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

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COVID-19: Regulatory measures across Europe

As highlighted in our previous newsletters, European financial services regulators have taken numerous actions to help those they regulate navigate this difficult time, to ensure that the financial markets continue to function as effectively as possible and to protect those in greatest need during this crisis. We are starting to see the number of new measures slow down across Europe, although the UK Financial Conduct Authority ("FCA") is an exception and it continues at pace.

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 continue to publish periodic updates over the coming weeks and months; our third publication focusses on key updates from the UK, Germany, Spain and Poland.

Europe

Previous newsletters have highlighted regulators across Europe adopting measures to address their key concern that banks and insurance companies retain, and can access, sufficient capital. The overriding objective is evidently to ensure that these institutions remain financially resilient, whilst also being able to provide the maximum support possible to their customers.

Whilst this is still important, we are starting to see the focus shift to more practical measures to a) help firms practically with the day to day requirements of their business (e.g. accepting scanned signatures) and b) set expectations to relax some regulatory requirements (where reasonable to do so) whilst indicating those requirements that must be strictly adhered to (evidently financial crime is an area of critical importance to regulators). This change is logical as, for the time being at least, the 'heavy hitting' capital measures have largely been implemented and the next stage is the conduct of business in the 'new normal'.

UK

Updates

The FCA and PRA have continued to be very active in their response to COVID-19. The FCA continues to identify and communicate areas of concern, one of the most pertinent being financial crime. In the last two weeks, the FCA has reiterated that obligations under the Senior Managers and Certification regime still apply and *"that Senior Managers have a crucial role to play to ensure their firms continue to act appropriately and with integrity"*[1]. The FCA has also identified further projects/requirements which have been postponed to take into account the difficulties faced by firms as a result of COVID-19. We have set out below a summary of the key actions taken by the FCA over the last two weeks.

Launch of the Financial Services Regulatory Initiatives Forum Grid (the "Grid")

The launch of the Grid was initially announced in March's budget and has been brought forward in light of the pressure on firms' resources due to COVID-19 in order to assist in planning for upcoming regulatory work. The Grid sets out the planned timetable for major regulatory initiatives by the Forum's members (HM Treasury, the Bank of England, PRA, FCA, Payment Services Regulator and Competition and Markets Authority), including the transition from LIBOR and the introduction of legislation to prepare for the end of the EU withdrawal period.

[1] Speech delivered by Nausicaa Delfas, FCA Executive Director of International at the Deloitte Annual Conduct Risk Conference

Notably, the Grid also details those regulatory initiatives that have been cancelled or delayed due to COVID-19; these include the Bank of England's annual stress test and a number of FCA consultations.

Firms should consider the details of the Grid and plan for the regulatory initiatives affecting them as soon as possible, consulting the relevant regulator, such as their FCA supervisor, for example, for further clarity if required. Firms are also being encouraged to provide feedback on the Grid as it has initially only been implemented as a one-year pilot exercise.

Further details on the Grid can be found here.

Financial crime systems and controls during the COVID-19 crisis

On 6 May 2020, the FCA set out its expectations on how firms should apply their systems and controls in order to prevent financial crime during the crisis. The FCA has reiterated that firms should remain vigilant to new types of fraud and make any amendments necessary to their systems and controls in order to respond to them. The regulator still expects the timely submission of Suspicious Activity Reports in relation to new threats.

The FCA's expectations include that firms should not change or switch off transaction monitoring triggers or sanctions screening systems for the sole purpose of reducing the number of alerts generated in order to deal with operational issues experienced as a result of COVID-19. However, the FCA has acknowledged that firms may need to *"re-prioritise or reasonably delay some activities"*. Examples of such activities given by the regulator are on-going customer due diligence reviews or reviews of transaction monitoring alerts. Helpfully, the FCA has set out that it will consider such delays *"reasonable"* provided that they are risk-assessed and that there is a plan to return to normal processes *"as soon as reasonably possible"*.

As mentioned in our first newsletter, the FCA has reiterated that it expects firms to be able to continue to comply with their obligations on client identity verification as there is already some flexibility in the existing requirements (for example, relating to scanned documentation and reliance on third party verification).

The messages from the FCA are clear:

1 the FCA expects to be notified of *"material issues that are impacting the effectiveness of…[firms'] financial crime controls or causing significant delays to remediation plans"*; and
2 firms must risk assess, document and ensure that any changes to their systems and controls go through the appropriate governance mechanisms.

Firms should be especially mindful of their Principle 11 obligations in relation to their financial crime systems and controls; it has long been a focus of the FCA and is likely to remain at the top of the FCA's agenda throughout the pandemic. Communications with the regulator during this period are key, as is the swift identification and rectification of any gaps identified in firms' financial crime systems and controls during the pandemic.

