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17 April 2024

Financial Regulation Monthly Breakfast Seminar

Overview



The FCA and PRA Business Plans for 2024/25

Proposed Changes to the FCA Rules on Research Unbundling

The FCA's Finalised Guidance on Financial Promotions on Social Media

An ESG Update – Highlighting a Timeline for Developments in the US, UK, and EU

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The FCA and PRA Business Plans for 2024/25

Rob Moulton

FCA Business Plan 2024/25

- FCA published its Business Plan for 2024/25 on 19 March 2024
- Sits alongside the FCA's 3-year strategy (currently in its third year) and Regulatory Initiatives Grid
- Three key areas of focus (among 13 public commitments):
 - Reducing and preventing financial crime
 - Putting consumers' needs first
 - Strengthening the UK's position in global wholesale markets

FCA Business Plan 2024/25 – Three Key Focus Areas

- FCA has made 13 public commitments, including three main pillars:

Reducing and preventing financial crime

- Intelligence and data-led approach to identifying potential harm
- Focus on investment fraud, authorised push payment fraud, money laundering and financial sanctions

Putting consumers' needs first

- Supervisory work on Consumer Duty – implementation and delivery of good outcomes – with a focus on fair value of a range of products
- Multi-firm work and market studies across different sectors to drive up standards
- Review of treatment of vulnerable customers

Strengthening the UK position in global wholesale markets

- Primary Market policy reforms – new public offer and admissions to trading regime
- Support industry work on T+1 settlement
- Wholesale Markets Review – investment research, UK EMIR reporting, PISCES framework, consolidated tape for bonds

FCA Business Plan 2024/25 – Other Key Commitments

Smarter Regulatory Framework

- Repealing and replacing assimilated law

Market Abuse

- Building on capabilities to tackle cross-asset class market abuse – market monitoring and intervention
- Direct Market Access peer review
- MiFID data reporting for transactions and reference data
- Revised Market Cleanliness Data in Q3 2024

ESG

- Integrating Sustainability Disclosure Requirements, Investment Labels and anti-greenwashing rule
- Expanding regime to portfolio management
- Transition Finance and new 'Nature' regulatory principle

Digital Markets

- Impact of AI on UK markets and strategic approach to AI
- Investigating digital consumer journeys and firms using sludge practices
- Driving greater co-operation on digital issues

Operational Resilience

- New operational resilience framework from 31 March 2025
- Consultation on expectations on how firms should report operational incidents to FCA
- Managing risks of critical third parties

PRA Business Plan 2024/25

- PRA published its Business Plan for 2024/25 on 11 April 2024
- Focuses on PRA's four strategic priorities:
 - Maintain and build on the safety and soundness of the banking and insurance sectors, and ensure continuing resilience
 - Be at the forefront of identifying new and emerging risks, and developing international policy
 - Support competitive and dynamic markets, alongside facilitating international competitiveness and growth, in the sectors that the PRA regulates
 - Run an inclusive, efficient, and modern regulator within the central bank

PRA Business Plan 2024/25 – Key Initiatives (1)

- ‘Strong and Simple’ project – simplifying regulatory requirements for smaller banks and reducing compliance burden without compromising on standards
- Adequate standards of operational and cyber resilience in banking and insurance sectors
- Bank stress testing – supporting the Bank of England’s desk-based stress test in 2024 before firm stress testing exercises resume in 2025
- Focus on risks of exposures to non-banking financial institutions, particularly challenges around trend toward illiquid private equity financing and private credit

PRA Business Plan 2024/25 – Key Initiatives (2)

- Implementation of Basel 3.1 standards with second near-final policy statement due in Q2 2024 on credit risk, the output floor, reporting and disclosure
- Consultation on changes to Pillar 2A methodologies in 2025 once Basel 3.1 rules are finalised
- Banking Data Review – consultation on first of three phases of reforms in H2 2024, reducing burden on firms with more focused data collection
- Improving the speed and efficiency of the PRA authorisation process, including SMCR applications
- Consultation on changes to the SMCR in Q2 2024
 - Also clarifying expectations for group entity SMF7s
- Consultation on changes to the remuneration regime in H2 2024

A blue-toned background image featuring a financial line chart with multiple data series and a grid. The chart shows various peaks and troughs, typical of stock market data. The overall aesthetic is professional and data-oriented.

