ELFA Legal & Regulatory Update
18/05/2020 – 22/05/2020

Key Highlights:

- This Legal & Regulatory Update covers the week commencing 18/05/2020.
- BoE & HM Treasury provide further information on their joint Covid Corporate Financing Facility (CCFF) and update a number of terms and conditions.
- BoE discontinues three-month Contingent Term Repo Facility (CTRF) operations at the end of May 2020.
- Financial Reporting Council (FRC) updates its Guidance on reporting of exceptional items and APMs in the context of the COVID-19 crisis, which we summarise below and analyse in more detail at the end of this update.
- UK Government introduces Corporate Insolvency and Governance Bill in Parliament, which we summarise below and analyse in more detail at the end of this update.
- ESMA issues Public Statement on implications of COVID-19 outbreak on half-yearly financial reports, which we summarise below and analyse in more detail at the end of this update.
- EIOPA publishes its updated Risk Dashboard based on fourth quarter 2019 Solvency II data.
- EBA publishes Report on interlinkages between recovery and resolution planning.
- ECB launches public consultation on its guide on climate-related and environmental risks.
- Autorité des Marchés Financiers (AMF) of France underlines some principles to respect regarding half-yearly financial statements.
- AMF publishes results of its first assessment of bond market transparency introduced by MiFID2.
- FINMA issues Guidance containing adjustments to the periods for various exemptions already granted and specifying in more detail how net stable funding ratio (NSFR) is calculated.
- ICMA submits letter to European Commission and ESMA outlining industry concerns on timely implementation of CSDR mandatory buy-in provisions.
- ICMA publishes briefing note outlining identified deficiencies in CSDR provisions for cash compensation in the case of bond markets.
- ICMA Asset Management and Investors Council (AMIC) publishes updated Regulatory Grid.
- In this update, we also cover some of the most important news on leveraged finance published by the Financial Times & Thomson Reuters during the week.
- Finally, we analyse some of the most important updates in more detail at the end of the update.

Bank of England (BoE)

19 May 2020: BoE and HM Treasury provide further information on their joint Covid Corporate Financing Facility (CCFF)

In this Consolidated Market Notice, the BoE and HM Treasury describe the operation of their joint Covid Corporate Financing Facility (CCFF). This Market Notice also updates the currently effective provisions of previous Market Notices in relation to the CCFF and so replaces all previous Market Notices relevant to the facility. The CCFF provides funding to businesses by purchasing commercial paper of up to one-year maturity, issued by firms making a material contribution to the UK economy. It will help businesses across a range of sectors to pay wages and suppliers, even while experiencing severe disruption to cashflows.

The CCFF offers financing on terms comparable to those prevailing in markets in the period before the COVID-19 economic shock, and is open to firms that can demonstrate they were in sound financial health prior to the shock. The CCFF looks through temporary impacts on firms' balance sheets and cash flows by basing eligibility on firms' credit ratings as at 1st March, prior to the COVID-19 shock. Businesses do not need to have previously issued commercial paper in order to participate. The CCFF will operate for as long as steps are needed to relieve cash flow pressures on firms that make a material contribution to the UK economy. The CCFF is operated by the BoE on behalf of HM Treasury. Further details of the CCFF, including application forms, Terms and Conditions and Operating Procedures are available on the Covid Corporate Financing Facility page.

19 May 2020: BoE & HM Treasury update a number of terms and conditions of CCFF

In addition to the previous announcement, the BoE and HMT updated a number of the terms and conditions of the CCFF. This update aims to promote the ability of companies to repay their borrowings from the facility in an orderly way after the Scheme closes to new drawings in March 2021. The update has two main components:

- First, all businesses that wish to draw from the CCFF for a term extending beyond 19 May 2021 will be expected to provide a letter addressed to HM Treasury that commits to showing restraint on the payment of dividends and other capital distributions and on senior pay during the period in which their commercial paper is outstanding. These commitments are intended to create incentives for, and promote the ability of, businesses to repay their borrowings from the CCFF where they mature after the Facility is expected to close.
- Second, businesses that have drawn under the CCFF are now able to repay their drawings early if they choose to do so. This gives businesses greater flexibility to exit the Facility in an orderly way where they are able to access alternative sources of funding, for example in capital markets.

In addition, following detailed consideration, HM Treasury and the BoE have decided to publish the names of businesses that have drawings under the CCFF, as well as the amounts borrowed. This change will make the scheme more transparent and enable participating businesses to demonstrate their access to the Scheme. These details will be published by the Bank every Thursday, beginning on 4 June at 15:00hrs (GMT).

22 May 2020: BoE discontinues three-month Contingent Term Repo Facility (CTRF) operations at the end of May 2020

In this Market Notice, the BoE announced that, in light of more stable funding market conditions and recent usage patterns, it will discontinue 3-month CTRF operations at the end of May 2020. The final operation is scheduled to take place on 28 May. The BoE will continue to offer 1-month term CTRF operations on a weekly basis at least through June 2020, with operations currently scheduled to end on 26 June. Furthermore, the BoE's regular liquidity insurance facilities will continue to operate including the weekly 6-month Indexed Long-Term Repo (ILTR) and the on-demand Discount Window Facility (DWF). Finally, the BoE notes that CTRF operations can also be rapidly reintroduced at any stage if justified by market conditions. The BoE stands ready to do so if necessary and will continue to monitor market conditions closely.

22 May 2020: PRA publishes Policy Statement PS13/20 – Insurance special purpose vehicles: Updates to authorisation and supervision

This PRA Policy Statement (PS) provides feedback to responses to Consultation Paper (CP) 19/19 'Insurance special purpose vehicles: Updates to authorisation and supervision'. It also contains the PRA's final policy, as follows:

- amendments to the Insurance Special Purpose Vehicle Part of the PRA Rulebook (Appendix 1);
- an updated Supervisory Statement (SS) 8/17 'Authorisation and supervision of insurance special purpose vehicles' (Appendix 2); and
- an updated Multi-arrangement Insurance Special Purpose Vehicle New Risk Assumption Notification Form (Appendix 3).

This PS is relevant to parties who wish to apply for, or have obtained authorisation as, an insurance special purpose vehicle (ISPV). It is also relevant to insurers and reinsurers seeking to use UK ISPVs as risk mitigation in accordance with Solvency II.

22 May 2020: PRA publishes statement on regulatory capital and IFRS 9 requirements for payment holidays

This PRA statement provides further information on the application of regulatory capital and IFRS 9 requirements to payment holidays granted or extended to address the challenges of COVID-19.