Further details of the FCA's expectations can be found here.

Statement from the members of the Working Group on Sterling Risk-Free Reference Rates (RFRWG) on the impact of COVID-19 on the timeline for firms' LIBOR transition plans

The UK's financial regulators remain adamant that firms cannot rely on LIBOR being published after the end of 2021. The FCA and the Bank of England have worked with members of the RFRWG to consider how all firms' LIBOR transition plans may be impacted by COVID-19. The FCA stressed that continued progress on LIBOR transition to SONIA throughout this difficult period has been largely completed. However, the FCA stated there will likely be continued use of LIBOR-referencing loan products into Q4 2020 in particular, to maintain the smooth flow of credit to the real economy. The work by RFRWG, the FCA, the Bank of England and international counterparts will continue to assess the impact of COVID-19 on firms' LIBOR transition efforts and further updates will be provided in due course.

For further details about the statement see here.

FCA guidance for consumers and firms regarding complaints handling during the COVID-19 pandemic

On 1 May, the FCA issued guidance recognising that firms will have staff who have been furloughed or who are working remotely and therefore response times to complaints may be delayed. For this reason, the FCA stated that priorities for firms are paying consumers who have accepted offers of redress, prompt and fair resolution of complaints from vulnerable consumers and micro/small enterprises as well as sending timely holding responses to those complainants where their complaints cannot be resolved promptly.

Where a firm cannot deliver these three priorities adequately and effectively through home working, then the FCA consider it could be appropriate for the firm to maintain a minimal physical onsite presence, so long as the site is configured for social distancing in line with Government guidelines.

The FCA also does not expect to see any drop off in the quality of complaint handling and still expects relevant obligations to be met. Firms are expected to contact their usual FCA supervisor if they encounter difficulties complying with these or contact firm.queries@fca.org.uk.

During this health crisis, in addition to those previously treated as vulnerable, other consumers may now also be vulnerable due to poor health, low financial or emotional resilience, life events such as bereavement or divorce and low (financial) capability. The FCA has asked consumers to inform firms if they fall into one of those now vulnerable categories when making complaints and warned firms to be alert to a customer's possible change of circumstances when dealing with them.

In addition, the FCA has given specific guidance to claims management companies on how to liaise with relevant stakeholders and consumers. For further information regarding the FCA's guidance please see our more detailed article here.

Delay to the implementation of Strong Customer Authentication for e-commerce

Following general guidance to all EU jurisdictions from the EBA, on 30 April the FCA issued a statement announcing that due to COVID-19 there will be a 6-month extension for firms to implement Strong Customer Authentication ("**SCA**") for e-commerce as mandated by the Payment Services Regulations 2017. The new deadline is 14 September 2021.

UK Finance has been coordinating the various finance industry bodies and is the architect of the phased implementation plan guiding firms towards compliance. It will now be obliged to revise that plan and will, no doubt, be consulting on that now. As before, firms should be working towards compliance to avoid regulatory intervention and full enforcement will follow 14 September 2021 for non-compliant parties.

Firms should therefore be engaging with their industry body in ongoing consultations and all businesses impacted by the SCA implementation (such as on-line retailers) should also watch further developments closely as they impact operational planning.

For further information regarding the FCA's statement see here.

Period to cover absent Senior Managers of solo-regulated firms extended due to COVID-19

The FCA has extended the maximum period that firms can arrange cover for a Senior Manager without being approved from 12 weeks to 36 weeks. Firms need to notify the FCA via Connect if they wish to use this extension as a precautionary measure. At the time of writing, we note there is a typo on the FCA website. The FCA references a modification to SYSC 24.1.2 when they mean SYSC 24.2.1 as shown by the actual Direction.

Further details regarding the extension can be found here.

Practical observations

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

1 the FCA continues to be very aggressive with current supervisory and enforcement matters. We have seen an increased focus on those sectors of the market that are most impacted by the pandemic and as a result present the greatest risk of consumer harm. As promised in its recent Business Plan, the FCA has targeted smaller firms;

2 the FCA continues to send the message that it is very much business as usual and that it will not hesitate to open enforcement investigations if serious misconduct is suspected. Firms should, therefore, ensure that they have accurately documented the actions they have taken in response to COVID-19 (and in light of FCA guidance), any assessments that have been conducted of their systems and controls, the rationale for, and governance around, decisions taken in order to mitigate enforcement risk;

3 the FCA remains in regular contact with firms to assess their current position and expects firms to continue to take reasonable steps to ensure they continue to meet the challenges the pandemic poses to customers and staff, particularly through their business continuity plans; and

4 the FCA continues to focus on firms' ability to manage their financial resilience and actively manage their liquidity. Firms should report to the FCA immediately if they believe they will be in difficulty and thus, in possible breach of the Threshold Conditions.

