CORONAVIRUS: INTERNATIONAL REGULATORY UPDATE 13 – 17 JULY 2020

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International

The Financial Stability Board (FSB) has published a letter from its Chair Randal K. Quarles to G20 Finance Ministers and Central Bank Governors, ahead of their virtual meeting on 18 July 2020. The Chair's letter sets out the following areas of focus for the FSB during the pandemic:

- assessing vulnerabilities during the current crisis;
- reinforcing resilient non-bank financial intermediation (NBFI);
- identifying and assessing policy responses;
- monitoring consistency with standards; and
- using flexibility in standards and buffer use.

The FSB has also delivered to the G20 a report on the financial stability implications of, and policy measures taken in response to, the pandemic.

European Union

The EU Commission has welcomed a list of 'best practices' agreed by the financial sector and consumer and business organisations to help further mitigate the impact of the pandemic. The document sets out how different market participants can support citizens and businesses throughout the crisis. In particular, the 'best practices' cover:

- payment moratoria for consumer and business loans, and for insurance contributions, to help those facing financial difficulties by deferring payments;

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- enabling safer cashless payments while ensuring cash payments remain available for those who need them;
- ensuring loans aimed at mitigating the impact of coronavirus are provided swiftly, and that the fees and interest rates incurred are fair; and
- legitimate insurance claims being processed and paid out as quickly as possible.

The publication of the 'best practices' follows two roundtable meetings facilitated by the Commission with consumer and business representatives, European banks, other lenders, and the insurance sector. The Commission intends to facilitate a further roundtable in September to take stock of progress and has encouraged all participants to follow the best practices.

Germany

The German Federal Financial Supervisory Authority (BaFin) has updated its coronavirus FAQ to include a list of payment relief initiatives that BaFin has notified to the European Banking Authority (EBA) as a general payment moratorium in accordance with no. 18 of the EBA guidelines EBA/GL/2020/02, detailing whether it is a legislative or non-legislative moratorium, the date from which it applies and other information as required by the guidelines. The list includes a number of non-legislative moratoria, e.g. a moratorium on KfW promotional loans intermediated by partner banks granted before the pandemic and various moratoria agreed and documented by the Association of German Banks (Bundesverband deutscher Banken) applicable to member institutions.

Luxembourg

The Luxembourg financial sector supervisory authority (CSSF) has issued a communiqué to reiterate precautionary instructions amid a resurgence in COVID-19 cases. The CSSF has stressed that given the significant increase in coronavirus infections, it is essential, as during the first wave, to prevent the spread of the virus while ensuring operational continuity. The Luxembourg regulator has therefore urgently asked supervised entities to:

- review their plans to lift the lockdown restrictions in order to make sure that they are in line with the current situation, especially for vulnerable persons; and
- ensure that the sanitary measures specified in the CSSF communiqué of 19 June 2020 are scrupulously respected.

United Kingdom

HM Treasury has issued guidance on the applicability of COVID-19 related amendments to the Capital Requirements Regulation (CRR) and CRR2. The statement clarifies the amendments that are applicable before the end of the transition period and which will form part of the body of EU law to be retained in the UK.

The Prudential Regulation Authority (PRA) has updated its statement on the implementation of the European Banking Authority (EBA) guidelines to address gaps in reporting data and public information in the context of COVID-19. The PRA has now considered how to apply the disclosure elements of the guidelines. The PRA considers that there is substantial benefit to disclosure-users from public information about the effects of the measures that UK firms have taken in response to COVID-19, but it intends to exercise the options available in the guidelines to ensure they are implemented in a proportionate manner. In particular, the PRA expects that UK banks and building societies which: (i) are, or are controlled by, global or other systemically important institutions designated by the PRA in the most recent list; and (ii) have retail deposits equal to or greater than GBP 50 billion on an individual or consolidated basis, should make disclosures similar to those prescribed by the guidelines, but incorporating a number of modifications that the PRA will set out. The PRA expects such firms to make these disclosures for the highest level of consolidation in the UK. The PRA is finalising the design of the disclosure templates, including to ensure they capture the full range of payment moratoria available within the UK, and will share these with relevant firms directly in due course. The PRA has acknowledged that there may be practical difficulties caused by the publication of the EBA guidelines and templates, and the details of the PRA implementation of the guidelines, close to the 30 June 2020 disclosure reference date. With this in mind, the PRA does not expect that firms include these disclosures in the main Pillar 3 disclosures made for the 30 June 2020 reporting period, and accepts that firms may need to make disclosures for the 30 June 2020 reference date at a later time.

