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COVID-19 Regulatory update no. 6

COVID-19 Regulatory update

Welcome to the sixth in our COVID-19 Regulatory update. Another relatively quiet period for COVID-19 related regulatory initiatives. With this in mind, forthcoming updates will be published on a fortnightly basis, or as and when sufficiently significant announcements are released.

Updates from last week are in blue, earlier but still relevant updates in grey.

Issue	Response
Basel III	9 April – PRA announces a decision to maintain firms' Systemic Risk Buffer (SRB) rates at the rate set in December 2019.
	8 April – BCBS released the results of the latest Basel III monitoring exercise, based on data as of 30 June 2019. The results do not reflect the economic impact of Covid-19 on participating banks, however BCBS believes that the information can act as a useful benchmark for analysis.
	7 April – MAS (Monetary Authority of Singapore) will defer by one year the implementation of the final set of Basel III reforms for banks in Singapore. MAS will defer to January 1, 2023 for the implementation of revised standards for: <ul style="list-style-type: none"> • Credit risk, operational risk, leverage ratio, output floor and related disclosure requirements (with the accompanying transitional arrangements for the output floor extended to January 1, 2028) and • Market risk and credit valuation adjustments for supervisory reporting purposes (for purposes of compliance with capital adequacy and disclosure requirements, these standards will be implemented from January 1, 2023 or later).
	27 March- the BCBS announced the deferral of final Basel III implementation measures. The December 2017 Basel III standards related to: the leverage ratio framework, the GSIB buffer, standardised and IRB approach for credit risk, operational and CVA frameworks are deferred by one year to 1 January 2023

	<p>The January 2019 market risk framework is deferred to 1 January 2023</p> <p>December 2018 Pillar 3 disclosure requirements are deferred to 1 January 2023</p>
Benchmark Transition	<p>04 May – ISDA have responded positively to the EC’s draft equivalence decisions to declare the regulatory and supervisory framework of Japan as ‘equivalent’ under Article 30 of the BMR.</p>
	<p>01 May - The FCA, BoE and RFRWG reiterated that firms cannot rely on LIBOR to be published after the end of 2021.</p> <ul style="list-style-type: none"> • There have been some successes in LIBOR transition despite the current situation: the first syndicated loan that will link SONIA and SOFR, the first bilateral loan referencing SONIA in the social housing sector, and another consent solicitation to convert a legacy LIBOR referencing bond. • Nevertheless, the RFRWG, the FCA and the BoE recognise that it will not be feasible to completely transition from LIBOR across all new LIBOR linked loans by original end-Q3 2020, and have published recommendations for how firms should proceed.
	<p>6 April – EC published a draft version of an equivalence decision with respect to benchmarks in Japan under the Benchmarks Regulation ((EU) 2016/1011)</p> <ul style="list-style-type: none"> • After an assessment of the benchmark regime in Japan the EC determined that the legal and supervisory framework applicable to the benchmarks in Japan are equivalent to the requirements of the BMR.
	<p>6 April – Australian Securities and Investments Commission (ASIC) has released feedback on responses to ‘Dear CEO’ letter from major Australian financial institutions.</p> <ul style="list-style-type: none"> • The feedback highlights the need for all institutions to plan for Libor transition taking into account that disruptions from Covid-19 may affect timing of some aspects of institutions’ transition plans.
Brexit	<p>06 May – In a speech delivered by Nausicaa Delfas, the FCA summarised their response to COVID-19 and their position on Brexit thus far:</p> <ul style="list-style-type: none"> • Putting in place transitional regimes so passporting can continue at the end of the Transition Period. • The FCA will use their powers under the TTP (Temporary Transitional Power) to help firms adapt to the regulatory regime after Brexit.

