

# The impact of Covid-19 on cleared derivatives



23 April 2020





# FIA engagement on COVID-19 with a focus on ensuring open and orderly markets

- ❑ Dedicated COVID-19 webpage ([www.fia.org/covid-19](http://www.fia.org/covid-19)) set up providing daily operational and regulatory updates from exchanges, CCPs and regulators.
- ❑ Hosted a series of calls with international regulators to focus on regulatory coordination, forbearance and relief measures to reduce the burden on market participants, and industry updates on operational and compliance challenges.
- ❑ In partnership with other trade associations, sent letters to regulators and government authorities to emphasise the importance of keeping markets open and ensure shelter in place flexibility for key financial services workers.
- ❑ Issued a public statement warning against the imposition of short selling bans and the negative impact to market liquidity.
- ❑ Co-signed a trade association letter to the EC and ESMA requesting an extension for various consultations.
- ❑ Collaborating on a joint association BCP survey for clearing members covering 60+ exchanges, CCPs, CSDs and other critical technology providers.
- ❑ EU and US operations committees met regularly to discuss critical issues and escalate contacts for trade breaks. Contacted CCPs to request an extension to clearing windows.



# Agenda

## □ Regulatory Issues

1. Impact on contracts, e-signatures and electronic execution
2. Governance
3. Continued compliance with conduct and other obligation
4. Outsourcing and other business continuity issues
5. Information management and cybersecurity
6. Regulatory forbearance and emergency measures

## □ Employment Issues

1. Overview
2. Regulatory expectations
3. Managing workforce impact
4. Coronavirus job retention scheme
5. Management of remote working
6. Cultural considerations
7. Looking forward – post lockdown and beyond
8. Questions



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# REGULATORY ISSUES



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# Financial contracts

FINANCIAL CONTRACTS	
Performance/force majeure	Assess whether performance may be impaired and if force majeure clauses in contracts may be engaged.
Unscheduled non-business days	Consider the impact of any unscheduled non-business days on contractual obligations, such as payment and delivery obligations.
Payment / delivery obligations	Identify other product-specific provisions that could affect parties' payment or delivery obligations, e.g., market disruption events.
Service of notices	If notice provisions require service by post or courier, consider what practical alternatives may be available.
Refresh contact lists	Ensure that all contact lists are up to date (e.g. in relation to notice provisions).
Key person clauses	Consider the impact of unavailability of personnel on any key person clauses or on the firm's ability to complete specific projects.
Electronic signatures	Consider ability to make use of electronic signatures instead of physical execution of documents



# Governance

GOVERNANCE	
Crisis management team / policy	Ensure the firm has an effective crisis management policy and consider establishing a crisis management team (if one does not already exist).
Internal key person risk	Identify any governance roles which must be filled and ensure the firm has a list of deputies or others who could carry out the role in an emergency.
Functions which require prior approval	Identify senior management and other roles requiring prior approval or certification or special qualifications and ensure anyone who may be required to carry out these functions temporarily is appropriately approved or certified.
Process for handing over roles / responsibilities	Key personnel should prepare handover notes to allow their functions to be taken over by someone else.
Managing upcoming deadlines	Identify key upcoming deadlines (such as in connection with litigation, regulatory implementation projects etc.) and consider how to mitigate risk of disruption impacting the firm's ability to meet them.
Board governance	Review processes for ensuring boards are kept informed on key issues and are able to exercise oversight and take key decisions.



# Conduct risk

CONDUCT RISK	
Surveillance and oversight	Assess whether performance may be impaired and if force majeure clauses in contracts may be engaged.
Reporting and disclosure obligations	Consider the impact of any unscheduled non-business days on contractual obligations, such as payment and delivery obligations.
Physical operations	Identify other product-specific provisions that could affect parties' payment or delivery obligations, e.g., market disruption events.
Fraud and cyber threat risks	If notice provisions require service by post or courier, consider what practical alternatives may be available.
Conflicts of interest/treating customers fairly	Ensure that all contact lists are up to date (e.g. in relation to notice provisions).
Primary dealer and market maker obligations	Consider the impact of unavailability of personnel on any key person clauses or on the firm's ability to complete specific projects.
Other time-sensitive obligations	Identify any other particularly time-sensitive obligations susceptible to disruption (e.g. cross-border payments) and possible risk mitigants.
Mutual aid arrangements	Consider whether to discuss mutual aid arrangements with other firms to facilitate continued customer service in the event of severe disruption.



