

A blue-toned background image featuring a financial line chart with multiple data series and a grid. The chart shows various trends, including a sharp decline followed by a recovery and another decline.

LATHAM & WATKINS^{LLP}

10 January 2018

Financial Regulation Monthly Breakfast Seminar

Overview



A blue-toned background featuring a financial line chart with multiple data series and a grid. The chart shows various peaks and troughs, with some lines appearing thicker than others. The overall aesthetic is professional and data-oriented.

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MiFID II
Rob Moulton

Mandatory Trading Obligation

- Trades “undertaken” in the EU should be done on a venue (unless an exemption applies)
- Trades on venues outside the EU subject to equivalence regime
 - Shares: US, Hong Kong, Australia, Switzerland
 - Derivatives: US
- If regime is equivalent, trading must be on venue
- If regime is not equivalent, MTO does not apply(!)
- FCA has (informally) said “undertakes” means executes not transmits

MiFID II – How was it for you?

- Terms of business
- Research charge agreements
- Tick size regime for SIs
- Are there many new MTFs/OTFs/SIs?
- Cross-border impact
- Will DCM use the corporate finance regime?
- What does your costs and charges disclosure look like?
- MiFID / PRIIPs overlap

MiFID II – Timetable for 2018

- See insert in your packs

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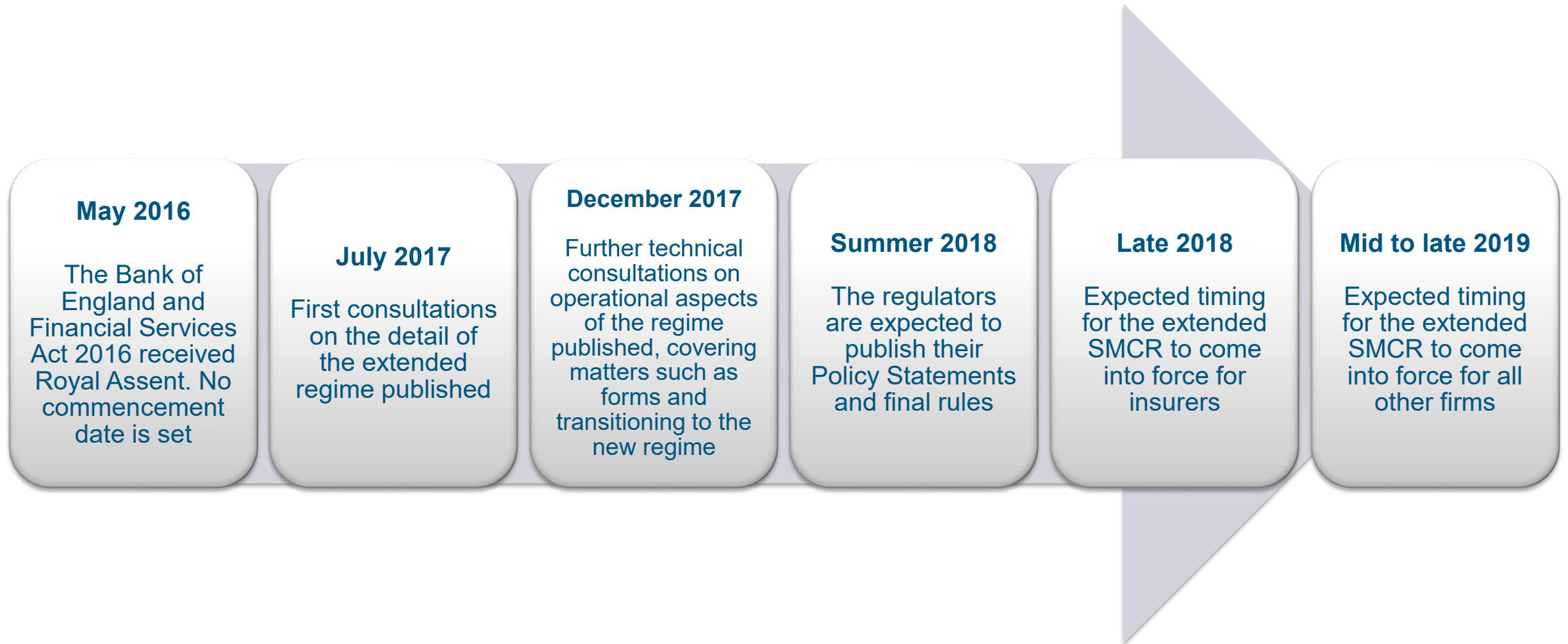
SMCR
David Berman

December Consultations

- FCA CP17/40 – Transitioning FCA solo-regulated firms and individuals to the SMCR
- FCA CP17/41 and PRA CP28/17 – Transitioning insurers and individuals to the SMCR
- FCA CP17/42 – Guidance on the duty of responsibility for insurers and FCA solo-regulated firms

Also some content affecting banks – proposal to introduce the new Prescribed Responsibility relating to the Conduct Rules for banks shortly after the rules are finalised (mid 2018?), rather than when the extended SMCR comes in

Timeline



Overview of transition

General approach: if an individual currently is an Approved Person, and will be performing an equivalent role that exists in the SMR, they will be eligible to be converted without needing to reapply for approval

Core and Limited Scope Firms

- Automatic conversion wherever possible, without any action required by the firm
- Exception for individuals who will perform SMF9 (Chair)
- SoRs to be provided on request

Enhanced Firms

- Required to submit Form K (conversion notification), along with SoRs and a Responsibilities Map, to convert individuals
- Will need to submit this at least one week before the start of the regime

How will transition work?

Scenarios:

- Converting an individual into a mapped SMF
- Applying for a new approval, to be effective before commencement
- Applying for a new approval, to be effective from commencement
- Moving an existing Approved Person into an SMF that does not map from their current function
- Applying for approval before commencement for an individual whose function will fall away under the SMCR
- New application is 'in flight' at commencement

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EU Benchmark Regulation: PS and Q&A

Becky Critchley

FCA Policy Statement - 20 December 2017

- “Near-final” rules only
- Supervised UK branches of third-country firms that use benchmarks
- Application of the APR / SMCR to Benchmark Administrators
- Interaction between BMR rules and existing FCA rules on benchmarks
- Interaction with the FCA Handbook
- Extension to EEA administrators and contributors
- 2018 consultations:
 - Governance requirements for administrators
 - Application to UK branches of third country firms
 - Extension of SMCR

ESMA Q&A - 14 December 2017

- When do the BMR obligations on EU administrators apply?
 - At the time of authorisation or registration
- Fallback provisions – users must produce and maintain robust written plans setting out the actions that they would take in the event that a benchmark they are using materially changes or ceases to be provided
 - Applies to post 1 January 2018 contracts
 - Applies to pre 1 January 2018 contracts “where practicable and on a best-effort basis”
 - Note trade association work

IOSCO “Statement on Matters to Consider in the Use of Financial Benchmarks” - 5 January 2018

- Application:
 - Intended for a global audience
 - Guidance not rules
- Covers two areas:
 - Assessing the appropriateness of a benchmark
 - Both at initial selection and periodically during ongoing use
 - Considerations may vary depending on the circumstances, e.g. characteristics of the user and types of contract or financial instrument referencing the benchmark
 - Contingency planning
 - Where a benchmark is no longer available or materially changes

IOSCO “Statement on Matters to Consider in the Use of Financial Benchmarks” - 5 January 2018

- Appropriateness
 - Appropriate for users own current and future needs and those of their clients
 - Consider information published by administrators
 - When selecting from a range of potential benchmarks, may need to balance different risks and benefits
 - Examples of relevant considerations:
 - Method of determination and the transparency of the methodology
 - Whether the benchmark provides an appropriately accurate and reliable representation of the market it seeks to measure
 - How the benchmark is disseminated to users
 - Governance and accountability
 - Processes for change and cessation
 - Consultation procedures
 - Contingency planning

IOSCO “Statement on Matters to Consider in the Use of Financial Benchmarks” - 5 January 2018

- Contingency planning
 - Users should maintain clear, comprehensive, and robust written policies and procedures on actions they would take in such an event
 - Proportionate approach
 - Where feasible and appropriate, contingency plans for the cessation of a benchmark should include users’ having sufficiently robust fall back provisions in contracts
 - Ideally involve at least one alternative or fall back rate and/or other figure
 - Seek to reflect their contingency plans in their contractual arrangements
 - Ideally, in both existing and future contractual arrangements
 - Need to be robust enough to prevent potentially serious disruption to markets and market participants (including users and their clients), and to safeguard the continuity of contracts

The background of the slide is a blue-toned financial chart. It features a grid of dashed lines and a prominent, thick, jagged line that fluctuates across the chart, representing market data. The overall aesthetic is professional and data-oriented.

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Brexit Transitionals

Rob Moulton

Wholesale capital markets, investment banking and market infrastructure report from DExEU

- Highlights
 - ?

Treasury Committee report on “Transitional Arrangements”

- Various potential options for transitional arrangements
 - Part of the Article 50 withdrawal agreement
 - Delay departure from EU beyond 29 March 2019
 - Produce a full Free Trade Arrangement for the transitional period
 - Not have one

Treasury Committee – issues with using Article 50 for transitionals

- Only permitted to cover withdrawal
 - “Some commentators have raised concerns that a ‘standstill’ transitional arrangement might exceed the EU’s competence under Article 50”
 - “The more substantive and forward-looking that an Article 50 transitional agreement becomes, the greater the legal risk”

Possible timing / next steps

- January 2018 – a flurry of papers, and a focus, on transitional arrangements
- Early 2018 – Parliament expected to pass European Union (Withdrawal) Bill
- March 2018 – target date (UK) for broad agreement on transitional arrangements; next European Council meeting
- April onwards – focus to shift to post-exit arrangements
- October 2018 – UK and EU to finalise draft Brexit agreement
- Late 2018 – UK Parliament to vote on final Brexit agreement
- Late 2018 / Early 2019 – European Parliament to vote on final Brexit agreement
- March 2019 – exit
- Timing implications for firms...



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Key Dates and Predictions for 2018

Nicola Higgs

Key Dates for 2018/19

1 January
2018

- PRIIPs Regulation takes effect
- Most provisions of the EU Benchmarks Regulation take effect

3 January
2018

- MiFID II applies
- Provisions in MAR relating to OTFs, SME growth markets, and emission allowances or auctioned products based thereon begin to apply
- Amendment to the UK definition of financial advice takes effect

13
January
2018

- Transposition deadline for PSD2

Early
2018

- MLD5 expected to be formally adopted

Key Dates for 2018/19

March
2018

- European Commission to publish an EU strategy for FinTech

Q1 2018

- FCA to publish its Approach to Supervision document

9 May
2018

- Transposition date for the Cyber-Security Directive

25 May
2018

- General Data Protection Regulation applies

Key Dates for 2018/19 (cont.)

1
October
2018

- Insurance Distribution Directive proposed delayed application date

Late
2018

- SMCR expected to come into force for insurers

2018

- Proposals to amend the BRRD, CRD IV and EMIR expected to be finalised

1
January
2019

- UK ring-fencing regime to take effect
- Securitisation Regulation applies

Key Dates for 2018/19 (cont.)

29 March
2019

- UK to leave the EU (if no extension agreed)

Mid to
Late
2019

- SMCR expected to come into force for all other firms

OTHER PREDICTIONS



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Questions?