Chapter 4

Further topics

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4.1 Anticipating reactions

4.1.1 G In WDPG 3.6 (Impact assessment: who will be affected by the wind-down?) we explain how important it is for *firms* to assess the impact of a wind-down on *customers*, markets and other parties. In this section, we highlight the importance of anticipating the reactions of those parties.

Employees

4.1.2 G *Employees* may want to leave as soon as possible to secure new roles. *Firms* may therefore need to consider how to ensure they can retain the key *employees* needed to carry out a wind-down.

Clients or counterparties

4.1.3 G If a *firm* is winding-down, especially under challenging market conditions, there is a risk that counterparties or other *clients* may simply *default*. This may have consequences on anticipated revenues and costs, and the duration and/or impact of the wind-down.

Creditors, landlords and other suppliers

4.1.4 G When a *firm* announces its wind-down decision, this may affect its reputation and/or credit rating. Changes in these factors may cause concerns for creditors, landlords and other suppliers about the *firm's* ability to meet any outstanding liabilities and may trigger reactions such as margin calls or demands for full and final payment. It is therefore crucial that the *firm* communicates with these parties, and ensures there is sufficient liquidity to meet any liabilities when they fall due. This is a prime example of the importance of making a timely decision to wind down.

4.2 Communications plan

4.2.1 G An effective wind-down plan would include a predetermined communications plan that considers the contents and timing of communications, including website updates (and possibly a hotline), to a wide range of stakeholders, such as relevant regulators (e.g. the listing authority, stock exchange, *FCA*, *overseas* regulators etc.), *employees*, *customers*, service providers, *shareholders*, bondholders, relevant industry associations and trade bodies and the media. Some suggested elements the *firm* may want to consider for the communications plan include:

(1) identifying the stakeholders to be engaged;

(2) determining who should engage those stakeholders;

(3) agreeing the internal process for drafting and approving any communication to the stakeholders;

(4) establishing guidance and procedures for a proactive vs a reactive communication strategy (or combination);

(5) preparing scripts in advance if appropriate, e.g. holding statements, acknowledging that detailed messaging may only be possible reactively; and

(6) recognising the potential need for the *governing body* to engage with legal advisors and communication experts (e.g. through media training).

4.2.2 G Good stakeholder contact during the wind-down period will support the *FCA's consumer* protection and market integrity *statutory objectives*. Communications should be carefully handled to avoid a lack of reliable information or leaks which could create concerns among *consumers* and, in more severe cases, an increased risk of detriment and disruption to the wider market.

4.2.3 G In line with Principle 11 (PRIN 2.1.1R), *firms* need to be mindful of their obligation to keep the *FCA* informed of material developments. This includes issues that might threaten the ongoing viability of the *firm* and any decision(s) to cease operations. Thereafter, a regular dialogue between the *firm* and the regulator needs to be maintained.

4.2.4 G It is important for the *firm* to identify one or more individuals who will be responsible for coordinating effective and timely communications during the wind-down period. These individuals are likely to include senior decision-makers as well as those with specialist communications/technology skills, for example those with knowledge of financial disclosure requirements, web publishers etc. This is particularly relevant for a *group* of companies, or where *listed* entities are involved. In order for these individuals to effectively deliver communications in a wind-down they will need the appropriate training, tools, systems and resources.

4.3 Client monies and custody assets

4.3.1 G Any *firm* holding *client monies* or *custody assets* must ensure that it complies with all applicable *CASS rules*.

4.3.2 G In particular, all firms that fall under the requirements of CASS 10.1.1R must maintain a *CASS resolution pack*.

4.3.3 G The purpose of the *CASS resolution pack* is to ensure that a *firm* maintains and is able to retrieve information that would, in the event of its insolvency, help an insolvency practitioner achieve a timely return of *client* money and *safe custody assets* held by the *firm* to its *clients*.

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4.4 Groups of firms and overseas businesses

4.4.1 G If the *firm* is part of a larger *group* and it decides to have its own individual wind-down plan the plan will almost inevitably be impacted by *group* activities. In particular, some or all elements of its governance, financing and operations may be dependent on the *group*. These dependencies have implications on the wind-down plan's cost, duration and simplicity.

4.4.2 G A *firm* preparing a wind-down plan at *group* level might be facing two possible wind-down scenario options:

(1) the *firm* winds down its regulated business on its own in an event independent of its *group*; or

(2) the *firm* winds down its regulated business as part of a larger *group failure*/wind-down event.

4.4.3 G The following are some common questions which a *firm* could consider in a group scenario.

(1) Does the *group*/parent need to be consulted before making the wind-down decision?

(2) If the *group* has entities that are *listed*, are there any actions to be taken in line with applicable disclosure regimes and *listing rules*?

(3) If there are *intra-group transactions*, how are they unwound and how do they affect wind-down costs?

(4) What support will the *firm* receive from the *group* during its wind-down?

4.4.4 G A *group failure* event is particularly serious, as it could mean the relevant *firm* no longer has access to *group* resources such as a central treasury function, financial resources, IT and administrative functions for its own wind-down operation. It would then need to consider alternative resources in its wind-down planning.

4.4.5 G Wind-down will trigger the closure of all regulated business undertaken by the *firm*, including *overseas* activities. Closure of *overseas branches* or *subsidiaries* could be complicated due to jurisdictional differences (e.g.

regulatory requirements, laws relating to employment and liquidation, etc.) and time differences (e.g. in relation to announcement of wind-down, closing out transactions etc.), which can add to the cost and duration of winding down.

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4.5 Continuing regulatory requirements during wind-down

4.5.1 G Continuing requirements during wind-down: The wind-down plan does not create an exception for complying with *threshold conditions* or our *rules* during the wind-down period.

4.5.2 G During wind-down *firms* will need to continue to comply with the *Principles*, reporting requirements, financial resource requirements and any other relevant requirements.