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Germany

Updates

The German Federal Financial Supervisory Authority ("**BaFin**") maintains FAQs summarising its opinion on various COVID-19 related topics. Our previous newsletters summarised a number of key topics. There have been only minor updates since our last newsletter focussing on advice on how to deliver documents which need to be signed manually by several people.

BaFin considers the practical issue of obtaining more than one manual signature on a given report or other document and highlights its electronic reporting and publishing platform MVP (*Melde- und Veröffentlichungsplattform*). This platform can continue to be used. Users are asked to attach a cover letter outlining how the document had been approved by the responsible persons (for example, consent obtained via mail or email, in an audio-visual board meeting etc.).

Alternatively, BaFin agreed to temporarily accept an electronic signature or a consent issued by e-mail or fax instead of a personal signature. However, the signatory needs to declare intent at the time when a digital submission is made reassuring the other party that a physical signature will be provided at the earliest opportunity. BaFin stressed that a mere announcement via phone is not sufficient for this purpose.

Practical observations

Our overall observation is that BaFin strives to establish a balanced, reasonable approach to guide supervised enterprises through the crisis.

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Spain

Updates

The country remains subject to exceptional measures under the State of Emergency which was declared on 14 March and which has already been renewed four times, now until 24 May.

On Monday 11 May, half of Spain began its transition to normality by restarting its economic and commercial activities including opening most small restaurants, bars and retailers in all sectors. However, no restrictions have been lifted in the country's two main financial centres, Madrid and Barcelona, which is delaying the country's economic recovery.

As a result, employees of the Spanish Stock Market National Commission (*Comisión Nacional del Mercado de Valores* or "**CNMV**") continue to work remotely. The CNMV continues to require that any applications are submitted online and the regulator has intensified its supervisory work in an attempt to deal with the current market volatility. In this regard, on 11 May the CNMV published guidance on the online filing of complaints which, together with the whistle blowing procedure (as reported in our second newsletter), has proven to be a key supervisory tool. As the CNMV has received a number of complaints, this has provided the CNMV with sufficient oversight over what is happening.

Most importantly, on 4 May the CNMV published an update to its 2020 annual business plan in light of COVID-19. Key points from the update include:

1. 33 of the CNMV's original 44 goals and objectives remain in the plan, including the digitalization transformation project, an update to the International Financial Reporting Standards (or IFSR or NIIF in Spain) and initiatives to improve and strengthen corporate governance;
2. 11 of those goals and objectives have been delayed, such as the CNMV's internal integral information plan;
3. two new activities have been included; the production of a full contingency plan for the CNMV incorporating a complete model of remote working for CNMV employees, and the amendment to its technical guide so that exams for CNMV employees may be made online too, and
4. three key aims have been set out:
   - supervisory activities relating to COVID-19 will be the regulator's top priority;
   - to promote competition in the Spanish market; and
   - to follow technological developments in the financial and investment sectors and reinforce its activities aimed at enhancing financial stability in line with the creation of the Macroprudential Authority Financial Stability Board (*Autoridad Macroprudencial Consejo de Estabilidad Financiera (AMCESFI)*) in which the CNMV is a participant.

On 7 May, the CNMV also published its quarterly bulletin which included an analysis of the effects of the COVID-19 crisis on the Spanish economy. The analysis covered the state of the stock markets and the professional participants which operate within the stock markets, the financial performance of Spanish collective investment schemes and a study on the effectiveness of the gender equality rules on companies' boards of directors.

As a result of the ESMA publications regarding breaches of the double volume cap (under the Markets in Financial Instruments Regulation), on 11 May the CNMV published a note on the six month suspension of certain exemptions from pre-transparency obligations in the negotiation of certain listed shares (APPLUS SERVICES, S.A. and PROMOTORA DE INFORMACIONES, S.A.)

In order to try and mitigate the harm to the Spanish economy caused by COVID-19, on 6 May the Bank of Spain (*Banco* de España) confirmed that it will apply the flexibility available in the regulations on minimum equity requirements for own funds and eligible liabilities (MREL). This applies to all supervised entities.

Both the Bank of Spain and National Commission on Markets and Competition (*Comisión Nacional de los Mercados y la Competencia* or "CNMC") continue supervising the granting of the financing lines backed by State Guarantee through the Official Credit Institute (ICO). A third tranche of additional funding amounting to 20,000 Million Euros is available to Small and Medium Enterprises and sole traders until 30 September (subject to the terms and conditions established by the Board of Ministers in their 5 May resolution).