The Financial Conduct Authority (FCA) has published a consultation paper (CP20/10) on making changes to its rules following the extension to the deadline by which FCA solo-regulated firms need to have implemented the Certification Regime. In June, the Treasury announced that the deadline by which firms must have first assessed the fitness and propriety of their Certified Staff will be delayed until 31 March 2021. This delay is intended to give firms who have been significantly affected by the coronavirus pandemic time to make the changes they need. To ensure other SM&CR deadlines remain consistent and to provide extra time for firms that need it, the FCA is consulting on extending the deadline for the following requirements from 9 December 2020 to 31 March 2021:

- the date the Conduct Rules come into force;
- the deadline for submission of information about Directory Persons to the FS Register; and
- changing references in the rules to the deadline for assessing Certified Persons as fit and proper (which has been announced by the Treasury).

The FCA is asking for comments on the consultation by 14 August 2020.

The FCA has also confirmed the support that will be available for users of motor finance, buy-now pay-later (BNPL), rent-to-own (RTO), pawnbroking and high-cost short-term credit (HCSTC) products who continue to face payment difficulties due to coronavirus. The finalised guidance comes into force on 17 July 2020.

The FCA and the City of London Corporation have announced that they will collaborate on the pilot of a ‘digital sandbox’ to support innovative firms tackling challenges caused by the pandemic. The strategic partnership will see both organisations work together to develop and launch a digital testing environment to provide innovative firms with access to high-quality data sets to allow for the testing and validation of technology solutions. In its pilot stage, the digital sandbox will support large financial institutions and start-ups looking to play a key role in the recovery from coronavirus through supplying relevant data sets and expertise in the areas of detecting and preventing fraud and scams, supporting vulnerable customers, and improving access to finance for SMEs financially affected by the pandemic.

United States

The Commodity Futures Trading Commission (CFTC) has published in the Federal Register an interim final rule amending its margin requirements for uncleared swaps for swap dealers (SDs) and major swap participants (MSPs) for which there is no prudential regulator. Due to operational challenges faced by certain entities as a result of the coronavirus pandemic, the CFTC is revising the compliance schedule for the posting and collection of initial margin under the CFTC margin rule to defer the compliance date of 1 September 2020 to 1 September 2021. Comments are due by 8 September 2020.

The Federal Reserve Board has announced an extension of a rule change to improve the effectiveness of the Small Business Administration's (SBA) Paycheck Protection Program (PPP). Like the earlier rule, the extension will temporarily modify the Board's rules so that certain bank directors and shareholders can apply to their banks for PPP loans for their small businesses. To prevent favouritism, the Board limits the types and quantity of loans that bank directors, shareholders, officers, and businesses owned by these persons can receive from their affiliated banks. However, these limits have prevented some small business owners from accessing PPP loans, especially in rural areas. The SBA clarified in April that PPP lenders can make PPP loans to businesses owned by their directors and certain shareholders, subject to certain limits, and without favouritism. The Board's rule change will allow those individuals to apply for PPP loans, consistent with SBA's rules and restrictions. The change only applies to PPP loans. The Board is providing the temporary change to allow banks to continue to make PPP loans to a broad range of small businesses within their communities. The SBA has explicitly prohibited banks from favouring in processing time or prioritisation a PPP loan application from a director or equity holder, and the Board will administer its rule change accordingly. The rule change is effective immediately and will be in place while the PPP is active. Comments will be accepted for 45 days after publication in the Federal Register.

RECENT CLIFFORD CHANCE BRIEFINGS

Coronavirus – A breath of fresh air for operators in the tourism sector – their mortgage financing takes a vacation

The mortgage moratorium granted under the new Spanish Royal Decree will benefit companies and professionals resident in Spain with ties to the tourism sector and experiencing financial difficulties due to the COVID-19 pandemic.

This briefing discusses the moratorium.

https://www.cliffordchance.com/briefings/2020/07/spain--coronavirus---a-breath-of-fresh-air-for-operators-in-the-.html

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