

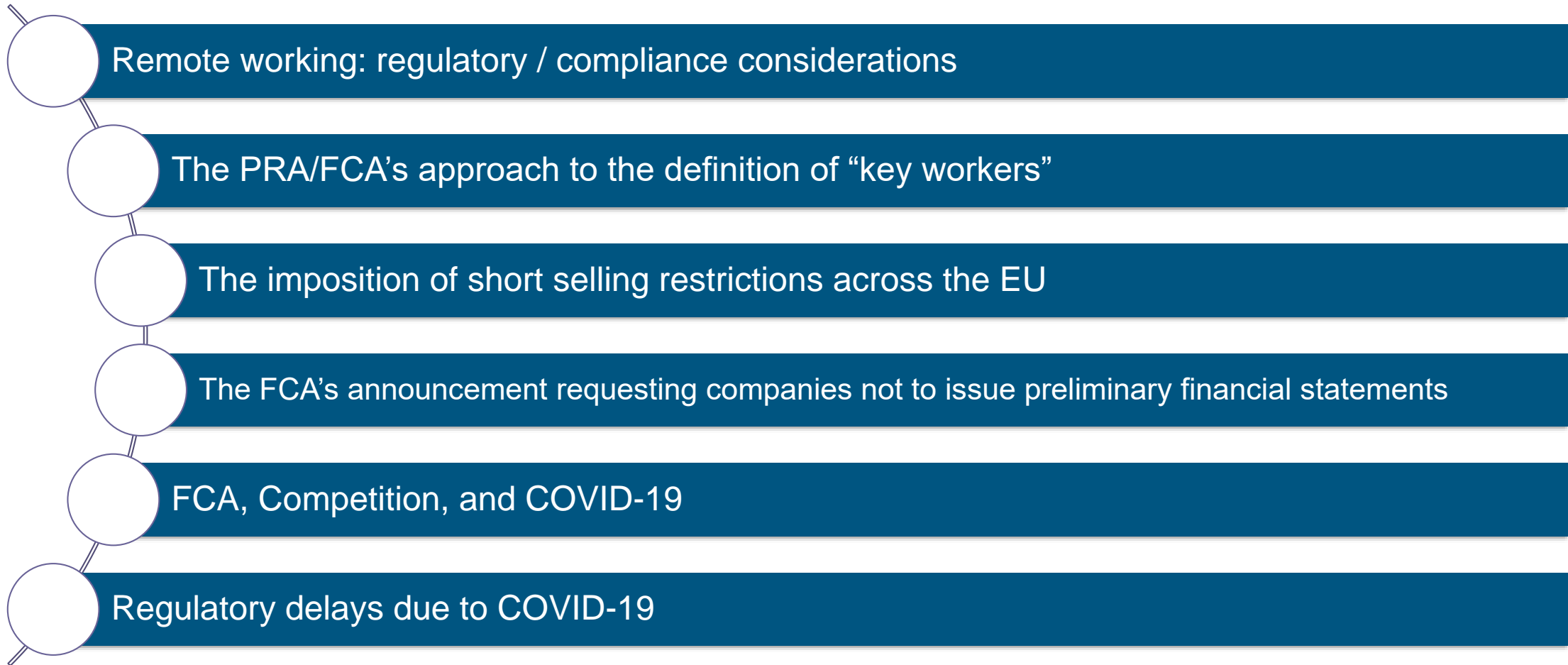


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8 April 2020

Financial Regulation Monthly Breakfast Webinar

Overview





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Remote working: regulatory / compliance
considerations
David Berman

Governance and oversight

- “Taskforce”
- Frequency of board updates
- BCP re-evaluation
- Material outsourcings
- Documenting response approach / rationale(s)

Conduct / operational risk management

- On-going employee vigilance, training and awareness. Include focus on:
 - IT use; security protocols and policies
 - Client communications policies
 - Heightened risk of operational errors (and importance of following error identification / handling procedures)
 - Increased cyber risk
 - Conflicts of interest
 - Reminder re continuance of monitoring and surveillance

Conduct / operational risk management

- Monitoring and surveillance – refine / intensify focus in certain areas?
 - FCA position on call recording

