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Important Regulatory Updates—UK and EU Regulators Respond to COVID-19

30 March 2020

THE FCA, PRA AND FRC JOINT STATEMENT

On 26 March 2020, the Financial Conduct Authority (the “FCA”), the Financial Reporting Council (the “FRC”) and the Prudential Regulation Authority (the “PRA”) issued a [joint statement](#) announcing their response to COVID-19.

The joint statement includes the implementation of [recommendations](#) made by the European Insurance and Occupational Pensions Authority (“EIOPA”) on 20 March 2020. EIOPA’s recommendations require regulators of the insurance sector to make every effort to exercise flexibility regarding reporting and public disclosure deadlines in response to COVID-19. This includes delays to the publication of certain Solvency and Financial Condition Reports.

Financial Reporting

Under applicable rules,¹ companies with securities admitted to trading on a regulated market in the UK (e.g. the Main Market of the London Stock Exchange) normally have four months from their financial year end in which to publish their audited annual financial statements. The FCA, however, has given such companies an additional two months to publish their annual company accounts during the COVID-19 crisis. As a result of the FCA’s announcement, they will now have six months. This temporary relief also applies to companies (including non-EEA issuers) with depositary receipts admitted to trading on a regulated market in the UK.

¹ DTR 4.1. The FCA’s Disclosure and Transparency Rules implement the Transparency Directive (Directive 2013/50/EU) in the UK.

This policy is intended to be temporary and the FCA states that it will announce the end of the policy in a fair, orderly and transparent way. These changes are especially aimed at companies that had set their reporting timetables before the full implications of COVID-19 became clear.²

The London Stock Exchange has also [offered](#) AIM-listed companies temporary relief from their financial reporting requirements if their financial year ends between 30 September 2019 to 30 June 2020. AIM-listed companies normally have six months from their financial year end in which to publish their audited financial statements;³ however, under the temporary relief, AIM-listed companies will now have an additional three months if they submit a request for such extension to AIM Regulation through their nominated adviser prior to their reporting deadline.

Although this temporary relief is optional, both the FCA and the London Stock Exchange have strongly encouraged issuers that are eligible for such temporary relief to utilise the time extensions on offer in full to ensure accurate and carefully prepared disclosures to the market.

In addition, the joint statement highlights that, although UK-registered companies wishing to delay the filing of their accounts with UK Companies House will still have to apply for a three-month extension, any such company that cites issues related to COVID-19 will be automatically and immediately granted an extension via a fast-tracked process.

On 21 March 2020, the FCA issued a [moratorium](#) on the publication of all preliminary financial statements by listed companies, which is to be observed for at least two weeks. The moratorium is not compulsory, but the FCA has requested that businesses comply. The FCA made this request in response to the sudden market changes that have been rendering financial statements out-of-date within days. Such out-of-date statements have been adding to the uncertainty felt by companies and audit firms in recent weeks. For further information, see the [FCA's Q&A](#) in relation to the moratorium.

Expectations of the FRC and PRA

The FRC is reducing its demands on companies and audit firms by:

- extending deadlines for consultations;

² Issuers with securities admitted to trading on non-UK EU regulated markets should check with the relevant competent authority for any similar relaxation of their financial reporting obligations under the Transparency Directive.

³ AIM Rule 19.

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- pausing its writing of letters to companies regarding their annual reports and accounts for at least one month; and
 - pausing its requests to firms regarding supervisory initiatives for at least one month.

The FRC also issued [guidance](#) encouraging boards to develop and implement mitigating actions and processes to ensure that they continue to operate an effective control environment. This includes reconsidering “key reporting and other controls on which you have placed reliance historically but which may not prove effective in the current circumstances”. Boards are also encouraged to consider how they will secure reliable information, on a continuing basis, in order to manage their future operations and those of their workforce and suppliers.

The PRA has issued [guidance](#) on the approach that should be taken by banks, building societies and PRA-designated investment firms to assessing expected credit loss (“ECL”) provisions under International Financial Reporting Standard 9 (known as “IFRS 9”). This guidance provides an insight into the precise ways in which financial forecasting will be disrupted during this period and the methods that can be applied by financial institutions in order to make accurate judgments about ECL.