18 – 22 May 2020: Speeches & Other Publications
During the week, the BoE released the following speeches & other publications that might be of interest to our readers:

- Treasury Committee – Oral evidence: The economic impact of coronavirus
- How are we monitoring the economy during the COVID-19 pandemic?
- Bank of England Weekly Report 20 May 2020
- Life beyond Solvency II: a view from the top of the regulator - speech by Charlotte Gerken

- The global effects of global risk and uncertainty
- Making text count: economic forecasting using newspaper text
- A shadow rate without a lower bound constraint

Financial Conduct Authority (FCA)

22 May 2020: FCA acts to strengthen protections for customers using payment firms

The FCA launched a consultation on additional guidance for payments firms to strengthen the way in which they look after customers' money. The payments sector is a priority area for the FCA and the consultation follows ongoing work to ensure payments firms are adequately protecting customer funds. The guidance is part of a broader programme of work the FCA was planning to consult on later in the year, to set out its expectations for the payments sector. This has now been brought forward due to pressures the coronavirus pandemic is placing on firms' finances. The guidance will provide additional direction for firms to meet their safeguarding requirements and it outlines the FCA's expectation of firms to put in place more robust plans for winding down, so that customer funds are returned in a timely manner. The consultation, which will apply to all payments firms, will last for two weeks and closes on 5 June 2020. If confirmed, the final guidance will be published at the end of June.

18 – 22 May 2020: Speeches, Letters & Other Publications

During the week, the FCA released the following publications that might be of interest to our readers:

- FCA Board Minutes: 8 April 2020
- FCA Board Minutes: 16 April 2020
- Mortgages and coronavirus: updated draft guidance for firms
- Handbook Notice No 77

Financial Reporting Council (FRC)

20 May 2020: FRC updates its Guidance on reporting of exceptional items and APMs in the context of the COVID-19 crisis

The Financial Reporting Council (FRC) has updated its guidance for companies on corporate reporting, which explains how companies should report exceptional items and alternative performance measures (APMs) in their reports and accounts in the context of the COVID-19 crisis (the "Guidance"). This Guidance is intended to help boards focus on areas of reporting of most interest to investors; and to encourage them to provide clarity on the use of key forward-looking judgements.

Please read our more in-depth report (Report 1) at the end of this update for a comprehensive summary and analysis of the FRC's Guidance.

The Pensions Regulator (TPR)

18 – 22 May 2020: TPR Blogs & Other Publications

During the week, The Pensions Regulator (TPR) published the following blog that might be of interest to our readers:

- DB funding code: It's a matter of principle

In this blog, TPR defends its decision to continue its consultation on the Draft DB Funding Code. TPR acknowledges that there have been calls to rethink or abandon the first consultation on its draft DB funding code. The argument is that it was written in different, more benign, economic conditions and it is now out of place. However, TPR believes that the principles it has laid out for consultation remain the right ones to focus on. According to TPR, these principles build on its past messages on the importance of trustees setting a long-term objective and putting a realistic plan in place for how to get there. Furthermore, TPR believes that the issues the consultation raises are even more important and relevant in the light of COVID-19. TPR explains that there is good evidence that schemes, which have managed their risks well and have built in sufficient resilience in their long-term funding strategy, are likely to have fared better as market conditions have worsened. TPR notes that it has decided to extend the deadline for response to 2 September 2020 to make sure that all interested parties are able to give the consultation their full attention.

UK Government

20 May 2020: UK Government introduces Corporate Insolvency and Governance Bill

The UK Government introduced the Corporate Insolvency and Governance Bill in Parliament, which will put in place a series of measures to amend insolvency and company law to support business to address the challenges resulting from the impact of coronavirus (COVID-19). The Bill consists of six

insolvency measures and two corporate governance measures. The insolvency measures will provide vital support to businesses to help them through this period of instability, and the corporate governance measures will introduce temporary easements and flexibility to businesses that are coping with reduced resources and restrictions.

Please read our more in-depth report (Report 2) at the end of this update for a comprehensive summary and analysis of the Corporate Insolvency and Governance Bill.

European Securities and Markets Authority (ESMA)

18 May 2020: ESMA notes the non-renewal and termination of short selling bans by Austrian FMA, Belgian FSMA, French AMF, Greek HCMC, Italian CONSOB and Spanish CNMV

ESMA noted the non-renewal of the emergency restrictions on short selling and similar transactions by the following national competent authorities (NCAs): Finanzmarktaufsicht (FMA) of Austria; Financial Securities and Markets Authority (FSMA) of Belgium; Autorité des Marchés Financiers (AMF) of France; Hellenic Capital Market Commission (HCMC) of Greece; and Comisión Nacional del Mercado de Valores (CNMV) of Spain.

20 May 2020: ESMA issues Public Statement on implications of COVID-19 outbreak on half-yearly financial reports

ESMA issued a Public Statement calling for transparency on COVID-19 effects in half-yearly financial reports (the "Statement"). In this Statement, ESMA highlights the need to continue providing the necessary level of transparency in financial communication, while considering measures that could provide assistance to issuers in facing these difficult circumstances.

Please read our more in-depth report (Report 3) at the end of this update for a comprehensive summary and analysis of ESMA's Public Statement.

European Insurance and Occupational Pensions Authority (EIOPA)

18 May 2020: EIOPA publishes its updated Risk Dashboard based on fourth quarter 2019 Solvency II data

The European Insurance and Occupational Pensions Authority (EIOPA) published its updated Risk Dashboard based on the fourth quarter 2019 Solvency II data. Despite the fact that some indicators used in this Risk Dashboard do not capture the latest market development in the context of COVID-19 outbreak, the expected deterioration of the relevant indicators reflecting all available information in a forward looking perspective has been considered in the assigned risk levels. The results show that the risk exposures of the European Union insurance sector increased as the outbreak of COVID-19 strongly affected the lives of all European citizens with disruptions in all financial sectors and economic activities. However, market perceptions remain at medium level albeit deteriorating.

19 May 2020: EIOPA announces change of Extraordinary RFR/EDA productions from weekly frequency to every two weeks

EIOPA has changed the frequency of current extraordinary processes for risk-free interest rate term structures (RFR) and symmetric adjustment to equity risk (EDA) from a weekly basis to every two weeks. The new frequency will apply from the week starting on 25 May. A calendar for the next extraordinary RFR/EDA processes will be also published on the dedicated area of EIOPA website. EIOPA is publishing this information in order to support insurance and reinsurance undertakings in the monitoring of their solvency and financial position. The information will be published on a specific area of the website created for this purpose for both RFR and EDA named "Extraordinary weekly updates".

European Banking Authority (EBA)

20 May 2020: EBA publishes Report on interlinkages between recovery and resolution planning

The European Banking Authority (EBA) announced that it has published a Report, which assesses the interlinkages between recovery and resolution planning under the Bank Recovery and Resolution Directive (BRRD), with the aim of enhancing synergies between the two phases and ensuring consistency in their potential implementation. Although formally separated

under the BRRD, recovery and resolution planning could be seen as a continuum. It is, therefore, crucial to maximise synergies and ensure a smooth transition from one phase to another. In line with this objective and following a first comparative analysis of a sample of recovery and resolution plans, the Report outlines the EBA's observations and identifies best practices and areas where further improvement and/or clarifications are needed. In addition, on some specific common elements between both types of plans such as critical functions and access to central bank facilities, the Report clarifies their specific purpose in each planning phase and the advantages/disadvantages of potential convergence/harmonisation. Lastly, the Report analysis the potential impact of recovery options on the institution's resolvability and introduces an assessment framework to support the assessment and consultation process between resolution and competent authorities.