# Business continuity and operational resilience

BUSINESS CONTINUITY AND OPERATIONAL RESILIENCE	
BCP, operational resilience planning	Ensure ongoing review and record keeping of how the firm's business continuity and operational resilience plans are engaged in responding to the outbreak and identify any 'lessons learnt'.
New working arrangements	Implementing split team, staggered and remote working arrangements and adhering to guidance from health authorities.
Outsourcing	Engage with critical service providers to understand their business continuity plans in line with outsourcing requirements.
Back-up to back-up	Consider whether there may need to be back-up to back-up arrangements given global impact.
Recovery/resolution planning	Review relationship with recovery plans to identify where outbreak could impair ability to execute recovery/resolution plans if triggered or itself trigger activation of recovery plans.





# Information management and licensing issues

INFORMATION MANAGEMENT	
Confidential / inside information	Consider whether any additional processes need to be put in place to maintain client confidentiality and manage inside information.
Announcement / disclosure obligations	Consider whether information about the impact of Coronavirus on the firm and its own plans may be inside information relating to the firm's listed securities, requiring announcement and information management.
Cybersecurity	Consider the resilience and security of remote working arrangements and whether this carries an increased risk of cybersecurity concerns.
Announcements and guidance	Monitor and respond to announcements and guidance from regulators and health authorities.

LICENSING ISSUES	
Remote working	Identify any staff who may be working outside of their normal jurisdiction and consider whether that may raise any licensing or tax concerns.
Licensing requirements	Consider whether remote working or activating business continuity plans may require changes in the way that people comply with existing licensing requirements.



# Communication and engagement strategy and licensing issues

## COMMUNICATION AND ENGAGEMENT STRATEGY

### Regulators

Develop a communication strategy for keeping regulators appropriately updated, understand what emergency or forbearance powers they have and monitor any exercise of those powers.

### Clients

Develop a client communication strategy to ensure that clients are kept appropriately updated, particularly if there may be delays or interruptions in service or closure of business premises.

### Employees

Ensure that all employees understand remote working policies and limits on activities they can carry on remotely; keep internal contact lists updated and reporting lines under review.

### Market infrastructure and other service providers

Engage with market infrastructure and other service providers to establish what their plans are, key contacts, channels for updates and other communication.

## FINANCIAL IMPACT

### Capital and liquidity

Assess impact on financial position, collateral requirements, capital and liquidity

### Client exposures

Identify and manage exposures to clients particularly vulnerable to risks resulting from the outbreak



# Emergency government measures

Emergency government measures	
Emergency funding	Emergency government funding or government guarantees for bank funding, available to specified classes of borrower (e.g., consumers, small / micro businesses, businesses with significant local business)
Insolvency measures	Amendments to insolvency law to provide for moratoria on creditor action (including stays on enforcement of security), deferrals of requirements to file for insolvency
Payment holidays	Mandatory or discretionary payment holidays for specified classes of debt (e.g., mortgages, credit cards, consumer loans) or more generally
Delays to implementation deadlines	Delayed deadlines for new obligations coming into effect (e.g., SFTR, phase 5 and 6 initial margin)
Temporary restrictions	Temporary restrictions on short selling, tighter disclosure thresholds for short and long positions



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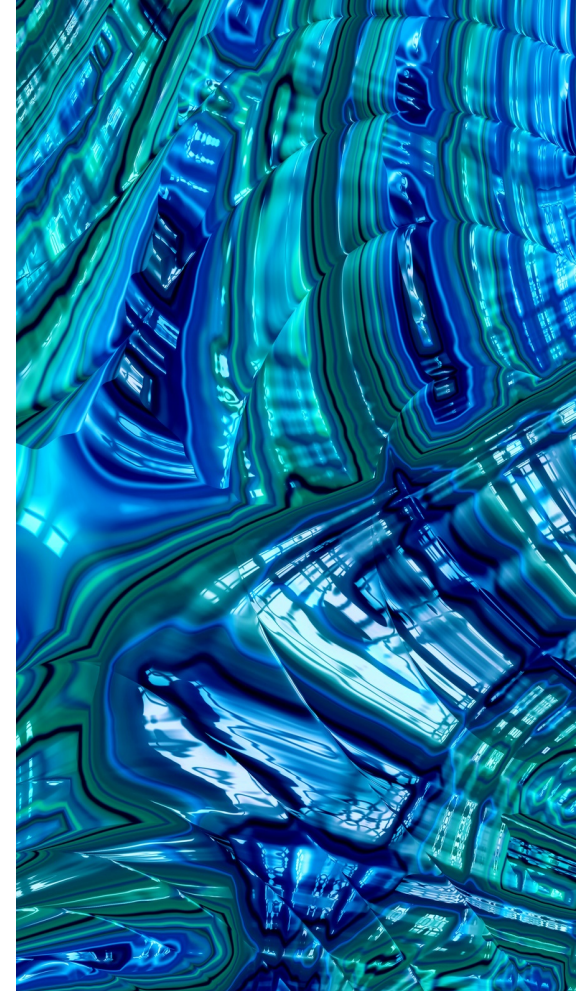
# EMPLOYMENT ISSUES