“Firms should continue to record calls, but we accept that some scenarios may emerge where this is not possible. Firms should make us aware if they are unable to meet these requirements. We expect firms to consider what steps they could take to mitigate outstanding risks if they are unable to comply with their obligations to record voice communications. This could include enhanced monitoring, or retrospective review once the situation has been resolved”

Conduct / operational risk management

- Revised / creative remit for Internal Audit? For example, focus on effectiveness of:
 - Contingency plans
 - Any control environment modifications
 - Governance / oversight of pandemic response
- Importance of on-going accessibility (and “visibility”) of advisory functions (e.g. Legal and Compliance)

Conduct / operational risk management

“Firms should continue to take all steps to prevent market abuse risks. This could include enhanced monitoring, or retrospective reviews. We will continue to monitor for market abuse and, if necessary, take action”

- Generally higher MNPI risk
- Increased prospect of (unlawful) selective disclosure of “inside information”?
- Heightened focus on bilateral issuer-investor dialogue – re-evaluate appropriateness of controls
- Opportune time for reminder bulleting addressed to all relevant personnel?

- Recent FCA pronouncements (Solo-regulated firms)
 - Statements of Responsibilities – notification submission relaxation
 - However, new arrangements must be documented clearly – “running commentary”
 - SoRs, role profiles and MRMs (where applicable) must nevertheless be kept up-to-date
 - Fixed firms to notify FCA of any changes that they would normally include in
 - Extension of 12 week rule
 - Again, clear internal documentation essential (especially within the MRM, if applicable)
 - Re-allocation of Prescribed Responsibilities
 - Furloughed staff
 - Enhanced firms and overall responsibility requirement

SMCR

- Dual-regulated firms
 - No (current) extension of 12 week rule
 - Certification process – reasonable steps
- F&P implications generally

General considerations

- FCA's approach and mind-set
 - Constructive approach
 - Pragmatism and forbearance – within reason
- Remain mindful of recognising “complaints” when handling communications from clients
- Regular monitoring of FCA website for new developments
- Taking advice, where appropriate

General considerations

- Short-selling restrictions – importance of keeping continually abreast
 - If in doubt, seek guidance
- Client identity verification needs to continue, but firms have flexibility within the FCA's rules - for example:
 - Firms can accept scanned documentation sent by e-mail, preferably as a PDF
 - Firms can seek third party verification of identity, such as from lawyers
 - Firms can ask clients to submit “selfies” or videos or place reliance on due diligence carried out by others, such as the client's primary bank account provider



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The PRA/FCA's approach to the definition of "key workers"
Sarah Gadd

COVID-19 “Key Workers” in Financial Services

- What’s the relevance?
 - UK schools closed on 20 March 2020 under social distancing measures but remain open for children of “key workers”
 - This means children whose parents are critical to the COVID-19 response and cannot be safely cared for at home
- Who does it cover?
 - Includes parents who work in financial services and are needed for the provision of essential financial services
- FCA guidance on how to identify “key workers” in financial services
 - Only expect a limited number of people to be identified as being key financial workers
 - Firms are best placed to decide which staff are essential for the provision of financial services
 - SMF1 responsible for identifying relevant key workers

Potential roles providing “essential services”

- Individuals essential in the **overall management of the firm**, for example individuals captured by the Senior Managers Regime
- Individuals essential in the **running of online services** and processing
- Individuals essential in the **running of branches** and providing **essential customer services**, such as those dealing with consumer queries (including via call centres), client money and client assets and those maintaining access to cash and other payment services
- Individuals essential to the functioning of **payments processing** and of cash distribution services

Potential roles providing “essential services”

- Individuals essential in facilitating **corporate and retail lending** and administering the repayment of debt
- Individuals essential in the processing of **claims and renewal of insurance**
- Individuals essential in the operation of **trading venues** and other critical elements of **market infrastructure**
- **Risk management, compliance, audit** and other functions necessary to ensure the firm meets its customers’ needs and its obligations under the regulatory system
- Any individual that provides essential support to allow the functioning of the above roles, such as **finance and IT staff**

Can other employees travel to work?

