

Intra-Group Liquidity Modification Direction

To: IG Markets Limited
IG Index Limited ("the firms")

Ref: 00001041
00001040

FRN: 195355
114059

Of: Cannon Bridge House
25 Dowgate Hill
London
EC4R 2YA

Date: 14 November 2019

Handbook Version as in force at the date of this Direction

Power

1. This direction is given by the FCA under section 138A of the Financial Services and Markets Act 2000.

Duration

2. (1) This direction takes effect on 14 November 2019.

(2) This direction ends on 8 January 2021.

Rules Modified

3. The FCA directs that the rules below apply to the firms identified in Schedule 1 to this direction ("UK DLG firms") with the modifications shown.

Rule	Modification
<u>BIPRU 12.2</u> "BIPRU 12.2.1R (1A)	 <u>To the obligation in BIPRU 12.2.1R (1) there is added a further obligation such that a UK DLG firm must ensure that at all times its UK DLG by modification maintains liquidity resources which are adequate, both as to amount and quality, to ensure that there is no significant risk that the liabilities of any of the UK DLG firms</u>

<p>BIPRU 12.2.1R (2)(a)</p>	<p><u>cannot be met as they fall due."</u></p> <p>"For the purpose of (1) <u>and (1A):</u></p> <p>(a) <u>a each UK DLG firm</u> may not include liquidity resources that can be made available by <u>any</u> other members of its <u>group other than resources made available by any other UK DLG firm;</u></p> <p>(aa) <u>a UK DLG firm</u> may include liquidity resources of the kind mentioned in (a) only if each of the <u>UK DLG firms</u> is party to a liquidity undertaking having the form and content set out in <u>BIPRU 12 Annex 1R</u> (a "Loan Facility Agreement");</p> <p>(ab) <u>a UK DLG firm</u> must take reasonable care to:</p> <p>(i) <u>keep under review any legal or regulatory changes that could affect the efficacy of the Loan Facility Agreement; and</u></p> <p>(ii) <u>amend the Loan Facility Agreement in the light of any such changes in order to maintain its efficacy;</u></p> <p>(ac) <u>a UK DLG firm</u> must advise the <u>FSA</u> of any amendment proposed to the <u>Loan Facility Agreement</u> and must ensure that no such amendment has effect until <u>approved by the FSA."</u></p>
<p>BIPRU 12.2.8R</p>	<p>"For the purposes of the <u>overall liquidity adequacy rule</u>, an ILAS BIPRU firm <u>a UK DLG firm</u> must also ensure that:</p> <p>(1) its <u>the</u> liquidity resources <u>of its UK DLG by modification</u> contain an adequate buffer of high quality, unencumbered assets; and</p> <p>(2) it <u>its UK DLG by modification</u> maintains a prudent</p>

BIPRU 12.3

"BIPRU 12.3.4BR

funding profile."

(1) To the obligation in *BIPRU 12.3.4R* there is added a further obligation such that each *UK DLG firm* must ensure that its *UK DLG by modification* has strategies, policies, processes and systems of the kind that are required by the rules in *BIPRU 12.3*.

(2) For the purpose of (1):

(a) the strategies, policies, processes and systems are those which are robust having regard to the liquidity risk run by the *UK DLG by modification*;

(b) references to the amounts and types of liquidity resources must be read as being to the amounts and types that the *UK DLG firm* considers should be held by the *UK DLG by modification*; and

(c) references to the distribution of liquidity resources must be read as being to the distribution between members of the *UK DLG by modification*.

(3) This rule does not alter the application of *BIPRU 12.3.27R*."

"BIPRU 12.3.5AR

The strategies, policies, processes and systems required by *BIPRU 12.3.4R* must be comprehensive and proportionate to the nature, scale and complexity of the activities of the *UK DLG by modification*."