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# Overview

- ❑ Recent weeks have seen HR facilitating people-based elements of operational resilience, moving from initial crisis mode to managing a new status quo of home-working;
- ❑ Specific Covid-19 regulatory provisions and guidance have been introduced, ranging from furlough to dealing with bonuses to maintaining a safe workplace;
- ❑ HR have faced large volumes of queries ranging from employees managing caring responsibilities, to sick pay, to impact on ongoing restructurings;
- ❑ Many of the issues that the FS industry are facing are common across workplaces. However, the FCA and PRA have highlighted issues specific to the sector, which impact the approach taken to employees;
- ❑ As the country ultimately emerges from lockdown, there will be fresh challenges in managing the partial or total reintegration of the workforce into physical office space;
- ❑ For employers in multiple jurisdictions, there is the added element of dealing with differing global approaches to the pandemic.





# Regulatory expectations

- ❑ FCA and PRA have issued several pieces of guidance, including on key workers, homeworking and Senior Manager absences, furlough and certification.
- ❑ Key worker and working from home guidance made clear that some front office roles that had always been office-bound could, in current circumstances, be performed remotely. May now have been digested and assimilated, but this will be come relevant again when there is a move away from lockdown.
- ❑ Also clear that regulators regard it as a Senior Manager responsibility to deal with these sorts of issues (although this does not need to be allocated to a specific senior manager).
- ❑ The detail of FCA and PRA guidance depends on firm type, but covers:
  - Relaxation of requirements for changes to statements of responsibility;
  - Re-allocation of responsibilities and use of the 12-week rule to cover Covid-19 absences;
  - How to allocate senior management responsibility for Covid-19 response;
  - How firms should approach furloughing senior managers (including restrictions on dealing with particular roles).
- ❑ European Banking Authority and PRA expect banks not to pay any cash bonuses to senior staff, including all material risk takers.



# Coronavirus job retention scheme (CJRS)




## Key features

- All UK employers with a PAYE payroll scheme on or before 19 March 2020 and a UK bank account (and subject to a real time information (RTI) submission notifying payment in respect of the employee claimed for being made to HMRC on or before 19 March 2020) will be able to access support to continue paying part of their employees' salary for those that would otherwise have been laid off during the Covid-19 crisis.
- HMRC will reimburse 80% of furloughed employees' usual monthly wage costs, up to £2,500 a month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on that wage.
- CJRS covers furloughed employees on any type of contract (and other individuals e.g. directors, limb (b) workers) that were on the PAYE payroll on or before 19 March 2020, even if their employment has terminated subsequently (whether by reason of redundancy or otherwise (provided in the latter case the employee is then rehired) and subject to.
- Employees recruited after 19 March 2020 cannot be furloughed and no claim under the CJRS may be made in relation to them.
- NB FCA and PRA guidance on application of furlough to Senior Managers.



# Coronavirus job retention scheme (CJRS)



Common  
questions in  
practice

- **How long does it last?**
  - CJRS will run for 4 months from 1 March to end of June.
- **How do we treat holiday pay?**
  - CJRS employee guidance provides that furloughed employees on holiday are entitled to be paid their usual pay and that the employer will have to top up.
- **How do we treat sickness absence?**
  - An employer has the choice of furloughing a sick employee or keeping them on sick leave but the employee cannot be paid under both the SSP and furlough schemes.
- **Do we need written agreement?**
  - Difference in approach between CJRS Guidance and Treasury directive. Best practice remains to have agreement being classical “two way” agreement to be sure without any doubt of meeting the “agreement” requirement and if a reduction to salary and /or benefits is agreed so no top up to full pay.
- **How does this impact collective consultation exercises?**
  - Placing employees on furlough does not automatically trigger a requirement for collective consultation. However, employers who propose to make employees redundant post furlough may need to consider starting collective consultation. Employees may also assert that furlough should be considered as an alternative to redundancy.





