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Insights

UK FINANCIAL SERVICES REGULATORY RESPONSES TO THE CORONAVIRUS CRISIS: THE KEY THINGS YOU SHOULD KNOW

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SUMMARY

Following our previous update on the various regulatory responses to the Coronavirus crisis (see our previous article), we set out here a summary of the key developments that have materialised since. As we observed in our previous update, there are two broad types of responses: one covers new initiatives and powers that have been specifically designed to deal with the crisis; the other reminders of existing rules and current expectations to help firms manage their compliance.

Last week, the majority of measures and announcements were seeking to address the immediate impact of the crisis. This week, the measures have begun to be a bit more forward looking. In particular, there have been announcements seeking to help firms and issuers understand expectations on operational resilience and on market announcements. Whilst there have been dispensations or delays in some areas (such as on SFTR implementation), in other areas (such as LIBOR transition) firms must still work to the original timetable. This means that firms must take care to assess which projects can be put on hold, which must continue regardless, and ensure that those projects that are delayed get back on track once there is a return to business as usual.

General supervision

The Financial Conduct Authority (FCA) continues issuing and updating various statements setting out its expectation of firms with respect to compliance with existing requirements. The latest updates include a clarification that, with respect to the Senior Manager & Certification Regime (SM&CR) requirements, firms do not have to designate a single senior manager specifically responsible for their Coronavirus contingency responses. Rather, firms should allocate the relevant responsibilities in the way which best enables them to manage the risks they face. The FCA goes on to suggest, by way of example, that SMF24 (for operational resilience) and SMF2 (for financial resilience) could be selected for such roles. This provides timely guidance as firms have been raising queries on the SM&CR application in the context of contingency planning and management.

Separately, the FCA has noted that the LIBOR transition plans remain unchanged. That is, firms should not rely on LIBOR being published after the end of 2021. This means that firms should continue their preparation for the replacement of LIBOR.

In other areas, firms and issuers are being given some breathing space. The FCA has given listed companies an extra 2 months to prepare and publish their financial statements (and is indeed encouraging them to take this extra time). This should provide issuers with much-needed time to consider and reflect the impact of the Coronavirus on their financial performance. Issuers are however reminded that they must still ensure they are mindful of their obligations on inside information and market updates.

Regulatory capital

In a prudential context, the FCA has issued some guidance specifically for solo-regulated firms (essentially, all authorised firms other than banks, insurers and large investment firms). The FCA reminded these firms of ensuring the sound management of their financial resources, particularly capital requirements. The FCA further notes that the relevant firms can use various capital buffers (if applicable to them) to support their business. This is largely in line with the approach of the Prudential Regulation Authority (PRA) with respect to the capital requirements for PRA/FCA dual-regulated firms.

The FCA, PRA and Financial Reporting Council have jointly provided a number of guidance and announcements relating to how firms should make the relevant capital calculations under IFR9. These actions appear to be in line with the calls made by the European Banking Authority (EBA) and European Securities and Markets Authority (ESMA) with respect to calculations under IFR9.

While these announcements largely provide guidance and clarification to solo-regulated firms on the relevant capital requirements, the very fact that it has been issued suggests that the authorities have a particular focus on firms' continued compliance with their regulatory capital requirements. In other words, firms should view this as a pre-warning that they cannot cite the Coronavirus impact as a convenient excuse for failing to comply with their ongoing prudential requirements.

Securities trading

In commenting on market activities, the FCA has given particular emphasis to short selling activities. So far, the UK has differed from many EEA markets which have imposed short-selling bans to help mitigate the effect of the Coronavirus crisis on the markets. The FCA has not to date imposed any such restrictions on UK markets. The FCA notes that short selling does not appear to be driver of current market movements and cautions that any ban on short selling should be considered carefully. This may explain the FCA's approach and its divergence from other EEA competent authorities which have imposed temporary bans on short selling (please see our Previous Update). Note that under the relevant parliamentary procedures, certain written question has been raised by MPs to HM Treasury on how it plans to address the perceived short selling risks.

HM Treasury has not, at the time of writing, provided an answer to the question. It remains to be seen whether or not the FCA would change its position on this.

Additionally, in line with the ESMA's statement which effectively calls for the delay of the new tick-size regime under MiFID II from 26 March to 26 June, the FCA has stated that it will adopt the ESMA approach.

Payment services

In an effort to reduce the handling of cash which may be contaminated with the Coronavirus, UK Finance (the trading body of the UK financial services sector) has announced that the UK card issuers will increase contactless payment limit from the current £30 to £45, effective from 1 April. This effectively increases the limit to the €50 maximum permitted under the relevant EU payment regulation.

Subsequently, the EBA is now calling for EU payment service providers to increase contactless payment limits to the maximum €50.

Under the initial guidance on the implementation of the strong customer authentication (SCA) requirements under the revised Payment Services Directive, the EBA had set out certain milestones whereby EU payment service providers are requested to provide reports on their implementation readiness. Now, the EBA has called for EU regulators to effectively disapply the first reporting milestone of 31 March 2020 with respect to SCA readiness for online card payments. As the UK has a different SCA implementation timeline, this suggested approach should not have significant impact on the UK payment service providers.

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