

The background of the slide is a complex, multi-layered visualization of financial data. It features a dark blue and black color palette. Overlaid on this are several types of charts: a prominent candlestick chart with green and red bars, several smooth blue and red line graphs, and a series of vertical bars in green and red at the top. The overall effect is that of a busy, high-tech financial dashboard or data analysis screen.

# Financial Regulation Monthly Breakfast Seminar

18 September 2024

LATHAM & WATKINS



# Today's Topics

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The final rules for the new UK listing regime, and the FCA's proposals for the new prospectus regime

James Inness

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A retail update including the FCA's Call for Input on retail conduct rules in light of the Consumer Duty, and its recent product governance thematic review

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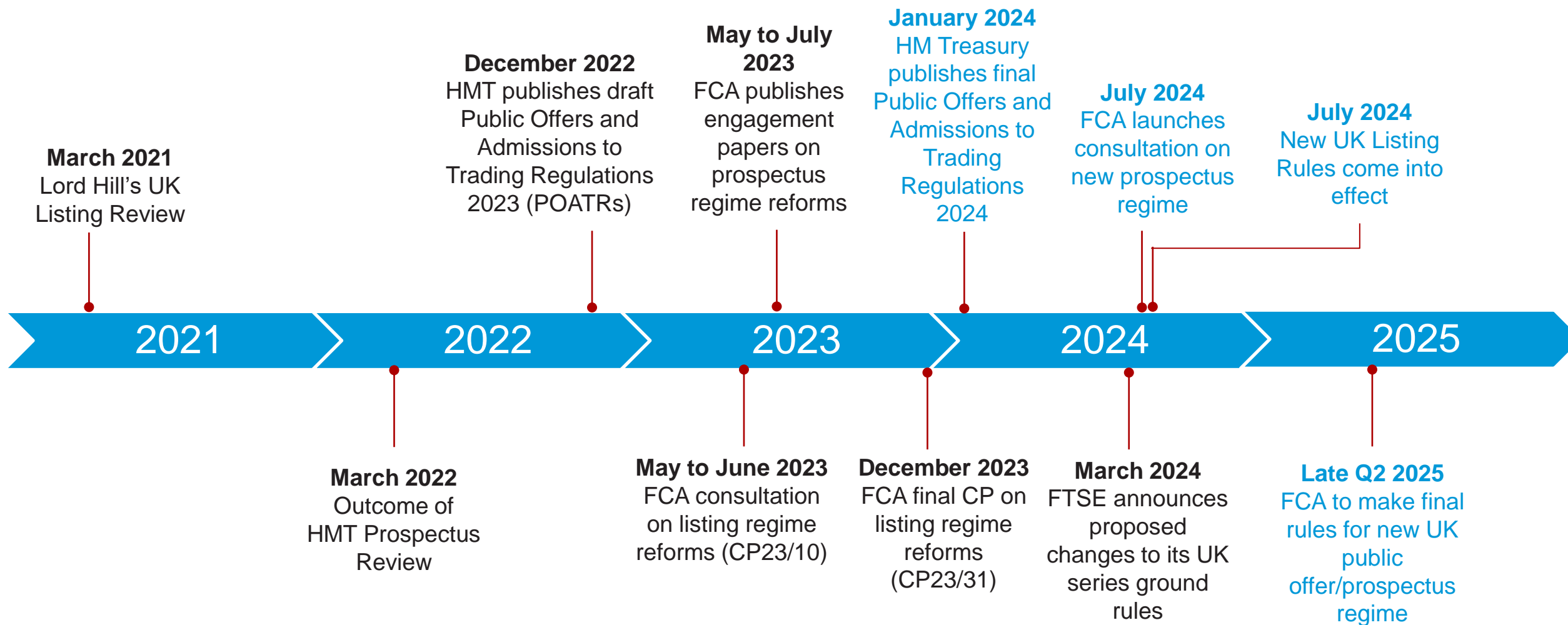




The final rules for the new UK listing regime, and the FCA's proposals for the new prospectus regime