European Central Bank (ECB)

19 May 2020: ECB publishes results of March 2020 survey on credit terms and conditions in euro-denominated securities financing and over-the-counter derivatives markets (SESFOD)

The ECB published the results of its March 2020 SESFOD. According to the results:

- credit terms remained broadly unchanged for almost all counterparties but are expected to tighten significantly in the next reference period;
- financing collateralised by euro-denominated securities continued to decline;
- valuation disputes saw a strong increase; and
- terms and conditions in secured financing and OTC derivatives markets were, on balance, broadly unchanged compared with one year ago.

20 May 2020: ECB launches public consultation on its guide on climate-related and environmental risks

The ECB published a Guide for consultation that explains how it expects banks to safely and prudently manage climate-related and environmental risks and disclose such risks transparently under the current prudential framework. The ECB wants banks to account for these risks given that they drive existing prudential risk categories and can substantially impact the real economy and banks. The Guide specifies how the ECB Banking Supervision expects banks to consider climate-related and environmental risks in their governance and risk management frameworks and when formulating and implementing their business strategy. It also outlines how the ECB expects banks to become more transparent by enhancing their climate-related and environmental disclosures. Furthermore, it is intended that the Guide will serve as a basis for the supervisory dialogue. Banks are expected to assess whether their current practices are safe and prudent in the light of the expectations and, if necessary, to start adapting them.

There will be a public hearing by telephone conference on 2 September, and the deadline for responses to the consultation is 25 September. An FAQ is also available.

18 – 22 May 2020: ECB Blogs & Other Publications

During the week, the ECB published the following blogs, speeches & publications that might be of interest to our readers:

- Burned by leverage? Flows and fragility in bond mutual funds
- ECB commences its June 2020 Survey of Monetary Analysts
- Stock return comovement when investors are distracted: more, and more homogeneous

Autorité des Marchés Financiers (AMF) of France

20 May 2020: AMF underlines some principles to respect regarding half-yearly financial statements

The AMF noted that it is aware of the difficulties being encountered by companies in the context of the coronavirus epidemic and is determined to provide them with effective support through this period. It has therefore published on its website a list of principles to be respected in the presentation of half-yearly financial reports. This publication accompanies the information provided by ESMA (mentioned above and discussed in more detail in Report 3 below) and has been adapted to the French context.

The AFM's publication addresses the following issues:

- the information in the interim financial statements and management report, such as the significant accounting judgments and assumptions that were used, or the information expected by the markets on financial risks (any debt renegotiations or new financing, for example),
- the news release on the results and performance indicators,

- the presentation of the financial statements,
- going concern basis,
- impairment tests and
- lease agreements.

As a general principle, the AMF encourages issuers to adopt a pedagogical approach and explain the assumptions they have applied. It calls on those companies that are unable to publish their half-year report in accordance with the calendar provided previously, or those wishing to benefit fully from the three-month period granted by the financial regulations, to inform the market as quickly as possible of their new publication calendar.

20 May 2020: AMF publishes results of its first assessment of bond market transparency introduced by MiFID2

More than two years after MiFID II came into force, the AMF published the results of its assessment of the bond market transparency measures introduced by the legislation and particularly the conditions for access to and use of post-trade transparency data by market participants. This analysis, carried out on the scope of debt securities issued by French companies, reveals that the transparency of transactions is currently insufficiently accessible, reliable and exhaustive and hence does not enable investors to make effective use of it.

According to the AMF's analysis, this transparency is derived from many different sources: a dozen platforms to which are added numerous APAs for transactions carried out over-the-counter. However, data vendors do not currently consolidate the full range of available data sources. Depending on the means at their disposal, participants therefore do not always have a complete view of the market. Furthermore, market participants still find it difficult to access data since some trading venues and data reporting services still do not meet all the criteria defined by ESMA in terms of accessibility. The AMF also notes that there is data that is currently of questionable quality and potentially non-exhaustive. For example, the ratio of overlap between transparency data and reporting to the regulator is estimated to be between 25% and 45% in terms of volumes traded, a particularly low level which would not appear to be fully explained by differences in reporting rules. As a result, the AMF supports the introduction of a single consolidated tape in Europe, a measure eagerly awaited by the market.[1]

Swiss Financial Market Supervisory Authority (FINMA)

19 May 2020: FINMA issues Guidance containing adjustments to the periods for various exemptions already granted and specifying in more detail how net stable funding ratio (NSFR) is calculated

In Guidance 06/2020 of 19 May 2020, FINMA announced that it is extending the exemption for the calculation of the leverage ratio (exclusion of central bank reserves) for all banks until 1 January 2021 (previously 1 July 2020), because clients are continuing to hold unusually large deposits with Swiss bank. As there is no longer any broad use being made of the exemptions concerning risk diversification at banks, FINMA is not extending them. However, institutions can request specific exemptions in individual cases. FINMA is also incorporating the exemption concerning market risk into future supervisory practice. Furthermore, FINMA has granted exemptions in the area of anti-money laundering for the opening of new client relationships. These will be extended for specific situations, in particular for foreign clients, in order to return gradually to the normal opening procedure. Finally, FINMA has also set out in more detail the handling of durations for loans procured as part of the SNB's COVID-19 refinancing facility (CRF) for calculating the net stable funding ratio (NSFR).

International Capital Markets Association (ICMA)

20 May 2020: ICMA submits letter to European Commission and ESMA outlining industry concerns on timely implementation of CSDR mandatory buy-in provisions

ICMA submitted a letter to the European Commission and ESMA outlining the industry concerns related to timely implementation of the CSDR mandatory buy-in provisions. The letter highlights the ongoing lack of regulatory clarification required by the industry to facilitate successful implementation, and calls on the authorities to review the design and application of the buy-in framework in light of the recent market events.

[1] On the 29th of April 2020, ICMA published an in-depth report on consolidated tape for greater post-trade transparency in the EU bond markets.

21 May 2020: ICMA publishes briefing note outlining identified deficiencies in CSDR provisions for cash compensation in the case of bond markets

ICMA published a briefing note outlining the identified deficiencies in the CSDR provisions for cash compensation in the case of bond markets, as well highlighting some of the potential market solutions under discussion, including the not insignificant challenges associated with these.

21 May 2020: ICMA publishes a note on "ESMA's clarifications on reporting of repos with EU central banks under MiFIR"

In response to an ICMA query, ESMA provided some long-awaited clarifications on the reporting of repos transacted with EU central banks. ESMA's response clarifies the following:

- under MiFIR, it is the collateral that should be reported, not the repo itself;
- only the purchase leg needs reporting;
- repos with multiple collateral securities should be reported as a Complex Trade, a concept introduced for certain derivatives. This means breaking up such a repo into components;
- in cases where the collateral allocation is only available after the T+1 reporting deadline, ESMA leaves it to National Competent Authorities to assess whether the delay is justified, taking into account that the reported trade is an SFT; and
- pledge-based repos (which are really secured loans, not repos) must be reported, because the rules on what to report are set by SFTR, not MiFIR, and ESMA has interpreted SFTR as including pledge-based repos.

22 May 2020: ICMA Asset Management and Investors Council (AMIC) publishes updated Regulatory Grid

AMIC published an updated version of the AMIC COVID-19 Regulatory Grid. It provides an overview of policy measures related to the buy-side taken by several European securities regulators in the context of the global pandemic.