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Poland

Updates

The Polish Financial Supervision Authority (PFSA) postponed the assessment of the impact of the product intervention on CFDs

In August 2019, the PFSA decided to impose certain restrictions on the marketing, distribution and sale of contracts for differences ("**CFDs**") to retail customers, such as introducing the amount of initial security deposit required from those customers, or the protection of retail customers against the negative balance (the product intervention on CFDs). The impact of the product intervention on CFDs on the domestic market of those derivatives has been constantly monitored by the PFSA. The PFSA was intending to carry out an assessment of the impact of the product intervention on CFDs no later than 12 months from the entry into force of the imposed restrictions. However, taking into account the current situation in relation to COVID-19, the PFSA decided to postpone the date of the assessment of the impact of the product intervention on CFDs to the second quarter of 2021.

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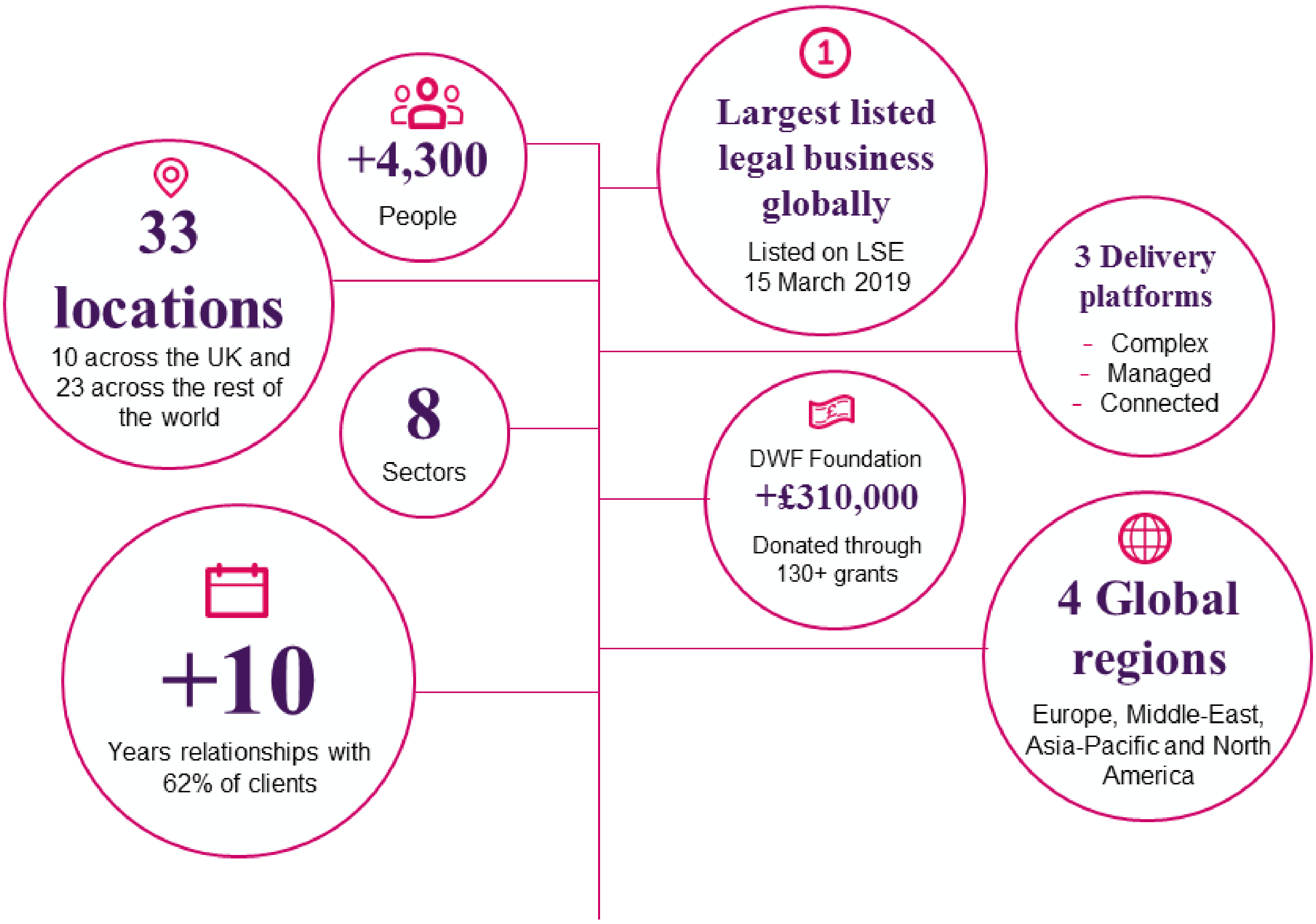

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