CORONAVIRUS: INTERNATIONAL REGULATORY UPDATE 29 JUNE – 3 JULY 2020

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International

The Financial Stability Board (FSB) has issued a statement on the impact of COVID-19 on global benchmark reform. The FSB's Official Sector Steering Group (OSSG) is monitoring developments and recognises that some aspects of firms' transition plans are likely to be temporarily disrupted or delayed, while others can continue. The FSB has reiterated its view that financial and non-financial sector firms across all jurisdictions should continue their efforts in making wider use of risk-free rates in order to reduce reliance on IBORs where appropriate and in particular to remove remaining dependencies on LIBOR by the end of 2021. The statement notes that relevant national working groups are co-ordinating changes to intermediate milestones in their benchmark transition programmes, where appropriate, to ensure global coordination. It also calls on financial and other firms to ensure that their transition programmes enable them to transition to LIBOR alternatives before end-2021. In its February 2020 communiqué, the G20 asked the FSB to identify remaining challenges to benchmark transition by July 2020 and to explore ways to address them and the FSB will publish a report on these issues later in July.

European Union

The EU Commission has prolonged the validity of certain State aid rules which would otherwise expire at the end of 2020. In particular, the Commission has prolonged:

- the Guidelines on regional State aid for 2014-2020, the Guidelines on State aid to promote risk finance investments, the Guidelines on State aid for environmental protection and energy, the Communication on the execution of important projects of common European interest (IPCEI), and the Communication on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance (STEC) by one year until 2021; and

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If you would like to know more about the subjects covered in this publication or our services, please contact:

International Regulatory Group Contacts

Marc Benzler +49 69 7199 3304

Caroline Dawson +44 207006 4355

Steven Gatti +1 202 912 5095

Owen Lysak +44 207006 2904

Lena Ng +65 6410 2215

Gareth Old +1 212 878 8539

Mark Shipman + 852 2826 8992

Donna Wacker +852 2826 3478

International Regulatory Update Editor

Joachim Richter +44 (0)20 7006 2503

To email one of the above, please use firstname.lastname @cliffordchance.com

Clifford Chance LLP,
10 Upper Bank Street,
London, E14 5JJ, UK
www.cliffordchance.com

- the General Block Exemption Regulation (GBER), the De minimis Regulation, and the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty by three years until 2023.

After consulting Member States, the Commission has also decided to make some targeted adjustments to the rules which are being prolonged as well as to the Framework for State aid for research and development and innovation (which has no expiry date), in order to mitigate the economic and financial impact of the coronavirus outbreak on companies.

The EU Commission has approved:

- a EUR 30 billion French subordinated loan scheme to support companies affected by the outbreak; and
- four Italian State aid schemes to support companies and self-employed workers affected by the outbreak, which are part of a wider Italian support package included in the 'Decreto Rilancio'.

The schemes were approved under the State aid Temporary Framework adopted by the Commission on 19 March 2020, as amended on 3 April and 8 May 2020.

Finally, the EU Commission has published a notice of information on the postponement of the entry into application of MiFIR open access provisions with regard to exchange-traded derivatives in the Official Journal. Article 54(2) of MiFIR provides for a transitional period during which Articles 35 or 36 of MiFIR do not apply to those central clearing counterparties (CCPs) or trading venues which made a request to benefit from this transitional arrangement with respect to exchange-traded derivatives. The transitional period expired on 3 July 2020. Given the high degree of uncertainty and market volatility as a result of the pandemic, the EU co-legislators have agreed to extend this period until 3 July 2021 and to extend the transitional arrangements in Article 54(2) concerning Articles 35 or 36 of MiFIR, effective as of 4 July 2020. The extension applies to those CCPs or trading venues, which made a request to their competent authorities to benefit from the transitional arrangements with respect to exchange-traded derivatives.

Netherlands

The Dutch Government has announced a new measure for the reimbursement of SMEs' fixed costs. SMEs in affected sectors will be eligible to tax free compensation on top of the emergency bridging measure (NOW). The amount depends on the height of the fixed expenses and the decline in turnover needs to be at least 30%. The maximum amount is EUR 50,000 per company. The Reimbursement Fixed Costs Scheme for SMEs is intended to compensate selected SMEs for fixed costs other than wage costs, and replaces the TOGS measure that closed on 26 June. Applications can be made from 30 June until 30 October 2020.