James Inness

# Setting the scene



# New UK Listing Regime Structure (PS24/6)

<b>Commercial Company Categories</b>	<div style="border: 2px solid red; background-color: #f4a460; padding: 5px;">                     Commercial Companies (Equity Shares)                 </div>	<div style="border: 2px solid red; background-color: #f4a460; padding: 5px;">                     International Secondary Listings (Equity Shares)                 </div>	<div style="border: 2px dashed red; background-color: #f4a460; padding: 5px;">                     Transition (Equity Shares)                 </div>
<b>Investment Funds</b>	<div style="background-color: #1a4a73; color: white; padding: 5px;">                     Closed Ended Investment Funds (Equity Shares)                 </div>	<div style="background-color: #1a4a73; color: white; padding: 5px;">                     OEICs (Equity Shares)                 </div>	
<b>Other securities</b>	<div style="background-color: #1a4a73; color: white; padding: 5px;">                     Debt &amp; Debt Like Securities                 </div>	<div style="background-color: #1a4a73; color: white; padding: 5px;">                     Certificates Representing Certain Securities (depository receipts)                 </div>	<div style="background-color: #1a4a73; color: white; padding: 5px;">                     Securitised Derivatives                 </div>
	<div style="background-color: #1a4a73; color: white; padding: 5px;">                     Warrants, Options, and other Miscellaneous Securities                 </div>	<div style="background-color: #f4a460; padding: 5px;">                     Shell Companies (Equity Shares)                 </div>	<div style="background-color: #f4a460; padding: 5px;">                     Non-Equity Shares and Non-Voting Equity Shares                 </div>

- The premium listing and the standard listing categories have been replaced by a single category for equity shares in commercial companies (“ESCC”)
- New international secondary listing category to accommodate non-UK incorporated companies with a primary listing outside the UK
- Transition category is a new closed category to maintain status quo for standard listed commercial companies

New listing category  
Retained listing category



# Key changes under New Listing Regime

## Eligibility criteria

ESCC accessible to a wider range of issuers (in comparison with premium listing):

- No requirement for three year revenue track record or clean working capital
- No requirement for independent business or operational control
- More permissive regime for dual-class share structures

## Sponsors

- Fewer situations where a sponsor needs to be appointed post-IPO in comparison with premium listing
- Sponsor role and responsibilities largely unchanged - with focused changes to Handbook and new FCA guidance



## Significant transactions and related party transactions

- No shareholder approval or FCA-approved circular required for ESCC issuers. Disclosure-based regulation

## Controlling shareholder regime

- No requirement for relationship agreements. Disclosure-based regulation

## Continuing obligations

- Other premium listing requirements largely carried over to the ESCC (including corporate governance, pre-emption rights and annual reporting)

# Significant transactions (1)

Classification	Description	Requirements
<b>Significant Transaction</b>	<p>Any percentage ratio under the class tests is 25% or more</p> <p>Class tests: gross assets, consideration and gross capital (not profit)</p>	<ul style="list-style-type: none"> <li>• Signing announcement (as soon as possible after terms are agreed) containing, amongst others: <ul style="list-style-type: none"> <li>• details of the transaction;</li> <li>• transaction rationale;</li> <li>• business description;</li> <li>• the consideration;</li> <li>• value of the gross assets;</li> <li>• the profits attributable to the assets;</li> <li>• the effect of the transaction and risks;</li> <li>• effect of the transaction on earnings and assets/liabilities;</li> <li>• break fees (if any);</li> <li>• application of sale proceeds (for a disposal); and</li> <li>• board statement that the transaction is in the best interests of the shareholders</li> </ul> </li> <li>• Follow-up announcement (as soon as possible after the information becomes available) on certain financial and non-financial information: <ul style="list-style-type: none"> <li>• related party transactions (re the listed company only), legal and arbitration proceedings, significant change in the issuer's financial position, and material contracts; and</li> <li>• for disposals only, the historical financials on target (2 years' audited financials). When such financial information is not available, provide an explanation of how the company arrived at the price agreed and a statement by the board that it considers the consideration to be fair</li> </ul> </li> <li>• A supplementary announcement required if there is a material change</li> <li>• Closing announcement - to include confirmation on whether there has been any material change to prior disclosures</li> </ul>