# Managing remote working

## Regulatory perspective

- FCA and PRA supportive of working from home and have dialogue with firms around compliance challenges.

## Confidentiality

- Controls around e.g. access and printing of data, and use of new video conferencing technologies, will be key, in particular for regulated roles.

## Providing a safe workplace

- This also applies for home working, and covers the provision of equipment as well as taking steps regarding the mental health of the workforce. The HSE has provided updated guidance.

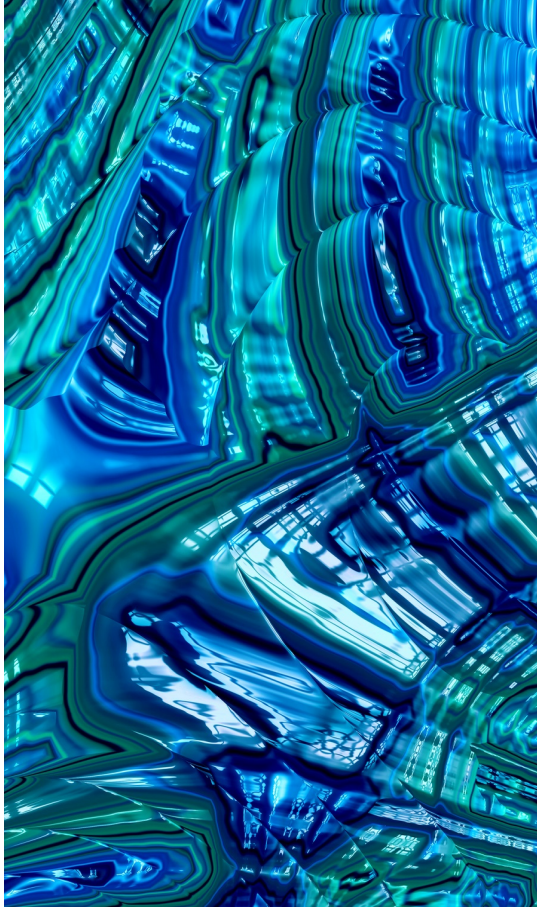
## Provision of home working equipment

- Financial services employers may be required to go further than others, for example in setting up specific secure trading screens and equipment and recorded lines. Employers also need to consider health and safety perspective and reasonable adjustments.

## Managing supervision remotely

- Working with managers and staff to balance appropriate monitoring, engagement and productivity (and maintenance of applicable regulatory standards), with reality of lockdown situation/ demarcation of home life.

# Cultural considerations



- ‘Speak up’ culture remains important within Covid-19 national effort and from a regulatory perspective.
- Government focus on preventing fraud in furlough and other schemes – reports can be made through an on-line hotline.
- FCA’s 2020/21 business plan continues its focus on culture: *‘We will continue to focus on the 4 key culture drivers in firms – purpose, leadership, approach to rewarding and managing people, and governance – and their effectiveness in reducing the potential harm from firms’ business models and strategies.’*
- A key FCA message from its discussion paper Transforming Culture in Financial Services was the importance of creating places of psychological safety where employees are able to speak up, and the need for employee engagement in corporate purpose.
- Given much of 2020 and beyond will be impacted by Covid-19, how firms deal with this vis-à-vis their workforce will interact with FCA assessment on culture.



# Looking forward

- Phased lockdown release would bring back questions of key workers and which roles are essential for being in the office – FCA/ PRA guidance on home working and key worker roles may have renewed relevance;
- PPE considerations will be relevant for office use and commuting – and may lead to health and safety complaints/ whistleblowing allegations;
- May be appropriate to have variegated approach for groups who are shielding – but beware discrimination claims;
- There may be a new working from home culture, where employees who were previously told it was not possible have found that it is – again, beware discrimination claims in reverting too rigidly to previous status quo;
- Speak up culture, health and safety considerations and transparency will mean mechanism for reporting concerns, monitoring compliance with HSE guidance and mechanism for dealing with problems will be key: this will be a board-level issue.



**Caroline Dawson**  
Partner  
T: +44 20 7006 4355  
E: caroline.dawson  
@cliffordchance.com



**Chinwe Odimba-Chapman**  
Partner  
T: +44 20 7006 2406  
E: chinwe.odimba-chapman  
@cliffordchance.com

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