COVID-19:

# Q1 summary of analysis highlighting the impact on financial services firms

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# Contents



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# Introduction

"They have been talking about the possibility of a global pandemic for many, many years but it never really happened. And until it happens, it does not get people's attention and it is not actualized. But now look, we're learning."

**Andrew M. Cuomo,** Governor of New York, April 2020

The COVID-19 pandemic is causing unprecedented chaos and uncertainty. Financial services firms are struggling to maintain stability while still delivering the required customer outcomes.

The ramifications for firms and, in particular, their risk and compliance functions, will be profound. Seeking to ensure a firm remains compliant is a full-time job even in ordinary times; in this crisis it will require a well-resourced in-house compliance function that is empowered, agile and flexible to help its firm navigate the worst of the uncertainty.

This report is a collection of extracts from articles that have appeared on Thomson Reuters Regulatory Intelligence (TRRI) during Q1 2020. It focuses on the regulatory (rather than fiscal) impacts of the crisis and is not intended to be a detailed chronology of how the crisis has developed.

The report covers the main areas of TRRI's coverage to help and inform the risk and compliance community on regulatory developments during this difficult time. It is divided into the following sections:

- planning for uncertainty
- risks
- communication with regulators
- working remotely
- response to the crisis.

The focus is on what firms and their compliance functions can and should do to remain compliant with evolving regulatory expectations.

# Planning for uncertainty

The COVID-19 pandemic is the first biggest international test of firms' operational resilience and business continuity arrangements since the financial crisis although U.S. firms underwent major challenges during hurricanes Katrina and Sandy. Operational resilience has been a focus for regulators in recent years, with a raft of guidance on how firms should prepare for a significant disruption to business. Firms consequently devised plans, but these preparations had been largely paper based and untried. There seems little doubt the crisis has highlighted weaknesses in many firms' approaches.

"I call it the COVID canary. This situation has highlighted that business continuity plans were fond aspirations as opposed to concrete plans, which is always the case. It is always ignored. People are very much realising it now ..."

**Frank Brown,** practice lead at Bovill in London

TRRI reported the following being examples of notable weaknesses:

- **Lack of testing —** At a national level, UK financial regulators have not run a market-wide pandemic exercise for 14 years. Financial regulators did test resilience of the UK payments system to a pandemic in 2016 but the ability of capital markets firms to keep the lights on in the face of a pandemic has not been tested since before the 2008 financial crisis.
- **Longevity of BCPs —** The business continuity plans of financial services firms were not designed for a long-lasting pandemic and are likely to come under pressure as the COVID-19 outbreak continues. Many firms will not have considered extending a control environment to home working and many employees were not set up for homeworking, beyond having a laptop.
- **Market abuse and financial crime concerns —** Concerns were expressed about market abuse occurring while firms are in flux. In the UK, firms have been asked to advise regulators if they are unable to meet the Market Abuse Regulation or Markets in Financial Instruments Directive II recordkeeping and communications surveillance requirements. In the US the Financial Crimes Enforcement Network (FINCEN) has stressed that firm's compliance with Bank Secrecy Act (BSA) remains crucial to protecting national security by combating money laundering and related crimes. FinCEN expects financial institutions to continue following a risk-based approach, and to diligently adhere to their obligations.
- **Use of back-up sites —** Firms have been sending staff to back-up sites and in some cases splitting them between the main office and the off-site location. The advantage is employees can access surveilled systems, but a disadvantage is the need to travel to the sites. Firms and their compliance officers need to acknowledge that their ability to foresee events is limited. That should not prevent them from developing adequate policies and procedures to enable an agile response to the unexpected.

Firms may wish to consider creating a stand-alone operational risk policy that sits alongside disaster recovery and business continuity plans to deal with events arising from uncertainty. Alternatively, they could align their approach to the one in place for handling dawn raids or other surprise inspections. As with all policies it should be documented, and all members of staff should be aware of the policy and familiar with its contents. The board and all senior managers should be briefed in detail and asked to confirm their understanding of the agreed approach.

"In 2020/21 we will focus on maintaining robust prudential standards and support the [Financial Policy Committee's] commitment to uphold the same level of resilience, to ensure continuity in the supply of vital financial services to the real economy throughout the cycle, including after severe shocks."

**Prudential Regulation Authority,** Plan 2020/21

## Operational resilience and business continuity plans

Firms should keep their disaster recovery and business continuity plans under review and test their efficacy. Any dependencies should be assessed carefully to consider whether the back-ups (for example, IT or physical location) could themselves be affected by the COVID-19 responses implemented by governments. Some firms are required to build and maintain "living wills", for which the same criteria would apply.

Suggested items to help manage the content of plans included:

1. **Crisis management arrangements —** This should include a plan owner who is responsible for ensuring it is maintained, exercised and updated appropriately. This may also align to responsibilities in the Senior Managers and Certification Regime (or equivalent). A crisis management team should be identified. Depending on the incident, this will include various members of the board, governance committees and senior managers. A mechanism to categorize individual incidents should be created. Alongside each category of severity there should be clear guidance on who needs to be involved and what decisions are to be taken. Standard agendas for crisis meetings should be pre-drafted and as much of the documentation as possible should be put into templates to make completion easier when it is needed.
2. **Identification of key business services —** Beneath the high-level crisis management plan there should be more detailed plans for each business unit or operational process. "Firms should focus on the outcome when approaching operational resilience," UK regulators have said. The business service itself needs to be resilient.
3. **Identification of impact tolerances —** Firms should develop a suite of impact tolerances which quantify the amount of disruption the firm could deal with should there be an incident. One example would be to define the maximum acceptable outage time of a business service. For the COVID-19 outbreak, firms may wish to consider the minimum number of employees needed to operate effectively and monitor this. Plans should be in place should staffing levels reduce to critical numbers.
4. **Flight path of processes —** Firms need to establish a transparent list of processes which are essential to keep the firm running during the crisis. This will include resource allocation and the competency of the employees required to undertake the processes during the pandemic. Interdependencies between processes should also be considered. The identification of the main process may be quite straightforward, but that process may rely on supporting processes for the delivery of a vital part of the desired outcome, in which case the supporting process increases in priority.
5. **Identification of key personnel —** The identification of each business service may lead the firm to identify those employees who are fundamental to its delivery. Firms should consider reducing the risk represented by these individuals by establishing back-up arrangements that deliver the same or equivalent standard. One option would be to split key teams and have them work in different locations.
6. **Succession planning —** Planning what will happen if a senior executive or employee becomes unavailable is a regulatory requirement. Succession planning normally covers job-hoppers and retirees but has become even more important during the pandemic.
7. **IT disaster recovery arrangements —** Firms should have arrangements which enable them to use remote sites when main offices are unavailable. Such offices will be in various states of readiness to host if disruption occurs. Access, functionality and back-ups should be reviewed and regularly tested. Staff training should set out the location of sites, transport links, parking arrangements and procedures for access to buildings.
8. **Office relocations, closings and alternative hours —** In the United States, a common requirement is that regulated entities must provide prior notice before relocating or closing an office or branch. The COVID-19 pandemic could require an office or branch to be closed suddenly for any number of reasons, including viral contamination. For example, JPMorgan Chase has closed about 20% of its branches. For state banks, numerous regulators have issued guidance regarding office and branch closures.