"BIPRU 12.3.26AR

In addition to complying with *BIPRU 12.3.26R*, a *UK DLG firm* must ensure that its *UK DLG by modification*:

(1) takes into account the impact on the liquidity position of that *UK DLG by modification* of its members forming

part of a wider group; and

- (2) understands and has regard to any legal, regulatory, operational or other constraints on the transferability to it of funds and collateral by entities in its wider group that are not members of the UK DLG by modification."

BIPRU 12.4

"BIPRU 12.4.-1R

The rules in this section are modified such that:

- (1) to each obligation in this section on a firm to conduct a stress test and analyse a liquidity stress there is added an additional obligation on each UK DLG firm to ensure that those stress tests and analyses are carried out by reference to the position of the UK DLG by modification as a whole; and
- (2) to each obligation in this section on a firm to maintain an adequate contingency funding plan there is added an additional obligation on each UK DLG firm to ensure that an adequate contingency funding plan is maintained having regard to the position of the UK DLG by modification as a whole."

BIPRU 12.5

BIPRU 12.5.2R

"A ~~firm~~ UK DLG firm must ensure that ~~carry out~~ an individual liquidity adequacy assessment (ILAA) is carried out in respect of its UK DLG by modification in accordance with this section."

BIPRU 12.5.4R

"A ~~firm~~ UK DLG firm must ensure that:

- (1) it ~~regularly carries out~~ an ILAA is regularly carried out in respect of its UK DLG by modification;
- (2) it ~~makes~~ a written record is made of its ~~that~~ ILAA;
- (3) its ~~the~~ ILAA is proportionate to the nature, scale and

	<p>complexity of its <u>the activities of the UK DLG firms</u>;</p> <p>(4) its <u>the ILAA</u> takes into account whole-firm and group-wide liquidity resources only to the extent that reliance on these is permitted by the FSA;</p> <p>(5) its <u>the ILAA</u> includes an assessment of the results of the stress tests required by <i>BIPRU 12.5.6R</i>; and</p> <p>(6) its <u>the ILAA</u> includes an assessment, <u>by each of the UK DLG firms considered separately and as a constituent of their UK DLG by modification</u>, of the firm's compliance with <i>BIPRU 12.3</i> and <i>BIPRU 12.4</i>, including the results of the stress tests required by the rules in <i>BIPRU 12.4</i>."</p>
<p>BIPRU 12.5.6R</p>	<p>"A firm <u>UK DLG firm</u> must ensure that <u>the ILAA of in-carrying-out its UK DLG by modification ILAA</u> it considers how <u>the liquidity resources of the that firm's UK DLG by modification's</u> liquidity resources change as a result of:</p> <p>(1) the stress in <i>BIPRU 12.5.8R</i> (the "first liquidity stress");</p> <p>(2) the stress in <i>BIPRU 12.5.11R</i> (the "second liquidity stress"); and</p> <p>(3) the first and second liquidity stresses occurring simultaneously."</p>
<p><u>"BIPRU 12.5.6AR</u></p>	<p><u>The rules from and including <i>BIPRU 12.5.8R</i> to and including <i>BIPRU 12.5.75R</i> (except <i>BIPRU 12.5.36R</i>) are to be read such that each obligation on a firm to assess its exposure to the type of liquidity risk in question is replaced by one on each UK DLG firm to ensure that the ILAA of its UK DLG by modification addresses those types of risks as they apply to the UK DLG by modification as a whole."</u></p>
<p><u>BIPRU 12.5.36 R</u></p>	<p><u>"A UK DLG firm must ensure that the ILAA of its UK DLG by modification assesses the liquidity risk to which the UK DLG by</u></p>

modification is exposed:

- (1) as a result of reliance on liquidity from group entities outside of that UK DLG by modification but on whose reliance permission has been given through an intra-group liquidity modification for the purpose of satisfying the overall liquidity adequacy rule as it applies to the UK DLG by modification; or
- (2) as a result of the exposure of the UK DLG by modification to calls on its own liquidity resources from group entities outside of the UK DLG by modification.