United Kingdom

The UK Government has launched a new GPB 200 million Sustainable Innovation Fund which is intended to help innovative businesses recover from the impact of coronavirus.

HM Treasury has announced that, as of 30 June, more start-ups and innovative firms will be able to apply for investment from the UK Government's Future Fund. Changes to the scheme's eligibility criteria will mean that UK companies that have participated in accelerator programmes and were required, as part of those programmes, to have parent companies outside of the UK will now be able to apply for investment.

In a separate development, the Treasury has agreed to delay, from 9 December 2020 until 31 March 2021, the deadline for solo-regulated firms to have undertaken the first assessment of the fitness and propriety of their Certified Persons, in order to give firms significantly affected by the coronavirus pandemic time to make the changes they need. To ensure Senior Managers & Certification Regime (SM&CR) deadlines remain consistent, and to provide extra time for firms that need it, the Financial Conduct Authority (FCA) intends to consult 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 Register; and
- references in its rules to the deadline for assessing Certified Persons as fit and proper (which has been agreed by the Treasury).

The FCA has also issued a statement setting out its expectations regarding the Approved Persons Regime (APR) and coronavirus to help benchmark administrators and firms using Appointed Representative arrangements apply the APR during the pandemic. The FCA recognises that firms may need longer periods of temporary arrangements if, for example, an Approved Person is absent because of coronavirus, or if recruitment to replace an Approved Person has been delayed due to the pandemic.

The FCA has confirmed the support users of certain consumer credit products will receive if they are still experiencing temporary payment difficulties due to coronavirus. The measures outline the options firms will provide credit card and other revolving credit and personal loan customers who are coming to the end of a payment freeze and for customers who have agreed an arranged interest-free overdraft of up to GBP 500. Customers yet to request a payment freeze or an arranged interest-free overdraft of up to GBP 500 will have until 31 October 2020 to apply for one.

The FCA has also announced proposals which would provide continued support for users of motor finance and high cost credit products who continue to face payment difficulties due to coronavirus. The proposals outline the options firms will provide motor finance, buy-now pay-later (BNPL), rent-to-own (RTO) and pawnbroking customers who are coming to the end of a payment freeze, as well as those who are yet to request one. For customers yet to request a payment freeze, the time to apply for one would be extended until 31 October 2020. The FCA welcomes comments on these proposals until 5pm on 6 July 2020 and expects to finalise the guidance shortly afterwards.

The FCA and the Payment Systems Regulator (PSR) have published more information on their joint work to map access to cash and how this will shape their future work in this area, including a statement on access to cash during COVID-19 and identifying and managing temporary gaps in provision and a statement on coverage of access to cash across the UK.

The Prudential Regulation Authority (PRA) has issued a statement on the Capital Requirements Regulation (CRR) 'Quick Fix' package, setting out its initial views on:

- transitional arrangements for capital impact of IFRS 9 Expected Credit Loss (ECL) accounting;
- acceleration of the date of application of certain CRR2 measures that had been due to apply from 28 June 2021; and
- discretion to apply a temporary prudential filter to certain unrealised gains or losses measured at fair value through other comprehensive income.

United States

The Securities and Exchange Commission (SEC) staff has extended some, but not all, COVID-19 related regulatory relief that was set to expire around the end of the first half of 2020. Amongst other things:

- the SEC's Division of Corporation Finance has determined that it is unnecessary to extend the relief that provided 45-day filing extensions to public companies for annual reports on Form 10-K or 20-F, quarterly reports on Form 10-Q, and certain other reports that would otherwise have been due on or before 1 July 2020;
- the relief permitting Form 144 to be provided to the SEC via email rather than in paper form has been extended until the SEC's staff provides public notice that it will no longer be in effect. The SEC's staff has indicated that it plans to publish a notice at least two weeks before the termination of this relief; and
- the Division of Corporation Finance has similarly extended equivalent relief for other paper filings.