9. **Working from home —** In the United States, many states require mortgage loan originators to perform licensed activities at a licensed location. Recommendations that businesses allow their employees to work from home are in direct conflict with those rules. States have addressed this by waiving requirements, while specifying which activities may not be performed (such as meeting with a borrower at a home) and addressing network security issues.

10. **Review insurance policies —** Insurance policies should be reviewed regularly to determine whether they cover firms for losses as a result of a pandemic outbreak. Frequent tendering is recommended to ensure value for money, and that coverage is appropriate.

11. **Data —** Many firms process data in a number of locations in various jurisdictions. Firms should have a central record of exactly what data is held, where, and on what basis. This is necessary both to comply with data protection requirements and to ensure accessibility and, where needed, retrieval. Should a swift and comprehensive repatriation of data be required, firms must know exactly what is held, where, and under what terms.

12. **Extensions to filing deadline —** Many regulators have offered flexibility on financial reporting deadlines. For example, in the United States, two states have provided extensions to various filing deadlines. New York has extended the filing deadlines by 45 days for: a range of returns and South Carolina has extended the Mortgage Log Submission deadline until June 1, 2020.

13. **Entity examination adjustments —** U.S. federal and state regulators are also having to restrict their own activities to prevent the spread of COVID-19. Many have announced adjustments to their examination procedures, such as limiting all work to off-site.

14. **Outsourcing agreements —** Firms should keep all outsourcing agreements under review. Equally, firms should keep all entities (even those in the same group structure) to which processes or other activities are outsourced under review to ensure that the outsourcing remains strategically viable. The TRRI Cost of Compliance Report 2019[1] reported that 28% of firms surveyed outsource some or all of their compliance functionality. Compliance officers must have lines of sight to all outsourced compliance functionality and a back-up plan if that functionality needs to be reallocated, potentially at speed.

15. **Organisation charts —** The shifting political approaches to manage the virus contagion risk have put a spotlight on where employees work and the likelihood that they may be, in large numbers, unwell. While managing the isolation or sick leave of employees will primarily be the responsibility of the human resources function, compliance officers will need to be informed in terms of keeping regulatory registrations up-to-date and ensuring the firm is left without any undue long-term gaps in key roles and skill sets. All firms will have organisation charts setting out who reports to whom. Many firms also capture, explicitly, who is responsible for what in the business. Those firms which do not already do so should consider building the next level of detail into their organisation charts. It is much simpler for firms to respond with agility to events if there is clarity as to who is able to take which of the required actions to remediate an unexpected event.

16. **Testing and post-event review —** The only true test of a policy is once it has been used. Every part of the operational resilience plan is potentially capable of being tested prior to formal invocation: for example, test call cascades, convening crisis management meetings, testing IT kit at remote sites. Testing against severe but plausible operational disruption scenarios enables firms to identify vulnerabilities. A post-event review should be used to refine and update any policy and to initiate a new round of training and awareness for the entire firm.

1 http://financial-risk-solutions.thomsonreuters.info/Cost-of-Compliance-2019

# Risks

Risk and compliance managers will be reviewing risk registers, repositioning them to reflect the current situation. This report looks at how some operational risks and conduct risks have been affected.

## Operational risks

"It is time for operational risk to show to the board how nimble and flexible they are. Operational risk needs to put aside non-urgent projects and programs, step up to provide a prompt opinion on the risks posed by the pandemic as well as key controls that have been weakened."

**Elena Pykhova,** director and founder, The Op Risk Company and chair of the OpRisk Best Practice forum

### Information and cyber security

Legal experts are warning companies to strengthen their cyber-security defences as the increase in the number of employees working from home presents new opportunities for fraudulent email, phishing and other risks.

The U.S. law firm Debevoise suggested a checklist for firms to consider when preparing for possible disruptions and remote working due to COVID-19. They set out the following cyber-security considerations:

- **Phishing —** Look out for coronavirus phishing scams. There have already been fake updates from the Centers for Disease Control and Prevention (CDC), IT alerts and software notices that attempt to obtain user credentials or install malware. Firms should therefore consider implementing coronavirus-specific phishing training or testing. It is also a good idea to redistribute any company policies that cover the use of personal computers, smartphones, tablets and WiFi networks for work and emphasize that: (a) those policies still apply to those working from home; and (b) security protocols will not be relaxed absent a clear change in policy.
- **More phishing —** Do not send legitimate emails to employees that look like phishing emails. Official COVID-19 updates to employees should have a consistent format and not include links or attachments, which will help employees properly identify phishing emails.
- **Remote capacity —** Consider testing the company's remote capacity by having many employees try to login remotely simultaneously, and consider adding or expanding use of secure, web-based video conferencing options.
- **Real-time vulnerability updates —** It will be important to keep on top of new vulnerabilities and scams by subscribing to various threat-sharing groups, including the CISA Alert service, FBI cyber alerts, IT-ISAC and industry threat-sharing groups.
- **Help for the help desk —** Anticipate the additional burden on the IT help desk and make sure those employees have the policies, training and tools they need to handle the greater number of requests for technical assistance from people working from home, including the ability to verify the identity of employees using measures such as phone number authentication, challenge questions and two-factor authentication.
- **Anticipate remote working problems —** Employees who experience difficulties using their home computers (for example, printing) will be tempted to use less secure means to accomplish work tasks, such as emailing confidential documents to their personal email accounts so that they can be printed at home. Companies should try to anticipate and solve these problems ahead of time.
- **Essential employees —** Determine how many people, if any, will be needed on-site to protect the network, including patching systems and conducting information security reviews of any new systems that need to be added in haste throughout this period. This should also include those needed to conduct investigations and remediation if a cyber event were to occur. Consider back-up personnel in case some of those people become unavailable.
- **Vendors —** Coordinate with the company's third-party data vendors to make sure their cyber-security contingency plans are adequate.
- **Update contact information —** Ensure contact information is up to date for significant employees, especially mobile telephone numbers.
- **Protect medical information —** If employees become ill, there will be good reasons to want to share that information, but it is also important to maintain the confidentiality of employees' medical data as required by law, including the medical status and identities of diagnosed employees or family members of employees.