# Significant transactions (2)

## Key changes:

- Requirements for shareholder vote and circular removed (except for reverse takeovers)
- New guidance on ordinary course of business exemption
- Profit test removed from class tests
- Not retained the concept of a company in “severe financial difficulty” or the prescriptive additional disclosure requirements for such situations. Instead, the FCA has introduced guidance setting out its expectations around disclosures (primarily compliance with MAR)
- Reverse takeovers still subject to a shareholder vote, circular requirements and sponsor role (with modifications to announcement and circular content)



# Related party transactions

	Class test ratio $\geq 5\%$	Class test ratio $< 5\%$
Related Party Transaction Requirements	<ul style="list-style-type: none"> <li>• <b>Announcement</b> naming related party and extent of their interest in the transaction, including sponsor confirmation that the transaction is <b>fair and reasonable</b></li> <li>• Announcement to be made, via RIS, <b>as soon as possible after terms are agreed</b></li> <li>• <b>Board approval</b> (excluding conflicted directors)</li> </ul>	<ul style="list-style-type: none"> <li>• No specific Listing Rule requirements. Consider MAR</li> </ul>

## Key changes:

- Requirements for shareholder vote and circular removed
- Threshold for “substantial shareholder” increased to 20% from 10%
- New guidance on ordinary course of business exemption

# Sponsor regime

- The basic role and responsibility of sponsor is unchanged
- Fewer situations where a sponsor must be appointed post-IPO
- Situations post-IPO where ESCC issuer must appoint a sponsor:
  - Fundraisings requiring a prospectus
  - RPT fair and reasonable opinions
  - Reverse takeovers
  - Issuer seeking individual guidance or waiver/ modification from FCA on RPT or significant transactions
  - Certain listing category transfers
- Situations where issuers no longer required to appoint a sponsor:
  - Class 1 circular
  - Company seeking guidance on class tests
  - Circular for reconstruction or refinancing which was required to include a working capital statement
  - Circular for proposed purchase of own shares which was required to include a working capital statement
  - Related party transaction circulars
  - Confirmation to the FCA of the Company's severe difficulty under LR 10.8.3G(2)
  - Written opinion under LR 11 Annex 1(8) for joint investment arrangements

# FCA proposals for new public offers and admissions to trading regime (1)

- On 26 July 2024, the FCA published:
  - CP24/12 containing its proposals on the new public offers and admissions to trading regulation regime; and
  - CP24/13 on the new public offer platform (POP) regime
- Deadline for responses to both CPs is 18 October 2024. FCA expects to finalise new rules by late Q2 2025
- There will likely be a transitional period before the new regulation takes effect



# FCA proposals for new public offers and admissions to trading regime (2)

## Recap on new public offers regime

- The Public Offers and Admissions to Trading Regulations 2024 (POATRs) were made in January 2024
- Under POATRs:
  - There is a general prohibition on public offers of relevant securities, subject to exemptions
  - New exemptions to this general prohibition include: (i) offers where the securities are admitted to trading on UK markets; and (ii) offers via POPs
  - FCA has rulemaking powers to specify (amongst other things):
    - When a prospectus (for admissions to trading) is required, the prospectus contents, and the manner/timing of validation and publication
    - The categories of forward-looking information to be subject to a different liability threshold
    - The rules applying to firms operating a POP
- New POATRs regime will come into force fully when the UK Prospectus Regulation is revoked (likely after mid-2025)


# Key proposals from CP24/12 - new prospectus regime (1)

- Large degree of consistency with current UK prospectus regime. Areas subject to only minor changes/unchanged include:
  - IPO prospectuses – Issuers would still be required to publish a prospectus when first admitting securities to regulated markets
  - Content/format requirements and prospectus responsibility – Only minor changes proposed
  - Most prospectus exemptions for admissions to regulated markets carried forward
- Substantive changes proposed:
  - **Further issuances** – The threshold for triggering a prospectus for further issuances of securities already admitted to trading would be increased from 20% to 75%  
In order to facilitate offerings into other jurisdictions, issuers may produce a voluntary prospectus approved by the FCA for issuances below this 75% threshold
  - **Forward-looking information** – Under POATR, “protected forward looking statements” (PFLS) would be subject to a “recklessness” statutory liability threshold to encourage issuers to incorporate forward-looking information into prospectuses  
The FCA proposes to provide a framework to give issuers legal certainty on what information can be deemed PFLS