~~Where a firm has an intra-group liquidity modification permitting it to rely on liquidity from other members of its group in order to satisfy the overall liquidity adequacy rule, or may be exposed to calls on its own liquidity resources from others in its group, then in assessing its intra-group liquidity risk it must:~~

In doing so, it must ensure that the ILAA:

- (3) takes into account:
 - (a) the extent to which the UK DLG firms ~~it~~ and other entities in its their group have access to central bank funding;
 - (b) in relation to any group entity outside of the UK DLG by modification on which a UK DLG firm relies for liquidity support, the legal and regulatory regime to which that entity is subject, in particular that covering liquidity regulation; and
 - (c) the contractual arrangements governing any agreed forms of intra-group liquidity support (including committed funding lines); and
- (4) assume that in periods of stress, group entities on

whose reliance permission has been given for the UK DLG by modification to rely will not repay loans or deposits made by the ~~firm~~ UK DLG firms to them, but that ~~the firm~~ those firms will meet ~~its~~ their liabilities that fall due to other *group* entities during the period of the relevant stress."

BIPRU 12.7

BIPRU 12.7.2R

"For the purpose of satisfying *BIPRU 12.2.8R*, a ~~firm~~ UK DLG firm must ensure that its UK DLG by modification ~~to which this section applies~~ may only includes in its liquid assets buffer only:

- (1) high quality debt securities issued by a government or central bank;
- (2) securities issued by a *designated multilateral development bank*;
- (3) reserves in the form of sight deposits with a central bank of the kind specified in *BIPRU 12.7.5R* and *BIPRU 12.7.6R*; ~~and~~
- ~~(4) in the case of a *simplified ILAS BIPRU firm* only, investments in a *designated money market fund*."~~

BIPRU 12.7.9R

"For the purposes of *BIPRU 12.7.2R* (1) and (2), a ~~firm~~ UK DLG firm must only ensure that its UK DLG by modification counts only securities:

- (1) which are unencumbered (except those which are encumbered as between UK DLG firms);
- (2) to which ~~it~~ a UK DLG firm has legal title; and
- (3) which ~~that firm~~ a UK DLG firm realises on a regular basis.

BIPRU 12.7.11R

- (1) For the purpose of *BIPRU 12.7.9R (3)*, a ~~firm~~ UK DLG firm must ensure that ~~periodically realise~~ a proportion of the assets in ~~its~~ the liquid assets buffer of its UK DLG by modification is periodically realised through *repo* or outright sale to the market.
- (2) A ~~firm~~ UK DLG firm must also ensure that ~~it periodically realises,~~ through the use of central bank liquidity facilities, a proportion of those of its assets which do not fall into *BIPRU 12.7.2R(1)* or (2) is periodically realised.
- (3) A ~~firm~~ UK DLG firm must ensure that ~~in carrying out~~ such periodic realisation is carried out such that:
 - (a) it is done ~~does so~~ without reference to the ~~firm's~~ day-to-day liquidity needs of the UK DLG by modification;
 - (b) ~~it realises in~~ varying amounts of the assets in ~~its~~ the liquid assets buffer of the UK DLG by modification are realised;
 - (c) the cumulative effect of ~~its~~ periodic realisation over any twelve *month* period is that a significant proportion of the assets in ~~its~~ the liquid assets buffer of the UK DLG by modification's ~~liquid assets buffer~~ is realised; and
 - (d) in *repo* to the market and central bank or in collateral *swap* transactions with a central bank, ~~it enters into~~ transactions of varying durations are entered into.
- (4) A ~~firm~~ UK DLG firm must ensure that its UK DLG by modification establishes and maintains a written policy setting out ~~its~~ the approach of the UK DLG by modification to periodic realisation of its assets."