> "Regulated entities should [...] promptly notify DFS of any significant or noteworthy cyber attack. DFS's cyber regulation requires notification 'as promptly as possible but in no event later than 72 hours' after a material cyber-security event. ... And, in light of the current threat, we urge all regulated entities to notify DFS of any material incidents as soon as possible given the heightened risk, and certainly no later than the required 72 hours."

**New York Department of Financial Services,** Industry letter to all regulated entities following recent events and the need for heightened cyber-security precautions, January 2020

Financial services firms should be on high alert for ransomware attacks throughout the COVID-19 pandemic. "Firms suddenly thrust into transitioning critical systems to back-up locations and record numbers of employees working from home might find a ransomware attack to be crippling," said Ioan Peters, associate managing director of Kroll's cyber risk practice in London.

Finally, in an office environment there are secure ways to dispose of confidential printed documents. Firms should assess how confidential paperwork is handled in the home environment and develop policies.

## Data and privacy protection

> "A principle underpinning data protection law is that the processing of personal data should be designed to serve mankind. Right now, that means the regulator reflecting these exceptional times, and showing the flexibility that the law allows."

**Elizabeth Denham,** UK Information Commissioner, April 2020

During the pandemic, working arrangements make it more difficult for firms to comply with data protection regulations. Regulatory relief has been given via numerous measures taken by governments, public and private organisations.

In France, for example, the Commission Nationale de l'Informatique et des Libertés (CNIL) provided guidance for employers relating to the processing of employee and visitor personal data, and for public authorities relating to the use of mobile location data in this context. The exceptional measures taken to fight against the virus must still ensure personal data is safeguarded.

The CNIL specified the limits on employers. Employers cannot implement measures to fight the pandemic that would infringe on employees' or visitors' rights to privacy, especially by collecting personal health data that would go beyond what is necessary to determine potential exposure to the virus, it said.

More precisely, employers cannot collect information relating to the search for potential symptoms of employees and their relatives. Employers cannot therefore take the following measures:

- conducting mandatory body temperature readings of each employee/visitor to be shared daily with managers; and
- collecting medical forms or questionnaires from all employees.

Employers have obligations to protect their employees' health, CNIL said. As part of those obligations, employers may: (1) raise employee awareness and invite employees to report information about them in connection with potential exposure to COVID-19 to the employer or to the relevant health authorities; (2) facilitate the transmission of such information by setting up, if necessary, dedicated channels for communicating this information; and (3) facilitate remote working methods and encourage use of occupational health resources.

In the event employees report suspected exposure to COVID-19, employers may record: (1) the date and the identity of the person suspected of being exposed; and (2) the organisational measures implemented by the employer (e.g., contacting the occupational health doctor, etc.,)

The Luxembourg, Belgian and Dutch DPAs have adopted similar approaches. For instance, employers in the

Netherlands cannot ask their employees questions about their health or test them, but they may ask them to monitor their own body temperature, including during working hours.

In the UK, the Information Commissioner's Office has recognized that, while it would be reasonable for employers to ask employees and visitors if they are experiencing any symptoms, employers could go further and collect health data. They must not however collect more than they need, and any information collected must be "treated with the appropriate safeguards".

The Irish DPA did not exclude the implementation of more stringent requirements, such as a (medical) questionnaire, if there is "a strong justification based on necessity and proportionality and on an assessment of risk".

All DPAs in Europe agree the measures taken by employers in response to COVID-19 involving the use of personal data should be necessary and proportionate and comply with the instructions of, or recommendations from, public health authorities.

Multinationals that are likely to send employee data overseas to headquarters or regional offices must consider whether any restrictions on cross-borders transfers of personal data apply before sending data abroad.

In Hong Kong, under the Personal Data (Privacy) Ordinance, employers are required to inform employees of the reasons why their data is being collected, what it will be used for and who it will be shared with. Consent is not legally required for the collection and use of personal data according to the stated purpose but use of personal data for a new purpose will require express consent. In practice, this means employers should comprehensively disclose to employees how their data will be used, especially if it will be sent to third parties such as healthcare authorities.

In China, cross-border transfers of personal data must undergo security assessments by provincial cyber-security regulators. Regulators have the discretion to prohibit transfers that are deemed to be contrary to national security or public interest. In practice, this could result in delays or otherwise interfere with a company's ability to conduct prompt contact-tracing on employees who may have fallen ill or have come into contact with a confirmed case.

## Financial crime

> "As the world effectively shuts down, it is having a dramatic effect on the ability of organized crime groups to traffic their drugs, smuggle contraband and illegally move humans across their borders."
>
> **Keith Ditcham,** senior research fellow at the Royal United Service Institute in London

The pandemic has provided fraudsters and scammers with an opportunity to increase their activity. Regulators have highlighted this risk to consumers, but financial crime has been manifesting itself in a number of ways:

**Identification and verification checks —** The coronavirus crisis has demonstrated the need for supervisors in all countries to embrace developments that facilitate, without face-to-face encounters, know-your-customer checks when opening a bank account. This made new Financial Action Task Force (FATF) guidance, issued in March 2020, designed to help governments, financial institutions, virtual asset service providers and other regulated entities determine whether a digital ID is appropriate for use for customer due diligence, particularly timely.

John Dobson, chief executive, SmartSearch, an AML verification platform in Leeds, said "Clients of banks cannot travel to branches or offices, so documents cannot be presented in person and with many staff working from home, it is not secure to send them to home or other remote addresses. Staff working remotely are unlikely to have the facilities to process documents appropriately, and there is also a chance that documents themselves may be contaminated."

"Electronic verification and AML checks solve all these problems. No documents are needed – and so the issue of forgery does not arise – and checks can be conducted entirely safely regardless of anybody's physical location, via PC, tablet or phone," Dobson said.

**Insider dealing —** Concerns were expressed that the UK Financial Conduct Authority's (FCA) announcement of two months' temporary relief for listed companies to complete audited financial statements was likely to lead to more insider dealing. "Given the volatility in the markets at the moment, there is every likelihood that people will be seeking to take advantage of inside information to enable short-term gains. These profits will then flow through the banking system as profits are realized and transferred to other accounts," said Steve Smith, partner at Eversheds Sutherland in London.

The U.S. Securities and Exchange Commission (SEC) has issued similar warnings.

**Transaction monitoring —** As government mandates stemming from the COVID-19 pandemic keep many restaurants, bars and other businesses shuttered or doing limited to-go business, bank financial crimes compliance professionals would be wise to beware such businesses whose transaction patterns remain unchanged. At the same time, the activity of other bank customers, especially the elderly, can be expected to potentially change.

**Scammers —** Banks were stepping up their fraud prevention measures to protect customers from scammers eager to exploit the coronavirus pandemic with a whole range of new tricks, including fake sales of medical supplies and bogus government relief schemes. Some banks have said customers had already been caught out by fraudsters posing as banks, government and even health service providers to persuade victims to hand over passwords or other sensitive data. Fraud is also on the rise in the United States, where regulators have warned about investment and data theft scams.

## Recordkeeping

Firms are already grappling with the challenge related to recording phone calls as traders place orders and relationship managers advise clients. At a time when markets are falling it is essential that firms step up recordkeeping and evidence of client interactions to offset future disputes. Many such tasks are not completely automated. Firms should assess whether manual processes are being followed to protect themselves.

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> **Elizabeth Denham,** UK Information Commissioner, April 2020

## Conduct risk

Conduct risk ultimately refers to the way the firm and individuals act, whether it is ethical, treats its customers fairly and allows the culture for both the firm and employees to "do the right thing".

The pandemic has increased the potential for bad practice whereby individuals and firms attempt to take advantage. This included news that four U.S. senators sold more than $1 million in stock after receiving closed-door briefings on the COVID-19 outbreak, leading to criticism that they may have profited from the official information. The reports came as the SEC warned firms with privileged information about the impact of the coronavirus not to trade on it or risk insider trading charges.

The practice of trading on the decline in a stock or security — short selling — is also an example of a conduct risk. The ethical value of the practice has been questioned, especially in a downturn. Short positions accounted for almost £17 billion of stock issued by the UK's biggest 350 listed companies earlier in March. This suggested that profits from falling share prices could run into billions, IHS Markit, a data firm, said. Many jurisdictions have moved to curtail the practice.

The risk of not treating customers fairly during the crisis is also significant. Many of the policies, procedures and processes that were in place during business as usual now must be reviewed as customers' situations change.

One of the conduct risks that firms run is an overlap with credit risk, i.e., that customers are unable to repay their debts. The conduct aspect to this when internal policies, procedures and processes fail to treat the customer fairly, given the situation and the customers' ability to manage it. For example, customers may find themselves unable to pay mortgages, personal loans and credit card debts because the customer is not working during the pandemic. This may not be the customer's fault, and regulators are keen to stress to financial services firms that customers in this position should not be disadvantaged. Similarly, insurance policies may not cater for the travel or health situation but again customers should be treated fairly during the crisis.

As explained in the responses section, regulators have put in place measures that help customers and firms manage this risk.

# Communications with regulators

During times of change, effective communication with stakeholders is vital. It is important for firms to know the identities of their main stakeholders and the best methods for communication with them.

Communication with the regulator during a time of crisis is essential. In the UK, to be "open and honest" with the regulator is a principle for doing business, and in many other jurisdictions it is mandatory for financial services firms. Keeping the regulator informed of current status and future plans can help the firm manage a situation better. It can help the regulator to get a handle on systemic issues which they, in turn, can advise the firm on if future actions dictate that the firm would be an outlier from the rest of the sector. Firms may find it beneficial to "sound out" the regulator informally and ask advice early in a crisis.

As well as informal or regular communication on ad hoc topics, communication with the regulator is usually more formal. An example of this is the various regulatory returns and information required. In this area regulators have communicated their positions on any concessions for reporting they may have given for example:

**Sanctions compliance** — As bank and non-bank corporate entities work to manage their sanctions compliance programs virtually, they must expect less efficient workflow and keep regulators apprized of their challenges. Perhaps the most heavily affected are alert managers who investigate screening alerts, determining whether possible matches are in fact sanctioned parties. Sanctions alert management is "one of the more difficult things to manage virtually" because "it really is an area that is not that accessible to do while at home," said Nicole Succar, counsel with Crowell & Moring in New York.

**Disclosure notifications** — The Australian Securities Exchange (ASX) is to provide regulatory relief and comfort to directors as listed companies navigate the COVID-19 market disruption. The bourse said in guidance that directors still needed to meet their continuous disclosure obligations but would have greater flexibility in raising capital during this uncertain period. The ASX said it appreciated there were "particular disclosure challenges for listed entities arising from the rapidly evolving and highly uncertain situation surrounding the coronavirus pandemic".

Directors would not be held accountable for failing to anticipate the extent of the COVID-19 crisis and its impact on capital markets, it said. "It is important at the outset to state that a listed entity's continuous disclosure obligations do not extend to predicting the unpredictable," the exchange said in a letter of comfort to directors. Directors of listed companies will not be expected to disclose "matters of supposition" with regard to future trading conditions, the exchange clarified.

Companies can also seek back-to-back trading halts, which will extend the maximum period to four trading days. This will give entities more time to plan their capital-raising activities. If the company needs more time the directors will have to request a voluntary suspension from the ASX. The bourse said these waivers were one-off measures to allow companies to trade through a difficult period.

In the United States, the SEC further extended the reporting period for firms to file many mandatory disclosures and eliminated the need for investment firms to explain delays. But it pushed companies to report the impact of the coronavirus on their operations and said it was monitoring firms' efforts.

"Timely, robust, and complete information is essential to functioning markets," the regulator said.

The SEC said it would take no action for reports delayed from March 1 to July 1, prolonging the prior 45-day extension from the first day of March, for firms whose reporting capability has been curtailed by the COVID-19 pandemic.

Public companies were still required to explain the cause of the delay. Investment firms, however, were further exempted from having to explain delays and allowed an extension for routine fund disclosures and form ADV updates until June 30.

In Canada, on March 18, the Canadian Securities Administrators announced that securities issuers would receive temporary relief from filings required before June 1. This includes a 45-day extension for periodic filings such as annual information forms and management's discussion and analysis.

**Financial results** — The UK FCA has strongly requested all listed companies to observe a moratorium on the publication of preliminary financial statements for at least two weeks.

"Investors in capital markets rely on trustworthy information on the companies whose instruments they trade. The unprecedented events of the last couple of weeks mean that the basis on which companies are reporting and planning is changing rapidly. It is important that due consideration is given by companies to these events in preparing their disclosures," the regulator said.

# Working remotely

"People are working from home. They are not working in the same office with the same oversight, controls and processes within an office. How do we ensure proper compliant behavior in a distributed workforce? That becomes critical. Even where regulations haven't changed, the business patterns and behaviors have changed and still need to be compliant. We still need to meet those requirements whether they are privacy requirements related to GDPR, market conduct requirements, UK SMCR, bribery and corruption and health and safety requirements. We need to be able to meet all these requirements with a distributed workforce in the pandemic."

**Michael Rasmussen,** GRC 20/20 Research LLC

One of the more practical aspects of firm's reaction to the COVID-19 pandemic has been the need for staff to work from home. With many countries and cities in lockdown working from home has become essential for firms. Many had planned for large numbers of employees to work remotely in their business continuity plans but few had expected the scale of working remotely and considered the range of issues to which this gives rise.

### What are the rights and duties of a financial services employer during the coronavirus pandemic in the UK?

**Duty of health and safety —** It is important to prevent unauthorized absences but an employer's primary duty in the event of a pandemic is to protect the health and safety of its employees. This means ensuring good hygiene, good communication and that working practices do not pose undue risks to staff. This is particularly relevant in circumstances where there are many employees sitting on one floor and using communal doors (e.g., a trading floor). A good sickness absence policy will allow the firm to manage any employees showing symptoms of infectious illness. Usual sick leave and pay provisions will apply. The same is true for any workers who have been placed in quarantine or have not been allowed back to the UK after travel.

**Right to enforce home working —** Can an employer insist an employee it suspects may have been exposed to the virus should stay out of the office?

The employer may have an express, contractual right to require an employee to stay at home. Even where this does not exist, however, it is unlikely to be a breach of duty to insist an employee stays at home, providing that there are legitimate, non-discriminatory grounds for concern. Nonetheless, it should be dealt with sensitively and discretely. Regardless of whether flexible working is possible, if an employee is well but is required to stay away from the office, they should be receiving their usual pay.

**Right to enforce office working —** Perhaps employees are afraid of catching the virus, and do not want to come into the office. Can the employer insist that they do?

Primarily, the employer should listen to the concerns of its staff. There may be easy ways around this issue, for example, by allowing them to work from home, or commute outside of rush hour to avoid peak times. Other considerations include arranging for staff to take unpaid leave or holiday. If employees unreasonably refuse to attend work despite negligible risk, and it is impossible to give them leave, the firm may consider taking disciplinary action. The firm should, however, be wary of taking any drastic measures such as dismissal without proper investigation.

**Right to close the office —** Guidance from the UK Advisory, Conciliation and Arbitration Service states that if someone with the coronavirus comes to work, a firm does not necessarily have to close the office. The local public health authority will contact the firm to perform a risk assessment. If, however, a firm chooses to close the office temporarily for safety reasons, it must ensure plans are in place for communicating effectively with staff. Unless provided for in employment contracts, the employer will still need to pay workers during the time the office is closed.

### What steps should firms be taking?

**Keep clean**

- Basic hygiene is crucial. Everyone at work should be washing their hands thoroughly with hot water and soap and/or sanitizer and using disposable tissues to catch sneezes or coughs. Put up signs or send emails to remind staff of these simple rules.
- Increase the cleaning of the workplace, particularly phones, door handles, stairwells and lifts.

- Provide hand sanitizers and tissues to employees, or ensure they are kept topped up in communal areas.
- Employees may feel more comfortable wearing face masks, particularly if they work closely with the public, so consider providing staff with masks, if appropriate.

**Keep informed**

- Be aware of how to spot the symptoms of the novel coronavirus. See, for example, NHS guidance.
- Stay up-to-date with government advice, particularly regarding the areas heavily affected, to avoid any non-essential business travel to novel coronavirus hotspots.
- Consider the risks to the business posed by the novel coronavirus and whether it is necessary to disclose these in year-end accounts.

**Keep to the plan**

- Put a contingency plan in place and take steps now to ensure that, if needed, the plan can be put into action.
- Ensure remote-working structures (if they exist) are accessible and ready in case they are required on a large scale.
- Watch out for any updates from the government or any financial regulators that may affect any contingency plan.

**Keep in touch**

- Communication is vital. Manage any "fear of the workplace" by keeping employees informed of any actions the business is taking to protect them and the likely level of risk.
- Staff should be made aware of how they will be contacted if their employer decides to take precautionary measures. This will require having up-to-date contact details for all staff and their emergency contacts.

According to the U.S. Financial Industry Regulatory Authority (FINRA), one of the most immediate effects of a full-blown pandemic will be higher levels of employee absenteeism, either voluntary or forced. In response, many firms are keeping employees and clients abreast of firm preparedness, asking employees to self-report symptoms, suspending non-essential travel, recommending the use of online conference or video services for client interaction and reducing the number of group meetings.

Working remotely has raised some difficult questions for firms in terms of how to manage and monitor market conduct, IT security as well as other compliance and risk management tasks. Firms still need to be able to see and monitor individual behavior, communicate what behavior should be in policies and ensure compliance among employees.

"Firms' reliance on outdated methods to communicate policies and enforce compliance will complicate the ability to maintain a compliance culture among a distributed workforce. In particular, the continuing use of documents, spreadsheets and emails to drive compliance will create a mountain of paperwork that will work against firms," said Michael Rasmussen, an analyst at Wisconsin-based GRC 20/20 Research.

Often employees working from home are getting too many messages sent in too many ways. Firms must shift to automated approaches to help employees stay on top of change and maintain a culture of compliance.

"We're moving from a past where compliance was document-centric — where compliance was managed, monitored and communicated in a variety of documents, spreadsheets and emails; [where there were] manual processes, reports that took 200 hours to build [and where] policy portals are scattered — to a future where compliance is automated, monitored and there's a single portal for the policies. Those policies are kept current as regulations change and business change and adapt pandemics and times of crisis," Rasmussen said.

Electronic communication, especially via mobile channels, has become the primary means of communication for many professionals.  Firms must be conscious of which mobile devices are used by all its employees. The importance of approved devices has always been a foundation of a mobile device policy; however, it becomes even more vital as employees who usually work primarily at the advisory office may now be working from home.

Finally, in Canada, employees, across all provinces and territories, also have a legal right to refuse to work if they have reasonable grounds to believe that their workplace poses a health and safety risk to them. A healthy employee's right to refuse to work because he or she is concerned about being exposed to COVID-19 might not be absolute but provincial legislation on occupational health can provide some insight on risk management measures employers could be expected to take.

In Ontario, employers are required to investigate formally the hazard upon which an employee's refusal to work request is based. In the context of COVID-19, businesses could be required, by law, to inspect the workplace and implement mitigating measures. Businesses would also likely be required to produce evidence outlining the measures they have taken to the Ministry of Labor, as a part of the investigation.

Similar obligations exist in other provinces such as British Columbia, where employers are also required to investigate an employee's refusal of unsafe work and decide on whether an employer has taken sufficient action to address the hazard.

# Response to the crisis

The pandemic has required a response from governments, central banks and regulators. From increasing bank capital to providing mortgage payment holidays, re-prioritising the work of regulators and prohibiting short selling, the actions in response to COVID-19 have been many and varied. This report does not aim to cover all measures implemented in response to the crisis, rather it focuses on how TRRI has reported the actions taken by regulators during Q1.

## United States

In the United State the measures taken have included:

**Rate cuts —** The Federal Reserve cut rates twice on an emergency basis, the first time it has done that since the 2008 financial crisis. The first cut of a half percentage point was on March 3 and the second of a full point was on March 15, which brought the Fed's overnight borrowing rate for banks back to near zero. The reduction is meant to keep down the cost of loans for banks, and by extension their customers, to ensure borrowers have ample access to credit during the crisis.

**Repo market —** The Fed has been intervening in money markets since last autumn, when a cash shortage led to a jump in short-term borrowing rates. Policymakers had planned this year to scale back operations in the market for repurchase agreements, or repo, through which dealers can borrow cash. But as the economic threat posed by the coronavirus increased, the central bank pivoted to offering almost unlimited support in the overnight lending markets for cash. On March 31, the Fed also announced that it broadened its repo agreements with foreign central banks, allowing them to exchange their holdings of U.S. Treasury securities for overnight dollar loans.

**Quantitative easing (QE) —** The Fed first employed QE in the 2008 financial crisis. The idea is that through large-scale purchases of various types of bonds (mostly Treasuries and mortgage-backed securities) it helps ensure that longer-term interest rates such as those for mortgages and car loans remain low and helps keep major purchases affordable for consumers and businesses. When it cut rates back to near zero on March 15, the Fed restarted these large-scale purchases and is now doing so with an open-ended commitment.

**Discount window —** Banks in recent weeks have borrowed the most since 2009 from the Fed's lending tool of last resort at the urging of the central bank. The so-called "discount window" is rarely used because banks are worried that using it could make them appear weak. But policymakers have lowered the rate charged on the funding to 0.25% and extended the length of the loans offered from one day to 90 days.

**Central bank foreign currency swap lines —** The Fed has standing agreements with five other major foreign central banks, the Bank of Canada, European Central Bank, Bank of England, Bank of Japan and Swiss National Bank, that allow them to provide U.S. dollars to their financial institutions during times of stress. The Fed has increased the frequency of the operations from weekly to daily. It also offered temporary swap lines to nine additional countries to ease access to dollars, which are in high demand because the liabilities of many foreign governments and companies are denominated in the U.S. currency.

**Term asset-backed securities loan facility (TALF) —** Through a special purpose vehicle (SPV), the TALF program will buy bundles of assets secured by auto loans, credit cards, student loans, loans backed by the Small Business Administration and other types of credit. Its aim is to make sure banks and other lenders such as auto finance companies have ample cash to keep making loans to consumers and businesses during the crisis.

**Commercial paper funding facility (CPFF) —** The Fed reintroduced the CPFF, a tool it used during the last financial crisis, to get money directly into the hands of large businesses, which are major employers. Like the TALF, it will use an SPV to make purchases of commercial paper, an essential source of short-term funding for many companies. The market had come under strain amid worries that companies hit by efforts to slow the spread of the coronavirus would not be able to repay their IOUs.

**Primary dealer credit facility (PDCF) —** Through this facility, the Fed offers short-term loans to the two dozen Wall Street firms authorized to transact directly with the central bank. The program offers funding of up to 90 days to primary dealers. A similar program run from 2008 to 2010 only offered overnight loans.

**Primary market corporate credit facility (PMCCF) —** With this program, the Fed will act as a backstop for corporate debt issued by highly rated companies. Through an SPV, the PMCCF will buy bonds and issue loans to companies that can help them cover business expenses and stay in operation. The debt must be repaid to the PMCCF within four years.

**Secondary market corporate credit facility (SMCCF) —** Closely related to the PMCCF, under this program an SPV will purchase corporate bonds and exchange-traded funds in the secondary market, or the public market where these securities are traded after they are first issued. The market liquidity added by the Fed is meant to stabilize conditions in the corporate bond market and make it easier for companies to raise funds there. Only so-called investment grade securities are eligible for purchase.

**Money market mutual fund liquidity facility (MMFLF) —** This new facility is meant to keep the $3.8 trillion money market mutual fund industry functioning even when investors are withdrawing money at a fast clip. The tool offers loans of up to one year to financial institutions that pledge as collateral high-quality assets like U.S. Treasury bonds that they have purchased from money market mutual funds. The Fed indirectly encourages banks to buy assets from money market funds, reducing the odds that the funds will need to sell those assets at a loss to meet redemptions.

**Leverage ratios —** The U.S. Federal Reserve announced it was temporarily easing its leverage rules for large banks by exempting certain investments from a key leverage calculation, part of the effort to combat the economic slowdown inflicted by the coronavirus pandemic. Now, banks will be able to exempt any holdings in U.S. Treasury debt or deposits at the Fed from their calculations of the supplementary leverage ratio, or SLR, an additional leverage restriction imposed on the largest U.S. banks. The exemptions, which the Fed said will help ease strains in the Treasury market and encourage banks to continue lending, will stay in place until March 31, 2021.

## Australia

In Australia, the parliament has passed an economic response package which attempts to avoid unnecessary insolvencies and bankruptcies. It has enacted the Coronavirus Economic Response Package Omnibus Act 2020; schedule 12 sets out temporary relief for individuals and companies for six months, so they can resume normal business operations once the threat has subsided. The main elements of the regulatory relief are:

- A temporary increase in the threshold at which creditors can issue a statutory demand on a company and an extension of the time companies must respond to statutory demands.
- A temporary increase in the threshold for a creditor to initiate bankruptcy proceedings and an increase in the period within which debtors must respond to a bankruptcy notice.
- Temporary relief for directors with regards to any personal liability for trading while insolvent, and a provision for "safe harbor" arrangements.
- The Treasurer has flexibility to provide relief from provisions of the act, to enable companies to deal with unforeseen circumstances that arise as a result of COVID-19.

Under the legislation, the threshold at which creditors can issue a statutory demand on a company has increased from A$2,000 to A$20,000, for a period of six months. In addition, companies will now have six months to respond to a statutory demand, rather than 21 days. For individuals, the government has temporarily increased the threshold for the minimum amount of debt required for a creditor to initiate bankruptcy proceedings against a debtor from A$5,000 to A$20,000.

As from March 25, 2020, directors will be temporarily relieved of personal liability for insolvent trading where the debts are incurred "in the ordinary course of business".

There are also changes to the existing "safe harbor" provisions in the Corporations Act that will provide temporary relief for directors from personal liability for being unable to pay their debts.

The act provides temporary relief for insolvent trading by a subsidiary if reasonable steps are taken to ensure the "safe harbor" applies to each director of the subsidiary.

"[T]o make sure that companies have confidence to continue to trade through the coronavirus health crisis with the aim of returning to viability when the crisis has passed, directors will be temporarily relieved of their duty to present insolvent trading with respect to any debts incurred in the ordinary course of the company's business. This will relieve the director of personal liability that would otherwise be associated with insolvent trading for a period of six months," the government said in its announcement.

Under the legislative framework, the Australian Securities and Investments Commission (ASIC) has the power to offer relief from some provisions of the Corporations Act, or to take no action for failure to comply.

Australia's prudential regulator loosened its capital requirements to enable banks to lend more freely, backing the government's efforts to stave off a recession amid the COVID-19 outbreak. The Australian Prudential Regulation Authority (APRA) said it would allow banks to breach its heightened capital buffer requirements to boost the flow of credit to the economy.

"APRA is advising all banks today that, given the prevailing circumstances, it envisages they may need to utilise some of their current large buffers to facilitate ongoing lending to the economy," the regulator said in a statement. A relaxation in the amount of capital they can hold is likely to free up hundreds of billions of dollars, according to bank analysts.

## UK

In the UK, the following measures which directly affect financial services firms have been introduced. This list does not include the social and commercial measures introduced for UK citizens and businesses:

**Rate cuts —** Monetary Policy Committee (MPC) reduced bank rate and launched a new Term Funding Scheme with additional incentives for SMEs. On March 10, 2020, the Monetary Policy Committee (MPC) reduced bank rate by 50 basis points to 0.25%. This was further reduced on March 19 to 0.1%.

**Capital ratios —** Financial Policy Committee (FPC) reduced the UK countercyclical capital buffer to 0% of banks' exposures to UK borrowers.

**Supervisory guidance —** The FPC accepted that all elements of banks' capital and liquidity buffers can be drawn down as necessary to support the economy through this period.

**Operational resilience —** The regulators expect all firms to have contingency plans to deal with major events and that the plans have been tested.

**Call recording —** The regulators have asked that firms should continue to record calls, but that some scenarios may emerge where this is not possible. Firms should make the FCA aware if they are unable to meet these requirements.

**Key financial workers —** On March 23, in response to the government's decision to close all schools, except to those pupils whose parents are critical to the COVID-19 response (including those parents working in financial services), the PRA issued guidance to firms to help them identify these employees.

### Canada

In Canada, the banking regulator delayed the implementation of revised minimum capital and liquidity requirements for small and medium-sized banks until 2023. The Office of the Superintendent of Financial Institutions also eased its capital and liquidity requirements for banks, changed credit loss provisioning and allowed more loans to be securitized as part of efforts to limit the economic hit from the coronavirus pandemic.

## Regulatory processes

Regulators have been reviewing their "to-do" lists and re-prioritising them. For example:

- In the UK, new firm and senior management function authorizations and approvals are a priority activity and enforcement powers remain the same during the COVID-19 pandemic, an FCA spokesman said. The FCA has put many policy initiatives on hold or delayed them until October so that it and firms can address the many COVID-19-related challenges, particularly operational resilience and market volatility.
- Australia's financial regulators will wind back their supervisory work as they support regulated entities through the coronavirus shutdown. The regulators will "recalibrate" their approach to regulation as businesses focus on the challenges associated with navigating the COVID-19 outbreak. The strategy has been developed in concert with the Council of Financial Regulators, which includes the central bank, conduct regulator and prudential regulator. The more lenient approach has been welcomed by market participants, who are still working through the findings and recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

## Stress testing

There has been a divergence of views on stress testing between the United States and Europe. In the United States, the Federal Reserve's annual stress-testing exercises for major U.S. banks is proceeding as planned despite the COVID-19 pandemic, with some large institutions nearing the final stage of their 2020 review. One source at a large New York bank said its stress-testing exercise was nearly complete.

In the UK, however, the Bank of England said it was cancelling this year's stress test of eight major banks and building societies to enable them to focus on providing lending throughout the crisis. The timetable for introducing the remaining Basel capital requirements for banks "may prove to be challenging" and the Bank said it would coordinate implementation with other countries. Scrapping this year's stress test follows a decision by the European Union to cancel its planned health check of leading banks, which had included top UK lenders.

## Suspension of dividends

To maximize financial services firms' holding of capital in the downturn, regulators have advised firms not to pay dividends this year.

- The European Insurance and Occupational Pensions Authority (EIOPA) advised insurers and reinsurers to suspend dividends temporarily and share buybacks and consider postponing bonuses as well to ensure continuity in services during the coronavirus pandemic, the EU's insurance regulator said. EIOPA said it was essential to ensure insurers and reinsurers hold a "robust level" of reserves to protect policyholders and absorb potential losses.
- In the UK's biggest banks announced they were suspending dividend payments. In a series of letters to HSBC, Barclays, RBS, Lloyds, Nationwide, Santander and Standard Chartered, Sam Woods, chief executive of the Prudential Regulation Authority (PRA), ordered the banks to make public statements and sent them a template for their announcements. Woods further asked the banks to announce voluntarily they would halt bonuses to senior staff, or the PRA would consider ordering them to do so.
- New Zealand's central bank ordered banks to stop paying dividends or redeeming capital notes given widespread economic uncertainty caused by the pandemic. The payment restrictions take effect immediately and were issued to all locally incorporated banks. They will remain in place until further notice, the Reserve Bank of New Zealand said in a statement.

## Short selling

The practice of trading on the decline in a stock or security — short selling — has also been banned in many jurisdictions. In the UK, the FCA temporarily prohibited short selling in a range of instruments. Greek, Belgian and Austrian markets authorities used arts 20 and 24 of the Short Selling Regulation (SSR) (EU) No 236/2012 to introduce month-long short-selling bans on March 19. They joined France, Italy and Spain in imposing such bans.

Conversely, in the United States, the head of the SEC said it would not ban short selling of shares, amid speculation about further measures the agency might take to arrest a market rout that stems from fears the coronavirus will spark an even more severe recession.

## Lending and arrears

A significant consumer risk during the pandemic is customers' ability to repay household bills, e.g., mortgages, should they lose their jobs due to businesses closing either temporarily or permanently. Many jurisdictions have recognized this consequence of any "lockdown" on the economy and financial institutions have been advised to respond sympathetically. Examples of this are:

- The U.S. Financial Accounting Standards Board has given rare, speedy approval to a regulatory statement issued on March 22, 2020 that urges banks to work with borrowers affected by COVID-19, so their loans can be modified without the usual penalties and accounting implications that come from a default.
- Ben Carson, U.S. Housing and Urban Development secretary, authorized the Federal Housing Administration to implement a moratorium on foreclosures and evictions for FHA-insured residential mortgage loans covering single family homes and reverse mortgages, in an effort to reduce the impact on people affected by COVID-19 disruptions. Similarly, the Federal Housing Finance Agency directed Fannie Mae and Freddie Mac to suspend foreclosures and evictions. The Department of Veteran Affairs has strongly encouraged VA loan servicers to implement a moratorium. While these actions at the federal level encompass the majority of first lien residential mortgage loan volume in the United States, there is a gap for nonconforming loans and second lien loans. Actions by some states have provided further protection.
- The European Union wants to give as much operational relief to banks as possible when dealing with losses on loans during the coronavirus epidemic and could consider further steps, a European Commission official said. Regulators in the EU have offered flexibility on how a loan loss accounting rule known as IFRS 9 is applied but the United States has gone further and offered banks a two-year holiday from its equivalent rule.
- In the UK regulators have advised on the following points:

• **Access to cash —** The regulators are working together to make access to cash as easy and convenient as possible. The regulators are confident that electronic payment providers have capacity to cope with the potential changes in transaction numbers. Firms should continue to help vulnerable consumers access their banking services.

• **Unsecured debt products —** The FCA wants firms to show greater flexibility to customers in persistent credit card debt. Firms are required to take a series of escalating steps to help customers who are making low repayments for a long period. After 36 months of someone being in persistent debt the provider must offer options to help repay the debt more quickly. If customers do not respond within a period set by the firm, the card must be suspended. Given the challenges facing many customers at they will be given more time, until October 1, 2020, to respond to firms' communications. This means firms would not be obliged to suspend the cards of non-responders before then. This applies both to those who have already received communications from their provider and those that are yet to receive them.

• **Three-month payment holidays —** Customers are being offered the opportunity to take three-month payment holidays on their mortgages should they need to free up money to pay for other essential debts such as energy bills. This will be for residential customers as well as buy-to-let landlords who have tenants who are experiencing issues with their finances.

## Closing thoughts

Regulators have been assiduous in their efforts to offset the impact of the COVID-19 pandemic on both financial services firms and their customers. Regulators have sought to be responsive to firm requests for delays and short-term changes to requirements,

In a March "Dear CEO" letter, the UK FCA emphasized that its approach to the reprioritization of regulatory work has been designed to allow firms to concentrate their efforts on responding to the crisis and the consumers they serve. In the same letter, the FCA issued a stark warning to all. It said that it had received some "requests that we believe are not in the interests of consumers, or would hamper us in managing the crisis situation, which we will refuse. In the case of requests that we consider to be opportunistic and designed to undermine consumer protection, we will reflect on what this tells us about the firms involved or conduct in the sector."

Firms and their clients are in survival mode, focused on dealing with the impact of the pandemic at the same time as seeking to plan for uncertain timescales and evolving responses. The best advice for firms is to stick to the bare minimum in terms of business activity, to seek continued good customer outcomes, and to document what they have done, and why. In the turmoil of the crisis regulators are giving firms considerable latitude but that will not stop forbearance from turning into hindsight once COVID-19 is in the past.