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Proposed Changes to the FCA Rules
on Research Unbundling
Rob Moulton

Background

- FCA's competition-driven approach to bundling of execution and research a decade ago
- MiFID II 2018
- Subsequent EU and UK adjustments (e.g., FICC, small cap)
- Kent report (2023)

FCA's New Analysis

- “In...2019, we found no evidence of a material reduction in research coverage”
- “MiFID II had not significantly affected research analyst coverage”
- ESMA 2020 “MiFID II had not led to a significant change in analyst coverage...the situation had neither been improved nor worsened by the MiFID II unbundling provisions”
- AFME 2022 “found declines...but found that this pre-dated MiFID II”
- “Numerous academic studies...conclusions vary”
- “The overall balance of evidence is not conclusive, but suggests that the impacts of unbundling have been largely positive”

FCA's Core New Proposals

- Instead of permitting re-bundling, FCA proposes permitting only a CSA-style alternative to an RPA
- Firms must comply with significant 'guardrails'
 - Written policy setting out approach to bundled payments
 - Written agreement with research and execution service providers establishing methodology for calculating research costs
 - Research provider payment allocation structure to allocate payments between different research providers
 - Taking responsibility for administering 'accounts' to ensure timely payments to research providers
 - Setting a budget (and being able to move to zero-payments if it is exceeded)
 - Allocating the cost of research fairly between clients
 - Annual review, including assessment of the research purchased
 - Detailed disclosure to clients

Analysis

- A surprise to the industry
- A robust defence of unbundling overall
- FCA takes the view that its new CSA option will be significantly less administratively burdensome for firms (?)
- FCA seems unsure of how to measure the success of its new proposal
 - How about looking at whether any firms actually use it?
- International comparisons
 - CSA approach in the US has considerably lower administrative burden/guardrails
 - EU will permit re-bundling (without requiring CSA), a point FCA struggles to acknowledge

FCA's Other Amendments

- Deletion of the sub-£200 million exception
- New exclusion for short-term trading communications (such that they are an acceptable minor non-monetary benefit)

Next Steps and Timings

- Likely to be widespread industry responses to the consultation
- FCA says it still expects to produce final rules by the end of June
 - Although it acknowledges that the “timetable inevitably is dictated by the amount, strength and breadth of feedback we receive as we consult”



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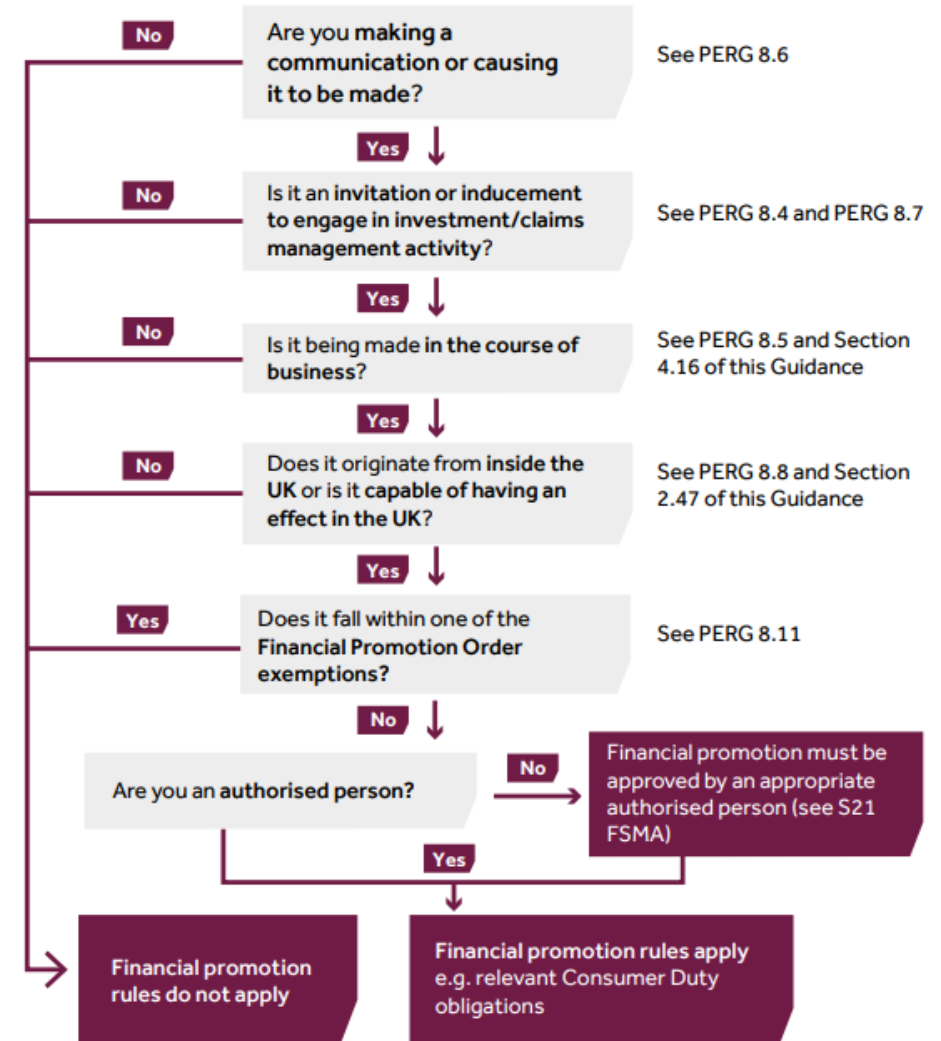
The FCA's Finalised Guidance on Financial
Promotions on Social Media
Jonathan Ritson-Candler