18 – 22 May 2020: ICMA Podcasts

During the week, ICMA released the following podcasts that might be of interest to our readers:

- Message from Martin Scheck, ICMA's Chief Executive
  ICMA's Chief Executive, Martin Scheck, talks about COVID-19 and its effect on capital markets, and how ICMA is adapting its approach to supporting its global membership.

- COVID-19: ICMA Asset Management & Investors Council weekly market update
  Robert Parker, Chair of ICMA's Asset Management and Investors Council, reviews the market events of the last week in the context of the COVID-19 pandemic, with a specific focus on the French-German proposal for a €500 billion EU Recovery fund, the state of bond, equity and oil markets, and the risk of a second wave of contagion.

In the News

During the week, the Financial Times & Thomson Reuters published the following news that might be of interest to our readers.

Financial Times

- Bond investors balk at use of 'ebitdac' to skirt debt restrictions
  "Bond investors have hit out at the growing trend of companies reporting earnings before coronavirus, warning that this new pandemic-era financial metric could allow businesses to use imaginary numbers to raise more debt than they can handle"

- Banks probe sales push linked to corporate loans
  "Banks in the UK are investigating whether they pressured corporate clients into giving them extra business in return for loans, after the country's financial watchdog warned against the practice during the coronavirus pandemic"

- Insolvency law shake-up to protect UK companies during pandemic
  "Insolvency laws are to be shaken up to prevent struggling companies being forced to file for bankruptcy because of problems caused by the coronavirus pandemic"

- Private equity-owned companies miss out on bailout loans
  "Private equity-owned companies are missing out on the wave of state-backed coronavirus loans because of the way the industry has relied on a model that can cut their tax bills but saddles them with debt"

- UK bailout scheme companies barred from paying bonuses and dividends
  "Companies using the government's COVID-19 bailout scheme aimed at the biggest businesses are to be banned from paying cash bonuses to executives and dividends as part of a revamp of the programme"

- Carmaker McLaren clashes with bondholders over emergency financing
  "Efforts by UK sports car maker McLaren to raise emergency funding have triggered a spat with its bondholders, who say they already have a claim on a collection of classic cars it is trying to pledge to new lenders"

- UK sells negative-yielding government bonds for first time
  "The UK sold a one-month bill at a negative yield in 2016, but this represents the first time it has sold a conventional longer term bond at a yield below zero"

- Bank of England pivots and starts to contemplate negative rates
  "Only a week ago, the governor was still holding the line, saying that negative rates were not something the central bank was planning or contemplating. But since then, the BoE has pivoted, and is now contemplating negative rates and planning how they might be implemented"

- British banks warn BoE of pain of negative rates
  "UK banks have hit out at the prospect of negative interest rates, saying the policy would slash their earnings and limit their ability to absorb an expected torrent of coronavirus-related loan losses"

- European regulators to end controversial bans on short selling
  "The restrictions had applied to investors creating net short positions — which could include a mixture of shares, bonds and derivatives — or those increasing their existing net short positions"

- EU 'frugal four' present rival Covid recovery fund plan
  "The debate over the EU's recovery fund intensified as four northern European states proposed a plan that would offer only loans, rather than grants, to hard-pressed member states"

- ECB fuels investor expectations that bond-buying will rise in June
  "The European Central Bank has intensified investors' expectations that it will expand its €750bn pandemic stimulus programme of bond purchases next month, after revealing on Friday that its top officials had agreed they needed to be ready to do so"

- US bank regulator finalises controversial community lending rule
  "The US Comptroller of the Currency, one of the three key bank regulators, has finalised controversial changes to rules on bank lending in poor communities"

- Federal Reserve's swaps intervention will preserve dollar's reach
  "When future financial historians study the COVID-19 shock, they will conclude that the Fed's intervention in offshore dollar markets via swaps deals with other central banks was one of its most significant policy moves. Not only has the Fed's action calmed markets, it has shored up the hegemony of the dollar-based global financial system for years to come"

- Debt investors lay claim to islands, cruise ships and theme parks
  "So-called secured debt deals were once a rarity in the corporate bond market, but American companies are now pawning their family silver as never before"

- Biggest US shopping complex shows threat to mortgage-backed bonds
  "The biggest shopping mall in America is delinquent on its $1.4bn mortgage, in an ominous sign of how the pain in US retail is infecting the $500bn market for commercial mortgage-backed securities"

- Investors bet American Airlines will default on debt
  "Investors are betting American Airlines will file for bankruptcy for the second time in a decade"

- Will COVID-19 light the fuse on a debt bomb?
  "The FT's US finance editor Robert Armstrong explains how high US consumer debt could fuel the economic crisis caused by coronavirus, causing global ripple effects"

- Retail bonds — for adventurous income seekers only
  "It goes without saying that investing in retail bonds is high risk. The type of companies that raise debt in this way tend to be small or alternative — most big companies would much rather tap the wholesale capital markets"

Thomson Reuters

- UK financial compensation body raises levy to fund LCF claims
  "Britain's Financial Services Compensation Scheme (FSCS) said it had earmarked 44 million pounds ($54 million) to pay claims from a small number of the investors who lost money after the collapse of investment company London Capital & Finance (LCF)"

- Lloyds investors rebel against bonus plan for top bosses
  "Lloyds Banking Group investors rebelled against the lender's pay policy for top bosses, with more than a third of balloted shareholders rejecting its bonus plan"

- HSBC and IFC emerging market green bond fund raises $474 mln
  "HSBC Global Asset Management and IFC, a member of the World Bank Group, announced the closing of a green bond fund, raising $474 million for investments aimed at mitigating risks from climate change in emerging markets"

- Explainer: How do negative interest rates work?
  "Investors are pricing in the possibility the Bank of England will follow other central banks in cutting interest rates to below zero for the first time"

- Regulators will owe banks a favour post-pandemic
  "The wrath of regulators is shifting away from banks. Big lenders spent the past decade atoning for the 2008 financial crisis. The coronavirus-induced meltdown has tested the resilience of a reformed industry, while revealing the fragilities of financial markets. Banks will reap the benefits"

- One in three UK firms can reopen fully following COVID rules: BCC
  "Just over a third of companies in Britain believe they can fully restart operations while implementing the government's coronavirus workplace guidance"

- European companies told to come clean on coronavirus pain
  "Listed companies in the European Union should state the uncertainties they face due to the coronavirus pandemic in their half-yearly reports and explain why they can stay in business, the bloc's securities watchdog said"

- European leveraged loan market reopens for LBOs
  "French mortgage broker Financiere CEP's €775m buyout loan has been launched into syndication, with the European leveraged loan market making the first steps since March to reopen for acquisition-related deals"

- EU 'green' recovery to target buildings, clean power, hydrogen: draft
  "European Union plans for an environmentally-friendly economic recovery from the coronavirus pandemic will target building renovation, renewable energy and clean hydrogen fuel, according to a draft document seen by Reuters"

- ECB can boost anti-pandemic bond purchases by as much as needed
  "The European Central Bank can expand and extend its pandemic-response programme of bond purchases by as much as necessary and for as long as needed, its chief economist Philip Lane said"