# Key proposals from CP24/12 - new prospectus regime (2)

- Substantive changes (cont.):
  - **Primary MTFs** (i.e., multilateral trading facilities which allow retail participation, such as AIM) – The FCA proposes to require an MTF admission prospectus for IPOs to such markets and reverse takeovers (with exceptions for existing simplified routes to admission). The FCA is not proposing to require an MTF admission prospectus for further issuances
  - **Sustainability disclosures** – The prospectus content requirements would be supplemented by specific requirements and guidance around sustainability disclosures. Debt issuers would be required to disclose whether their instruments have been marketed as “green”, “social”, or “sustainable”, or issued under a bond framework or a similar document
  - **Non-equity issuances** – Permit issuers to use forward incorporation by reference of financial information in a base prospectus, and more flexibility around using a supplementary prospectus to amend a base prospectus
  - **Six day rule** – Reduce the minimum availability period of a prospectus for retail investors to three days



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A retail update including the  
FCA's Call for Input on retail  
conduct rules in light of the  
Consumer Duty, and its recent  
product governance thematic  
review

**Becky Critchley**

# FCA's Call for Input on retail conduct rules in light of the Consumer Duty

- *“This Call for Input will help to ensure our regulation remains effective, streamlined and comprehensible, maximising the Duty’s benefits.”*
- Requests comments on issues including:
  - Which detailed rules or guidance could be simplified to rely on high-level rules, or have interactions with other rules which could be clarified
  - How any steps to simplify FCA rules and guidance affect the FCA’s statutory objectives
  - The appropriate balance between high-level and more detailed rules
  - The potential benefits and costs from simplifying FCA rules
- FCA particularly wants to address potential areas of complexity, duplication, confusion, or over-prescription, which create regulatory costs with limited or no consumer benefit
- No comments on the Consumer Duty!
- Comments by 31 October 2024

# FCA insurance product governance thematic review (1)

- On 21 August 2024, the FCA published its Thematic Review TR24/2 on Product Oversight and Governance in the insurance sector
- Overall lack of progress in embedding appropriate product oversight and governance within insurers and intermediaries
- FCA found that:
  - Many manufacturers are not adequately assessing and evidencing that their products deliver fair value and good outcomes; and
  - Many distributors are not getting sufficient information from manufacturers to understand their distribution strategies and do not understand how their remuneration can impact on a product's value



# FCA insurance product governance thematic review (2)

- Key issues:
  - Product governance arrangements
  - Fair value assessments and regular review of products
  - Target market statements were often too high level and lacked granularity
  - Lack of consideration of distribution chains and arrangements
- FCA notes the need to:
  - Improve the effectiveness of governance structures
  - The quality of data circulated and debated
  - Root cause analysis of issues that the data flags
  - The introduction of demonstrable improvements in product value in light of these assessments

# FCA insurance product governance thematic review (3)

- What did 'good' look like?
  - Involvement of the Board, senior managers and the business
  - Monitoring and high-quality MI
  - Prompt escalation and action
  - Prompt sharing of product information and effective processes for sharing
  - High quality assessment of the firm's own remuneration and its impact on the product's intended value
- Read across to all retail sectors



# The FCA's final rules on research unbundling

Rob Moulton



# Introduction

- CP24/7 proposed a CSA+ (with extra “guardrails”) model
  - Not full rebundling like EU (or US)
- The FCA defended original policy analysis behind unbundling proposal
- Final rules
  - The FCA says “feedback...was broadly supportive”
  - Has made some tweaks to the guardrails
  - Further work on retail access, corporate access to follow

# Key changes to guardrails (1)

- Budgeting
  - Can aggregate approach to budgeting by type of client/strategy
- Disclosure that budget was exceeded can be cyclical
- Disclosure of research providers used
  - Can be aggregated (as with budgeting)
  - Focus to be on type, rather than firm (e.g. IRP v non-IRP)

# Key changes to guardrails (2)

- Cost allocation and disclosure
  - Can be aggregated (as with budgeting)
  - Can disclose either the planned costs, or the outcome
- Price benchmarking
  - Benchmark is only a suggested, not a compulsory, way
- Separately identifiable research charge
  - Can be an arrangement (rather than a written agreement)





# Impacts (1)

- Changes to processes for Asset Managers who want to use the new option
  - Is it sufficiently attractive?
  - Is it less complex than an RPA?
- International alignment
  - UK out of line with EU (soon) and US (still)
  - The FCA says “none of the responses received indicated that it would be impossible from a legal and compliance perspective simultaneously to meet our requirements and those of other jurisdictions”



## Impacts (2)

- Asset Managers likely to come up with a variety of approaches (declining the new option, coming up with their own CSA, asking for a broker CSA, attempting international alignment etc.)
- Dust off those old CSAs!
  - Is there a separately identifiable execution charge for research?
  - Is there a separate research payment agreement to refer to?
  - Timely payment: gathering, reconciling, paying?
  - Do firms still want/need a “compliance with applicable laws” rep?

