

Financial Regulation Monthly Breakfast Webcast

LATHAM & WATKINS

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Today's Topics

The FCA's final rules for ESG ratings providers	Nicola Higgs
The regulators' Phase 2 consultations on changes to SMCR	Rob Moulton
Findings from the FCA's multi-firm review of conflicts of interest in private markets	Jonathan Ritson-Candler
The FCA's good and poor practices on firms' use of AI	Becky Critchley
A round-up of recent markets-related developments	Rob Moulton





The FCA’s final rules for ESG ratings providers

Nicola Higgs

UK Regime for ESG ratings providers

- FCA PS26/22 (3 November 2026)
- FCA has largely maintained the rules as consulted on, with the following noteworthy developments –
  - **Proportionality**: further clarifications, reflecting that many stand-alone providers seeking authorisation for the first time are smaller businesses unaccustomed to detailed regulatory standards
  - **Transparency and stakeholder engagement**: considerable feedback led to more substantive changes in these two areas
  - **International alignment**: further alignment with the EU ESG Ratings Regulation on certain aspects, but the UK and EU regimes remain separate frameworks. Providers caught by both must meet each regime on a stand-alone basis



Next Steps: Key Dates

Late or missed applications carry ‘significant consequences’

7 Dec 2026	26 Jan 2027	Feb 2027	24 Jun 2027	End Jul 2027	End Aug 2027	29 Jun 2028
FCA webinar on the final rules	FCA webinar on the authorisation process	Pre-Application Support Service opens	Authorisation gateway opens	Deadline: firms expecting ≥£500,000 UK ESG ratings revenue in 12 months post-application	Deadline: all other firms	Regime takes effect

Applied in window, not yet determined

May continue business as usual after 29 June 2028, including taking on new business, until the application is determined.

No application, refused or withdrawn

Cannot continue from 29 June 2028; must wind down UK ESG ratings activities.

Scope of the regime

UK firms	Overseas firms
Providing ESG ratings to UK and non-UK users, by any means	**Remuneration trigger**: Providing ESG ratings to UK users by way of a business relationship. Framed broadly to cover paid subscriptions and other contractual arrangements, including where the rating is bundled with wider services. ESG ratings available for free on websites excluded (= EU position)
Jurisdiction comparison • **UK**: Rating must be "likely to influence a decision to make a specified investment" (solicited or unsolicited). PERG lists factors for "likely to influence", such as target users, marketing and contractual terms. • **EU**: Providers "operating in the Union" through publication, distribution to regulated financial undertakings, Accounting / Transparency Directive undertakings, or public bodies. • **Third-country providers**: Overseas providers need FCA authorisation (inc. UK presence). The UK has no equivalence, endorsement or recognition third country routes (as available under EU ERR).	
Exemptions Regulated products and services, unregulated benchmarks, unregulated credit ratings, intra-group, private use, ancillary non-commercial use (journalists, academics, charities), public authorities and central banks, accreditation, own regulatory compliance, proxy advice, designated professional body (DPB) exemption. *Future monitoring* FCA will continue to monitor ESG ratings activity by asset managers, benchmark administrators, investment research providers and investment consultants, and may adopt a different approach in future.	

Overview of framework

Area	Key requirements	Handbook
Baseline Standards	Existing FCA rules apply, including COND, PRIN, SYSC, SMCR, GEN and the Financial Crime Guide	COND, PRIN, SYSC, SUP, GEN, FCG
Transparency	Minimum public disclosures on rating products; additional disclosures to users on products and individual ratings; rated entities may access these on request	ESG 6
Governance	Clear accountability; retain operational responsibility for the rating process; written outsourcing agreements; sufficient UK presence and accountability	ESG 6, SYSC, COND
Systems and controls	Quality assurance, data validation and methodology reviews; records evidencing how ratings were produced	SYSC, ESG 6
Conflicts of interest	Identify, prevent, manage and disclose conflicts; conflicts policy with at least annual senior management updates; personal transactions policy	ESG 6
Stakeholder engagement	Notify rated entity at least two business days before first availability; provide underlying data on request at any time; feedback procedures	ESG 6
Complaints	Effective complaints policies and procedures; investigate, record and address complaints	ESG 6

Transparency

- **Public disclosures**: Policies and processes on data quality and verification, rating review frequency, methodology versioning, factors relevant to material methodology changes, AI oversight and material limitations
- **User and rated-entity disclosures clarified**: Specific requirements for peer groups and for what the firm considers a material change to a rating or its data
- **Product-level disclosure permitted**: Where information applies across an entire product; rating-level disclosure still required where information is specific to an individual rating
- **Rated entities**: Disclosures to rated entities are no longer made by default, but providers must make clear how they can be requested. Proposed disclosure of unresolved factual challenges removed
- **Jurisdiction comparison**: The UK regime contains no equivalent marketing disclosure rule for firms relying on the regulated products and services exclusion, whilst the EU regime requires ERR-aligned (Annex III point 1) disclosures



Stakeholder Engagement and Complaints

2

Business days minimum notice to rated entities before a rating is first made available, and long enough to read and understand the information. Aligns more closely with the EU.

- **No waiting for feedback**: requirement to await rated-entity feedback before publication removed, as it risked uncertainty and delay. A rating may be made available while the rated entity reviews the underlying data.
- **Product types clarified**: for controversy products, rated entities should be notified before coverage begins.
- **Issuer-pays and user-pays**: notification applies under either model, though a shorter period may be appropriate where there is an existing relationship.
- **Complaints**: providers must maintain effective complaints policies and procedures and investigate, record and address complaints appropriately.