- Key worker definition doesn't define who can / can't travel to work
- Government guidance allows employees to continue to travel to work unless their role can be carried out from home
- Firm's designated Senior Manager (or equivalent person) should identify which employees cannot perform their jobs from home and have to travel to work
- FCA expect the total number of roles requiring physical presence to be “far smaller” than the number of workers needed to ensure all of a firm's business activities continue to function

Can other employees travel to work?

- Employers should take every possible step to facilitate their employees working from home
- FCA do not expect the following to go into work or meet face to face:
 - Financial advisers
 - Staff who can safely and securely trade shares and financial instruments from home
 - Business support staff (like IT) unless they are looking after specific equipment or technology
 - Claims management companies and those selling non-essential goods and credit



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The imposition of short selling restrictions
across the EU
Carl Fernandes

What happened

- The SSR was introduced in late 2012 following the financial crisis to provide an EU wide framework to regulate short selling and short position reporting
- Chapter 5 of the SSR provides regulators wide powers of intervention where there is a threat to financial stability or market confidence
- Until the COVID-19 crisis these powers were used sporadically, and generally in relation to single stocks (other than a Greek ban in 2015)
- On **13 March 2020**, Italy and Spain introduced single day short sale bans under Art 23 of the SSR. These were limited scope and essentially applied to “short sales” in a wide range of stocks effected on venue, and not to OTC or third country trading, or increases in net short positions generally

What happened

- On **16 March 2020**, using its powers under Art 28 of the SSR, ESMA issued a decision requiring holders of net short positions in shares admitted to trading on any EU regulated market to notify the relevant NCA if their position reaches or exceeds 0.1% of the issued share capital of the company concerned (the usual trigger threshold is 0.2%), for a period of 3 months. (Although FCA's systems were not accommodating for a few days)
- Between **16-18 March 2020**, Italy, Spain, France, Belgium, Austria and Greece all introduced broader “short position” bans under Art 20 of the SSR, extending from 1 month to 3 months (Italy)

Common characteristics of the bans

- Each ban differs on its terms and it is important to review each one carefully, review the accompanying Q&A and take local counsel advice on points of uncertainty
- Some common characteristics:
 - Ban increases in “net short positions”, so short sales might be permitted if there are corresponding increases in synthetic long positions (order of events is important)
 - Capture on venue trading and OTC, in and outside the relevant jurisdiction
 - Market making positions continue to be exempt
 - Can flatten out net long positions by increasing gross short positions or selling down gross long positions
 - Can’t “refresh” pre-existing short positions in place at the time of the ban
 - Increases due to changing market values are ok

Some of the challenges and uncertainties

- Firms grappled/are grappling with a number of challenges and uncertainties:
 - Trading index-linked instruments: a number of jurisdictions defined the types of indices which were in-scope of the ban. But what about bespoke baskets? What about listed index-linked futures traded on other EU venues?
 - Do the bans apply at trading entity level or group aggregation level?
 - The lack of availability of a market making exemption for trading on third country venues, which is a problem for market makers on US venues in ADRs and ETFs
 - Allowing long derivative positions to expire where net short positions were then increased

What next?

- Make sure that your trading activities are in compliance with the existing bans
- Watch for clarifications (through Q&A) and potential time extensions
- Watch for other major markets – Germany?
- Potential for an EU wide ban imposed by ESMA – effectively needs support from all member states



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The FCA's announcement requesting companies not
to issue preliminary financial statements
James Inness

Recent publications

- [FCA moratorium “request” on preliminary financial accounts](#) (21 March)
 - [Associated Q&A](#) (22 March)
- [Joint statement by FCA, FRC and PRA](#) (26 March)
 - [FCA delaying annual company accounts during COVID-19](#) (26 March)
 - [Associated Q&A](#) (26 March)
 - [FRC Company Guidance Update March 2020](#) (COVID-19)
 - [FRC Guidance on audit issues arising from the Covid-19 pandemic](#) (16 March)
 - [Companies House requirements for businesses](#) (25 March)
- [ESMA recommended action by financial market participants for COVID-19](#) (11 March)
- [AIM companies delay in publication of annual accounts](#) (26 March)
- [FCA Primary Market Bulletin No. 27](#) (30 March)