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# The findings from the FCA's review of firms' treatment of Politically Exposed Persons

**Nicola Higgs**

# FCA consults on its 2017 guidance on the treatment of PEPs

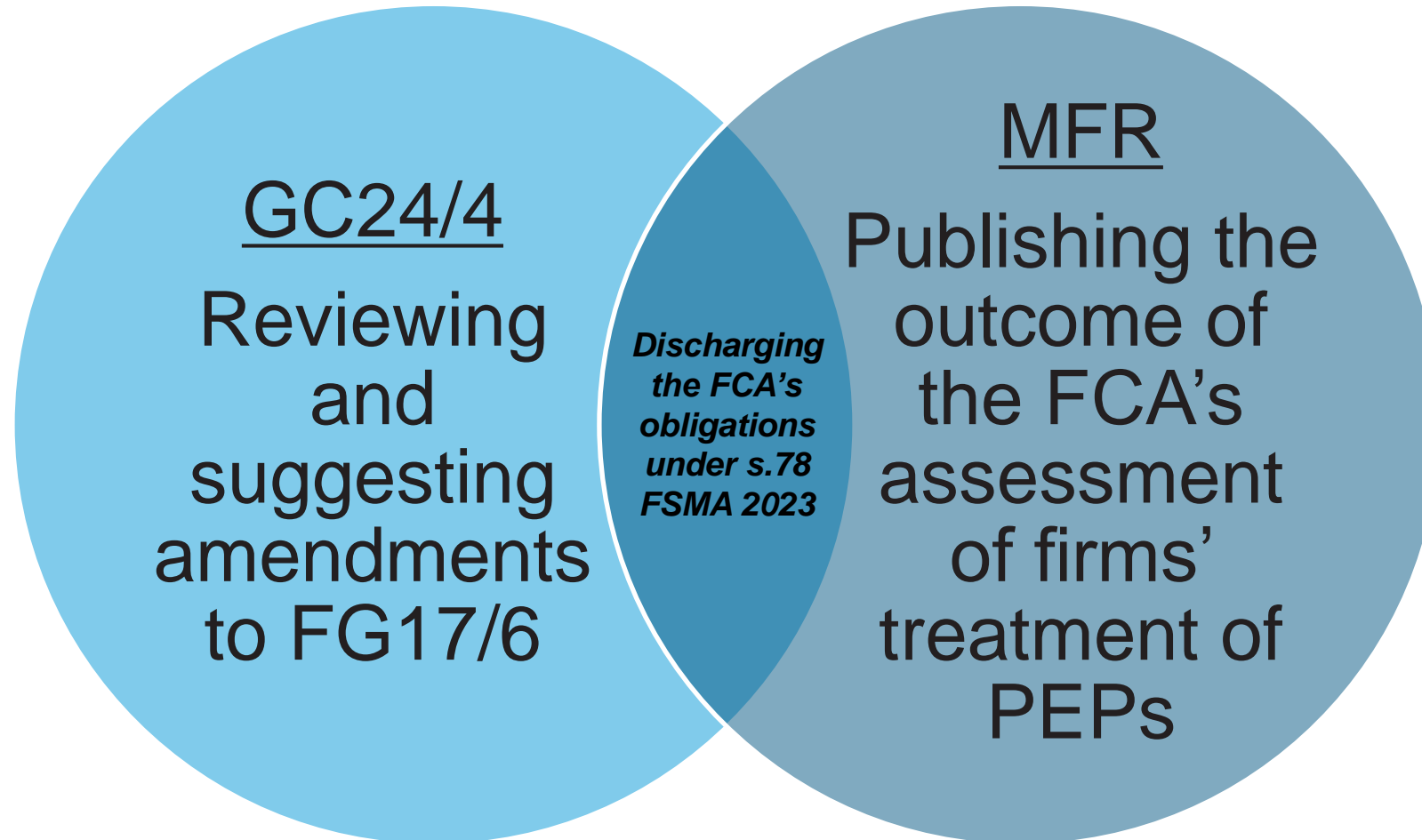
- On 18 July 2024, the FCA published its guidance consultation (GC24/4) on amending and updating its 2017 guidance (FG17/6) on the treatment of PEPs
- At the same time, the FCA also published the outcome of its Multi-Firm Review (MFR) of firms' treatment of PEPs
- FG17/6 provides helpful guidance for FCA-regulated firms on how to interpret and apply, for example, the EDD requirements for PEPs set out in the MLRs 2017
  - Including that domestic PEPs, in the absence of any other heightened risk factors, should be treated as “lower risk” as a starting assumption
- Notwithstanding the foregoing, press coverage last year intimated that UK financial services firms were potentially being too conservative in their application of EDD to PEPs