COMPETITION AUTHORITIES

European Union

There have been a number of procedural changes in light of COVID-19 to ensure the Commission is able to continue to enforce the EU merger control regime. Primarily the Commission is encouraging parties to delay notification where possible due to “*the complexities and disruption caused by the Coronavirus*”. That decision is partly due to difficulties in carrying out the normal market testing, as well as to accommodate case teams working remotely.

Although delays have been requested for new filings, it is important to note that the statutory deadlines for dealing with existing cases still apply—although procedural mechanisms exist to extend the overall timeline. For notifications that are legitimately urgent, the Commission has announced that it will temporarily accept and will encourage, electronic submissions. Simplified filings should also be largely unaffected.

There has also been confirmation at the EU level that the antitrust regulations are flexible to allow for extraordinary situations such as this. On 23 March 2020, the European Competition Network (consisting of the Commission, European Surveillance Authority and national competition authorities across the EU) issued a [joint statement](#)

confirming that company cooperation to ensure the supply and fair distribution of products is “unlikely to be problematic” and that companies should seek further guidance from their national authority in the event of uncertainty (for the UK, see below).

The Commission has also acted quickly to adopt a new “Temporary Framework” for State aid, which allows the individual Member States to provide unprecedented levels of financial support to their economies.

UK Competition Authority

On 18 March 2020, the Competition and Markets Authority (the “CMA”) detailed its amended working arrangements in light of the ongoing situation. Those have been implemented to ensure that the *“UK public is protected from anti-competitive practices, transactions and unfair trading”*. The CMA staff are working remotely and consequently all meetings and hearings are now also being conducted remotely.

The CMA has announced that it intends to continue progressing cases and meeting applicable statutory deadlines. In practice, however, the CMA has been encouraging parties to hold off from formally filing new merger notifications due to anticipated delays.

The CMA has also introduced temporary measures to relax its enforcement of antitrust law to encourage cooperation in certain industries. The UK Government confirmed, for example, that supermarkets would be able to cooperate by sharing data on stock levels and sharing distribution depots and delivery vehicles. The CMA has also [offered further reassurance](#) that it will not take enforcement action against *“cooperation between businesses or rationing of products to the extent that this is necessary to protect consumers – for example, by ensuring security of supplies”*.

On 25 March 2020, the CMA published [new guidance](#) on its general approach to business cooperation in response to COVID-19. The guidance provides extra detail as to how the CMA intends to apply the criteria for exemption from the competition law prohibition on agreements and arrangements restricting competition in light of the pandemic. However, despite the relaxation of the antitrust rules, the CMA has warned that any anti-competitive practices that are found to be in breach of the rules will still be investigated. The CMA’s Senior Director has published an [open letter](#) to the food and drink industries as well as the pharmaceutical industry to reiterate this warning.

CAPITAL MARKETS

Disclosure Obligations for Issuers and other Market Participants

Despite the challenges that companies are facing as a result of COVID-19, the FCA has confirmed that it expects issuers with securities listed on an EU-regulated market, multi-lateral trading facility or organised trading facility to continue to comply with their obligation under the EU Market Abuse Regulation⁴ to disclose any inside information⁵ to the market in a timely manner (although disclosure can be delayed in certain, limited circumstances).

In addition, “persons discharging managerial responsibilities” (“PDMRs”) and “persons closely associated” with such PDMRs are required to continue to comply with their obligation to notify the relevant issuer and the FCA (or other relevant competent authority) of any trading that they conduct in the securities of the issuer within three business days of such transaction, while the issuers also remain obligated to make disclosures of such trades within the timeframe set forth in the EU Market Abuse Regulation.

For more information on the disclosure and corporate governance obligations for issuers and other market participants in the EU and the UK in light of COVID-19, please see our client update “[COVID-19: Implications for Disclosure and Corporate Governance in the EU and UK](#)”.

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For more information regarding the coronavirus, please visit our [Coronavirus Resource Center](#).

⁴ Regulation (EU) No 596/2014 on market abuse.

⁵ For the purposes of the EU Market Abuse Regulation, “inside information” is information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the price of those financial instruments or on the price of related derivative financial instruments.

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