	<ul style="list-style-type: none"> FCA continues to be concerned about issues of equivalence, pointing out that post-Brexit, UK will have the most equivalent framework to the EU of any country in the world.
Competition	22 April – CMA releases guidance on their approach to merger assessment during the Coronavirus pandemic
Consultations	2 April – EC announced an extension of the response date on the consultation on the review of MIFID II by four weeks. The deadline is now May 18 2020 (instead of April 20).
	20 March - On 20 March, ESMA decided to extend the response date for all ongoing consultations by four weeks. Some of the affected consultations include: <ul style="list-style-type: none"> Consultation on MiFIR report on SI Draft Regulatory Technical Standards under the Benchmarks Regulation
IFRS9	04 May – The EBA published an update regarding the Implementing Technical Standards (ITS) on benchmarking of internal approaches. The main novelty is the inclusion of the IFRS9 template.
	02 April- the EBA issued Guidance clarifying that payment moratoria do not trigger classification as forbearance or distressed restructuring if the measures taken are based on the applicable national law or on an industry or sector-wide private initiative agreed and applied broadly by the relevant credit institutions.
	31 March- the EBA provided additional clarity on its call to protect institutional capital by refraining from the distribution of dividends, on the need for one-month flexibility on reporting and Pillar 3 disclosures , and reiterates the need to share information on ML/TF risks .
IM	06 May – Korea postpones margin rules amid COVID-19. <ul style="list-style-type: none"> The final two phases of the initial margin requirements for uncleared derivatives have been delayed by a year to allow financial firms to manage the corona virus outbreak.
	04 May – ESAs (EBA, ESMA and EIOPA) have submitted a draft version of revised EMIR margin requirements to reflect the recent guidance given by BCBS/IOSCO. <ul style="list-style-type: none"> The deadline for companies with an AANA of non-centrally cleared derivatives has been moved from September 2020 to September 2021.

	<ul style="list-style-type: none"> The deadline for companies holding more than €8billion has been moved from September 2021 to September 2022.
	<p>15 April – Canada’s OSFI delays final phases of IM by one year, adopting the BCBS and IOSCO guidelines from 3 April 2020. The new guidelines are as follows:</p> <ul style="list-style-type: none"> Deadline of September 1 2021 for covered entities of AANA exceeding CAD 75 billion Deadline of September 1 2022 for covered entities of ANNA exceeding CAD 12 billion
	<p>15 April – The JFSA published the proposed amendments to adopt the BCBS-IOSCO’s guidelines from the 3 April and defer the timeline as follows:</p> <ul style="list-style-type: none"> 1 September 2021 for covered entities exceeding 7 trillion JPY 1 September 2022 for covered entities exceeding 1 trillion JPY
	<p>14 April – Swiss Financial Market Supervisory Authority (FINMA) announced that they would be adopting the BCBS/IOSCO statement from 3 April 2020 that extends the final phases of IM by one year:</p> <ul style="list-style-type: none"> Duty to exchange will apply to counterparties for which the AANA of the group is greater than CHF 50 billion from September 1 2021 Is greater than CHF 8 billion from September 1 2022.
	<p>9 April - the CFTC formally adopted the old BCBS-IOSCO guidelines, and makes no mention of the BCBS-IOSCO’s latest statement from the 3 April. Although, somewhat confusingly presented as a COVID-19 measure, the mitigation contains no new elements:</p> <ul style="list-style-type: none"> New Phase 5 phase in: Target institutions > \$50bn New Phase 6 phase in: Target institutions > than \$8 bn
	<p>8 April – ISDA sets out some clarifications regarding the performance of the ISDA Standard Initial Margin Model (SIMM).</p>
	<p>7 April – MAS (Monetary Authority of Singapore) has deferred by one year the implementation of the final two phases of the margin requirements for non-centrally cleared derivatives:</p> <ul style="list-style-type: none"> September 1, 2021 for a bank or merchant bank whose group’s aggregate non-centrally cleared derivatives exposure is more than \$80 bn and

	<ul style="list-style-type: none"> September 1 2022 for a bank or merchant bank whose group's aggregate non-centrally cleared derivatives exposure is more than \$13 bn and up to \$80 bn.
	26 March - Joint statement by FCA, FRC and PRA -The PRA sent a letter to firms giving them guidance about the approach they should be adopting in assessing expected loss provisions under the International Financial Reporting Standard (IFRS).
	23 March - the LMA published 3 COVID-19 briefing notes prepared by Clifford Chance. Available to LMA members via its website , the notes cover: leveraged finance , electronic signatures, investment grade lending
MiFIR	06 May – ESMA published a statement to remind firms of their MiFID II conduct of business obligations in the context of increasing retail investor activity.
	20 March- ESMA published a statement clarifying that it does not expect regulators to prioritise compliance with the Article 17a MiFIR 26 March 2020 application of the tick-size regime for systematic internalisers.
RCAP	26 March - Joint statement by FCA, FRC and PRA -The PRA sent a letter to firms giving them guidance about the approach they should be adopting in assessing expected loss provisions under the International Financial Reporting Standard (IFRS).
Regulatory Activity	07 May – The Financial Services Regulatory Initiatives Forum have published their Regulatory Initiatives Grid , detailing the regulatory work plan over the next 12 months. <ul style="list-style-type: none"> The Grid contains relatively few instances of new policies entering into force over the next few months, so that firms can concentrate on COVID-19.
	02 April - The PRA published a statement outlining its approach to regulatory reporting and Pillar 3 disclosures for UK banks, building societies, designated investment firms and credit unions in response to Covid-19 and the EBA's 31 March statement on 'Supervisory reporting and Pillar 3 disclosures in light of Covid-19' .

