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Insights

6 KEY THINGS YOU SHOULD KNOW: UK FINANCIAL SERVICES REGULATORY RESPONSE TO CORONAVIRUS CRISIS

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SUMMARY

The impact of the Coronavirus crisis has been sudden and steep in the UK. There has been a huge number of announcements and initiatives of relevance to the UK financial services industry. We have selected the key items that may be of particular significance to various firms. Please note that this is in no way an exhaustive list of all the announced responses. This is the first of a series of BCLP Client Updates following from our Emerging Themes in Financial Regulation publication. We are monitoring the developments and will keep you updated.

In the initial flurry of responses and initiatives, we have generally seen two types of measures. Firstly, there have been new initiatives and powers that have been specifically designed to help address the crisis. Secondly, regulators have also been reminding firms of existing rules and current expectations to help ensure that they respond to the crisis in a proportionate and compliant manner.

General supervision

1. The Financial Conduct Authority (FCA) has made several statements reminding firms to take reasonable steps to ensure continuing compliance with regulatory requirements, including on contingency planning, fair treatment of customers and systems/controls regarding remote working.

These are not "hard" new rules but they clearly set out the FCA's expectations on how certain existing requirements should be complied with. For example, the FCA reminds firms of communicating with it appropriately about their crisis planning. The FCA also encourages firms to do more to "treat customers fairly" such as not suspending credit cards of those in difficulty even though the firm may be entitled to do so under the FCA rules.

Firms should also be particularly mindful of the relevant requirements in the context of “working from home”, such as call recording requirements and market abuse-related obligations. In this respect, ESMA has stated that where firms cannot implement their call recording procedures, they must take alternative steps such as taking written minutes or notes of relevant calls and that firms are expected to take all possible efforts to ensure compliance.

2. In relation to primary markets, the FCA has stated that issuers should continue to comply with the Market Abuse Regulation (MAR) and relevant FCA rules.

Persons discharging managerial responsibilities (PDMR) and their “close associates” should be particularly vigilant with respect to their notification requirements. Further, issuers should consider if their responsive measures themselves constitute a disclosable event under MAR. Please see our previous update on this for further information (https://www.bclplaw.com/en-GB/thought-leadership/primary-market-bulletin-no-27-coronavirus-update.html).

In addition, the FCA strongly requests that all listed companies (excluding AIM companies) delay publication of preliminary financial statements. This is a voluntary moratorium and applies only to preliminary results that are due to be published within the next two weeks (from 23 March 2020).

Regulatory capital

3. Bank of England (and Prudential Regulation Authority) has reduced the countercyclical capital buffer (CCyB) from 1% to 0%, effective from 11 March 2020 for at least 12 months.

The CCyB was scheduled to be increased to 2% by December 2020. The CCyB applies only to exposures to UK borrowers. The reduction impacts not only UK firms (essentially, banks and PRA-authorised investment firms) but also EEA firms that have such UK exposures. This means that affected firms no longer need to hold the additional capital (as calculated under the CCyB); the intention is that such firms (e.g. banks) can then use the released capital to lend to businesses.

Simultaneously, the PRA warned affected firms not to use the freed-up capital to make dividend or other distributions (e.g. bonus) and the PRA may request firms to submit written records of how they have made use of such funds.

Securities trading

4. The European Securities and Markets Authority (ESMA) has reduced the notification threshold for net short positions (under the EU Short Selling Regulation) to 0.1%, effective from 16 March 2020 for 3 months.

This effectively reduces the threshold for “private notification” (0.2%), i.e. available to the FCA only. The “public notification” threshold remains at 0.5%, i.e. such disclosures will be published on the FCA website. The reduction may capture firms that have never made such reports (e.g. those whose shorting strategy is to stay below the previous 0.2% threshold).

Most EEA regulators (including the FCA) require firms to register first before they can report. Further, such notifications must be made by 15:30 local time on the trading day following the net short position. So newly in-scope firms should ensure they understand each relevant regulator's reporting procedures as well as the reporting regime in general. Firms familiar with the current rules may need to make changes to their internal processes (e.g. calculation triggers).

New Bank of England Governor Andrew Bailey also warned short sellers to think carefully about their actions.

In the meantime, several EU member states (Belgium, France, Italy, Greece and Spain) have temporarily banned the short selling of certain listed instruments until mid-April and as a result short selling of such listed securities is also banned in the UK. Please note that as at the time of writing the FCA itself has not imposed such a ban.

5. ESMA has announced a certain relaxation of the requirements under the Securities Financing Transactions Regulation (SFTR), by effectively delaying the Phase-1 reporting requirements to Phase 2. This means firms now have additional time to prepare. The FCA announced on 20 March 2020 that it would follow ESMA's statement.

Investment Management

6. In the investment management sector, there has been considerable pressure on authorised funds to consider gating or taking other measures to protect their liquidity. On 19 March, the FCA published a speech given by Edwin Schooling Latter asking for industry input on the response to liquidity issues within funds. The FCA has been looking closely at fund liquidity for some time and whilst the speech was not aimed specifically at the Coronavirus crisis, it is nonetheless very pertinent to the issues that authorised fund managers are currently seeing.

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