

COVID-19: Overview of key regulatory measures in financial services across Europe



As COVID-19 continues to cause disruption across the globe, European financial services regulators are taking an increasing number of actions to help those they regulate in navigating this difficult time, to ensure that the financial markets continue to function with some degree of effectiveness and to protect those in greatest need during this crisis. This newsletter is to keep our clients up to date with the key regulatory measures being adopted across Europe and to provide practical observations from our interactions with clients and the regulators. We will publish periodic updates over the coming weeks and months; our first publication focusses on key updates from the UK, Germany, Spain and Poland.

Europe

Whilst it is not the case that national regulators in every European country are taking identical actions in response to COVID-19 there are, of course, similarities. Some of the common themes include:

- a concern that consumers, particularly vulnerable consumers, are at risk of being "scammed". Indications are that firms will be expected to go further in informing and protecting consumers;
- regulators understanding that firms will have difficulties with continuing to maintain certain regulatory requirements, as they would under 'normal' circumstances. A number of regulators are indicating on which rules they are prepared to provide flexibility and on which they are not; and
- an increasing pressure, and in some jurisdictions and sub-sectors, regulatory/legislative action to reduce or prevent financial institutions, particularly banks and insurance companies, from paying dividends in part to increase/protect their capital buffers.

UK

Updates

The actions taken by the FCA and PRA since the beginning of the COVID-19 crisis are unprecedented. Measures taken by the FCA have included the issuing of guidance on the Coronavirus Business Interruption Loan Scheme, to mortgage providers on payment holidays and on the application of key worker rules in financial services. The regulator has also allowed a delay to the publication of the audited financial accounts of listed companies and has created a dedicated [webpage](#) containing COVID-19 related information for firms.

Whilst we are unable to cover all of the actions taken by the FCA since the beginning of the COVID-19 crisis here, we have set out below some of the regulator's key actions over the last few weeks.

- **The Senior Managers and Certification Regime:** It is clear that the FCA (and PRA) are trying to strike a balance between

reducing bureaucracy and increasing flexibility for firms, whilst still maintaining meaningful accountability and appropriate governance. There is no expectation that firms have a single Senior Manager responsible for their COVID-19 response, but they do still expect all Senior Management obligations to be maintained and re-distributed where individuals are incapacitated due to COVID-19. Key points from the FCA's statements in relation to the Senior Managers and Certification Regime are as follows:

– Dual regulated firms:

- firms are expected to submit revised Statements of Responsibilities "as soon as reasonably practicable" if there are significant changes to an SMF's responsibilities due to COVID-19;
- if firms cannot reallocate an absent SMF's Prescribed Responsibilities among their remaining SMFs due to COVID-19, they can temporarily allocate them to the individual who is acting as interim SMF under the 12-week rule; and
- the statement sets out FCA and PRA expectations around the furloughing of SMFs, listing out those functions that dual-regulated firms must have individuals performing at all times;

– Solo regulated firms:

- there is no need for firms to submit revised Statements of Responsibilities if there is a change due to sickness, or other temporary changes in responsibilities due to COVID-19 and the firm expects to revert to the pre-existing arrangements; and
- if temporary arrangements for SMF cover last longer than 12 weeks, firms can notify the FCA that they consent to a modification of the 12-week rule which can be extended up to 36 weeks.

The key here is to document the allocation of responsibilities and ensure that Management Responsibilities Maps (if required) are kept updated.

For more information for dual regulated firms see [here](#); for solo regulated firms see [here](#).

- **Firms' financial crime and market abuse systems and controls:** The FCA has emphasised that the prevention and detection of financial crime, and market abuse specifically, remains a priority and that COVID-19 does not remove firms' obligations under the Market Abuse Regulation and relevant FCA rules, for example:
 - in its [Primary Market Bulletin](#) (issue 27), the FCA references market abuse requirements in multiple places. It reminds issuers of their obligations as well as the notification requirements relevant to persons discharging managerial responsibilities (PDMRs), and "persons (who are) closely associated";
 - the FCA's [Dear CEO letter](#) dated 31 March makes it clear that whilst firms may have difficulties around KYC, there is flexibility already built into the rules and firms must continue to satisfy their obligations.
- **Retail investments:** The FCA is evidently concerned about the difficulties that retail investors may face during the pandemic and has published guidance to firms on the information they can provide to clients in a non-advisory context, including:
 - firms should ask for background information that may help to uncover grounds for concern; and
 - the FCA has provided a number of example messages that firms could consider using when providing customers with information.

The key message is that, provided a firm does not steer a customer to a specific investment outcome, it is unlikely that the FCA will consider advice (personalised or general) has been given. The FCA has confirmed that the Financial Ombudsman Service (FOS) will take the FCA's guidance into account. For further information, see [here](#).