- ECB's Lagarde welcomes Franco-German EU recovery fund plan
  "European Central Bank President Christine Lagarde welcomed a proposed 500-billion euro ($546-billion) coronavirus recovery fund proposed by France and Germany, saying it would bring much-needed relief to the worst-hit EU countries"

- EU lawmakers voice support for equal capital treatment of euro bonds
  "European Union lawmakers signalled their initial support for equal capital treatment of euro-denominated government bonds regardless of where they are issued in the bloc"

- Lobby calls on EU for extra capital easing to help banks lend more
  "A banking lobby group called for the European Union to further soften a capital measure to ensure banks do not run out of headroom to help companies hit by the coronavirus crisis"

- Germans paid to borrow as negative rates reach consumers
  "Germans are being shown the bright side of negative interest rates as some online lending platforms pay customers to borrow despite the steepest recession since World War Two"

- U.S. leveraged loan defaults at six-year high as coronavirus hits businesses
  "The monthly tally of defaults in the U.S. leveraged loan market has hit a six-year high, data from Fitch Ratings showed, as companies are either missing payments or filing for bankruptcy because of the fallout from the coronavirus pandemic"

- COVID-era junk bond deals begin to go sour
  "Companies hard-hit by the pandemic rushed to raise debt last month, encouraged by the Federal Reserve's intervention to support the credit market. But for some of the riskier names, those bond offerings have quickly curdled"

- More than 8% of U.S. mortgages now in forbearance: MBA weekly survey
  "Roughly 4.1 million U.S. mortgage borrowers have had their payments paused or reduced as the novel coronavirus outbreak hits household finances, but the increase in the number of people needing such help is slowing, the latest weekly survey from the Mortgage Bankers Association showed"

- Banks test sluggish US loan market with a slew of M&A transactions
  "Banks in the US have launched US$3.4bn in leveraged loans backing mergers and acquisitions this month, reopening a market that was mainly available for companies seeking emergency funding related to the coronavirus pandemic"

- Investors seen queuing up for new U.S. 20-year bonds, backstopped by Fed
  "Investors are likely to snap up 20-year bonds when the U.S. Treasury sells them for the first time in more than three decades, pulling out all the financing stops to mitigate the economic havoc from the coronavirus pandemic"

- Banks test sluggish US loan market with a slew of M&A transactions
  "Banks in the US have launched US$3.4bn in leveraged loans backing mergers and acquisitions this month, reopening a market that was mainly available for companies seeking emergency funding related to the coronavirus pandemic"

Report 1. FRC updates its Guidance on reporting of exceptional items and APMs in the context of the COVID-19 crisis - 20 May 2020

The Financial Reporting Council (FRC) has updated its guidance for companies on corporate reporting, which explains how companies should report exceptional items and alternative performance measures (APMs) in their reports and accounts in the context of the COVID-19 crisis (the "Guidance").[2] The FRC acknowledges that making forward-looking assessments and estimates when preparing financial statements and providing other corporate reports is particularly difficult in the current circumstances. Therefore, this Guidance is intended to help boards focus on areas of reporting of most interest to investors; and to encourage them to provide clarity on the use of key forward-looking judgements.

The Guidance examines the following:

- the need for narrative reporting to provide forward-looking information that is specific to the entity and which provides insights into the board's assessment of business viability and the methods and assumptions underlying that assessment;
- going concern and any associated material uncertainties, the basis of any significant judgements and the matters to consider when confirming the preparation of the financial statements on a going concern basis;
- the increased importance of providing information on significant judgements applied in the preparation of the financial statements, sources of estimation uncertainty and other assumptions made; and
- the judgement required in determining the appropriate reporting response to events after the reporting date and the extent to which qualitative or quantitative disclosures may be appropriate.

Corporate reporting and Investors

The FRC acknowledges that it is reasonable for an investor to expect companies to be able to articulate their expectations of the possible impacts on their specific business in different scenarios. The FRC explains that investors and other users of corporate reports want to understand a company's resilience in the face of current uncertainty and to understand the key assumptions and judgements a board is making when assessing resilience and in preparing company financial statements. Of particular importance to investors is the availability of cash within a group of companies, the ability to transfer such resources around the group to where it is needed, given operational, regulatory and legal constraints, and the access to further cash through existing and potential financing facilities.

Strategic Report and Viability Statement

The FRC explains that the Strategic Report should be forward looking and entity-specific because the critical implications of the current circumstances for individual companies will differ. According to this Guidance, when setting out its principal risks and uncertainties, a company should consider the specific resources, assets and relationships that are most under threat and the steps being taken to protect them.

Furthermore, the FRC acknowledges that because of the current systemic uncertainties many boards will be less confident in stating that they have a reasonable expectation that the company will be able to continue in operation and meet its liabilities as they fall due over a period of assessment ("the viability statement" as required for compliance with the UK Corporate Governance Code). However, the FRC stresses the following points:

- boards are required to have a "reasonable expectation" of the company's viability over the period of assessment – during the current emergency and unprecedented pace of change, any reasonable level of expectation would naturally carry a much lower level of confidence;

[2] On 18 May 2020, ELFA published a statement on the reported use of EBITDAC in financial statements to calculate debt capacity, which allows management to add back losses relating to disruptions caused by the COVID-19 outbreak and related government-enforced lockdowns, "EBITDAC is an Inappropriate Metric for Calculations of Covenant Capacity under Leveraged Finance Agreements (Vol 5)". This statement was covered by the Financial Times "Bond investors balk at use of 'ebitdac' to skirt debt restrictions". On 20 of May, ESMA issued a Public Statement calling for transparency on COVID-19 effects in half-yearly financial reports.

- it is absolutely important to be clear on the company's specific circumstances and the degree of uncertainty about the future; and
- when presenting a company's viability statement, its board should draw attention to any qualifications or assumptions as necessary.

Therefore, in describing any qualifications to the statement, the Guidance provides that a board should describe the limits of the predictions, the level of confidence with which they have been made and the uncertain future events that could prove critical to viability. Similarly, the key assumptions made and the future scenarios considered should be explained. The FRC notes that the use of reverse stress testing, to identify future scenarios that could lead to corporate failures, is also good practice.

Financial Statements

The FRC's Guidance covers the following issues in financial statements:

1. Going concern and material uncertainties

The FRC believes that it is likely that more companies will disclose "material uncertainties" to going concern in the current circumstances. The term refers to uncertainties related to events or conditions that may cast significant doubt upon the entity's ability to continue as a going concern. When assessing whether material uncertainties exist, the FRC explains that boards should consider both the uncertainty and the likely success of any realistically possible response to mitigate this uncertainty.

The FRC accepts that this assessment is significantly different in the current circumstances and provides the further guidance to companies:

- The FRC encourages boards to consider the impact of different potential scenarios (e.g. consideration of different time periods for the continuation of social distancing) on their company's revenues, costs (both fixed and variable) and cash flow requirements.
- If a material uncertainty does exist, then the company should disclose it in terms that are as specific to the entity as possible. Investors will wish to know how and when the uncertainty might crystallise and its impact on the resources, operational capacity, liquidity and solvency of the company.
- If the board concludes that there is not a material uncertainty that meets the criteria for disclosure, but this conclusion required the application of significant judgement, then this judgement should be disclosed in accordance with paragraph 122 of IAS 1. Providing such disclosures will help investors to understand fully the pressures on liquidity, viability and solvency.

