

UK Measures to Address Covid-19

The Capital Commitment Blog on April 13, 2020

The Novel Coronavirus (COVID-19) has significant implications for the asset management industry globally, forcing both sponsors and investors to consider the immediate impact on their investments, and to re-prioritize both immediate and longer term issues. In the United Kingdom, the Financial Conduct Authority (“FCA”) issued a series of communications to firms to address the impact of COVID-19 on the industry. Despite complexities caused by COVID-19, the FCA warns in its recently published [2020/21 Business Plan](#) that it will remain vigilant to potential misconduct and reminds firms that where it finds poor practice, *“[it] will clamp down with all relevant force”*.

Business continuity

A recent [statement](#) confirmed that the FCA remains focused on business continuity plans for financial institutions. The statement further confirms that it expects regulated firms to take all reasonable steps to continue meeting their regulatory obligations and to have contingency plans for major events (and that those plans have been tested.. While the FCA accepts that certain regulatory requirements may not always be met (for example, difficulties in submitting regulatory data or telephone recording), firms are expected to maintain appropriate records during this period and for regulatory data, should submit the data as soon as possible. Firms should be prepared to discuss with the FCA if they have concerns that certain regulatory obligations may not be strictly met.

Certain regulatory developments postponed

The FCA is postponing non-critical activity, including extending the closing date to respond to open consultation papers and calls for input until 1 October 2020 and rescheduling most other planned work. While not explicit, firms can expect delays with respect to applications for Part IV authorisation, or individual approval under the senior managers’ regime. Transactions which are conditional on FCA approval for ‘change of controller’ are also likely to experience delays on approval to close on deals, while the FCA also navigates the logistics of moving its workforce to a remote working environment.

Short selling

On 16 March 2020, the European Securities and Markets Authority (“**ESMA**”) issued a [decision](#) to temporarily amend the threshold for notifying net short positions to EU member state regulators under the Short Selling Regulation from 0.2% of issued share capital to 0.1%.

The FCA confirmed this decision would apply in the UK and following changes to internal systems, will be ready to receive notifications at this lower level from Monday 6 April 2020. Certain European countries such as France and Spain have introduced short selling bans. While the FCA has followed those bans where requested, it has not yet introduced such a ban in the UK though it is closely monitoring market activity.

Financial Crime

The FCA also announced that it will start to implement changes to how financial crime is to be reduced, as part of its ongoing Business Plan focus and in line with its commitments in the UK’s 2019 [National Economic Crime Plan](#). These measures include making greater use of data to identify firms or areas that are potentially vulnerable.

Firms should be mindful of the fact that COVID-19’s impact on public and private markets has led to an increase in scams which will mean firms’ business continuity and cyber security resilience may face challenges in the upcoming months. As the FCA has indicated, firms will need to have contingency plans to deal with major issues like COVID-19 and ensure those plans have been adequately tested. Firms should consider whether their key service providers also have appropriate business continuity plans in place, and are equipped to provide services through various crises. Firms should be liaising with key service providers such as brokers, IT system providers, administrators and custodians to confirm they have robust business continuity procedures in place.

Flexibility offered to investment firms with retail investors

In a recent [Dear CEO letter](#), the FCA has offered flexibility to firms dealing with retail investors in areas such as verifying a customer's identity. The regulator acknowledges that the restrictions on non-essential travel have impacted firms' abilities to use traditional methods to verify a customer's identity in accordance with the Money Laundering Regulations 2017 ("**MLRs**"). While firms are still expected to continue to comply with their obligations on client identity verification, the MLRs and the Joint Money Laundering Steering Group provide helpful guidance for verification of client identity to be carried out remotely. They also provide additional checks firms can use to assist with verification, such as asking clients to submit "selfies" or videos.

In the Dear CEO letter, the FCA also confirmed that firms providing portfolio management services, or holding retail client accounts that include leveraged investments, are currently required to inform investors where the value of their portfolio or leveraged position falls by 10% or more compared with its value in their last periodic statement, and for each subsequent 10% fall in value. However, the FCA have no intention of taking enforcement action where a firm:

- has issued at least one notification to a retail client within a current reporting period, indicating their portfolio has decreased in value by at least 10%; and
- subsequently provides general updates through its website, other public channels (such as social media) and/or generic, non-personalised client communications; or
- chooses to cease providing 10% depreciation reports for any professional clients.

The FCA expects to take this approach until 1 October 2020.

We will continue to monitor regulatory updates related to COVID-19. In the meantime, Proskauer is here to answer any of your questions or concerns, and help discuss concerns with meeting regulatory obligations.

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Proskauer's cross-disciplinary, cross-jurisdictional Coronavirus Response Team is focused on supporting and addressing client concerns. Visit our [Coronavirus Resource Center](#) for guidance on risk management measures, practical steps businesses can take and resources to help manage ongoing operations.

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