BIPRU 12.9

BIPRU 12.9.13R

"On the occurrence of any of the events identified in *BIPRU 12.9.14R*, a *UK DLG firm* must as soon as it becomes aware of the event in question ensure that:

- (1) ~~notify the FSA in writing; the FSA is notified thereof in writing;~~
- (2) ~~provide the FSA with an adequately reasoned explanation for the deviation; the FSA is provided with an adequately reasoned explanation for the deviation;~~ and
- (3) ~~implement its contingency funding plan; the contingency funding plan for its UK DLG by modification is implemented."~~

BIPRU 12.9.14R (2)

"For the purpose of *BIPRU 12.9.13R*, the events in question are:

- (1) ...
- (2) in the case of a ~~*standard ILAS BIPRU firm or a simplified ILAS BIPRU firm*~~, being a *firm* which in either case has *UK DLG modification* whose constituent *UK DLG firms* have accepted *individual liquidity guidance* ~~given to it~~ issued in respect of that *UK DLG by modification* by the FSA:
 - (a) ~~its~~ the liquid assets buffer of the *UK DLG by modification* falling, or being expected to fall, below, the level advised in the ~~*guidance individual liquidity guidance*~~; or
 - (b) ~~its~~ the funding profile of the *UK DLG by modification* ceasing, or being expected to cease, to conform to that advised in the ~~*guidance individual liquidity guidance*~~."

BIPRU 12.9.17 R

~~"No later than two days after the day on which a firm notifies the FSA under BIPRU 12.9.13R (1), the firm must submit a liquidity remediation plan to the FSA. A UK DLG firm must ensure that a liquidity remediation plan in respect of its UK DLG by modification is submitted to the FSA no later than two days after the day on which the FSA has been notified under BIPRU 12.9.13R (1)."~~

BIPRU 12.9.18 R

"For the purposes of BIPRU 12.9.17R, a ~~firm's~~ the liquidity remediation plan which is submitted in respect of a UK DLG by modification must:

- (1) be communicated in writing;
- (2) detail the ~~firm's~~ UK DLG firms' forward estimates of the evolution of the size of the ~~firm's~~ liquid assets buffer of their UK DLG by modification and of its funding profile;
- (3) in relation to any of the events identified in BIPRU 12.9.14R that has occurred, detail the actions that the ~~firm~~ UK DLG firms intends to take to remedy the relevant deviation, or avoid the expected deviation, including information about:
 - (a) the amount of funding that it is intended to raise;
 - (b) the intended funding providers; and
 - (c) the maturity profile of the intended funding;
- (4) identify clear timescales for achieving each of the actions that ~~it details~~ are detailed in accordance with BIPRU 12.9.18R (3); and
- (5) include an adequately reasoned assessment of the likelihood of the timely achievement of the actions that it details in accordance with BIPRU 12.9.18R (3)."

BIPRU 12.9.24 R

BIPRU 12 Annex 1R

BIPRU 12 Annex 1R

~~“An *ILAS BIPRU firm* must monitor on each *business day* whether it is in conformity with *individual liquidity guidance* that it has accepted or, as the case may be, with the *simplified buffer requirement*. A *UK DLG firm* must ensure that, on each *business day*, conformity with the *individual liquidity guidance* issued in respect of its *UK DLG by modification* and which the *UK DLG firms* have accepted is appropriately monitored.”~~

“Form and content of UK DLG liquidity support undertakings for intra-group liquidity modifications”

Overview

1. The Loan Facility Agreement required by *BIPRU 12.2.1R (2)(aa)* between the constituent *ILAS BIPRU firms* must be a multi-currency, 2-way commitment between those *firms* having the attributes set out below. The purpose of requiring such an undertaking is to ensure that liquidity can flow completely freely throughout the *UK DLG by modification*.