2. Significant judgements and estimation uncertainty

The FRC states that companies should disclose significant judgements made in applying accounting policies that have the greatest effect on the financial statements. The FRC is encouraging companies to provide as much context as possible for the assumptions and predictions underlying the amounts recognised in the financial statements, irrespective of any narrow interpretation of the requirements. Such information will help investors to understand the amounts presented. The FRC is aware that in the absence of any consensus view of the future path of the COVID-19 pandemic and its impact on the economy, investor cannot expect all companies to apply consistent assumptions when there is such uncertainty. However, the FRC believes that this lack of consistency makes the need for full disclosure of judgements, assumptions and sensitive estimates significantly more important than usual.

3. Events after the reporting date

According to the FRC, there is a general consensus that the outbreak of COVID-19 in 2020 was a non-adjusting event for the vast majority of UK companies preparing financial statements for periods ended 31 December 2019. Therefore, companies will need to judge how much of the impact of COVID-19 should be considered to arise from non-adjusting

events for subsequent reporting dates. The FRC explains that this will be highly dependent on the reporting date, the specific circumstances of the company's operations and the particular events under consideration. The FRC explains that if an event is considered to be non-adjusting, then the nature of the event should be disclosed. Where an estimate of the financial effect on the company can be made, then this should be disclosed. Otherwise, the fact that the financial effect cannot be estimated should also be disclosed. The estimate does not need to be exact – a range of estimated effects is better than no quantitative information at all. Finally, in the absence of any quantitative estimate, a qualitative description should be provided.

4. Exceptional or similar items

The FRC explains that companies will need to consider whether additional items of income and expenditure arising from the COVID-19 crisis should be separately disclosed in accordance with their existing policies for 'exceptional' or other similar items. The materiality of items such as restructuring costs, impairment charges, incremental health and safety costs, and the costs of onerous contracts will need to be considered by each company. The nature and amounts of any such items should be presented in a way that is helpful to readers; for example, by giving them all in a single note or linking them with cross-references. Information about the effect of these or similar items on cash flows, and their timing, and tax will also be relevant to readers.

According to the Guidance, companies should:

- be even-handed in identifying any gains as well as losses;
- not describe amounts as 'non-recurring' or 'one-off' if they are also expected to arise in future periods;
- not disclose costs (sometimes described as 'stranded', 'sunk' or 'excess') as exceptional solely because of a reduction in, or elimination of, the related revenue streams due to the COVID-19 crisis; and
- not identify incremental costs as exceptional if they result in incremental revenue that is not also described as exceptional; for example, additional staff costs related to managing unusually high levels of sales of in-demand items.

The FRC stresses that splitting discrete items on an arbitrary basis in an attempt to quantify the portion relating to COVID-19 is unlikely to provide users with reliable information. The FRC discourages companies from disclosing these in their accounts.

5. Alternative Performance Measures (APMs)

Most importantly, the FRC highlights that APMs which attempt to provide a measure of 'normalised' or 'pro-forma' results, excluding the estimated effect of the COVID-19 crisis, are likely to be highly subjective and, therefore, potentially unreliable. In addition to the subjectivity arising around which costs to exclude, in most cases COVID-19 is likely to have resulted in reductions in revenues. Any adjustment for lost revenues would be hypothetical and could not be reflected reliably in an APM. Therefore, the FRC does not expect companies to provide these measures; for example, by including them in a 'third-column' income statement presentation. **In this context, please read our statement on the generously redefined version of ex-COVID-19 EBITDA and its detrimental impact on calculating debt capacity.**

6. Interim reports

According to the Guidance, the directors will need to exercise judgment about the nature and extent of the procedures that they apply to assess the going concern assumption at the half-yearly date. This might include disclosures of: any material uncertainties to going concern; assumptions made about the future path of COVID-19 and the public health responses; the projected impact on business activities; use of government support measures; and access to bank and other financing.

The FRC explains that the issues which might trigger a need to re-examine the going concern assumption and going concern and liquidity risk disclosures include:

- a significant adverse variation in operating cash flows between prior budgets and forecasts and the outturn in the first half of the year;
- a significant reduction in projected revenues for the second half of the year based on plausible scenarios for the COVID-19 pandemic and public health responses, and taking into account government support measures;
- a failure to obtain renewal or extension of committed financing facilities; and
- a failure to sell capital assets for their expected amounts or within previously forecast time-frames.

According to the Guidance, if going concern has become a significant issue since the previous annual financial statements, directors should undertake procedures similar to those that they would have carried out for annual financial statements to ensure that all relevant issues have been identified and considered. The FRC accepts that it is a matter for a company to decide whether to engage their auditors to perform an interim review engagement– it is not a legal or regulatory requirement. However, the feedback the FRC received from investors indicates that such a review provides valuable assurance, and this may be particularly important in the current environment.

Report 2. UK Government introduces Corporate Insolvency and Governance Bill in Parliament - 20 May 2020

The UK Government has introduced the Corporate Insolvency and Governance Bill in Parliament, which will put in place a series of measures to amend insolvency and company law to support business to address the challenges resulting from the impact of coronavirus (COVID-19). The Bill consists of six insolvency measures and two corporate governance measures. The insolvency measures will provide vital support to businesses to help them through this period of instability, and the corporate governance measures will introduce temporary easements and flexibility to businesses that are coping with reduced resources and restrictions.

This Bill's three main purposes are:

- to introduce new corporate restructuring tools to the insolvency and restructuring regime to give companies the breathing space and tools required to maximise their chance of survival,
- to temporarily suspend parts of insolvency law to support directors to continue trading through the emergency without the threat of personal liability and to protect companies from aggressive creditor action, and
- to amend Company Law and other legislation to provide companies and other bodies with temporary easements on company filing and annual general meetings (which will extend to charitable incorporated organisations and mutual societies) thus allowing them to focus their resources on continuing operations in this uncertain time.

This Bill will achieve this through:

- introducing a new moratorium to give companies breathing space from their creditors while they seek a rescue plan,
- prohibiting termination clauses that engage on insolvency, preventing suppliers from ceasing their supply or asking for additional payments while a company is going through a rescue process,
- introducing a new restructuring plan that will bind creditors to it,
- enabling the insolvency regime to flex to meet the demands of the emergency,
- temporarily removing the threat of personal liability for wrongful trading from directors who try to keep their companies afloat through the emergency,
- temporarily prohibiting creditors from filing statutory demands and winding up petitions for coronavirus related debts,
- temporarily easing burdens on businesses by enabling them to hold closed Annual General Meetings (AGMs), conduct business and communicate with members electronically, and by extending filing deadlines, and
- allowing for the temporary measures to be retrospective so as to be as effective as possible.

Further information about the measures

1. Company moratorium

This measure will give businesses a 20-business day opportunity to consider a rescue plan, extendable to 40 business days, with further extensions at the agreement of creditors or the court. The company will remain under the control of its directors during the moratorium, but the process will be overseen by a monitor who must be a licensed insolvency practitioner.