- **Temporary financial relief for customers impacted by COVID-19:** Last week the FCA confirmed a package of temporary measures to assist those holding some of the most common consumer credit products. Expectations of firms include:
 - offering temporary payment freezes on loans and credit cards for up to three months;
 - allowing those negatively impacted by COVID-19 who already have an arranged overdraft on their main personal account up to £500 at zero interest for three months; and
 - ensuring that the credit file of consumers using any of these temporary measures is not affected.

For further information about these measures click [here](#).

- **CASS difficulties:** The CASS regime includes strict deadlines and a number of specific requirements, which can be hard to manage in the current circumstances. The regulator's message is that: a) firms need to do their research before contacting the regulator for guidance; b) there are some workarounds in the

current rules; and c) firms should continue to report breaches in the normal manner, even if they consider that the breach is a consequence of the current circumstances. The FCA has provided a summary of the queries that it has received (along with its general advice) [here](#).

- **Raising new capital:** The FCA has announced a series of measures aimed at assisting companies to raise new share capital in response to the coronavirus crisis while retaining an appropriate degree of investor protection. This is relevant to listed companies as well as corporate financiers/corporate advisers and details of the measures can be found [here](#).
- **MiFID – 10% portfolio value reporting:** The FCA published a Dear CEO letter about coronavirus to firms providing services to retail clients and in particular, those firms providing Portfolio Management Services or holding retail client accounts. The relaxation in this area runs until the end of September 2020 and states that the regulator will not take enforcement action where at least one notification to a retail client has taken place indicating that their portfolio as decreased in value by at least 10%. Other relaxations in this area were also cited and can be read [here](#).
- **Best execution:** in the same Dear CEO letter as above, flexibility was also introduced permitting firms until the end of June to publish data under RTS 27 and RTS 28, extending deadlines to 30 June under both Standards.

Practical observations

The measures summarised above are public actions being taken by the FCA. During the course of our work we have made a number of observations as to how the FCA is operating in practice:

- the FCA has been surprisingly active with current supervisory and enforcement matters;
- in an enforcement context, the FCA is considering issuing information requirements in place of conducting interviews. Notwithstanding that, enforcement cases are progressing to the next phase of the investigation, whatever that may be; and
- there appears to be a varying approach to section 166 'skilled persons' reviews; some are progressing whilst others have been postponed, we feel this is likely to be dependent on the sector of the firm concerned and whether the risk of poor outcomes is still present to its clients as a result of COVID-19.

Whilst many firms currently find their time and resources squeezed, it is evident that some are seeing a respite in regulatory supervision and are using that opportunity to review, or consider making changes to, their current systems and processes. We have also seen firms horizon scanning so that they are prepared for business after the pandemic.

DWF articles

You can find more in-depth articles on our [COVID-19 hub](#). In particular, we have produced updates on the following:

- the FCA has released its 2020/2021 Business Plan whilst acknowledging that COVID 19 has resulted in a re-focusing and a reduction of planned activities, at least, in the short term. Full summary [here](#);
- you can find our top tips for staying on the right side of the regulator during [COVID-19 here](#); and
- the FCA has introduced measures to help consumers who have outstanding loans and credits, for a full summary, see [here](#).

Germany

Updates

In response to COVID-19, the German Federal Financial Supervisory Authority ("**BaFin**") published FAQs addressing numerous queries it had received from the market. We have highlighted some of the key points below:

- **Money laundering requirements (state promotional loans):** subject to the specific requirements of the respective state promotional loan conditions, BaFin will not object if the identification processes for granting state promotional loans are carried out in accordance with Section 14 of the Money Laundering Act (simplified due diligence);
- if, after establishing the business relationship, a firm identifies the client as posing higher risks, the firm will need to take appropriate additional measures at a suitable time;
- **Forbearance measures:** if an institution postpones a loan on the basis of a governmental order, this is not considered a forbearance measure within the meaning of Article 47b of the Capital Requirements Regulation (the "**CRR**") because the institution does not decide to postpone the loan for a specific obligor; rather, the postponement applies to a larger group of obligors without regard to their specific individual financial situation;
- **Default of loans:** if a loan is postponed on the basis of a governmental order, the counting of days past due within the meaning of Article 178(1)(b) will be suspended for the period subject to the governmental order;
- the "unlikely to pay" criteria as part of the definition of default under Article 178(1)(a) of the CRR requires a case-by-case assessment: the basis for the institution's assessment is the obligor's payment obligations towards the institution in accordance with the postponement as stipulated by the governmental order. If an obligor receives support from a third party, e.g. through rent reductions or public grants, this is also taken into consideration in the assessment by the institution;
- **Reporting:** for certain reports, particularly those based on the German Financial and Internal Capital Adequacy Information