Finalised Guidance FG24/1

- Response to Guidance Consultation GC23/2 from July 2023
- Replaces FG15/4
- Not intended to create new rules for firms; rather, indicates how firms might approach complying with existing obligations
- Guidance is relevant to:
 - Firms that make or approve financial promotions
 - Unauthorised persons involved in communicating financial promotions on social media (e.g., influencers and affiliated marketers)

Financial Promotions on Social Media

- Financial promotion rules are technology neutral and apply irrespective of the channel of communication (e.g., capture communications made through “private” or invitation-only social media channels such as Discord or Telegram)
- FCA expects financial promotions to be “standalone compliant” i.e., each communication must comply with FCA rules when considered individually
- Contains helpful reminder of application of financial promotion rules



Financial Promotions on Social Media (cont.)

- Image advertising:
 - Advertisements which only display the name of the firm, logo, a contact point and references to the firm's products and services may either not amount to a financial promotion at all or may fall within an exemption
 - However, FCA notes that this may not exempt such an image advertisement from all FCA sector-specific rules

Figure 2: A non-compliant promotion, lacking balance



Figure 3: A promotion that supports consumer understanding



Financial Promotions on Social Media (cont.)

- Standalone compliance:
 - Fine to include supporting hyperlinks to further disclosures. However, these should be clearly brought to the recipient's attention and the link should contain all requisite information to enable them to make an informed decision
 - When considering compliance of a “dynamic medium” (e.g., Instagram stories), FCA will take a proportionate view, considering the number of frames and where important information, particularly around risk, is displayed to check it is balanced

Financial Promotions on Social Media (cont.)

- Suitability of social media as a platform for the promotion in question:
 - Some products' features are inherently more complex than others, requiring explanation of their features and risks that may be longer and/or more complex. Firms should therefore initially assess whether this can be achieved via social media to enable the communication to be clear, fair and not misleading

