

UK COVID-19 Considerations for Authorised Firms - Update

April 30, 2020

Our [UK COVID-19 Considerations for Authorised Firms](#) memorandum published earlier this month focused on the steps UK authorised firms can take to ensure their responses to the coronavirus (COVID-19) crisis are consistent with the expectations of the Financial Conduct Authority (FCA) and summarised some of the key announcements and measures introduced by the FCA at that time. This note provides a brief summary of further announcements and measures introduced by the FCA in recent weeks.

FCA Dear CEO letter on ensuring fair treatment of corporate customers preparing to raise equity finance

On 28 April 2020, the FCA published a [Dear CEO letter](#) following credible reports that a small number of banks have not been treating their corporate clients fairly when negotiating new or existing debt facilities. In particular, the FCA has had reports that some banks may have used their lending relationship to exert pressure on corporate clients to secure roles on equity mandates that the issuer would not otherwise appoint them to. In some cases, these roles may be 'in name only', with few or no additional services being provided in exchange for a share of the fee pool. The FCA will look into this further and will not hesitate to take action against offending firms, but wants any practice of this kind to cease immediately. Such conduct could breach FCA rules and the FCA Principles for Businesses, including those requiring firms to observe proper standards of market conduct (PRIN 5), act with integrity (PRIN 1) and in the best interests of clients (COBS 2.1), prevent or manage conflicts of interest (SYSC 10.1) and avoid including clauses in agreements restricting clients' choice of providers for future business (COBS 11A.2). In addition, such conduct could have implications regarding the firm's obligations under the Market Abuse Regulation (MAR). Firms must meet their MAR obligations concerning the identification, handling and disclosure of inside information received in connection with renegotiating a corporate client's existing facilities; depending on the circumstances, sharing details of a potential equity capital markets transaction within a lending bank may be inconsistent with its MAR obligations.

The FCA asks all firms active in both equity and lending markets to review their current systems and controls to satisfy themselves that they are appropriate for ensuring the proper treatment of clients, the identification and mitigation of conflicts of interest, and the handling of inside information. The FCA will separately contact firms that have both a lending relationship and equity role with any issuers that have recently raised significant equity capital. It will seek to understand how those firms ensured clients were treated fairly and inside information was handled appropriately.

FCA extends submission deadlines for regulatory returns due by 30 June 2020

On 22 April 2020, the FCA published a new [webpage](#) detailing temporary measures it has introduced for firms that are due to submit regulatory returns by 30 June 2020, in the light of the coronavirus (COVID-19) pandemic. The FCA has extended the submission deadlines for various returns including:

- a one-month extension for certain returns due under chapter 16 of its Supervision Manual (SUP 16);
- a two-month extension for the submission of the FIN-A return (annual report and accounts); and
- a two-month extension for annual financial reports (as required under Disclosure Guidance and Transparency Rules).

The FCA still expects firms to submit their returns as soon as possible. It will continue to monitor the situation over the coming weeks. The PRA announced similar extensions to the submission deadlines for certain regulatory returns on [2 April 2020](#).

FCA expectations about wet-ink signatures

On 20 April 2020, the FCA published a [webpage](#) outlining its expectations of firms when dealing with the need for 'wet-ink' signatures (original signatures) in light of the coronavirus (COVID-19) pandemic. It focuses on two types of documents:

- **Agreements.** Firms should consider the legal position as well as the FCA Principles for Businesses including the client's best interests rule (COBS 2.1.1R) and the fair, clear and not misleading rule (COBS 4.2.1R) to ensure that, if a client signs a document electronically, this does not make it more difficult for the client to understand what they are agreeing to; and
- **Forms.** Firms may use electronic signatures for all interactions with the FCA.

FCA updates financial resilience expectations for FCA solo-regulated firms

On 17 April 2020, the FCA updated its [webpage](#), which was first published on 26 March 2020, setting out its expectations on financial resilience for FCA solo-regulated firms. The updates included the following:

- **Capital and liquidity buffers.** If a firm is planning to draw down a buffer, it should contact the FCA.
- **Wind-down plans.** Firms should maintain an up-to-date wind-down plan that takes consideration of the current market impact of the coronavirus (COVID-19) crisis. If the wind-down plan identifies material execution risks, the firm should contact the FCA with its plan for the immediate period ahead.
- **Distributions.** If a firm is considering whether to make a discretionary distribution of capital to fund a share buy-back, fund a dividend, upstream cash or meet a variable remuneration decision, it should satisfy itself that each distribution is prudent given market circumstances and consistent with its risk appetite. The FCA does not expect firms to distribute capital that could credibly be required to absorb losses over the coming period.

FCA Dear CEO letter to banks on lending to SMEs

On 15 April 2020, the FCA published a [Dear CEO letter](#) to banks on lending to small and medium-sized enterprises (SMEs) in the context of the coronavirus (COVID-19) pandemic:

- Although the activity of lending to an SME sits mostly outside the FCA's scope, the Senior Managers and Certification Regime defines the responsibilities and accountability of senior managers in a way that applies to all activities they conduct whether they are regulated or not. Where a bank lends to SMEs, there should be at least one senior manager at the bank with clear responsibility for that activity.
- The bank's CEO and board should take reasonable steps to ensure that the senior manager(s) with responsibility for small business lending is discharging their responsibilities effectively. This should include collecting information on the bank's treatment of SMEs and, where appropriate, challenging the senior manager(s).
- The FCA's objective will be to ensure that there is not a repeat of the "well documented historic issues" in banks' treatment of SMEs. It states that when carrying out its supervisory work, it will take account of the fact that banks may now be making different judgements and adopting a different risk tolerance than they would have before the coronavirus (COVID-19) pandemic to support SMEs.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your usual Davis Polk contact.

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