22 October 2020 (the last update to the list), there are 48 non-UK CCPs on the Bank of England’s TRR interim list⁴. All of those CCPs will be permitted to continue offering clearing services to UK clearing members post Brexit for the period of the TRR.

The UK has now granted permanent equivalence to CCPs established in the EEA, which will come into effect on Brexit date⁵. This will enable the Bank of England to make permanent recognition decisions for the individual EEA CCPs, which, if granted, will come into effect at the end of the TRR.

BofA’s response to Brexit has been shaped by our strategic priority to continue to service our corporate and institutional clients across Europe and the UK seamlessly and with minimal disruption. We have aligned our booking model with that strategy such that EEA clearing clients now face BofASE SA, in compliance with cross-border licensing requirements post transition, and UK and Non-EEA clearing clients continue to face MLI. We have also aligned our exchange and clearing memberships with that strategy where possible.

If you are a UK or non-EEA clearing client, you will be able to continue clearing listed derivatives on EU CCPs as an indirect client of BofASE SA, through MLI. We have already put this indirect structure in place as part of our Brexit strategy, so there is no further action required to implement this. If you clear OTC derivatives on Eurex Clearing AG through MLI, this clearing service will also continue post transition, for a period of three years, under the TRR.

3. How will you offer clearing services on UK CCPs and EU CCPs post transition? Will there be any impact on the CCP protections available to clients or on the CCP account types that you can offer?

Our EU (France domiciled) broker-dealer, BofA Securities Europe SA (“BofASE SA”), has clearing memberships of

⁴ <https://www.bankofengland.co.uk/-/media/boe/files/financial-stability/financial-market-infrastructure-supervision/interim-list-of-third-country-ccp.pdf?la=en&hash=5476B539773D6E5F667DFDC238B982F93C515C6F>

⁵ <https://www.gov.uk/government/publications/hm-treasury-equivalence-decisions-for-the-eea-states-9-november-2020/hm-treasury-equivalence-decisions-for-the-eea-states-9-november-2020>

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all key EU CCPs. If you are an existing EU client of BofA, you will have been offered the opportunity to migrate your business from our UK broker-dealer, Merrill Lynch International (“MLI”) to BofASE SA in order to continue to have access to EU CCPs for clearing of listed derivatives and OTC derivatives. You will also continue to have access to the UK CCPs for clearing of listed derivatives (as an indirect client of MLI through BofASE) and OTC derivatives (directly through BofASE, subject to the response to question 1 above).

If you are an existing non-EU client of BofA, your account and your clearing relationship will remain with MLI and you will continue to have access to the UK CCPs for clearing of listed derivatives and OTC derivatives. You will also continue to have access to EU CCPs for clearing of listed derivatives (as an indirect client of BofASE SA through MLI) and OTC derivatives (directly through MLI). We do not expect market structure changes resulting from Brexit to impact the CCP account types that we can offer, nor to impact rights, benefits or obligations with respect to cleared positions and collateral. You may have experienced certain operational changes on account set up resulting from new indirect clearing chains.

II. Venue Access – DEA

Will it still be possible for a UK client to have direct electronic access to EEA trading venues via BofA from 1 January 2021?

The legislative framework governing the provision and use of direct electronic access (DEA) across the EU27 is not harmonised and therefore requires a case - by – case analysis. We anticipate that in the majority of jurisdictions to which we currently offer DEA we will continue to be able to do so but as we approach 31 December 2020 national regulators may provide additional interpretative guidance that will require us to update our position. If you have questions about specific jurisdictions, please contact your usual Sales & Trading contact. .

Will it still be possible for an EEA client to have direct electronic access to UK trading venues via BofA from 1 January 2021?

Yes.

III. Venue Access– Derivatives Trading Obligation

Does the firm have a contingency plan in place to mitigate any risks arising from the conflict between the MiFIR Derivatives Trading Obligation (DTO) and the onshored DTO?

Industry has been advocating for the UK and the EU to grant equivalence to the (derivatives) trading venues in each other’s jurisdictions prior to the end of the Brexit transitional period, as in the absence of such equivalence decisions or other mitigating relief, EEA counterparties subject to the MiFIR DTO and UK counterparties subject to the “onshored” or UK DTO that wish to trade with each other from 1 January 2021 will face conflicting requirements where the derivatives fall within the scope of both the EEA and UK DTOs (in-scope derivatives), i.e., the most liquid EUR, USD and GBP interest rate swaps and index credit default swaps (CDS).

To mitigate the potential impact of conflicts of regulation in the absence of equivalence or any other regulatory relief, one of the proposed industry solutions for EEA and UK counterparties that could otherwise continue to do business with each other after the end of the Brexit transitional period is to trade in-scope derivatives on a US SEF which is determined to be equivalent under both the EU and UK regimes. You will need to consider whether it is appropriate

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for you to trade on SEF, including whether you have the necessary operational set up to trade and comply with your UK or EU transaction reporting and other requirements.