	<p>26 March – Joint statement by FCA, FRC and PRA</p> <ul style="list-style-type: none"> The FCA announced a two month temporary relief for listed companies to complete their audited financial statements, meaning that they will have 6 months to publish financial statements from their year-end, instead of the mandated four months.
	<p>20 March – the BoE and PRA stated that their supervisors would be cancelling ‘non-critical data requests, on site visits and deadlines’ where appropriate.</p> <ul style="list-style-type: none"> This will be on top of the cancellation of the 2020 bank stress tests. This relief is to allow financial services groups to be able to channel more resources towards customers’ needs during the COVID-19 disruption
SFTR	<p>26 March- ESMA published a revised version of its SFTR statement. The revision clarifies that SFTs concluded between the 13 April 2020 and 13 July 2020 and SFTs subject to backloading will not be a supervisory priority. The FCA has updated its SFTR webpage to ensure consistency.</p>
	<p>26 March - The FCA revised its approach on a co-ordinated supervisory approach to the application of the SFTR so that it is consistent with that of ESMA.</p>
SM&CR	<p>06 May – The FCA has extended the maximum period that firms can arrange cover for a Senior Manager from 12 to 36 weeks, without being approved.</p> <ul style="list-style-type: none"> It aims to provide flexibility to firms that are trying to manage their governance arrangements during the ongoing pandemic. It allows firms to allocate an absent Senior Manager’s prescribed responsibilities to the individual covering the role. The modification by consent will take place from the date the firm applies for it, and will end on 30 April 2021.
	<p>15 April – FCA published a ‘Dear CEO’ letter to banks on lending to SMEs, stating that although the activity of lending to an SME is outside its scope, the SM&CR defines senior managers’ responsibilities and accountability in a way that applies to unregulated activities conducted by a bank.</p>

Note the view of the Regulatory Forum (BoE, PRA, FCA, Payment Systems Regulator, CMA and HM Treasury) in which they expect a return to some semblance of regulatory BAU by October 2020.

Notwithstanding this intention, it is our view that the longer term effects of COVID-19 will radically re-shape a number of fundamental assumptions upon which financial regulations are based. It is highly likely that the long term effects of the crisis will be far more significant than mere postponements or delays.

Useful links:

1. <https://www.fca.org.uk/publication/corporate/regulatory-intitatives-grid.pdf>
2. <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/pr-statement-on-prioritisation-covid19>
3. <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/pr-statement-on-prioritisation-covid19>
4. <https://www.psr.org.uk/psr-publications/news-announcements/financial-services-regulatory-initiatives-forum-launches-grid>
5. <https://eba.europa.eu/coronavirus>
6. <https://www.bankofengland.co.uk/-/media/boe/files/news/2020/may/uk-regulatory-grid-launched-to-help-financial-firms-with-planning.pdf>
7. <https://www.ft.com/content/936a8575-04e0-44a4-95dd-95ce1611243f>
8. <https://www.bankofengland.co.uk/news/2020/march/boe-announces-supervisory-and-prudential-policy-measures-to-address-the-challenges-of-covid-19>
9. <https://www.bankofengland.co.uk/coronavirus/information-for-firms>
10. <https://www.law360.co.uk/financial-services-uk/articles/1270373/eu-watchdogs-back-delay-to-global-derivatives-rules>
11. <https://www.sfo.gov.uk/2020/05/07/covid-19-update/>
12. <https://www.fca.org.uk/firms/information-firms-coronavirus-covid-19-response>
13. <https://drs-als.com/coronavirus-initial-regulatory-responses/>

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