# FSMA 2023

- This resulted in amendments to the MLRs 2017 in the Financial Services and Markets Act 2023 (FSMA 2023):
  - Section 77: amends MLRs to differentiate between domestic and international PEPs such that regulation 35(3A) was inserted into the MLRs with effect from 10 January 2024 and requires that:
    - The starting point for a risk assessment of a domestic PEP is that they present a lower level of risk compared to a non-domestic PEP; and
    - If no enhanced risk factors are present, the extent of EDD should be less than that applied to a non-domestic PEP
  - Section 78: requires the FCA to review FG17/6 within a year of FSMA 2023's entry into force, and the review must include:
    - As assessment of the extent to which the guidance is followed by persons in-scope of the MLRs 2017; and
    - In light of the foregoing, consideration as to whether FG17/6 should be revised

# Resulting in two FCA publications



# GC24/4

- *“We conclude that, generally, our Guidance **remains appropriate and have not identified significant changes needed to FG17/6**”*
- That said, FCA has proposed improvements to FG17/6 in four key areas:
  1. Non-executive board members (NEBMs) of civil service departments: NEBMs provide advice to departments but have no executive role. GC24/4 clarifies they should not be treated as PEPs
  2. Senior management sign-off of PEP relationships: confirmation that MLRO can sign off lower risk PEP relationships, and other senior management sign-off may only be needed for higher risk PEPs
  3. Amending existing regime to clarify that domestic PEPs are a lower risk than non-domestic PEPs (as a starting point)
  4. Minor additional tidy-ups
- Responses due by 18 October 2024



# GC24/4 – treatment of persons who are both UK and non-UK PEPs

- Where a customer qualifies as both a UK PEP and a non-UK PEP, UK firms should treat that customer as a non-UK PEP
- They should use GC24/4 to assess the risk of that customer and apply appropriate higher or lower risk driven measures as necessary

## GC24/4 – application to UK headquartered groups

- Regulations 19(6) and 20(1) of the MLRs require in-scope firms to, where relevant, communicate their MLR-compliant policies, controls and procedures to its branches and subsidiary undertakings which are located outside of the UK
- Regulation 20(3) of the MLRs states that if the subs or branches are located in third countries which apply less strict AML and CTF rules, the UK parent must ensure that they comply with the group policies that are to the higher UK standard (as far as permitted under local law)
- The FCA now clarifies that it expects UK PEPs to be treated as lower risk across the group (unless not permitted under local law) for UK headquartered firms

# The MFR

- The FCA's MFR comprised:
  - Looking at how firms apply the definition of PEP and their relatives / known close associates (family members)
  - Checking how firms are set up to employ a risk-based approach to assessing the risks associated with PEPs and family members, in accordance with FG17/6
    - This involved data gathering and analysis from an initial group of firms from 5 retail sectors
    - Then narrowed down to a detailed review of 15 firms, primarily in the retail banking and consumer credit sectors (not intended to be representative of the UK market, but accounting for 60% of the UK market for retail "main" current accounts)
    - 5 firms for detailed file review
    - 3 firms were interviewed
  - Contacting over 1,000 PEPs to check their experiences, receiving responses from 65