Figure 4: A non-compliant debt counselling promotion

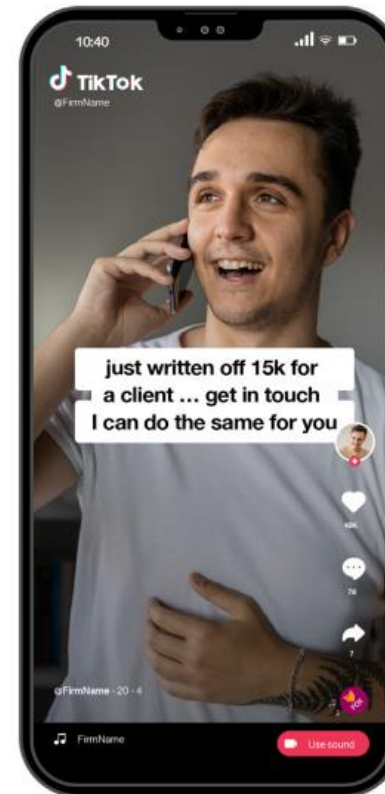
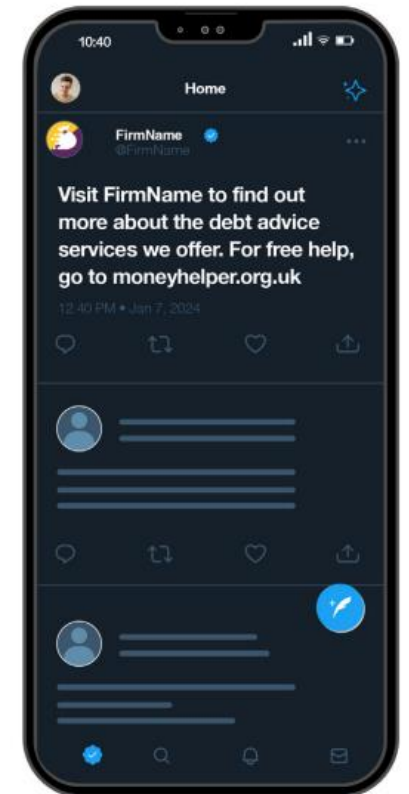


Figure 5: A debt counselling promotion that signposts consumers to a more appropriate channel for more information



Financial Promotions on Social Media (cont.)

- For example, character limits, image truncation, how likely consumers are to click through multiple frames of an Instagram story
- Firms may instead consider signposting potential customers towards other channels where more comprehensive information is provided
- FCA has particular concerns around promotions it has seen for debt counselling services that do not explain the disadvantages

Financial Promotions on Social Media (cont.)

- Prominence:
 - Firms are reminded to refer back to FSA Guidance re. prominence of certain warnings or information, from September 2011
 - Whether something is prominent will depend on the size, position and emphasis within a promotion
 - Firms should consider target audience and medium; social media means consumers are likely to spend less time considering promotion in its entirety

Financial Promotions on Social Media (cont.)

- FCA encourages use of consumer testing to assess understanding
- For example, having all benefits within the video / image content and all risks separately in the caption is not acceptable as the risks aren't being given sufficient prominence
- Where information needs to be prominent, avoid click throughs or any other optional action to view it
- Firms should be aware of the medium they are using and whether they truncate the image or information and cater the promotion to account for this
- Risk warnings should be displayed before or at time of communication of promotion

Financial Promotions on Social Media (cont.)

- High risk investments:
 - Firms are reminded of the additional rules for non-mainstream pooled investments and speculative illiquid securities that limit mass marketing to retail clients and the tension created by promoting these on social media
 - Often also require additional risk warnings and/or entire risk warnings to be displayed for the duration of the promotion
- Compliance by unregulated, non-UK entities
 - Financial promotion rules apply to communications capable of having an effect in the UK even if the communicator is based outside the UK
 - Financial promotions do not need to be targeted to UK investors to be capable of having an effect
 - If UK consumers can view the promotion and potentially engage in the investment activity being promoted, the communication is likely capable of having effect in the UK

Marketing Strategies

- Compliance with the Consumer Duty
 - Financial promotions being clear, fair and not misleading will not be sufficient to discharge any obligations to deliver good outcomes for retail consumers under the Consumer Duty
 - The Consumer Duty also requires, for example, firms to identify their target market and tailor communications to account for that target market. This includes assessing whether social media is the appropriate medium for the communications
 - Including disclaimers such as “for professional investors only” without taking further steps (where possible) is not sufficient meaning that if firms cannot ensure retail clients are not targeted, they should reconsider use of social media
 - Consider consumer testing to check how promotions are understood by the target market
 - Controls for forwarding or sharing of communications

Influencers and Social Media Platforms

- Affiliate marketing:
 - FCA sets out good and poor supervision and monitoring practices for firms which use unregulated affiliated marketers (such as influencers)
 - Also describes the regulatory diligence firms should undertake on influencers such as checking that the influencer understands the product, whether they have made illegal promotions, the likelihood of the influencer altering the promotion or otherwise engaging in regulated activities without a license
 - For the influencer – how are they going to make the communication without a license in order to comply with s. 21 of FSMA?
 - What about legal but non-compliant promotions (e.g., those approved by an authorised person but which do not comply with applicable requirements such as COBS 4 and the Consumer Duty) – responsibility likely to rest with both the approving firm and the influencer if, for example, the influencer has not altered the content of the promotion



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An ESG Update – Highlighting a Timeline for
Developments in the US, UK, and EU
Nicola Higgs

ESG Update - UK

Timing

31 May 2024

UK FCA “anti-greenwashing” rule comes into force

Anti-greenwashing rule

The general ‘anti-greenwashing’ rule reiterating requirements for all UK regulated firms that sustainability-related claims must be clear, fair and not misleading. The UK Financial Reporting Council (**FRC**) has indicated it will challenge companies if it considers reporting of climate-related metrics or targets to be unclear or potentially misleading, by referring matters to FCA for investigation.

H1 2024

FCA consultation expected

UK ISSB

FCA intends to consult on updating TCFD-aligned disclosure rules for listed companies to refer to the UK-endorsed ISSB standards in H1 2024. ISSB has the goal of establishing a globally consistent corporate reporting standard, incorporating: 1. IFRS S1 (Sustainability-related Financial Information); and 2. IFRS S2 (Climate-related Disclosures). The ISSB standards build on the TCFD framework and IFRS S2 is consistent with the four core recommendations and eleven recommended disclosures published by the TCFD.

Net Zero Commitments

The FCA has committed to consult in 2024 on strengthening requirements for transition plan disclosures in line with the TPT framework. The ISSB IFRS S2 includes a requirement to make disclosures that relate to transition planning. The TPT Framework has been designed purposefully to interoperate with IFRS S2

H2 2024

HMT consultation response and legislative steps expected

ESG Ratings

HMT announced during the Spring Budget 2024 that the UK will regulate the provision of ESG Ratings, where these assessments of ESG factors are used for investment decisions and influence capital allocation.

ESG Update - EU

Timing

1 Jan 2025	<u>EU CSRD</u>
First report published for large, listed companies already subject to the NFRD	What: The EU Corporate Social Responsibility Directive (CSRD) is a new disclosure regime for companies with a significant EU presence which requires disclosure on how the enterprise monitors a wide range of ESG issues. The CSRD data requirement is significant – over 1,000 data points to report on across 10 key E, S and G topics. Disclosures must cover qualitative and quantitative measures across short, medium and long-term considerations, spanning the entire value chain. Limited assurance over all reported sustainability information is required.
TBD	<u>EU CSDDD</u>
Pending European Parliament plenary vote in April 2024	The European Council has endorsed a compromise text on the Corporate Sustainability Due Diligence Directive (CSDDD) after considerable negotiation. The CSDDD requires companies to conduct due diligence to identify and assess environmental and human rights issues across their value chain, and to take steps to prevent and eliminate them. The revised text is understood to provide for a higher turnover threshold for companies to fall within the CSDDD's scope: €450 million as a minimum worldwide turnover for EU companies, and a minimum €450 million turnover generated in the EU for non-EU companies that fall under the CSDDD (up from €150 million in the provisional agreement). The employee threshold for EU companies has also increased from 500 to 1,000.
TBD	<u>EU Forced Labour Regulation</u>
Pending formal adoption by the Council and Parliament	On 5 March 2024, the European Parliament and European Council announced that they had reached a provisional political agreement on the Regulation that aims to prohibit any product manufactured using forced labour from being placed on or exported from the EU market.

ESG Update - EU (cont.)

Timing

TBD

Pending agreement by the EU Council. The regulation will start applying 18 months after its entry into force.

ESG Ratings

The Council and European Parliament have reached a provisional agreement on a proposal for a regulation on ESG rating activities, which aims to boost investor confidence in sustainable products. ESG ratings provide an opinion on a company's or a financial instrument's sustainability profile, by assessing its exposure to sustainability risks and its impact on society and the environment.

Under the new rules, ESG rating providers will need to be authorised and supervised by ESMA and comply with transparency requirements, in particular with regard to their methodology and sources of information.

TBD

Consultation open. ESMA will submit its advice to the Commission by Dec 2024

Credit Ratings

On 2 April 2024, the European Securities and Markets Authority (ESMA) launched a consultation on proposed amendments to the Credit Rating Agencies regulatory framework. The objective of the proposals is to ensure a better incorporation of ESG factors in the credit rating methodologies and subsequent disclosure to the public, as well as to enhance transparency and credibility in the credit rating process.

ESG Update - US

Timing

In force

California corporate climate disclosure laws

California Corporate Climate Disclosure Laws

On October 7, 2023, State of California Governor Newsom signed into law three climate bills (SB 253, SB 261 and AB 1305) that require disclosure of GHG emissions, climate-related financial risks and information regarding the use of carbon offsets and claims relating to carbon neutrality, net zero and significant reductions of GHG emissions. First disclosures under SB 253 and 261 are due in 2026; under AB 1305 either January 1, 2024 or January 1, 2025 (AB 1305 is subject to ongoing legislative clarifications). Impact: The laws have far reaching impacts, in that companies could be subject to the law even if they do not have a physical presence in California, but simply “do business in California”.

TBD

SEC Climate Disclosure Finalized (first disclosures due for the largest filers in 2026 (on Fiscal Year 2025 data))

US SEC Climate Disclosure Rules

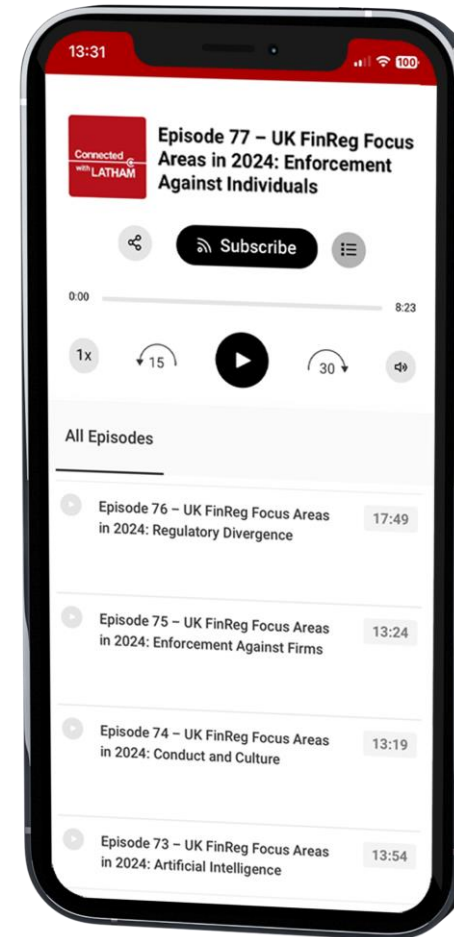
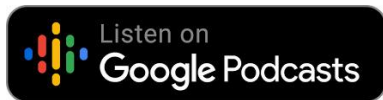
The US SEC climate disclosure rules are intended to apply directly to SEC registrants only. Key requirements include: Governance and Risk Management of Climate-Related Risks; Climate-Related Risks and Impacts; GHG Emissions Metrics and Related Attestations (Note: Scope 3 GHG emissions disclosure will not be required); Climate-Related Targets and Goals; and Climate-Related Notes and Metrics (expenditures and capitalized costs) in Financial Statements.

On April 4, 2024, the SEC announced that it would voluntarily stay its final climate disclosure rules pending judicial review. This rapidly evolving litigation landscape with respect to the final rules has been predicted since the SEC issued the proposed rules in March 2022. The SEC’s final rules may be overturned entirely or in part — or go unenforced by a future Commission pending this litigation.

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We have published a 10-part podcast series complementing our **“10 Key Focus Areas for UK-Regulated Financial Services Firms in 2024”** report. Topics include The Edinburgh Reforms, AI, Regulatory Divergence, ESG, Enforcement, and more.