Preliminary accounts

- FCA strongly requested all listed companies to observe a moratorium on publication of preliminary financial accounts for at least two weeks (until 5 April), on a voluntary basis
- This was to aid companies to give due consideration to COVID-19 considerations in preparing disclosures, which may not have been possible with pre-set timetables
- Also to ease pressure on the audit profession which was also facing unprecedented practical challenges
- Q4 updates, if required, would be a sensible approach to disclose key information to market
- Only applicable to companies on the Official List. AIM companies to consult with Nomads
- Currently not extended after 5 April 2020

Annual accounts

- UK premium listed companies can delay the publication of audited annual financial reports by two months - now to be published within six months from year end
- AIM companies with financial year ends between 30 Sep 2019 and 30 June 2020 can also apply for a three month extension for publication of annual audited accounts
- For premium listed issuers:
 - Half yearly financial reports still to be published within three months of half-year end
 - Delay not applicable to issuers with a Home State outside the UK, who will be governed by their respective Home State legislation

Annual accounts

- FCA also urges market participants to not draw adverse conclusions on issuers who choose to delay publication of annual financial reports
- Businesses will also automatically be granted a three month extension for filing annual accounts with the Companies House, if they apply citing COVID-19 reasons

Ongoing disclosure and MAR

- Listed companies expected to comply with their disclosure obligations under MAR and the FCA rules in a timely fashion, including any operational response to COVID-19
- ESMA also urges issuers to disclose any relevant significant information concerning the impacts of COVID-19 on their fundamentals, prospects or financial situation, including a qualitative and quantitative assessment in their 2019 year end reports or other interim financial reporting disclosures as soon as possible

Ongoing disclosure and MAR

- Listed companies urged to carefully review all pre-set timetables for publication of financial information to ensure disclosures are accurate and carefully prepared
- FCA to continue considering suspension of trading in line with existing practice, taking into account risks to the smooth operation of the market and the risk of harm to investors
- However, FCA may challenge suspension requests where a situation is more appropriately addressed by a market announcement
- PDMR/PCA transaction notification requirement to continue as applicable



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FCA, Competition, and COVID-19
David Little

FCA, Competition, and COVID-19

- FCA issued statement of support of the CMA's approach to competition and COVID-19
 - Rules diverge across jurisdictions, and the situation is highly dynamic within/across jurisdiction(s)
 - Regulators might be forgiving of genuine efforts at coordinated action to mitigate the health crisis – either through formal exemption or by exercising their discretion not to prosecute – but are highly attuned to the risk that companies may use the challenging circumstances as a pretext for short-term price gouging/longer-term coordinated activity (price-fixing, market allocation, etc.)

FCA, Competition, and COVID-19

- Challenge – patchwork Government assistance and forbearance announcements/programmes (especially around credit and lending) creating confusion and are hard to implement absent some measure of industry coordination
 - Anecdotal evidence of competitors speaking to “find out what everyone else is doing”

FCA, Competition, and COVID-19

- Remote working poses unique challenges for competition-law compliance/surveillance
 - Already seeing increased use of messaging apps/personal devices that cannot be easily monitored by employers
 - While employers may find it difficult to supervise staff using these media, agencies will not hesitate to mine them for incriminating evidence: agencies now routinely request disclosure of WhatsApp, Snapchat, Telegram etc. correspondence
 - Also aware of converse problem – individually-recorded video or voice calls not subject to central document retention policies
 - Examples of business-focused discussions between locally-sheltering employees of competitors

FCA, Competition, and COVID-19

- Competition enforcement/litigation is a long-tail problem
 - Many examples, in financial services and other sectors, of unlawful agreements arising during periods of market volatility
 - Still addressing competition litigation from 2008-09 financial crisis
 - There are fixes/prophylaxes that can be implemented to mitigate risk



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Regulatory delays due to COVID-19
Nicola Higgs

Overview

- COVID-19 has triggered a number of delays to regulatory timings
- These can be broadly categorised as follows:
 - **Regulatory reporting requirements:** extensions and delays to regulatory reporting and client notification obligations
 - **Delays to regulatory change activity:** delays to implementation dates for new rules, and extensions/delays to consultation periods and broader policy making activity
 - **Impact on regulatory approvals:** impact on processing timeframes for licensing and transaction related filings

