

# Third countries

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# Proposed cross-border regime

- A fully harmonised regime run by ESMA for the provision of services into the EU covering eligible counterparty business only
- A third country firm has to register with ESMA
- A broad Commission remit for deciding equivalence, following a detailed and prescriptive template of assessment
- Harsh transitional arrangements with the potential to disrupt cross-border business

# Cross-border regimes as passed in MiFIR

- Has broadened in scope to cover all wholesale clients
- The assessment of equivalence is now outcomes-focused
- Proportionate transitional arrangements mean that the Commission cannot run out of time because national rules can continue to apply for three years after a positive equivalence decision is made
- Retains the current 'with or through' exemption and the ability of professional clients and ECPs to access services outside the scope of EU regulation if they do so at their 'own exclusive initiative'
- A 'branch passport' is available to third country firms servicing professional clients and ECPs once certain conditions have been met

# Proposed branch regime

- The original proposal mandated that all retail and professional clients be serviced through a branch
- Branch authorisation depended on a prior equivalence and reciprocity decision, coupled with a four year sunset clause transitional provision
- The application of harmonised authorisation requirements and conduct of business rules subject to individual Member State oversight
- A services passport granted to the branch so it could provide services across the EU

# Branch regime as passed in MiFID

- The harmonised branching regime is now optional and subject to the exercise of national discretion
- The scope has been narrowed to focus on retail business alone
- If the discretion is exercised, firms will be compelled to provide services through the branch
- Member States must apply the harmonised authorisation requirements and conduct of business rules
- No role given to ESMA and likewise no equivalence decision and therefore no pan-European 'branch passport'.