# The MFR – key findings

- All firms were clear that they would not decline a customer simply because of PEP / family member status
  - FCA found no evidence (albeit limited file review) of customers being rejected or accounts closed due to PEP status
- Around 50% of firms did have internal definitions of who amounts to a PEP or family member that were wider than the FCA would have expected under the MLRs 2017 and FG17/6
- FCA found only a small number of disproportionate information requests to PEPs
- Firms need to improve processes in place for de-classifying customers as PEPs / family members when they have left public office
  - Regulation 35(9) of MLRs includes wash out period of 12 months for PEPs (or longer if enhanced risk factors) or, for family members, immediately upon the relevant PEP leaving office (35(11))

# The MFR – recommended actions for all firms

- Update policies and procedures to reflect changes to MLRs, GC24/4, and the MFR (even though open for consultation)
- Review policies and procedures to confirm they align with Regulation 35(9) for de-classifying customers as PEPs
- Confirm definition of PEP and family member used internally aligns with MLRs and GC24/4
- Consider refreshing staff training to ensure they are up to speed on changes in this space and are confident applying a consistent, risk-based approach to PEP identification and risk management
- Check information gathering processes and client communications with PEPs to ensure they are proportionate and not overly intrusive (based on risk)

# UK Finance – what does “good” PEP data look like in 2024?

- UK Finance flags the challenges for international firms which need to comply with overlapping AML and CTF regimes, including the PEP requirements
  - Differing definitions of PEPs
  - Understanding what amounts to a person with a sufficiently prominent public function in differing jurisdictions
  - Different periods after which a PEP or family member ceases to hold public office during which they should remain subject to enhanced monitoring
- PEP screening software should be calibrated taking into the account the above
- Reiterates the FCA’s observation in the MFR that the software should also be dynamic enough to track changes in a PEP’s status (e.g., new appointments, retirement, re-posting etc.)

# UK payment accounts access and closures (1)

- FCA has also published a report on UK payment accounts access and closures – this is linked to but does not overlap with the work relating to PEPs
- Follow up to September 2023 report – published amid concerns that account providers might have terminated customers' payment accounts because of their political beliefs or lawfully expressed views
- 2023 report found no suggestion that these concerns were substantiated, but the FCA committed to carry out follow-up work
- September 2024 report sets out findings from the FCA's follow-up work, including expectations for firms under the Consumer Duty



# UK payment accounts access and closures (2)

## Key findings and expectations:

- There is still not evidence of political beliefs or other views lawfully expressed being used as a rationale for account denial, suspension or termination. However, FCA has asked senior leaders in firms to sign an attestation taking personal responsibility for ensuring rules have been complied with and that they are confident of their compliance going forward
- Data on account access was limited or unclear. FCA expects firms to ensure their governance and oversight of account access decisions support their compliance with their obligations under the Consumer Duty
- “Reputational risk” is used in varying ways by different firms to deny or close accounts. FCA expects firms to have a clear, properly considered definition of reputational risk
- Some customers in vulnerable circumstances are experiencing worse outcomes. FCA expects firms to take relevant factors into account, such as considering whether alternative forms of ID can be provided
- FCA expects firms to review relevant policies and procedures through the lens of the Consumer Duty, if they have not already done so, and ensure their decisions on account access are based on reasonable grounds
- Firms should ensure they can evidence how they have made sure that their customer journeys, policies and procedures are compliant with the Consumer Duty

# Basel 3.1 implementation

- PRA published second near-final Policy Statement on 12 September 2024
- Implementation date has been pushed back to 1 January 2026, with a four-year transitional period for full implementation
- PRA estimates that the Tier 1 capital requirements for major UK firms will be virtually unchanged, with an aggregate increase of less than 1% from January 2030 when the transitional arrangements come to an end
- Key changes from the consultation include:
  - Lower capital requirements for SME exposures, infrastructure exposures, and trade-finance related activities
  - A simpler approach to valuing residential property
  - An adjusted approach to calculating the output floor
- PRA: “The result is that there are strong examples...where competitiveness and growth considerations have played an important role”

