

Alert

UK Update: Guidance for FCA-Regulated Managers (COVID-19)

18 March 2020

Our previous publications and *Alerts* discussed various considerations that [hedge fund managers](#) and [private equity sponsors](#) generally should take into account when preparing for business interruptions that may be associated with the coronavirus outbreak. The following additional considerations will apply to managers that are headquartered in the United Kingdom or have group affiliates regulated by the UK Financial Conduct Authority (“FCA”). These considerations apply to all FCA-authorized firms to which they are relevant, irrespective of their regulatory permissions.

Operational Resilience

The FCA, Bank of England and HM Treasury recently published a [supervisory statement](#) addressing the developments relating to the spread of COVID-19. This statement made it clear that firms were expected to continue to comply with their ongoing regulatory requirements despite market volatility and irrespective of the business disruption meaning that many managers have implemented certain aspects of their business continuity plans (“BCPs”).

In another [statement](#) published on 17 March 2020, the FCA again highlighted the importance of operational resilience. Firms must have contingency plans to deal with major events and the regulator expects these plans to have been tested. The FCA and PRA continue their work on the rules aimed at strengthening operational resilience of UK firms proposed in [CP19/32](#).

Given the recent market volatility, managers should be vigilant in challenging the assumptions that underpin their BCPs, as certain contingencies may need to be adapted as the spread of COVID-19 continues. The FCA has indicated that they intend to engage with a wide range of firms to review their BCPs in the near term. Managers should use this warning as an impetus to document their review and stress-test their BCPs.

Compliance with Telephone-Recording Obligations

Managers should ensure they can continue to record and monitor relevant communications if staff works from home or at alternative sites. Managers that currently do not record mobile communications should consider providing key employees with recording software or equipment as part of their BCPs. Managers who are unable to comply with the telephone recording requirements need to notify the FCA.

Transactions and Orders

The FCA has not so far offered any relief or forbearance with regards to compliance with record-keeping or transaction reporting obligations, although it has promised to work with trade associations, industry bodies and firms to resolve any issues as they come up. In the meanwhile, managers are expected to continue entering orders and transactions promptly into the relevant trading systems, and maintain full

records of orders and transactions. As managers are moving to alternative sites and work from home arrangements, they must not lose sight of the broader control environment for trading and operations. For example, when reviewing their BCP arrangements, firms should separately consider the increased risk of trade errors where a remote working policy has been implemented.

Trading Surveillance

Managers must still take all steps to prevent market abuse. This could include enhanced monitoring or retrospective reviews. The market surveillance teams at the FCA continue to monitor for market abuse and other misconduct and firms are still receiving information requests relating to their trading activities. These must be responded to on a timely basis.

Regulatory Reporting

Firms should assume that the usual reporting deadlines will apply. If a firm is experiencing difficulties in submitting their regulatory data, the FCA expects the firm to maintain appropriate records during the relevant period and submit the data as soon as possible. Firms are advised against delaying their filings unnecessarily, and should contact the FCA if they are not able to comply.

Outsourcing

Managers that rely on third-party service providers for performance of material functions will need to engage with them to ensure these business services will not suffer interruptions. Managers should review service provider contracts for any “material adverse change” or “force majeure” clauses, obtain the necessary service continuity assurances from service providers, and take these matters into account when stress-testing their business continuity and disaster recovery scenarios. Irrespective of any outsourcing, responsibility remains with the regulated manager.

Access to Compliance Support

Managers must ensure that trading and other personnel are able to access the compliance function (and vice versa) even where they have implemented a remote working policy. Personnel should be briefed on all arrangements and systems for communications with others within the firm and provided with emergency contact details for key persons within the firm. Managers will need to review the legal basis on which personal data is being shared and should look to update internal data protection policies (e.g., employee privacy notices) where necessary.

Temporary Trading Restrictions

Firms should keep regulatory announcements relating to emergency measures, such as short-selling bans, position limits, market suspensions and position disclosure obligations, under constant review. In particular, firms are advised to monitor the [FCA's news page](#) and [ESMA's press-release page](#), as well as the websites of other regulators, and any updates circulated by their brokers and counterparties in the relevant markets. Managers should ensure that staff or external service providers are on standby to make modifications to their portfolio/execution management systems (e.g., automated tracking of positions) to ensure compliance with such emergency measures.

Managers should also review their trading documentation and exchange rules, and stress-test the impact of scenarios involving market interruptions on their portfolios.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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