Regulation (Finanz- und

Risikotragfähigkeitsinformationenverordnung – FinaRisikiv) and the reporting of large exposures and loans of €1 million or more, BaFin and the Deutsche Bundesbank will not be taking supervisory measures for late submissions. Institutions will be permitted to use an additional modified submission procedure for master data reports for reporting large exposures and loans of €1 million or more;

- **IFRS 9 accounting and valuation:** IFRS 9 stipulates that estimates of expected loss for determining impairments are performed on a point-in-time basis and take into account forecasts for future macroeconomic development. BaFin recommends that institutions place greater emphasis on scenario estimates that remain stable over the long term and that are based on past experience for the estimation of credit loss and for the assessment of the necessity of a transfer between Stages within the scope permitted under the IFRS. This applies in particular where banks are facing uncertainties in generating reasonable and supportable forecasts. Measures by the public authorities intended to mitigate the effects of the crisis, such as support programmes and moratoria, should also be taken into account by institutions in their estimates;
- **Capital conservation buffer:** in the current situation, it is possible for institutions to use the capital contained in the capital buffers (see the Pillar 2 Capital Guidance), in particular for the purposes of granting loans. If an institution fails to meet the combined buffer requirement, this does not represent a breach of supervisory minimum capital requirements but rather the appropriate use of available equity. There are therefore no grounds for the competent supervisory authorities to object to this appropriate usage of the capital buffer;
- **Segregation of front and back office:** as a rule, the principle of dual voting in risk-relevant credit business should be observed so as to prevent conflicts of interest arising when the same staff members process loans in both the front and back office. However, to mitigate the impact of staff shortages resulting from the crisis, BaFin considers a more flexible deployment of staff members acceptable in exceptional circumstances in order to maintain the institution's operational capacity. Institutions will need to remain alert to (and manage) the risks that arise when the same staff members perform duties in both the front and back office.

Practical observations

During the crisis, institutions should communicate with BaFin and Deutsche Bundesbank, in the following ways:

- in order to reduce personal contact as far as possible, most employees are working from home. Therefore, firms should use email (or known telephone extensions) to speak with your BaFin contacts (and BaFin and Deutsche Bundesbank more generally);
- if electronic communication should be impossible in an exceptional case or due to legal form requirements, BaFin and Deutsche Bundesbank ask that you discuss the matter with

them in advance if possible;

- most supervised entities already have a secure connection to BaFin and to the Deutsche Bundesbank. If you do not, it is recommended that you contact BaFin or Deutsche Bundesbank.

On-site inspections, such as inspections of banking business carried out by the Deutsche Bundesbank and cover audits for SIs and LSIs, are being discontinued for the time being. Any inspections commenced prior to the COVID-19 crisis will be completed without any on-site activities, wherever possible. For the present, no new routine inspections will be ordered.

Spain

Updates

Under the 14 March 2020 Royal Decree declaring a state of emergency in Spain, the Spanish market supervisory entities - both the Bank of Spain and the Spanish Stock Market National Commission (*Comisión Nacional del Mercado de Valores*) (the "CNMV") - suspended all their authorization, admission and other internal proceedings until the end of the state of emergency. The employees of both entities are working remotely and any applications to the supervisors must be submitted online. These arrangements are expected to continue until at least 26 April 2020.

Following the recommendations of the European Securities and Markets Authority ("ESMA"), the Bank of Spain and CNMV are focused on ensuring that the firms they supervise:

- implement their business continuity plans;
- share material information on the economic impact of COVID-19; and
- manage their risks according to the applicable regulatory and/or legislative standards.

The Spanish Government has offered up to €100,000 million of financial support to unlisted businesses (in particular, SMEs and individuals) backed by a State Guarantee through the Official Credit Institute ("ICO"). Measures taken by the Bank of Spain in support of the Government's actions include:

- ensuring intermediary banks' terms and conditions are in line with Government policies relating to the leniency of terms for those entities financially affected by COVID-19. Each loan of up to €1,5 million is being granted for a maximum period of 5 years with a State Guarantee of between 60% and 80% of its amount and with a capital repayment moratorium of 2 years;
- publishing guidelines following the recommendations of the European Banking Authority and ESMA on the risk classification of refinancing transactions carried out during this period. The guidelines aim to prevent certain types of transactions from automatically being classified as refinanced and restructured so as to fall in the "unlikely to pay" risk category. The relevant transactions are those that:

- receive a State Guarantee;
- have their amortization calendar amended; or
- have a payment moratorium agreed;
- in line with the above, specific considerations include:
 - any financing product with a payment delay of more than 30 days should not be classified automatically as "standard risk with special surveillance" ("NVE" risk) if no additional long-term risk increase is justified;
 - an increase in risk classification may only be justified if the financing transaction as a whole is affected rather than just the punctuality of repayment or on a temporary basis;
 - only amendment or restatement transactions where the debtor is seen to have financing difficulties for repayment in the long term – and not just exceptional cash shortages due to COVID-19 effects - may be classified as refinancing or restructuring transactions;
 - any other amendment of financing agreements shall be treated as renewals or amendments and kept with their normal risk classifications, provided that there is no justified risk of payment failure for the whole transaction under the new conditions.

