

## **COVID-19: FURTHER DEVELOPMENTS ON THE UK FINANCIAL CONDUCT AUTHORITY'S EXPECTATIONS OF SOLO-REGULATED FIRMS**

To Our Clients and Friends:

In light of the significant impact of COVID-19, the UK Financial Conduct Authority (“**FCA**”), like many other regulatory authorities globally, has introduced a number of temporary measures impacting financial services firms. As can be seen even over the course of the last week, the FCA has made further announcements which:

- i. are targeted at ensuring the financial resilience of solo-regulated firms;
- ii. reduce certain short-term burdens placed on firms by permitting extensions for regulatory return filings; and
- iii. clarify the FCA’s expectations regarding the use of electronic signatures.

This client alert provides an overview of the impact of these announcements on FCA solo-regulated firms.

### **FCA’s expectations relating to the financial resilience of firms**

The FCA has updated its statement on its expectations of the financial resilience of FCA solo-regulated firms given the COVID-19 pandemic. The FCA has stressed the importance of the role played by firms prudentially regulated by it in supporting the functioning of the economy. It emphasised that firms should meet this responsibility by planning ahead and ensuring the sound management of their financial resources. This should, in part, be achieved through taking appropriate steps to conserve capital and plan for how to meet potential demands on liquidity (see the [FCA website](#)).

#### *Capital and liquidity buffers*

The FCA flagged that firms that have been set capital and liquidity buffers can use them to support the continuation of the firm’s activities (albeit that the firm should contact the FCA if it is planning to draw down such a buffer).

#### *Wind-down plans*

Wind-down plans should consider the impact of COVID-19 and, should a firm need to wind-down, the firm should consider how to do so in an orderly way and take steps to reduce harm to both consumers and the market.

Firms concerned that they will be unable to meet their capital requirements or debts as they fall due should contact the FCA with their plan for the immediate period ahead, as should firms whose wind-down plans have identified material execution risks.

### *Discretionary distributions of capital*

The FCA adds a note of caution to firms 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 expects firms and their boards to satisfy themselves that each distribution is prudent given market circumstances and consistent with their risk appetite. The FCA specifically states that it would not expect firms to distribute capital that could credibly be required to absorb losses over the coming period.

Whilst this announcement is unlikely to be particularly controversial, it should give firms food for thought, particularly those considering taking steps such as those referred to above (for example, funding a dividend out of a discretionary distribution of capital). A key message to be drawn out from the announcement relates to firms being proactive in their communications with the regulator, for example (as noted above), where a firm is concerned that it will be unable to meet its capital requirements.

### **FCA grants extension for regulatory return filings**

The FCA has extended submission deadlines for a number of regulatory returns. Certain returns have been given a 1-month extension and others a 2-month extension. This applies for submissions which are due up to and including 30 June 2020. Returns not specifically referred to by the FCA in its announcement do not have an extended deadline.

By way of an example, if a return is due on 22 May 2020 but a 2-month extension has been granted for this particular type of return, the submission will need to be completed by 22 July 2020. The FCA has noted that if the extended deadline date falls on a weekend, the submission is instead due the following working day. The table below details the full list of extensions granted.

1 month extension	2 month extension
<ul style="list-style-type: none"> <li>· COR001A (Own funds)</li> <li>· COR001B (COREP Leverage Ratio)</li> <li>· COR002 (COREP LE)</li> <li>· COR003 (COREP NSFR)</li> </ul>	<ul style="list-style-type: none"> <li>· FIN-A (annual report and accounts)</li> <li>· Annual financial reports (as required under Disclosure Guidance and Transparency Rules)</li> </ul>

<ul style="list-style-type: none"> <li>· COR005 (Asset Encumbrance)</li> <li>· FRP001 (FINREP)</li> <li>· FSA004 (Breakdown of Credit Risk Data)</li> <li>· FSA005 (Market Risk)</li> <li>· FSA007 (Operational Risk)</li> <li>· FSA008 (Large Exposures)</li> <li>· FSA014 (Forecast Data from Firms)</li> <li>· FSA017 (Interest rate gap report)</li> <li>· FSA018 (UK integrated group - Large Exposures (UK integrated group))</li> <li>· FSA019 (Pillar 2 Information)</li> <li>· FSA055 (Systems and Controls Questionnaire)</li> <li>· REP005 (High Earners Report)</li> <li>· RMA-D2 (Financial Resources)</li> </ul>	<ul style="list-style-type: none"> <li>· Credit union complaints return (CREDS 9 Annex 1R)</li> <li>· Complaints return (DISP Annex 1R)</li> <li>· Claims management companies complaints return (DISP 1 Annex 1AB)</li> </ul>
--	--

This announcement also follows the FCA’s statement that it is allowing fund managers an additional two months to publish their annual reports. This is one of several instances in which the FCA has exercised supervisory flexibility specifically in a fund management context over the course of the last month (further details are available [here](#)). This flexibility does not, however, extend as far as changing the usual deadlines for reporting transparency information to the FCA under the AIFMD Level 2 Regulation (Regulation 231/2013/EU).

## **FCA expectations regarding wet ink signatures**

The FCA has also recently released a statement on its expectations (or lack of) with regard to wet ink signatures. In relation to agreements, the FCA has emphasised that its rules do not explicitly require wet ink signatures. Likewise, the rules do not generally prevent the use of electronic signatures. The position ultimately comes down to a matter of law, which should be considered before use of electronic signatures (see our signing checklist, available [here](#)).

Firms should, nonetheless, consider related requirements under the FCA Handbook. For example, firms should consider 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, when a client electronically signs a document, this does not make it more difficult for the client to understand what they are agreeing to. For FCA forms, the FCA has provided that firms may use electronic signatures.

# GIBSON DUNN



*Gibson Dunn's lawyers are available to assist with any questions you may have regarding developments related to the COVID-19 outbreak. For additional information, please contact your usual contacts or any member of the Firm's Coronavirus (COVID-19) Response Team or the following authors:*

***Authors:*** *Michelle Kirschner, Martin Coombes and Chris Hickey*

© 2020 Gibson, Dunn & Crutcher LLP

*Attorney Advertising: The enclosed materials have been prepared for general informational purposes only and are not intended as legal advice.*