2. Termination clauses

The Bill also introduces a permanent change to the use of termination clauses in supply contracts. As a result of the measure, where a company has entered an insolvency or restructuring procedure or obtains a moratorium during this period of crisis, the company's suppliers will not be able to rely on contractual terms to stop supplying, or vary the contract terms with the company, for example increasing the price of supplies. The customer is required to pay for any supplies made once it is in the insolvency process but is not required to pay outstanding amounts due for past supplies while it is arranging its rescue plan.

This way both the suppliers and other creditors will benefit if more companies are able to survive and repay more of their debts by implementing a rescue plan. The measure also contains safeguards to ensure that suppliers can be relieved of the requirement to supply if it causes hardship to their business. There will also be a temporary exemption for small company suppliers during the emergency.

3. Restructuring

The Bill also introduces a new restructuring plan as an option for companies in financial difficulty. The measure will allow struggling companies, or their creditors or members, to propose a new restructuring plan which will provide an alternative rescue option for companies that are suffering financially. The plan will enable complex debt arrangements to be restructured and will support the injection of new rescue finance. It will introduce a cross-class cramdown that will allow dissenting classes of creditors to be bound by the plan, if sanctioned by the court as fair and equitable, and if the court is satisfied that those creditors would be no worse off than if the company entered an alternative insolvency procedure. This new plan will support more companies to be rescued, rather than going through a value destructive liquidation process, giving a better return for creditors, preserving jobs and maintaining productivity.

4. Statutory demands

This Bill introduces temporary provisions to void statutory demands made between 1 March 2020 and 30 June. The Bill will also restrict winding up petitions from 27 April 2020 to 30 June 2020. These temporary measures are intended to prevent aggressive creditor action against otherwise viable companies struggling because of coronavirus.

5. Suspension of wrongful trading

The Bill will temporarily remove the threat of personal liability for wrongful trading from company directors while they make their best efforts to continue to trade. This will be for any period of trading between 1 March to 30 June. This way, directors can be assured that they can use their best endeavours to trade through during the coronavirus period without the threat of personal liability for wrongful trading should the company ultimately become insolvent. All the other checks and duties on directors remain in place.

6. Financial services firms

Certain financial services firms and contracts have been excluded from some of the reforms. These exemptions were thoroughly examined by the FCA in its publication "Financial services exemptions in forthcoming Corporate Insolvency and Governance Bill". The Bill's exclusions for financial services will ensure that these existing special insolvency regimes are unaffected, and that financial market participants have the legal certainty needed to facilitate the efficient functioning of financial markets. The company moratorium will not be available to certain financial services firms, and will not affect certain financial contracts. The new termination clauses measures will also not apply to financial contracts or to financial services firms. This is to ensure legal certainty and support the efficient functioning of financial markets. The suspension of wrongful trading will also not apply to certain financial services firms.

Financial services firms will however have access to the new restructuring plan, though with appropriate safeguards including a role for the financial services regulators. There are no exclusions for financial services firms for the other measures provided in the Bill.

7. Annual General Meetings (AGMs) and general meetings (GMs)

The Bill temporarily allows those companies that are under a legal duty to hold an AGM or GM to hold a meeting by other means even if their constitution would not normally allow it. As a result, directors will not be exposed to liability for measures that need shareholder endorsement, and shareholders rights are preserved.

8. Retrospectivity

The measures relating to company meetings are intended to be retrospective from 26 March so that any company that has already had to hold an AGM in a way that adhered to social distancing measures, but that, as a result, did not meet relevant obligations in their constitution, will have done so in accordance with the law. Companies who were forced to postpone AGMs which were due to be held after 26 March will be given a limited period after the Bill is passed to hold those AGMs using the new flexibilities.

9. Shareholder rights

The measures will not prevent shareholders from exercising their right to vote on resolutions or other matters brought before the meeting, though they may be prevented from voting in person (rather than by post or by electronic means).

10. Extension of filings

Finally, the Bill enables the Secretary of State to make regulations to extend deadlines for 3 types of filing:

- accounts,
- confirmation statements (including event-driven filings that are required to be submitted in advance of the confirmation statement), and
- registrations of charges.

This measure will reduce pressure on companies that are currently unable to meet their filing deadlines allowing them to focus their resources on keeping their businesses going in this uncertain time but ensuring that the data is filed with Companies House within a reasonable time.

Report 3. ESMA issues Public Statement on implications of COVID-19 outbreak on half-yearly financial reports - 20 May 2020

ESMA issued a Public Statement calling for transparency on COVID-19 effects in half-yearly financial reports (the "Statement").[3] In this Statement, ESMA highlights the need to continue providing the necessary level of transparency in financial communication, while considering measures that could provide assistance to issuers in facing these difficult circumstances.

This Statement addresses the preparation of the interim financial statements according to IFRS and the interim management reports for the 2020 half-yearly reporting periods. It highlights the need for issuers to provide updated information that is useful to investors to adequately reflect the current and expected impact of the COVID-19 situation on the financial position, performance and cash-flows of issuers. ESMA also highlights the importance of providing information on the identification of the principal risks and uncertainties to which issuers are exposed. The considerations in this Statement are also applicable to the reporting of financial information in other interim periods to which IAS 34 Interim Financial Reporting is applied.

ESMA calls on the management, administrative and supervisory bodies, including audit committees of issuers and their auditors, to take due consideration of the recommendations included in this Statement when preparing the interim financial reports in order to ensure that they provide comparable, relevant and reliable information and an adequate level of disclosure and transparency to market participants. Given the complexities of the current environment, ESMA encourages audit committees to enhance their oversight role which is key to contribute to high-quality half-yearly financial reports.

Timing of publication of half - yearly financial reports 2020

ESMA acknowledges that some issuers may consider setting the timing of publication of their half-yearly financial reports later than usual within the available time-span, without prejudice for the compliance with the obligations arising from the Market Abuse Regulation. ESMA highlights that the key driver in making this assessment shall remain the objective of providing timely, relevant and reliable information, while not unduly delaying the publication of periodic information. In this respect, ESMA also reminds issuers to carefully consider the impact on their financial statements of any material events occurring after the end of the reporting period and to provide the relevant disclosures in accordance with paragraph 16A(h) of IAS 34.

Half yearly financial statements

ESMA's Statement provides guidance on the following issues in half-yearly financial statements:

1. IAS 34

In relation IAS 34, which requires issuers to provide an update on the new activities, events and circumstances that have not been captured in the most recent annual financial statements,[4] ESMA expects this update to be particularly extensive for the upcoming half-yearly financial statements because the events related to the COVID-19 outbreak have become evident in the first half of 2020. ESMA also emphasises that some of the disclosures that are normally required by individual IFRSs for a complete set of (annual) financial statements may be used to provide relevant information on the consequences arising from the COVID-19 outbreak in the condensed financial statements for the half-year. For instance, ESMA recommends that issuers provide transparency regarding the application of some of the available relief

[3] On 18 May 2020, ELFA published a statement on the reported use of EBITDAC in financial statements to calculate debt capacity, which allows management to add back losses relating to disruptions caused by the COVID-19 outbreak and related government-enforced lockdowns, "EBITDAC is an Inappropriate Metric for Calculations of Covenant Capacity under Leveraged Finance Agreements (Vol 5)". This statement was covered by the Financial Times "Bond investors balk at use of 'ebitdac' to skirt debt restrictions".