Attributes of Loan Facility Agreement

2. The Loan Facility Agreement must possess the following characteristics:
 - a) The Loan Facility Agreement must be an enforceable contract for a 2-way, unsecured, revolving lending facility, callable in all currencies that are significant in the businesses of the members of the *UK DLG by modification*. The obligation of each member *firm* to lend may be limited to its available liquidity resources. “Available liquidity resources” means in this context:

- i) those of the lending entity's liquidity resources that comprise cleared, immediately accessible funds or those of its assets, rights, facilities or other resources that it, using its best efforts, is capable of converting to cleared, immediately accessible funds such that they may be transferred to and received by the borrowing entity in accordance with paragraph 2(k)(i) below;
- ii) but excluding:
 - (1) those of its liquidity resources that the lending entity has calculated it is likely will be needed to meet its liabilities to entities other than those in the UK DLG by modification falling due in the 24-hour period following receipt of a request to borrow from the borrowing entity;
 - (2) those of its liquidity resources that the lending entity has already agreed to lend to entities in the UK DLG by modification other than the borrowing entity in the 24-hour period following receipt of a request to borrow from the borrowing entity; and
 - (3) such portion of its liquidity resources which, if lent, would cause the lending entity to become balance sheet insolvent in the sense of section 123(2) of the Insolvency Act 1986.

The Loan Facility Agreement:

- (A) must not require the lending entity to lend if it reasonably believed that after making the loan, if made in full, it would:

- (i) be in breach of its capital resources requirement; or
 - (ii) run a significant risk that it would not be able to pay its debts as they fell due; except to the extent approved in advance by the FSA; and
- (B) must require the lending entity to notify the FSA promptly upon receipt of a request to make such a loan.
- b) The Loan Facility Agreement must consist of liquidity support undertakings made between all members of the UK DLG by modification, thereby creating a "cat's cradle" configuration of commitments. The entirety of the undertaking(s) comprising the Loan Facility Agreement must be contained in a single document.
- c) The Loan Facility Agreement must contain no conditions on the availability of the lending facility to a borrowing entity, or on a drawdown by a borrowing entity, except that:
- i) the borrowing entity continues to be a member of the UK DLG by modification; and
 - ii) the borrowing entity is solvent – meaning that no "insolvency event" has occurred in respect of the borrowing entity. An "insolvency event" occurs when:
 - (1) an order (including a bank insolvency order or bank administration order, as defined by section 94 and section 141 of the Banking Act 2009, respectively) is made, or an effective resolution passed, for the liquidation

or winding up of the relevant entity; or

- (2) a receiver, administrator, trustee, bank liquidator, bank administrator, or other similar official is appointed in relation to the whole of the relevant entity.
- d) The Loan Facility Agreement must be governed by English, Scottish or Northern Irish law.
- e) The Loan Facility Agreement must contain a jurisdiction clause providing that disputes arising from the agreement are to fall within the exclusive jurisdiction of the courts of the country of the governing law, save that the borrowing entity may choose the jurisdiction of the courts of the lending entity's country of incorporation/head office (if different).
- f) The Loan Facility Agreement must contain an entire agreement clause.
- g) The Loan Facility Agreement must contain no terms that limit the enforceability of the agreement by reference to representations, warranties, conditions precedent or events of default (other than insolvency of the borrowing entity).
- h) The Loan Facility Agreement must contain a clause stipulating that damages arising from any impecuniosity of the borrowing entity due to non-provision of funds under the Loan Facility Agreement are recoverable, but must contain no liquidated damages or limitation clauses (i.e. no pre-estimates of, or limits on, damages recoverable for breach of the agreement).
- i) The Loan Facility Agreement must contain a clause stating that:

- i) the purpose of the lending facility is to provide a borrowing entity with liquidity in a range of circumstances;
- ii) the lending facility has been provided both to meet the funding needs of the borrowing entity and in connection with the modification of a regulatory requirement that would otherwise require the borrowing entity to be self-sufficient in terms of liquidity, which has enabled the borrowing and lending entities' group to fund itself on a more efficient basis;
- iii) the lending facility may be drawn down by a borrowing entity either on its own initiative or in response to a request or requirement from the FSA; and
- iv) the circumstances in which the lending facility may be used include those in which a borrowing entity is unable to access funding from other sources on normal market terms or at all, and that in such circumstances, damages will not be an adequate remedy for the lending entity's failure to lend money to the borrowing entity under the lending facility (i.e. for the lending entity's breach of the agreement).
- j) The Loan Facility Agreement must contain a clause stating that all parties to the agreement recognise that the purposes of the agreement include (a) the protection of consumers and (b) wider market stability;
- k) The Loan Facility Agreement must contain clauses providing that:
 - i) liquidity support must be provided by a lending

entity to a borrowing entity as cash in cleared, immediately accessible funds within 24 hours of the borrowing entity requesting the loan – it must be provided by the end of the same business day if the borrowing entity makes a request before noon; otherwise it must be provided by noon on the following business day;

ii) the loaned funds may be used by the borrowing entity for its general corporate purposes;

iii) the following provisions apply in respect of a *firm* ceasing to be a party to the Loan Facility Agreement:

(1) any member of the *UK DLG by modification* may cease to be a party to the Loan Facility Agreement upon giving not less than 6 months' notice to the other members of the *UK DLG by modification*; in such circumstances, the contractual relations between the other members of the *UK DLG by modification* under the Loan Facility Agreement will continue in force unaltered (formally, this may mean that the contract is varied in order to discharge the departing member from its obligations);

(2) when a member of the *UK DLG by modification* gives notice of its intention to cease to be a party to the Loan Facility Agreement, its obligation to repay any loan whose term extends beyond the date at which it will cease to be a party is accelerated so that the loan must be repaid by the date at which it will cease to be a party to the Loan

Facility Agreement;

- (3) the outstanding borrowings of a member of the UK DLG by modification under the Loan Facility Agreement must be repaid by the time at which it ceases to be a party to the Loan Facility Agreement;
 - (4) the Loan Facility Agreement (whether in its original form or as varied) may not be terminated while being relied on for an *intra-group liquidity modification* to form a UK DLG by modification.
- iv) if the *intra-group liquidity modification* is revoked by the FSA, each member of the UK DLG by modification has the right to be released from its loan-making obligations to other members of the UK DLG by modification under the Loan Facility Agreement. However, its existing repayment obligations would be unaffected.
- l) The Loan Facility Agreement must specify the rate of interest and any other charges to be levied by the lending entity; the rate of interest must be a market rate that would not inhibit use of the loan facility.

Conditions and requirements

3. The firm must obtain a separate legal opinion (one for each jurisdiction in which a party to the Loan Facility Agreement is located) from a reputable third-party counsel with expertise in the relevant field dealing with the following matters:
- a) Compliance of the Loan Facility Agreement with all the stipulations above;

- b) Parties' corporate standing;
 - c) Whether the obligations are legal, valid, binding and enforceable (including any relevant conflicts of laws issues and corporate benefit issues);
 - d) Due execution (including whether the agreement was within the capacity and powers of the parties, duly authorised, with all necessary consents and approvals);
and
 - e) Whether the provision of the lending facility, and exercise of the rights thereunder, would conflict with any applicable laws or regulations.
4. In order to satisfy the above condition, the legal opinion must have found that the Loan Facility Agreement complies with all the stipulations and is enforceable in all relevant jurisdictions and under all relevant systems of law."

Guidance

4. With regard to *rules* as modified by this direction the *FSA* gives the following guidance:

(1) the language added by this direction as BIPRU 12.4.-1R does not alter the application of BIPRU 12.4.10R.

Interpretation

5. Interpretative provisions (including definitions) of the *Handbook* apply in this direction in the same way as they apply to the *Handbook*.

Isabella Bedi
Waivers Team
Authorisations
Financial Conduct Authority

Schedule 1

This Schedule sets out the *UK DLG firms*:

IG Markets Limited (195355)
IG Index Limited (114059)