The CNMV has also issued several guidelines on flexing the corporate requirements applicable to listed companies such as:

- the permitted assistance of members to general shareholder meetings and to board of directors meetings by virtual means; and
- extending the time period to propose the companies' annual accounts and distribution of proceeds by the boards of directors and in calling the general shareholders meetings for their approval.

Lastly, on [15 April 2020](#), the CNMV extended until 18 May 2020 the prohibition on short selling shares and financial products - including futures and options – over any shares and rights listed on a Spanish market.

Practical observations

The Bank of Spain and CNMV have responded quickly to the COVID-19 crisis taking actions in order to balance their duties, protect their personnel and continue supervising the financial markets and activities of those they regulate.

Poland

Updates

The Polish Financial Supervision Authority (PFSA) presented the Supervisory Stimulus Package for Security and Development.

The PFSA has recently announced a COVID-19 support package for the Polish financial (primarily banking) sector, the Supervision

Regulatory Impulse Package for Security and Development (the "SSP").

The SSP aims to strike a balance between securing the stability of the financial system (especially the banking sector) and maintaining the availability of credit for businesses. The SSP is divided into the following sections:

- reserves and credit exposure classification including:
 - PFSA proposals amending the Regulation of the Minister of Finance in relation to provisions for risk related banking activity. Specifically, these changes provide certain exemptions from the requirement to reclassify credit exposures to:
 - micro, small and medium sized entities;
 - individuals (including employees and those who have recently lost their job),
 - where there is a change of repayment schedule caused by COVID-19.
- capital buffers (which includes supporting lower systemic risk buffers);
- liquidity requirements (the PFSA is adopting an individual approach to liquidity buffers in the case of each bank);
- day-to-day supervision (which includes decreasing the number of scheduled controls in banks as well as a 6 month extension to the time limit for banks to conform to EBA guidelines on outsourcing); and
- legislative measures (including proposing legislation under which banks would be able to extend the deadlines for

repayment of loans or amend the terms of loans in favour of individual and SME clients based on their creditworthiness assessed after 30 September 2019).

The PFSA has also announced measures to assist in financing SME clients whose creditworthiness has not been assessed since 30 September 2019. For further details of these measures please click [here](#).

The PFSA suggests the suspension of payment of dividends by banks and insurance companies.

The Chairman of the PFSA has made it clear that he expects banks and insurance companies not to pay dividends from the profit generated in previous years. The PFSA has stated that banks and insurance companies should strengthen their capital base by accumulating profit. In addition, they should not engage in any activity outside of the scope of their normal business without prior consultations with the PFSA.

Practical observations

The PFSA has been very active in preparing and implementing measures in response to COVID-19. The measures adopted by the PFSA demonstrate that it is taking a flexible and market-oriented approach to the pandemic.

Contacts

UK

Financial Services



Martin Pugsley

Head of Financial Services Sector

T +44 20 7645 4135

M +44 7718 130 683

E martin.pugsley@dwf.law

Financial Services Regulatory Legal



Robbie Constance

Partner

T +44 20 7645 9629

M +44 (0)7545 100 514

E robbie.constance@dwf.law



Richard Burger

Partner

T +44 20 7280 8944

M +44 7545 100 510

E richard.burger@dwf.law



Imogen Makin

Legal Director

T +44 20 7220 5262

M +44 (0)7842 608 194

E imogen.makin@dwf.law



Aaron Osborn

Associate

T +44 20 7220 5246

M +44 (0)7892 701 766

E aaron.osborn@dwf.law

Regulatory Consulting



Andrew Jacobs

Partner

T +44 20 7645 4459

M +44 (0)7902 701 867

E andrew.jacobs@dwf.law



Darren Fisher

Director

T +44 20 7645 9533

M +44 (0)7598 600 112

E darren.fisher@dwf.law

Germany



Marc von Ammon

Partner

T +49 (0) 221 534098-0

M +49 (0) 151 12659375

E marc.vonammon@dwf.law

Spain



Diego Artacho

Partner

T +34 93 503 48 68

M +34 91 758 39 06

E diego.artacho@dwf.law



Iratxe Lezamiz

Senior Associate

T +34 695 880 220

M +34 917 583 906

E iratxe.lezamiz@dwf.law

Poland



Adam Stopyra

Partner

T +44 20 7645 9533

M +48 57 124 4772

E adam.stopyra@dwf.law



Michał Torończak

Senior Associate

T +48 22 653 4257

M +48 692 003 532

E michal.toronzak@dwf.law