

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

LATHAM & WATKINS

10 January 2024

Financial Regulation Monthly Breakfast Seminar

Overview



10 key focus areas in 2024

The FCA's detailed proposals for its listing rule reforms

The proposed regulatory framework for critical third parties

The FCA and government Discussion Paper on the Advice Guidance Boundary Review

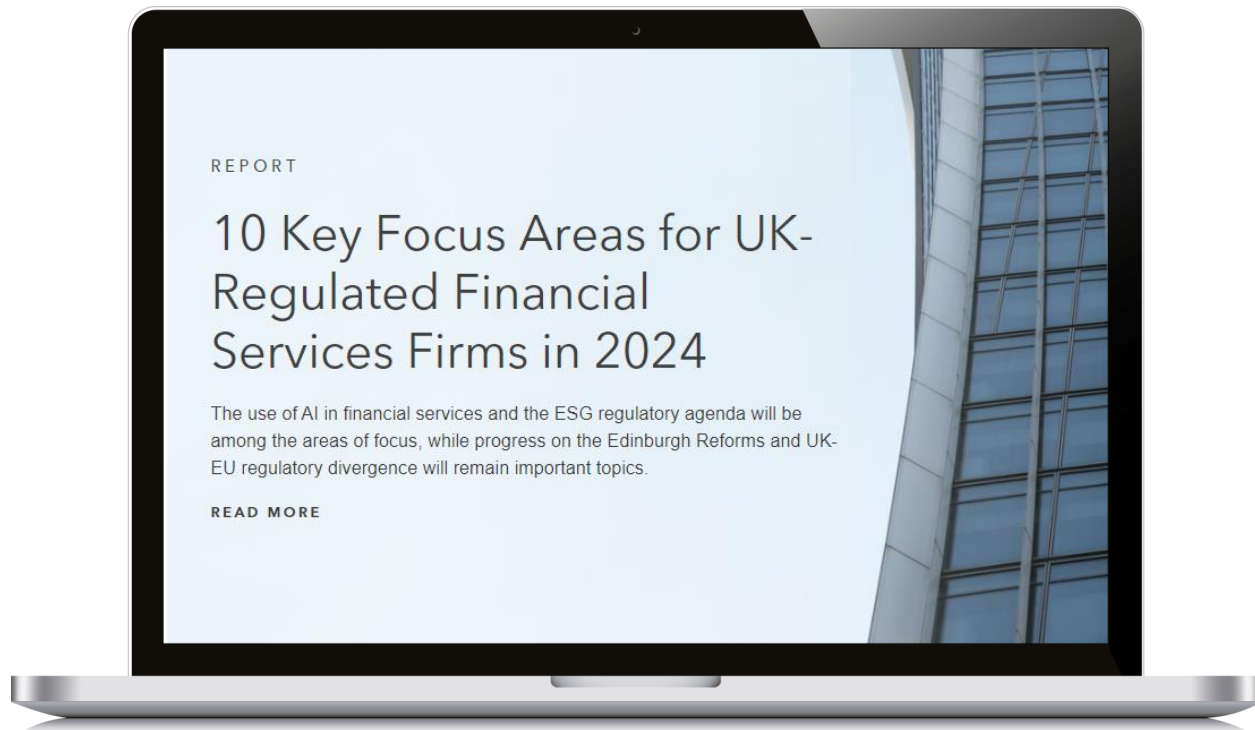
A blue line graph is plotted on a dark blue background with a lighter blue grid. The line starts at the top left, dips, rises, dips again, and then rises sharply towards the top right. The graph is composed of several segments, some of which are slightly blurred, giving it a sense of motion or multiple data series.

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10 key focus areas in 2024

Nicola Higgs

10 key focus areas in 2024



1	Artificial Intelligence
2	ESG
3	Regulatory Divergence
4	Edinburgh Reforms
5	Conduct & Culture
6	Retail Markets: Direction of Travel
7	Investment Research
8	Enforcement (Firms)
9	Enforcement (Individuals)
10	Primary Markets Reform

1. Artificial Intelligence

- Pivotal junction for how the regulation of AI develops
- UK government plans to take an “agile and iterative” approach to regulating AI
- Expected to publish the response to its White Paper and confirm its cross-cutting principles in early 2024
- UK regulators exploring whether they need to expand current regulation to specifically encompass AI, or whether existing measures suffice
- Firms should note that many areas of existing regulation are already applicable to their use of AI
- EU has reached political agreement on its AI Act, which takes a much more prescriptive approach to regulating AI

2. ESG

- Sustainability Disclosures and Labelling
 - FCA's final rules on its Sustainability Disclosure Requirements, investment labelling regime, and anti-greenwashing rule
 - EU review of the SFDR
 - Proposed US ESG disclosure rule and changes to the "Names Rule"
- ESG Ratings Providers
 - UK and EU legislative proposals
- Corporate Disclosures
 - UK plans to incorporate ISSB standards into its disclosure rules for listed issuers
 - EU CSRD regime starts to apply, and CSDDD is nearing adoption
- Greenwashing Risk
 - An ever-increasing area of risk for market participants

3. Regulatory Divergence

- UK exercise of repealing and restating retained EU law will lead to divergence in some areas, although this exercise will not always result in policy change
- The areas of divergence announced so far have been fairly predictable and reasonably confined
- There has been good progress on priority files, but there are still lots more files to go and these are yet to be prioritised
- There have also been some “quick wins” in certain areas such as the bankers’ bonus cap, the share trading obligation, and the PRIIPs regime

4. Edinburgh Reforms

- Significant progress has been made, but many aspects of the reforms still await finalisation
- In many respects, the Reforms have not been as ambitious as expected
- Recent Treasury Committee report found the work so far to be “disappointing”
- Notable progress has been made on listing and prospectus reforms, and wholesale market reforms
- Progress on other aspects, such as the review of the SMCR, has been slower than expected

5. Conduct and Culture

- Conduct and culture remain high on the FCA's supervisory agenda, linking in closely with the Consumer Duty
- Both the FCA and PRA are focused on the importance of D&I in driving a healthy firm culture, with policy measures on new D&I reporting requirements to be finalised in the second half of this year
- The FCA will also finalise its proposed guidance on non-financial misconduct, which aims to achieve greater consistency in how the regulatory framework is applied

6. Retail Markets: Direction of Travel

- FCA is working to embed the Consumer Duty
 - Firms must apply the Duty to closed products and services, and prepare the first board report confirming that good customer outcomes are being achieved, by 31 July 2024
 - Firms are reminded that the Duty is not a “once and done” exercise
 - The FCA will continue with its reviews of how firms have implemented the Duty
- The new UK Retail Disclosure Framework (CCI regime) is due to be finalised and implemented this year
- The government plans to publish a second-stage consultation on the reform of the Consumer Credit Act 1974 this year, with more detailed proposals for an “ambitious overhaul” of the regime

7. Investment Research

- FCA and government will be moving forward with the final recommendations from the Investment Research Review
- FCA plans to consult on changes to the rules on research unbundling early this year
- It will be interesting to see whether, and how quickly, market practice changes
- The EU is also in the process of changing its equivalent rules and it will be important to see where this lands
- Following the expiry of the US SEC staff's no-action relief, international alignment is a key consideration

8. Enforcement Against Firms

FCA

- Two new Joint Executive Directors of Enforcement and Market Oversight have yet to really show their colours
- Recent cases suggest financial crime and market abuse remain high on the agenda
- The Consumer Duty could also be an important area for the FCA

PRA

- Firms will want to see whether changes to the enforcement process have a tangible impact
- We anticipate regulatory reporting to be a key focus area for the PRA

9. Enforcement Against Individuals

- FCA has had a strong focus on market abuse
- Other key areas are non-financial misconduct and lack of integrity
 - FCA has had a difficult time in the Upper Tribunal
 - Interaction with new FCA guidance on non-financial misconduct
 - Unsuccessful in arguing that gross negligence amounts to a lack of integrity
 - FCA severely criticised for its handling of certain cases
- 2023 saw two senior manager cases, but we await a really instructive case on the SMCR

10. Primary Markets Reform

- Reforming the UK Listing Regime
- New Public Offers and Admissions framework for UK capital raisings
- Digitisation Taskforce work on modernising share ownership
- Intermittent Trading Venue

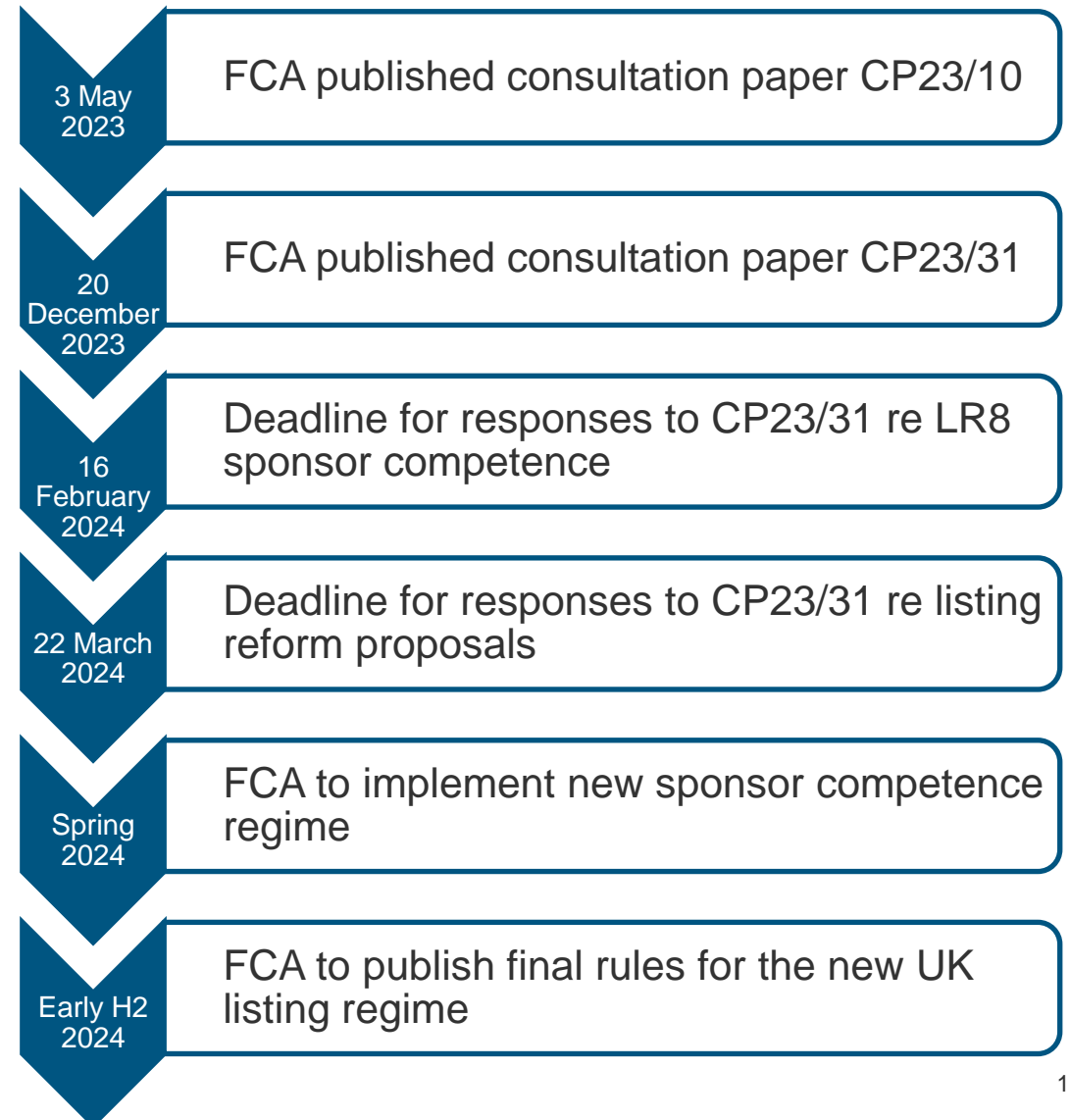
A blue line graph is plotted on a dark blue background with a lighter blue grid. The line starts at the top left, dips, rises to a peak, dips again, and then rises to a higher peak before trending downwards. The overall style is professional and financial.

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The FCA's detailed proposals for its listing rule
reforms
Mark Austin

Overview

- On 20 December 2023, the FCA published CP23/31 setting out detailed proposals for the new UK listing regime
- Most key changes reflect proposals from CP23/10:
 - **Single segment** for equity shares in commercial companies (ESCC)
 - **Relaxed eligibility conditions** to admit broader range of issuers
 - **Disclosure-based regulation** of significant and related party transactions
- Key changes since CP23/10:
 - Controlling shareholders – requirement for **written relationship agreements** to be retained
 - DCSSs – can be held by **wider range of persons** and **no time-based sunset**
 - **Listing categories** and **transitional arrangements** – proposals now set out (next slide)



Proposed UK listing regime structure

	Commercial Company Categories			Equity shares	
Listing Categories	Commercial Companies (Equity Shares)	International Secondary Listings (Equity Shares)	Transition (Equity Shares)	Closed Ended Investment Funds	OEICs

New listing category

Retained listing category

Proposed UK listing regime structure (cont.)

	Other					
Listing Categories	Shell Companies	Non-Equity Shares and Non-Voting Equity Shares	Debt & Debt Like Securities	Certificates Representing Certain Securities	Securitised Derivatives	Warrants, Options, and other Miscellaneous Securities

New listing category

Retained listing category

Key changes under the single segment (ESCC)

			Reflects existing premium listing requirements
			Modified premium listing requirements
			Reflects requirements applicable to existing standard or both listing segments
	PREMIUM LISTING	STANDARD LISTING	ESCC
Revenue earning track record	✓	✗	✗
Independent business requirement	The issuer must demonstrate that it carries on an independent business as its main activity	✗	✗ – but note requirements on controlling shareholders below
Control of business	The issuer must demonstrate that it exercises operational control over the business it carries on as its main activity	✗	✗ – save that premium listing requirements in relation to externally managed companies would be retained
Shareholder pre-emption rights	✓	✗	✓
Adviser(s) requirement	Sponsor required on listing (including listing category transfers to the premium segment) and post-listing for certain transactions	No sponsor required	Sponsor required on listing (including certain listing category transfers such as transfers from the transition segment to the ESCC) but for fewer transactions post-listing (i.e. further issuances requiring a prospectus, fair and reasonable opinions for RPTs and reverse takeovers)
Controlling shareholder requirements	✓ Relationship agreement and certain constitutional provisions required if issuer has a controlling shareholder (i.e., 30%+)	✗	✓ Relationship agreement and certain constitutional provisions required if issuer has a controlling shareholder (i.e., 30%+)
Working capital statement	✓ (must be a clean statement)	✓ (but can be qualified)	✓ (but can be qualified)
Shareholder approval for significant transactions	✓	✗	✗ (disclosure needed for significant transactions ≥25% in class tests)
Shareholder approval for related party transactions	✓	✗	✗ (disclosure and fair and reasonable opinion needed for RPTs ≥5% in class tests)
Shareholder approval for discounted (>10%) share issuances	✓	✗	✓
Shareholder approval for voluntary delisting	✓ (plus additional requirements if controlling shareholder involved)	✗	✓ (plus additional requirements if controlling shareholder involved. Cannot exercise weighted voting rights for such vote)
Comply-or-explain against UK Corporate Governance Code	✓	✓	✓
Dual class share structures (DCSS)	✓ (permits a limited form of DCSS subject to certain parameters, including: (i) weighted votes may only be exercised following a change of control (to deter takeovers) or prevent director removal, (ii) maximum weighted voting of 20:1 and (iii) five year sunset)	✓ (no regulatory restrictions)	✓ (DCSSs permitted subject to limited conditions. May be held by directors, employees and natural persons who are shareholders at the time of listing. No time-based sunset restrictions. Weighted votes may not be exercised on certain matters that adversely impact holders of listed shares)

Transitional arrangements

- **“Mapping”** of existing issuers to new listing categories:
 - Premium listed companies → ESCC
 - Standard listed commercial companies → Transition category
 - Standard listed secondary listings (commercial companies) → Secondary listings or Transition category
 - Shell companies/SPACs → Shell companies or Transition category
 - Standard listed non-equity shares and non-voting equity shares → Non-Equity Shares and Non-Voting Equity Shares category
- **“In-flight”** listing applications
 - Treated as being an application for the corresponding new UKLR listing category on implementation date
 - In-flight premium listing application → ESCC
 - In-flight standard listing application → Secondary listings/Shell/Transition category (i.e. maintain status quo but have option to revise to different category)

Transitional arrangements (cont.)

- **“Mid-flight”** transactions
 - New transaction requirements apply with immediate effect on implementation date
 - Transactions by premium issuers not yet completed at implementation date would no longer need to comply with premium listing requirements not carried forward

Changes affecting sponsors

- **Sponsor services under new listing regime**
 - Initial listing
 - Certain listing category transfers (inc. transfers to the ESCC category)
 - Certain post-IPO transactions:
 - Fundraisings requiring a prospectus
 - RPT fair and reasonable opinions
 - Reverse takeovers
 - Issuer seeking individual guidance or waiver/modification from FCA
- **Sponsor competence**
 - Look-back period for sponsor competence to be **extended from 3 to 5 years**
 - Allow **wider factors** to demonstrate sponsor competence
 - Proposals on sponsor competence to be implemented in Spring 2024

Latham Primary Market Reforms Tracker



Available on lw.com:

<https://www.lw.com/admin/upload/SiteAttachments/UK-Primary-Market-Reforms-Tracker.pdf>

B. Listing Reforms Comparison Chart

	Premium Listing	Standard Listing	Single Listing Segment ²
Minimum market capitalisation	£30 million	£30 million	£30 million
Accounts requirement	Must have published or filed accounts that represent at least 75% of the issuer's business and cover at least the last three years ending no more than six months before the date of the prospectus and not more than nine months before the date of the listing. These accounts must have been independently audited and reported on by the auditors without modification	Must have audited historical information covering the latest three financial years (or such shorter period as the issuer has been in operation) and the audit report for each year	Must have audited historical information covering the latest three financial years (or such shorter period as the issuer has been in operation) and the audit report for each year
Accounting standards	UK-adopted IFRS or (if non-UK issuer) EU IFRS or other national accounting standards determined to be equivalent to UK-adopted IFRS	UK-adopted IFRS or (if non-UK issuer) EU IFRS or other national accounting standards determined to be equivalent to UK-adopted IFRS	UK-adopted IFRS or (if non-UK issuer) EU IFRS or other national accounting standards determined to be equivalent to UK-adopted IFRS
Revenue earning track record	☑	☑	☑
Independent business requirement	The issuer must demonstrate that it carries on an independent business as its main activity	☑	☑ – but note requirements on controlling shareholders below
Control of business	The issuer must demonstrate that it exercises operational control over the business it carries on as its main activity	☑	☑ – save that premium listing requirements in relation to externally managed companies would be retained
Free float	At least 10% of the shares must be in "public hands"	At least 10% of the shares must be in "public hands"	At least 10% of the shares must be in "public hands"

² This chart provides a comparison of the key eligibility and continuing obligations for the new single segment for equity shares in commercial companies, against the existing premium and standard listing segments.
Source: [ECA \(2023\)](#) – Primary Markets Effectiveness Review: Feedback to CP23/19 and detailed proposals for listing rules reforms.



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The proposed regulatory framework for critical third parties

Jonathan Ritson-Candler

Joint BoE, PRA and FCA CP26/23 on critical third parties

- CP published on 7 December 2023
- Follows Discussion Paper 3/22 from 21 July 2022
- Sets out framework for critical third party (CTP) regime for firms that HMT will designate as CTPs (e.g., cloud service providers)
- Further detail to follow:
 - Use of disciplinary powers (as part of wider review on enforcement)
 - How regulators will carry out oversight of CTPs
 - HMT has power under FSMA 2000 (as amended by FSMA 2023) to designate entities as CTPs; no such designations have yet been made
- Consultation period closes on 15 March 2024

Interaction of CTP regime with operational resilience

- The proposals in the CP will not impose additional obligations on UK authorised persons (firms) or financial market infrastructure entities (namely clearing houses, recognised investment exchanges and CSDs) (FMIs) or otherwise “*blur, eliminate or reduce the accountability and responsibility of firms, FMIs, their boards or SMFs*”
- But rather seek to complement their existing obligations on operational resilience and third-party risk management
- Firms and FMIs are reminded that a designated CTP subject to this regime will “*not necessarily mean that it is inherently more resilient, safer or more suitable to provide a given service...than non-designated third parties providing the same or similar services*”
- Emphasis of designation is HMT identifying CTPs due to the risk their failure presents to firms and FMIs

Territorial scope

- The proposed requirements in the CP will apply to services provided to firms and FMIs regulated by the BoE, PRA and/or FCA wherever the services are carried out
- Meaning the proposals are agnostic as to the location of the CTP
- No requirement for a CTP to set up a UK establishment (e.g., a subsidiary)
- It is recognised that CTPs may provide services from multiple jurisdictions – the proposals include requirements for a central point of contact and legal person to perform certain functions on their behalf
- Rules will apply from date of designation by HMT

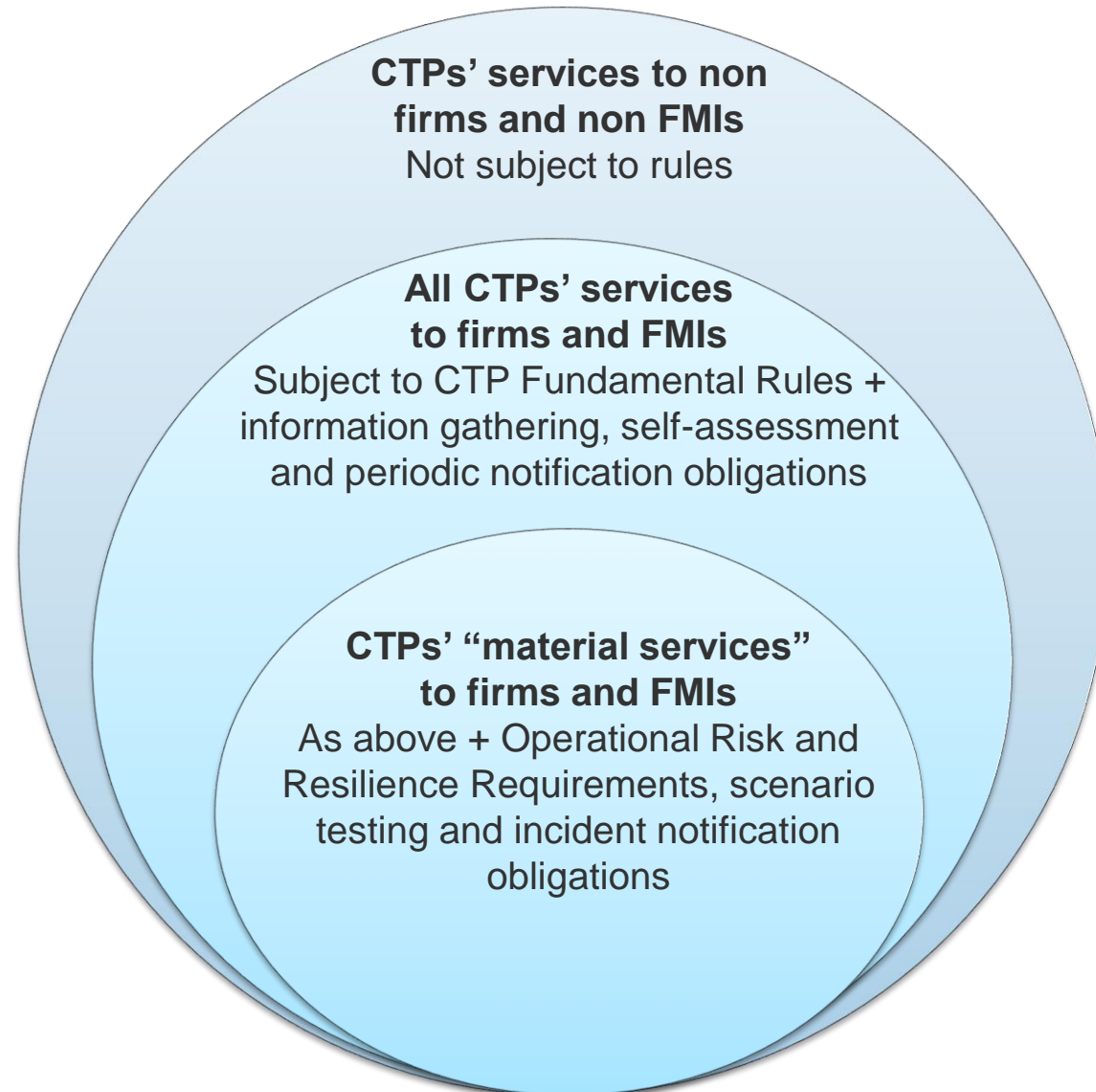
Identifying and designating CTPs

- HMT empowered to designate a CTP if, in its opinion, a failure or disruption of the services (individually or aggregated) that the third party provides to firms and FMIs could threaten the stability of, or confidence in, the UK financial system
 - Will include consideration of the materiality of, and the number and types of firms and FMIs to which, the services are being provided
- HMT must consult with BoE, PRA and FCA prior to designating a third party as a CTP
- CP anticipates in practice BoE, PRA and/or FCA will proactively recommend HMT should designate a third party based on their analysis
- Intention is to limit the regime to systemically important third parties and therefore a “very small number and percentage” of third parties that provide services to firms and FMIs

Identifying and designating CTPs (cont.)

- Will identify potential CTPs from operational resilience policies, thematic reviews, skilled persons reviews etc
- Third parties already subject to regulation (including telcos) will not be CTPs
- HMT will discuss rationale for potential designation with third parties and they can make representations in response
- HMT will also identify the services it considers “material” (to which additional rules will apply)
- “Material” defined as services a failure in, or disruption to, the provision of which could threaten the stability of, or confidence in, the UK financial system

Overall structure of the proposed requirements



CTP Fundamental Rules

- Six high-level rules similar to the Principles for Businesses
- Will apply to all CTP services to firms and FMIs
 1. A CTP must conduct its business with integrity
 2. A CTP must conduct its business with due skill, care and diligence
 3. A CTP must act in a prudent manner
 4. A CTP must have effective risk strategies and risk management systems
 5. A CTP must organise and control its affairs responsibly and effectively
 6. A CTP must deal with the regulators in an open and co-operative way, and disclose to the regulators appropriately anything relating to the CTP of which they would reasonably expect notice

CTP Operational Risk and Resilience Requirements

- Will apply in respect of CTPs' material services to firms and FMIs
- Suggestions for minimum resilience standards in DP3/22 generated a lot of feedback (to urge regulators not to produce overly granular rules)
- Resulted in outcomes-focused requirements covering:
 1. Governance
 2. Risk management
 3. Dependency and supply chain risk management
 4. Technology and cyber resilience
 5. Change management
 6. Mapping
 7. Incident management
 8. Termination of services

Information gathering, self-assessment, testing, skilled person review and information sharing

- A wide range of ongoing obligations including:
 - Annual self-assessments (identifying vulnerabilities, areas for improvement and intended remediation)
 - Scenario testing of CTPs' ability to provide each material service within a maximum tolerable level of disruption versus a severe but plausible disruption
 - Annual testing of financial sector incident management playbook
 - Regulators can make ad hoc information requests in addition to the annual testing
 - Regulators have power to order Skilled Person Reviews
 - Various ongoing notification requirements
 - Relevant incidents that seriously disrupt the delivery of a material service; or
 - Seriously and adversely impact the availability, authenticity, integrity or confidentiality of assets belonging or relating to the firms to which the CTP has access or the potential to result in a serious loss of such assets
- CTPs with head office outside the UK required to nominate a legal person with authority to receive documents and notices from regulators

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The FCA and government Discussion Paper on the
Advice Guidance Boundary Review
Becky Critchley

Discussion Paper on the Advice Guidance Boundary Review

- FCA and government joint Discussion Paper ([DP23/5](#)) on the Advice Guidance Boundary Review. Seeks views on the following three proposals:
 - Further clarifying the advice boundary
 - A new approach that would allow firms to provide targeted support
 - A new form of simplified advice

Clarifying the advice boundary

- Aim to provide firms with greater certainty around the boundary between regulated advice and unregulated support
- Firms are currently overly cautious when considering providing unregulated support
- Potentially leads to poor customer outcomes
- Either new guidance or simplification of existing guidance

Targeted support

- New regulatory framework to broaden the support firms can provide to consumers
- Firms could suggest products or courses of action that are appropriate for a particular target market:
 - Based on limited information provided by the consumer
 - No explicit charges required
 - Disclosure of how the service is paid through other charges
- Considering an amendment of the legislative framework
 - Creating a new regulated activity
 - Establishing a new sub-permission for firms authorised to advise on investments
 - Allowing authorised firms to offer support if they have certain existing permissions linked to relevant products
- Remuneration issues

Simplified advice

- One-off advice, taking into account information about a specific consumer need
- Attractive to existing advisory firms, plus investment platforms, retail banks and product manufacturers offering direct to consumer
- Remuneration issues
- Comments requested on:
 - Product scope
 - Financial limits

Next steps

- Feedback requested by 24 February 2023
- Further engagement with stakeholders and the government

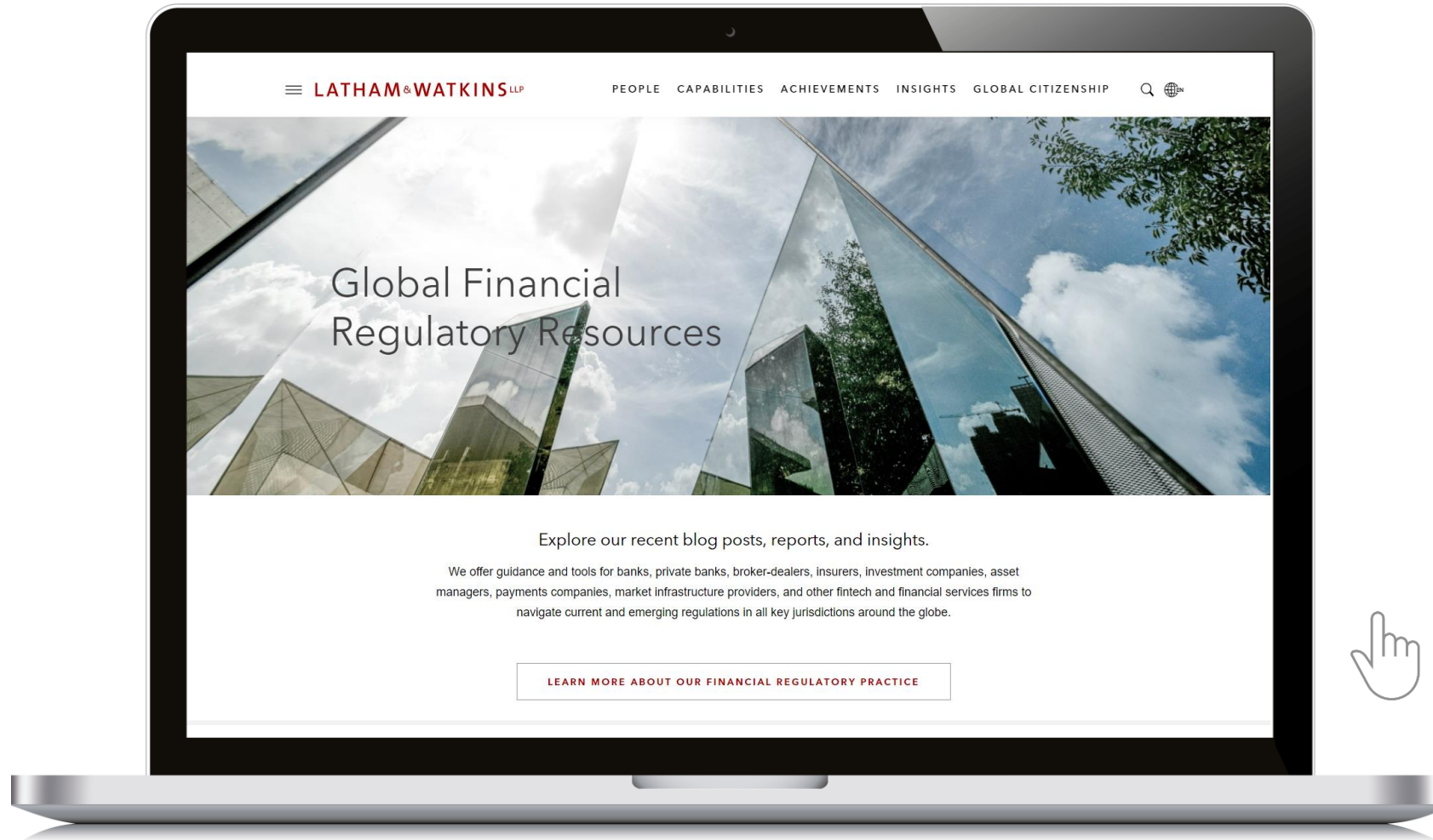
10 Key Focus Areas for Financial Services Firms in 2024

This annual publication explore some of the primary focus areas in 2024 for UK-regulated financial services firms. The fundamental consideration of the direction of UK financial services regulation has progressed, and this is borne out across many of the topics covered in this year's publication.



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- [FCA Unveils Final Measures to Make UK Listing Regime Match Fit Again](#)
- [UK Regulators Publish New CTP Regulatory Framework Proposal](#)
- [FCA Explores How to Close the “Advice Gap”](#)
- [EU Supervisors to Scrutinise ESG Benchmark Disclosures](#)