Regulatory reporting requirements

Obligation	Original Timeline	Revised Timeline
Listed issuer financial reports		
<i>The FCA has provided two months temporary relief for publication of annual reports for listed issuers under the DTRs, and ESMA has similarly indicated it expects NCAs to exercise forbearance in relation to Transparency Directive mandated annual financial reports (+ 2 months) and half-yearly financial reports (+ 1 month)</i>		
Publication of audited annual financial reports for UK listed issuers	4 months from end of financial year	Additional two months to publish
Publication of preliminary financial statements for UK listed issuers	As usual	Requested moratorium for two weeks, ending on 5 April 2020
EBA and PRA reporting requirements		
<i>Various regulatory reporting requirements for banks, building societies, designated investment firms and credit unions have been delayed, including CRD and BRRD harmonised reporting requirements, and PRA regulatory reporting requirements</i>		
Various CRD, BRRD and PRA reporting requirements	Requirements falling on or before 31 May 2020	One to two month delays (depending on requirement)

Regulatory reporting requirements

Obligation	Original Timeline	Revised Timeline
MiFID II: best execution reporting		
<i>ESMA has recommended NCAs exercise forbearance for late publication of MiFID best execution reports, provided they are published by 30 June 2020</i>		
RTS 27 Best Execution Reports	Due 31 March 2020	30 June 2020
RTS 28 Best Execution Reports	Due 30 April 2020	30 June 2020
MiFID II: portfolio depreciation notifications		
<i>FCA will exercise forbearance in relation to the requirement to inform clients of 10% depreciations in their portfolio value, provided firms take certain actions to report depreciations to retail clients</i>		
10% depreciation notification requirement	Ongoing obligation	1 October 2020

Delays to regulatory change activity

Obligation	Original Timeline	Revised Timeline
Securities Financing Transaction Regulation (“SFTR”) reporting		
<i>ESMA has recommended NCAs exercise forbearance with respect to the implementation of SFTR reporting requirements, due to come into effect for investment firms and credit institutions on 13 April 2020. ESMA will also not prioritise registration of trade repositories and recommends dis-applying SFTR “backloading” requirements to report certain open securities financing transactions</i>		
SFTR reporting obligations	Due 13 April 2020 for investment firms and credit institutions	13 July 2020
SFTs – Registration of Trade Repositories	Due 13 April 2020	13 July 2020
SFTs – Backloading	SFTs concluded between 13 April and 13 July 2020 do not need to be backloaded	
Payments: Confirmation of Payee requirements		
<i>The UK Payment System Regulator will exercise forbearance in relation to directed banks’ implementation of the Confirmation of the Payee requirements, provided customers are appropriately protected</i>		
Confirmation of Payee requirements	31 March 2020	30 June 2020

Delays to regulatory change activity

Obligation	Original Timeline	Revised Timeline
MiFID II: tick size regime		
<i>ESMA has recommended NCAs exercise forbearance with respect to the application of the MiFID II tick size regime to systematic internalisers (“SIs”)</i>		
Tick size regime for SIs	Due 26 March 2020	26 June 2020
SMCR		
<i>The FCA is reviewing timing for its publication of the SMCR directory of certified and assessed persons</i>		
Publication of certified and assessed persons register	31 March 2020	At least one month

Impact on regulatory approvals

- There have been no changes in UK statutory timeframes for regulatory authorisations and approvals
- The FCA has stated that authorisations and approvals are a priority area for the FCA and will continue as normal
- However, it may be prudent to plan for some impact on processing times as a result of increased pressure on staff and transition to remote working arrangements
- Note: This is not true of other global jurisdictions