Asset Managers:

What is your booking model for asset managers acting on behalf of underlying EEA principals?

When a client's proposed structure is for a manager to act for EEA principals with delegation of certain functions to order giving entities, the nature of BofA's interactions with each entity will determine the analysis and our strategy.

The booking is determined by the location of the order giving entity or investment manager, assuming that interactions which give rise to the requirement for cross border licensing are carried out with the investment manager or order giving entity (rather than the EEA principal). That is subject to certain conditions being complied with. The high level strategy outlined below depends on the extent of the delegation and the functions delegated, which will vary from manager to manager.

UK investment managers / UK order giving entities

- Where a client's proposed structure is for a UK investment manager to act for EEA principals (with no other entities being involved) and MLI deals only with the UK investment manager, subject to certain conditions being complied with, we regard the UK investment manager as MLI's client. Such relationships have generally not been repapered with our EEA entities but may stay with MLI.
- Where a client's proposed structure is for an EEA investment manager to act for EEA principals and to delegate to a UK order giving entity and MLI deals only with the UK order giving entity, subject to certain conditions being complied with, we regard the UK order giving entity as MLI's client. Such relationships have generally not been repapered with our EEA entities but may stay with MLI.

EEA investment managers / EEA order giving entities

- Where a client's proposed structure is for an EEA investment manager to act for EEA principals (with no other entities being involved) we regard the EEA investment manager as BofA's client. Such relationships have generally been repapered with our EEA entities.
- Where a client's proposed structure is for an EEA investment manager to act for EEA principals and to delegate to an EEA order giving entity, we regard the EEA order giving entity as BofA's client. Such relationships have generally been repapered with our EEA entities.

EEA investment managers / UK order giving entities

- Where a client's proposed structure is for an EEA investment manager to act for EEA principals and to delegate to a UK order giving entity and MLI deals only with the UK order giving entity, subject to certain conditions being complied with, we regard the UK order giving entity as MLI's client. Such relationships have generally not been repapered with our EEA entities but may stay with MLI.
- MLI may not be able to provide certain regulated services to the EEA investment manager. Instead, these services have generally been provided by one of our EEA entities.

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Does the firm have any plans in place to mitigate any risk arising from the revised guidance regarding the Share Trading Obligation and the Derivative Trading Obligation?

A. Derivatives Trading Obligations (DTO)

Yes. As mentioned in the Venue Access – Derivatives Trading Obligation section, if neither the UK nor the EU ‘recognise’ the other’s trading venues, it would give rise to conflicts of regulation where counterparties subject to the UK DTO wish to trade with counterparties subject to the EU DTO, in contracts subject to both the EU and UK DTO.

To mitigate the potential impact of conflicts of regulation in the absence of such recognition or other regulatory relief, it may be possible for Bank of America and its impacted clients to trade on a US SEF (Bank of America is prepared for this scenario).

B. Share Trading Obligation (STO)

No mutual equivalence decisions have been granted which would allow firms to satisfy the UK or EU STO by trading across trading venues in the EEA and UK. Accordingly, firms (including MLI & BofASE SA) must observe the STO applicable to them, and, where requested, seek to also comply with the STO that applies to their clients.

The EU and UK have taken different approaches to the STO. The EU has sought to limit the scope of the STO to avoid an overlap with a UK STO. The UK has not given any guidance that limits the scope of the UK STO but instead has used its Temporary Transitional Powers to enable entities subject to the UK STO to also satisfy it by trading on EU execution venues. We do not know how long the FCA will continue to adopt this position, which will be kept under review and may be withdrawn. The maximum duration for the power is 2 years.

BofA has enhanced its systems, connectivity, and processes to ensure that we can continue to deliver leading class execution capabilities, including access to relevant venues. Additional information on the scope of the STOs, instruments impacted, our assessment of likely liquidity shifts and how you can inform us about your STO preferences is available from your usual Sales & Trading contact.

National Regimes and MLI:

What are BofA’s views on the availability of EEA national regimes after Dec 2021 that permit cross border access from UK entities and the extent to which your UK entity plans to rely on such regimes?

National regimes provide a patchwork solution to allow MLI to continue to service clients in certain jurisdictions and while we may avail of available regimes for optionality our focus is to service EEA clients from our EEA entities, BofASE and BofA Europe DAC.

However, we continue to monitor developments at the EU27 level to determine which regimes MLI may rely upon in a post transition cliff edge, and are working to ensure MLI has access to all available EEA regimes and exemptions to ensure continued client optionality.

For an up to date summary of the national regime status, please contact brexitclientimpact@bofa.com.

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