[4] Paragraph 6 of IAS 34

and support measures, for which the issuer's entitlement to the programme may require compliance with particular conditions, in terms of eligibility, conditions and consequences as well as in terms of the underlying judgements they made.

2. Disclosures reflecting significant uncertainties, going concern and risks linked to COVID-19

ESMA notes that, as a result of COVID-19, a significant a significant risk of material adjustment to the carrying amounts of assets and liabilities may have arisen. In these cases, ESMA urges issuers to update the assessment made at year-end about the assumptions regarding the future and other major sources of estimation uncertainty.[5] Additionally, ESMA reminds issuers that they are required to disclose the nature and amount of changes in estimates of amounts reported in prior interim reporting periods of the current financial year or changes in estimates of amounts reported in prior financial years.[6]

In relation the going concern assessment, ESMA notes that the current uncertainties may in some cases cast doubt on an issuer's ability to continue as a going concern. When this is the case, ESMA emphasises that an entity shall disclose those uncertainties.[7] ESMA expects that in making the assessment of their ability to continue as a going concern, issuers shall take into account all available information about the future (at a minimum twelve months from the end of the reporting period), including the expected profitability and any restrictions to readily access financial resources. Therefore, in the context of half-yearly financial statements, ESMA expects issuers most significantly impacted by COVID-19, to provide disclosures about the going concern assessment and the related underlying judgements where these are significant.

ESMA also acknowledges that the current circumstances may have triggered financial risks which were in full or in part unknown or not relevant at the end of the last annual reporting period. This might include, for example, debt renegotiations, new financial arrangements and the breach of debt covenants. In this respect, ESMA reminds issuers of the importance of providing disclosures regarding those risks, in particular, the exposures of issuers to credit, liquidity and other risks and the related sensitivities, in order to provide the necessary updates of the information presented in the latest annual financial statements.

3. Impairment of non-financial assets

ESMA reminds issuers of the requirement to assess whether there are any indications that an asset may be impaired on the basis of a set of internal and external sources of information.[8] In making this assessment, issuers should carefully consider the effects of the COVID-19 outbreak which, in ESMA's view, would most likely constitute a strong basis to conclude that one or more of the impairment indicators in IAS 36 have been triggered. Furthermore, ESMA notes that determining the recoverable amount in the current uncertain environment requires a careful assessment of the cash-flow projections over a relevant horizon. Such projections may require, especially in the current circumstances and depending on the level of risk associated with the asset being tested, the consideration of multiple scenarios. The weighting of the different scenarios needs to be calibrated on the basis of reasonable, supportable and realistic estimates and assumptions, in order to avoid the risk of overly optimistic or pessimistic biases. ESMA reminds issuers of the importance of updating the disclosures relating to the significant judgements and assumptions underlying these assessments and the sensitivity analyses, as ESMA expects this update to be significant to an understanding of the changes in an entity's financial position or performance since the last annual reporting period.

4. Presentation of COVID-19 related items in the statement of profit or loss

ESMA calls for caution regarding any separate presentation of the impacts of the COVID-19 pandemic in issuers' profit or loss statement as, due to their pervasiveness, such separate presentation may not faithfully present issuers' overall financial performance, position and/or cash-flows, thus being to the detriment of users' understanding of the financial statements. In light of these considerations, ESMA instead encourages issuers to provide information, also on a quantitative basis, on the significant impacts of the COVID-19 outbreak as part of the explanations of the amounts presented and recognised in the statement of profit or loss in a single note as part of the notes to the financial statements. **In this context, please read our statement on the generously redefined version of ex-COVID-19 EBITDA and its detrimental impact on calculating debt capacity.**

5. Other disclosure requirements applicable to half-yearly financial statements

Apart from the items explicitly mentioned above, ESMA highlights that issuers should consider whether other requirements in IFRS are also relevant in the context of their half yearly financial reporting. These requirements include, but are not limited to, the recognition of deferred tax assets and tax reliefs,[9] fair value measurements,[10] provisions and onerous contracts and insurance contracts liabilities. ESMA also recommends that issuers closely monitor the developments in relation to the accounting for COVID-19-related lease concessions based on the expected IASB's amendments to IFRS 16 and the related endorsement process at European level, where material to their specific situation.
Interim management reports

ESMA recommends that issuers provide detailed and entity specific information in their interim management reports regarding:

- the impact that the COVID-19 pandemic had on their strategic orientation and targets, operations, financial performance, financial position and cash-flows. This should include details of the issuer's liquidity position and its liquidity risk management strategy, decrease of revenues, disruptions in supply chains and/or production);
- measures taken to address and mitigate the impacts of the COVID-19 pandemic on their operations and performance and their progress/state of completion (including, but not limited to, information of whether issuers have applied or are considering to apply for public support measures, details regarding the nature, amounts and conditions of such assistance, the planned renegotiation of major contracts); and
- where available, the expected future impact on issuers' financial performance, financial position and cash-flows, related risks and contingency measures planned to mitigate the expected future impact and risk and uncertainties identified.

In order to complement the information provided above and to facilitate users' understanding, ESMA provides that issuers should also include narrative information regarding the estimates and judgements made as well as assumptions used to determine the future impact of the COVID-19 pandemic on the business of the issuer and how the different uncertainties faced affected the estimates made and the strategy undertaken by the issuer to address the impact of COVID-19.

Summary of recommendations

To conclude, this Statement provides recommendations on areas of focus identified by ESMA and highlights:

- the importance of providing relevant and reliable information, which may require issuers to make use of the time allowed by national law to publish half-yearly financial reports while not unduly delaying the timing of publication;
- the importance of updating the information included in the latest annual accounts to adequately inform stakeholders of the impacts of COVID-19, in particular in relation to significant uncertainties and risks, going concern, impairment of non-financial assets and presentation in the statement of profit or loss; and
- the need for entity-specific information on the past and expected future impact of COVID-19 on the strategic orientation and targets, operations, performance of issuers as well as any mitigating actions put in place to address the effects of the pandemic.

ESMA new Q&A on Alternative Performance measures

Finally, ESMA notes that a new Q&A[11] on the ESMA Guidelines on Alternative Performance measures in the context of COVID-19 was published, and highlights that any new COVID-19 related subtotals qualifying as APMs and presented simultaneously inside and outside the financial statements, are subject to the principles and disclosure requirements provided for in ESMA's Guidelines on APMs and further explained in ESMA's Q&A document.

[9] In accordance with IAS 12
[10] In accordance with IFRS 13 Fair Value
[11] ESMA32-51-370 - Questions and answers - ESMA Guidelines on Alternative Performance Measures (APMs) - 17 April 2020

Regulators & Associations Monitored

1. FCA
2. BoE
3. The Pensions Regulator
4. FRC
5. ESMA
6. EBA
7. EIOPA
8. ECB
9. European Commission
10. Autorité des Marchés Financiers (AMF) of France
11. CSSF
12. FINMA
13. CBI
14. ICMA
15. IOSCO
16. FSB

Important Information: