

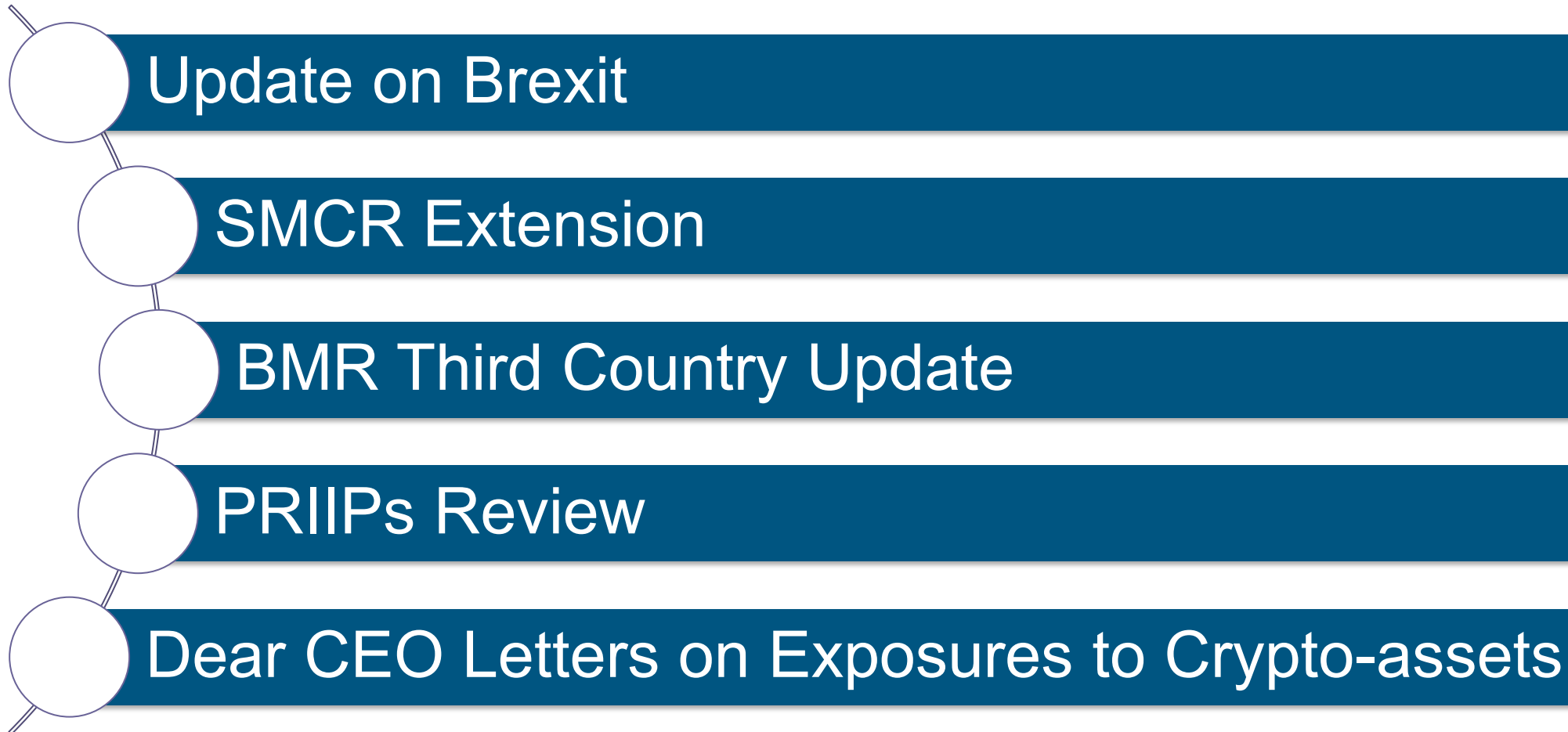
A blue-toned background image featuring a financial line chart with multiple data series and a grid. The chart shows various trends, including a sharp decline followed by a recovery and another decline.

LATHAM & WATKINS^{LLP}

11 July 2018

Financial Regulation Monthly Breakfast Seminar

Overview

- 
- Update on Brexit
 - SMCR Extension
 - BMR Third Country Update
 - PRIPs Review
 - Dear CEO Letters on Exposures to Crypto-assets

A blue-toned background featuring a financial line chart with a grid. The chart shows two data series: a solid blue line and a dotted blue line. The solid line starts high on the left, dips, rises to a peak, dips again, and then rises to a higher peak on the right. The dotted line starts high, dips, and then trends downwards. The overall aesthetic is professional and data-oriented.

LATHAM & WATKINS^{LLP}

Update on Brexit

Nicola Higgs

Onshoring EU Financial Services Legislation

- HM Treasury to start laying the first SIs to correct deficiencies in financial services legislation
- HM Treasury to publish drafts of further SIs, to enable early review

HM Treasury to continue laying SIs

Summer 2018

Early 2019

Autumn 2018

FCA and PRA to consult on proposed changes to correct deficiencies in certain rules (HM Treasury to delegate powers to the regulators for this purpose)

Approach of the Regulators

Planning for a “no deal” scenario

- HM Treasury, the FCA and the PRA continue to state that firms should plan for a transitional period (cf. statements from the EU), and do not need to prepare now to implement onshoring changes
- HM Treasury plans to give the regulators powers to grant transitional relief in the event that there is no transitional period

Implications for regulation more widely

- FCA has stated that, in the run up to March 2019, it will limit Handbook changes unrelated to Brexit to those identified as core priorities in its Business Plan, as well as other “essential items”

A blue-toned background featuring a financial line chart with a grid. The chart shows two data series: a solid blue line and a dotted blue line. The solid line starts high on the left, dips, rises, dips again, and then rises sharply towards the right. The dotted line starts high, dips, and then trends downwards. The overall aesthetic is professional and data-oriented.

LATHAM & WATKINS^{LLP}

SMCR Extension

David Berman

Latest Publications

- FCA (near) final rules for FCA solo-regulated firms
- FCA and PRA (near) final rules for insurers
- FCA final guidance on the duty of responsibility for FCA solo-regulated firms and insurers
- FCA consultation on a new public register of individuals
- FCA guides to the SMCR for FCA solo-regulated firms and insurers

Regime for FCA Solo-regulated Firms

- To come into effect on 9 December 2019
- Key changes from the consultation:
 - Removal of one of the Prescribed Responsibilities for Core firms - responsibility for informing the firm's governing body of their legal and regulatory obligations
 - Providing an “easy” process for firms to inform the FCA that they wish to apply a higher regime tier voluntarily
 - Amending the three financial criteria relating to qualification for the Enhanced regime, to smooth single-year anomalies
 - Lengthening the time period from six to 12 months for a firm to implement the Enhanced regime, once it has met the relevant criteria

Consultation on Public Register

- Proposal to introduce a directory that would include Certified Staff and directors outside the scope of the SMCR
- Would mean firms needing to provide the relevant information to the FCA, and update it within prescribed time periods
- FCA is also proposing to make other improvements to the Financial Services Register
- Comments requested by 5 October 2018





LATHAM & WATKINS^{LLP}

BMR Third Country Update

Nicola Higgs

BMR: Impact on third country firms

- Third country index providers can provide existing and new indices for use in the EU until 1 January 2020
- Third country users: outside scope of BMR
- Emergence of global standard?
 - What do EU users of APAC indices want to see?
 - How do IOSCO developments impact this?
- Are third country index providers ready?
- Will IOSCO compliance suffice or is BMR compliance necessary?

BMR: Options for third country benchmarks

1. Equivalence (article 30(2),(3))

- Application: country level
- Commission must make an equivalence finding (political impact of Brexit)
- Estimated 2 year lead time

2. Administrator recognised (article 32)

- Application to NCA (/ESMA): administrator level
- “Legal representative” in EU Member State
- Long form application
- Provide & update benchmark list

3. Benchmark endorsed (article 33)

- Application to NCA (/ESMA): benchmark / family level
- EU administrator endorses (90 day approval timeframe)
- Objective reason for provision outside the EU and use in the EU
- Short form application
- Application for each new benchmark / family

BMR: Options for third country benchmarks

	RECOGNITION	ENDORSEMENT
Challenges	<ol style="list-style-type: none">1. Inflexible mechanism for identifying the legal representative: Method for identifying the legal representative is mandated by the Regulation.2. EU legal representative accountable to ESMA: For failure to exercise proper oversight.3. Expertise of legal representative: Message from some EU regulators is that they won't accept an application for recognition from a third country administrator unless the EU legal representative can demonstrate appropriate expertise.4. Need for cooperation agreements between Member State regulators: If the third country administrator is supervised in a third country in relation to benchmark activity. There should be a cooperation agreement between the EU and third country regulators.	<ol style="list-style-type: none">1. Objective reason: There is a requirement to establish an 'objective reason' for the provision of the benchmark in the EU.2. Launch of new indices: Each new benchmark or family will necessitate a new approval being submitted to the relevant EU regulator (/ESMA) by the Endorser (potential 90 day lead time for approval)3. Regulatory accountability (Endorser): Responsible for breaches of BMR equivalent standards by the third country administrator.4. Legal Risk (Endorser): The legal risk liability profile is increased for the Endorser under the endorsement model, since it takes full responsibility for compliance with BMR standards by the third country administrator and a user may sue it for breach of its regulatory obligations.

BMR: Options for third country benchmarks

	RECOGNITION	ENDORSEMENT
Benefits	<p>1. Reliance: The ability of the third country administrator to continue to provide indices into the EU is not dependent on its legal representative remaining licensed.</p>	<p>1. Regulatory accountability (third country firm): Third country administrator has no direct accountability to any EU regulatory authorities (such accountability sits with the Endorser).</p>
Risks	<p>1. Impact of regulatory breach by third country firm: Request by legal representative to fix compliance. Potential removal from ESMA register and immediate ceasing of use of third country indices in EU.</p> <p>2. Impact of regulatory breach by EU legal representative: Requirement for third country firm to appoint a new legal representative (may not be possible given strict method of identifying the relevant firm).</p>	<p>1. Impact of regulatory breach by third country firm: Request by EU Endorser to fix compliance. Potential termination of endorsement relationship – leading to removal of third country benchmarks from ESMA register (until such time as a new endorsement relationship is established).</p> <p>2. Impact of regulatory breach by EU legal representative: Requirement for third country firm to appoint a new Endorser.</p>

The background of the slide is a blue-tinted financial chart. It features a grid of dashed lines and a jagged line representing data points. The chart is partially obscured by a dark blue horizontal bar at the bottom. The overall aesthetic is professional and data-oriented.

LATHAM & WATKINS^{LLP}

PRIIPs Review

Nicola Higgs

PRIIPS – State of play

- 24 January – FCA statement on performance scenarios
 - PRIIPs v fair, clear and not misleading
- Performance scenarios – industry body efforts
- Corporate bonds
 - Issues with KID content emerging
- FCA next steps



LATHAM & WATKINS^{LLP}

Dear CEO Letters on Exposures to Crypto-Assets

Stuart Davis

FCA Dear CEO Letter

- Focusses on conduct risk and financial crime
- Requires firms to take **reasonable and proportionate** measures to reduce the risk of facilitating financial crime through exposures to crypto-assets, including:
 - Staff training on the specific risks relating to crypto-assets
 - Appropriately and frequently update financial crime risk frameworks
 - Engaging with crypto clients to understand risks posed by their businesses
 - Perform due diligence on key individuals and consider any adverse intelligence
 - Assess the adequacy of crypto clients' own due diligence arrangements
 - If clients are involved in initial coin offerings (ICOs), consider the issuance's investor base, organisers, the functionality of tokens (including intended use), and the jurisdiction
 - Carry out proper source of wealth checks on customers whose wealth or funds derive from the sale of crypto-assets, or other crypto-related activities

PRA Dear CEO Letter

Applies to banks, insurers, and PRA-regulated investment firms

Key principles:

- Governance
 - Board and senior management consideration/sign-off of crypto-exposures
- Due Diligence and Safeguards
 - Extensive due diligence must be undertaken before taking on any crypto-exposures
 - Appropriate safeguards against financial, operational, and reputational risks must be put in place

PRA Dear CEO Letter (cont.)

- PRA Notification
 - Firms should inform their usual supervisory contact of any planned crypto-asset exposure or activity on an ad hoc basis, together with an assessment of the risks associated with the intended exposure
- Remuneration
 - Firms' remuneration policies and practices should ensure that the incentives provided for engaging in crypto-related activities do not encourage excessive risk-taking
- Prudential Assessment
 - Firms must appropriately classify crypto-assets and take them into account in their capital adequacy/solvency assessments
 - Prudential treatment will depend on the precise features of the asset
 - Crypto-assets should not be considered as currency for these purposes



LATHAM & WATKINS^{LLP}

Questions?