# Recent Thought Leadership

- [FCA Publishes Final Rules for Reformed Listing Regime](#)
- [FCA Launches Consultations on the New Prospectus Regime and Public Offer Platforms](#)
- [FCA Finalises Changes to Rules on Investment Research](#)
- [FCA Findings on Firms' Treatment of Politically Exposed Persons](#)
- [FCA Pushes Back Deadline for SDR Naming and Marketing Rules](#)
- [European Commission Publishes FAQs on EU Corporate Sustainability Reporting Directive](#)



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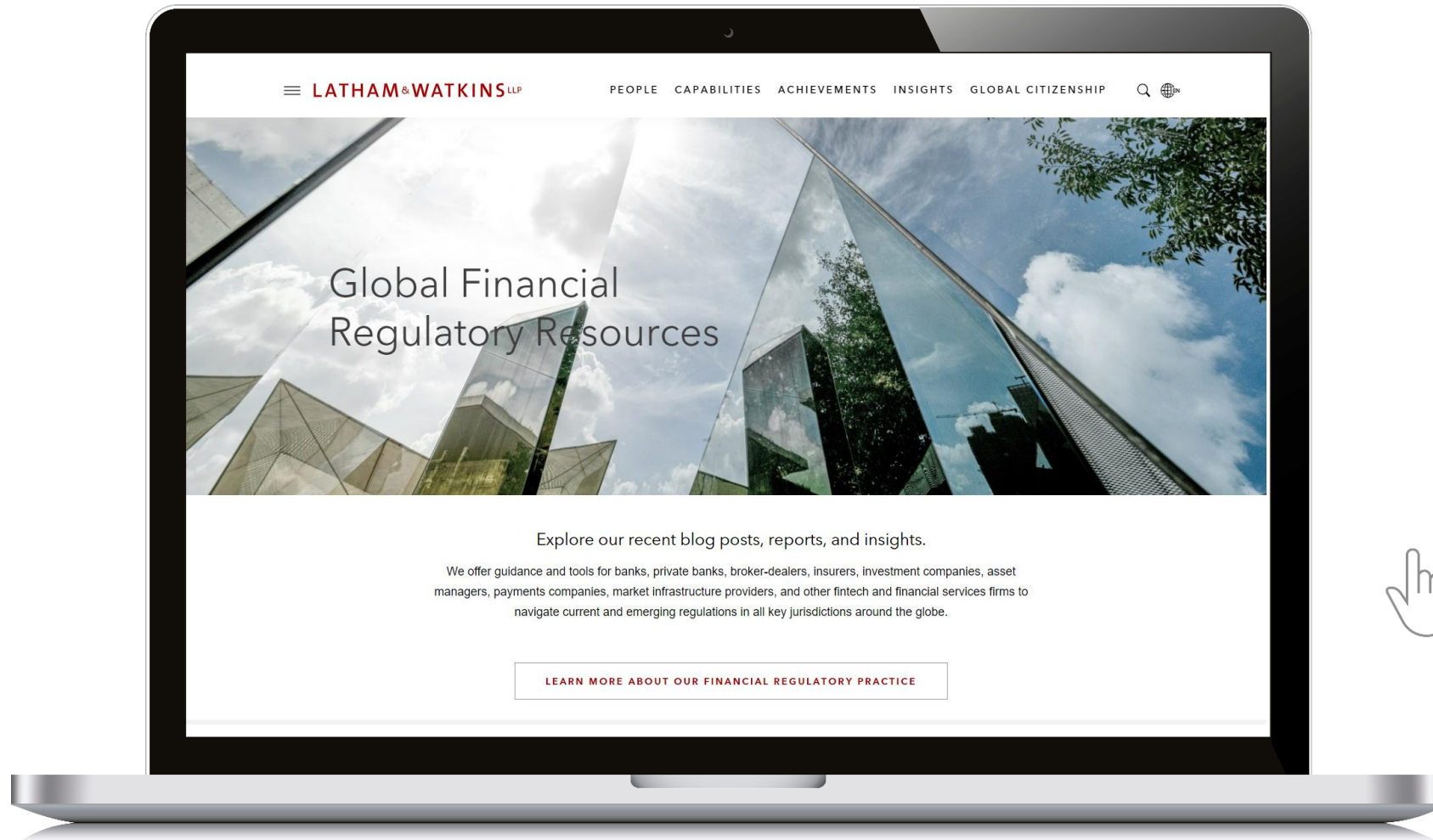
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