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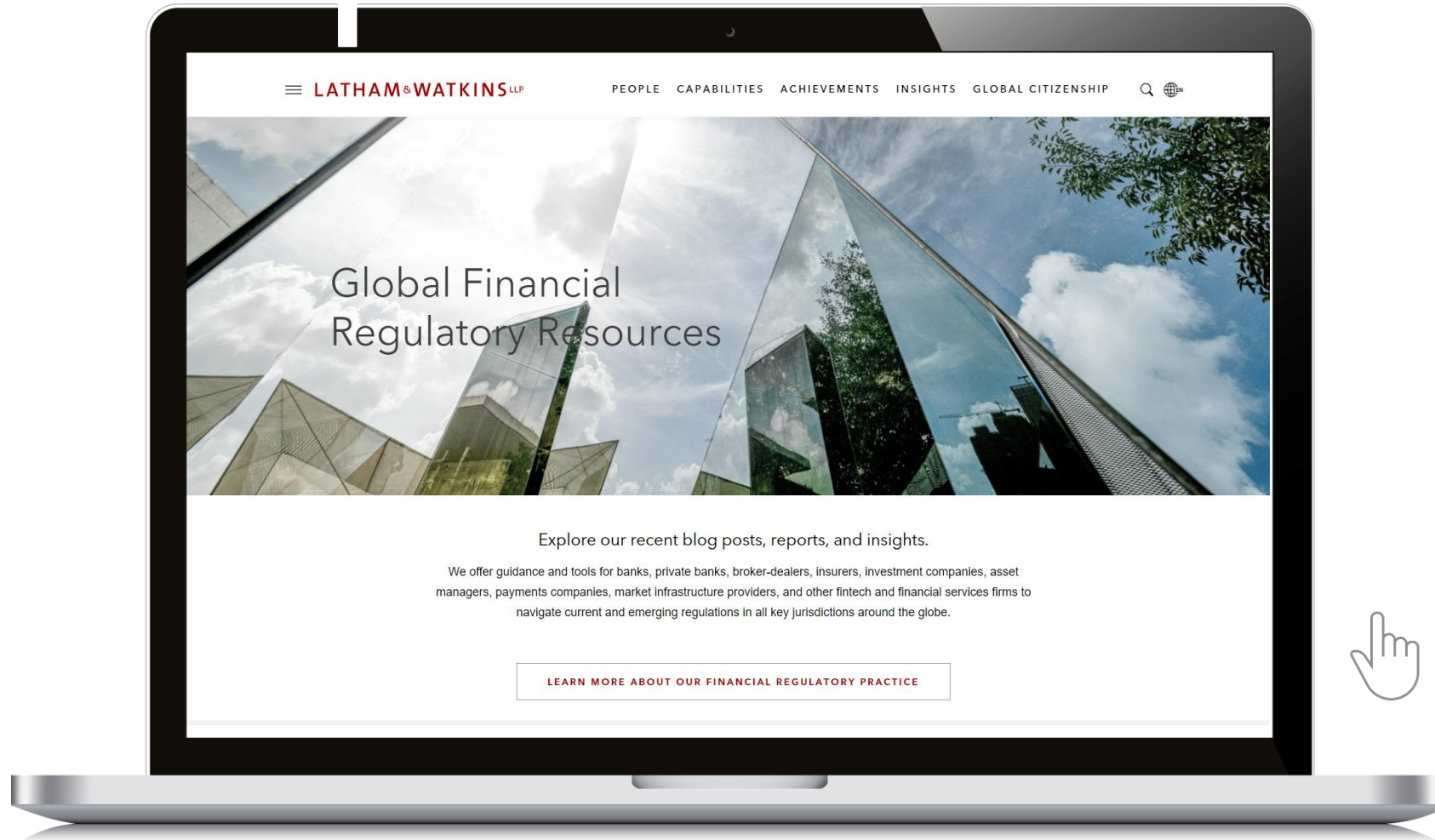
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- [FCA Consults on Permitting Bundled Payments for Research](#)
- [EU Member States Reach Agreement on Corporate Due Diligence Directive](#)
- [The SEC's Final Climate Disclosure Rules: Requirements, Practicalities, and Next Steps](#)
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