Annex A: Consultation delays

Obligation	Original	Revised
BofE & FCA		
Joint Bank of England and FCA survey into open-ended funds	2020	Delayed until further notice
Extension of the deadline for responses to the current consultations on Building Operational Resilience and Outsourcing	3 April 2020	1 October 2020
Postponement of the implementation of changes to the credit risk modelling framework for banks	1 January 2021	1 January 2022
Cancellation of the 2020 stress test for the eight major UK banks and building societies	2020	Cancelled
FCA Directory of certified and assessed persons	End of March 2020	Currently under review
EBA		
Extension of deadlines for all ongoing EBA consultations	N/A	Deadlines extended by 2 months
Postponement of all scheduled public hearings - EBA	N/A	Currently under review
Extension of the remittance date for funding plans data - EBA	31 Mar 2020 / 8 May 2020	Deadlines extended by 2 months
Postponement of the EBA, EU-wide stress test	2020	2021
Basel III standards (note, the transitional arrangements, revised market risk framework and the Pillar 3 disclosure requirements have also been delayed by 1 year)	1 January 2022	1 January 2023

Annex B: EU consultation delays

Obligation	Revised Timeline
European Commission Consultations	
Payments: A retail payments strategy for the EU	26 June 2020
Fin Tech Action Plan: A new digital finance strategy for Europe	1 October 2020
Revision of the non-financial reporting directive	11 June 2020
MiFID II Refit	18 May 2020
ESMA consultations	
Consultation on Guidelines on Internal Controls for CRAs	11 May 2020
Consultation on MiFIR report on SI	13 May 2020
Guidelines on securitisation repository data completeness and consistency thresholds	11 May 2020
Consultation on MiFID II/ MiFIR review report on the transparency regime for equity	12 May 2020
Draft Regulatory Technical Standards under the Benchmarks Regulation	6 July 2020
Draft technical standards on the provision of investment services and activities in the Union by third-country firms under MiFID II and MiFIR	26 May 2020
Consultation paper on MiFIR Review Report on Transparency for Non-equity TOD	14 May 2020

Annex C: FCA consultation delays

Obligation	Revised Timeline
CP20/4: Quarterly Consultation No 27	1 October 2020
CP20/1: Introducing a Single Easy Access Rate for cash savings	1 October 2020
CP20/3: Proposals to enhance climate-related disclosures by listed issuers and clarification of existing disclosure obligations	1 October 2020
CP20/5: Consultation paper on ETF Listing: Premium to Standard Listing	1 October 2020
Call for input: Open Finance	1 October 2020
Call for input: Accessing and using wholesale data	1 October 2020
Motor Finance Policy Statement	TBC
Consultation Paper on mortgage switching	TBC
Vulnerability Guidance and Vulnerability Research	TBC
Options to change our regulatory framework following our Duty of Care Feedback Statement	TBC
Consumer Credit Act (CCA) review	TBC
Credit Information Market Study – Interim Report	TBC
GI Pricing Final report and Consultation Paper on remedies	TBC

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[COVID-19: Key UK Business Measures — Current State of Play](#)

[FCA and PSR Support CMA’s Guidance on Business Cooperation Under Competition Law](#)

[FCA and PRA Statement on SM&CR and COVID-19: Expectations of Dual-Regulated Firms](#)

[COVID-19: FCA Dear CEO Letter to Firms Providing Services to Retail Investors](#)

[COVID-19: PRA Welcomes Suspension of Dividends, Share Buybacks, and Cash Bonuses](#)

[UK Government Temporarily Suspends Wrongful Trading Rules to Assist Company Directors](#)

[New Draft Regulatory Technical Standards Under the EU Benchmarks Regulation](#)

[COVID-19 Bank Lending Relief Measures](#)

[Changes to Reporting Requirements for Issuers in Light of COVID-19](#)

[EU Regulators Outline Approach to Remote Working During COVID-19 Crisis](#)

[FCA Indicates LIBOR Transition Deadline Will Not Be Extended Due to COVID-19](#)

[Preliminary Financial Accounts – The FCA’s Moratorium “Request”](#)

[FCA Issues Guidance on Key Workers in Financial Services](#)

[Bank of England Announces Measures to Address Challenges of COVID-19](#)

[HM Treasury Responds to the Call for Evidence on Regulatory Coordination](#)

[FCA Sets Out Its Expectations of Firms’ Response to COVID-19](#)

[FCA Breaks Ranks in Its Approach to Using Wholesale Data](#)

[FCA Proposes New Rules on Climate-Related Disclosures by Listed Issuers](#)

