

Response to IOSCO's consultation report on the operational resilience of trading venues and market intermediaries during the COVID-19 pandemic (CR01/22)

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About the Investment Association

The Investment Association (IA) champions UK investment management, a world-leading industry which helps millions of households save for the future while supporting businesses and economic growth in the UK and abroad. Our 270 members range from smaller, specialist UK firms to European and global investment managers with a UK base. Collectively, they manage £9.4 trillion for savers and institutions, such as pension schemes and insurance companies, in the UK and beyond. 44% of this is for overseas clients. The UK investment management industry is the largest in Europe and the second largest globally.

Executive summary

The IA welcomes the opportunity to comment on the International Organization of Securities Commission's (IOSCO) assessment of how certain types of regulated firms within financial services have coped during the COVID-19 pandemic and what lessons can now be drawn from the experience to further improve firms' operational resilience.

We are pleased that the consultation report finds entities were well prepared for the disruptions that the pandemic created. In our view the investment management sector responded effectively to the crisis and maintained levels of service to consumers and counterparties during highly volatile times, both operationally and in capital markets. The industry's response was also helped by effective cooperation between regulators and regulated entities to solve problems, allow flexibility where necessary and prioritise what was most important in a time of crisis.

We broadly agree with the key lessons from the pandemic identified within the consultation report. In addition, we suggest there are further lessons to be learnt from our perspective that should be taken into consideration, including that the increase in remote working has exasperated legal and regulatory risks; that it is more challenging to assimilate new joiners into a corporate culture remotely; that there is merit in focusing on general preparedness; and that the pandemic has highlighted the need to think about longer-term disruptive scenarios. These are explored in greater detail in our response to the questions.

We also contend that the COVID-19 pandemic was more than a typical 'severe but plausible' scenario of the sort that operational resilience rules ask firms to prepare for: it was an 'extreme but plausible' scenario (the last equivalent event was in 1918 flu pandemic). It is important to acknowledge this, as to not do so risks unconsciously extending the boundaries of what firms are expected to focus on as part of their operational resilience programmes. Firms will be better aligned to protecting clients and



consumers if the primary focus of operational resilience programmes remains centred on common issues, such as day to day outages that happen as a result of changes in management or hardware failures, rather than on 'black swan' type events.

Q1: In the context of reviewing operational resilience during the pandemic, is the description of 'operational resilience' and 'critical operations' appropriate for:

(a) trading venues;

(b) market intermediaries?

If not, please explain why and describe your preferred approach?

We agree that the definitions are appropriate in the context of this consultation report. However, it is worth noting that the Basel Committee on Banking Supervision's (BCBS) concept of 'critical operations' differs to an extent from the UK regulators' (Bank of England/Prudential Regulation Authority and Financial Conduct Authority) equivalent concept of 'Important Business Services', with the latter concept placing greater emphasis on avoiding consumer harm as an outcome of operational resilience.

Q2: Are there other impacts, risks or challenges faced by regulated entities not mentioned in this section?

Q3: Are there other impacts, risks or challenges from remote work or hybrid working that impact operational resilience?

We will respond to questions 2 and 3 together.

The IA considers that the increase in remote working since the onset of the pandemic has exacerbated the legal and regulatory risks associated with employees working from home. We agree with the points made in the consultation report regarding regulated entities reviewing their compliance and supervisory processes over remote workers. However, we would emphasise that employee monitoring needs to be approached carefully. Hybrid working technologies, such as those used to assist with employee monitoring, can present data protection issues. Data protection legislation sets out a strict framework for when employers can process employees' personal data and firms will need to evidence that monitoring is proportionate and necessary. Firms need to have a clear use case and outline the regulatory reasons and/or safeguarding reasons (to monitor working hours for instance) to monitor employees. Additionally, having an ethical framework in place will be very important when conducting monitoring activities and maintaining employee trust.

We also consider that assimilating new joiners into a corporate culture remotely, as well as training junior staff, can be more challenging than it previously was when new joiners would spend the majority of their time in the office environment. To the extent that embedding the right corporate culture guards against the risks that arise where a poor corporate culture exists, the additional challenge of remotely assimilating new staff into the firm's corporate culture will impact on a firm's operational resilience.

To account for the increase in remote working, some firms are building scenarios focused on the firm's reliance on internet connectivity/ internet service providers and assessing the impact of an outage on employees working from home.



Q4: Are there other lessons learned that can be drawn from the experiences of regulated entities during the pandemic in the context of maintaining operational resilience?

We note that general preparation for disruptive events can offer some level of resilience to a range of scenarios, including those that may be unforeseen. In this vein, we understand that many firms are adopting a scenario agnostic approach, where less emphasis is placed on the specific scenario but rather on their response, which has the potential to be applicable to a wide variety of scenarios. Similarly, many firms noted that their existing business continuity plans proved very effective when the pandemic first struck despite not preparing for this precisely.

The pandemic has also highlighted the need to consider scenarios of a longer time duration. Pre-pandemic, we understand that many firms were predominantly thinking about disruptive scenarios of a short-term nature. The pandemic has shown that extended crises require a different approach, and some firms are now planning to test scenarios of an extended duration as they develop the sophistication of their scenario testing. For example, testing scenarios examining the impact of climate change risks and their associated resilience issues, or thinking about the rise in antibiotic resistance.