

COVID-19 Derivatives Checklist – Part 3: Key regulatory issues and action items

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The novel coronavirus (**COVID-19**) pandemic is presenting the global markets with unprecedented challenges. Governments, corporations and the financial markets have been struggling to evaluate and adapt to the social and economic impact of COVID-19. We have created this three-part Client Alert to highlight some issues and considerations which, though general in nature and not intended to be exhaustive, we hope will be helpful as part of your preparations for the unique challenges ahead.

In Part 1, we discussed the key legal and practical issues that market participants should consider under the ISDA Master Agreement and related ISDA collateral agreements. In Part 2, we discussed the issues as applied to certain over-the-counter (**OTC**) derivatives products. In this Part 3, we discuss recent derivatives regulatory issues.

Current Relief

- Check whether a specific supervisor's or regulator's current emergency forbearance, flexibility, relief or reprioritising of supervisory actions applies in other relevant jurisdictions (*e.g.*, CFTC Phase V uncleared margin relief may not be followed by all jurisdictions; EU national regulators are making individual statements about ESMA's reprioritising of reporting under phase 1 of SFTR to July 2020).
- Check COVID-19 announcements on bank supervisors' websites on avoiding procyclical effects when applying accounting standards, use of capital and liquidity buffers including Pillar 2 guidance, capital conservation buffers and the liquidity coverage ratio, composition of capital relief and relaxation of countercyclical capital buffers.

Upcoming Deadlines

- Monitor relevant trade association webpages collating regulators' and supervisors' announcements about the postponement of upcoming consultation and implementation deadlines, surveys, bank stress tests and supervisory programmes and visits in order to facilitate quick reprioritising of resources and project teams (as at the date of this Client Alert, final LIBOR transition is still scheduled for the end of 2021 and the UK's Brexit transition period is still scheduled to expire at the end of 2020).

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- Reconfirm the timelines of any regulatory applications, approvals, waivers and authorisations currently with your supervisor.
 - Check prudential supervisors' announcements adjusting any implementation timelines of upcoming changes to prudential Internal Ratings Based models and the Standardised Approach to credit risk and for any acknowledgement (alongside that of the UK Prudential Regulation Authority) that the existing Basel timetable may prove to be challenging and that international co-ordination is ongoing.

Short Selling Bans

- Check the scope of individual regulators' short selling restrictions and prohibitions carefully for gaps and issues (e.g., how dual-listed shares are caught, or conflicts such as that with the Euro STOXX® Banks exemption clarified at https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Meldung/2020_Corona/meldung_2020_03_19_corona_virus8_Leerverkaufsverbote_en.html).
- Check regulators' websites for any new, lower thresholds for the notification of short selling positions.

Market Suspension | Markets Continuity

- Monitor trade association COVID-19 webpages (e.g., WFE <https://www.world-exchanges.org/our-work/wfe-members-covid-19-work>, FIA <https://fia.org/covid-19>) for clearinghouse and exchange announcements, including circuit breaker triggers, trading suspensions and floor closures.
- Monitor FIA, GFMA and ASIFMA websites for updates on the potential publication of completed business continuity questionnaires to be sent to major exchanges, clearinghouses and settlement systems covering (among other things) remote working and connection speed issues.

Senior Management Decisions

- Document for supervisors the decisions and rationale of senior management who are being pressured to make difficult and urgent decisions so that they can show that reasonable steps were taken in the circumstances.

Remote Working | Social Distancing

- Check carefully relevant regulators' announcements regarding practical difficulties currently being suffered by firms around recording of telephone conversations of staff trading in split remote locations and different expectations from regulators and supervisors in different jurisdictions on how risks arising from the lack of voice recording should be mitigated and controls and oversight maintained.
- Consider how to comply with supervisors' expectations that firms must still take all steps to prevent market abuse risks (including enhanced monitoring or retrospective reviews).
- Check carefully relevant regulators' announcements regarding practical difficulties currently being suffered by firms around submission of regulatory data and supervisors' expectations that firms will maintain appropriate records during this time and submit the data as soon as possible.
- Check if financial services workers in your jurisdiction are in a government list of "key workers" who have fewer restrictions (e.g., use of schools for their children, use of public transport) as in the UK (where bank and financial market infrastructure staff are on the list at <https://www.gov.uk/government/publications/coronavirus-covid-19-maintaining-educational-provision/guidance-for-schools-colleges-and-local-authorities-on-maintaining-educational-provision>).

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