Governance

Rules unchanged, but key clarifications on UK presence and operating structures

Sufficient UK presence

- A clear UK point of accountability does not require all rating processes, operations or senior personnel to be in the UK
- Sufficient senior management presence, oversight and access to information, proportionate to size, scale and complexity

Retained responsibility

- Provider retains responsibility for UK ratings and can require changes to any part of the process
- Sufficient authority to identify, assess and address risks, including where functions sit elsewhere in the group

Global firms

- No explicit market access route for non-UK providers, unlike the EU
- Structures assessed case by case; a UK-incorporated subsidiary (rather than a branch) is most likely to meet expectations

SMCR

- SMCR applies; providers will be Core Firms
- Phase 2 SMCR reforms due by end 2027, so in place before go-live but after applications are due



Practical Considerations for Firms

Preparing ahead of the June 2027 gateway

1

Confirm scope

Assess whether products fall within the regulated activity, using the expanded PERG guidance and exclusions

2

Check EU overlap

Where caught by both UK and EU regimes, plan to meet each on a stand-alone basis

3

Structure and governance

Consider UK presence, accountability and whether a UK subsidiary is needed; prepare for SMCR as a Core Firm

4

Already authorised firms

Assess whether existing governance, systems and controls meet ESG-specific requirements when adding permissions

5

Know your window

Forecast UK ESG ratings revenue to identify the July or August 2027 deadline; use PASS from February 2027

6

ESG data providers

Not caught by the framework, but the ICMA Code of Conduct remains relevant





The regulators' Phase 2 consultations on changes to SMCR

Rob Moulton

Background

- SMCR has been tweaked numerous times during its ten-year lifespan
- Phase 1 changes have already achieved “quick wins”
- These new proposals are a significant attempt to both reduce the burden and future-proof the regime



Senior Managers

- Reduction in number of Senior Management Functions
  - PRA to remove pre-approval for roughly half its current SMFs
  - FCA proposes to make six of its SMFs notification-only (these roles are relevant only to dual-regulated and Enhanced Firms)
- Firm will assess whether notification-only candidates are fit and proper, but must complete criminal records checks and produce Statements of Responsibilities and Management Responsibilities Maps
- The FCA and PRA will retain “exceptional” powers to require pre-approval for notified roles
- 12-week rule will be extended to 18 weeks (to apply for approval)
  - PRA and FCA differ in that PRA requires the situation to be “reasonably unforeseen” whereas FCA more relaxed with a “reasonable use” standard
- New and more complex approach to SMF7, including the creation of SMF7a



Dual-regulated firm – mock SMF list

- Pre-approved SMF
  - SMF1 Chief Executive
  - SMF2 Chief Finance Officer
  - SMF3 Executive Director
  - SMF4 Chief Risk Officer
  - SMF9 Chair
  - SMF16 Compliance Oversight
  - SMF17 MLRO
- Notified SMFs
  - SMF5 Head of Internal Audit
  - SMF6 Head of Key Business Area
  - SMF10 Chair of the Risk Committee
  - SMF11 Chair of the Audit Committee
  - SMF12 Chair of the Remuneration Committee
  - SMF13 Chair of the Nomination Committee



Certification Regime

- FCA and PRA propose removing all certification requirements
- No more assessments of fitness and propriety and annual certificates
- No written regulatory referencing regime
- No Directory (listing Certified Persons)
- The end of associated reporting and attestations
- Firms will remain responsible for ensuring individuals are competent and follow appropriate standards of conduct



Conduct Rules

- Conduct Rule reporting will focus on more serious breaches below Senior Manager level
  - Currently the standard is “disciplinary action”
  - Will be changed to “final written warning”
- Differences in frequency of reporting
  - PRA would still require Form L within 7 business days
  - FCA plans to replace annual reporting requirement with a 14-month notification period
- Obligation to provide training on Conduct Rules dropped in favour of an obligation to notify staff about them



Other changes

- Major upgrading of FCA thresholds to become an Enhanced Firm e.g.,
  - Asset managers £65 billion to £100 billion
  - Intermediaries from £45 million to £75 million revenue



Implementation

- Policy Statements H1 2027
- Implementation H2 2027
- Given scale of changes, we can foresee this being 1 January 2028



Observations and conclusions

- Proposals go considerably further than many have anticipated
- Should make a significant difference to the time and cost involved in complying with the regime
- The reforms do bring their own new complications
  - Firms must decide how far to retain, adapt or dismantle their existing processes e.g. certification/appraisals, regulatory referencing
  - Dual-regulated firms face divergent FCA and PRA requirements
- FCA may face political lobbying to reinstate the certification and regulatory referencing regimes
- PRA and FCA may face further government pressure to better align their processes





Findings from the FCA's multi-firm review of conflicts of interest in private markets

Jonathan Ritson-Candler

Conflicts of interest and treating customers fairly multi-firm review

- On 23 October 2026, FCA published findings of its review of the conflicts of interest **policies** and **governance arrangements** of asset managers, AIFMs and advisors dealing in private market assets
- Focus: private equity, private credit and real estate firms
- Expects firms to review their conflicts processes against these findings and address any gaps
- FCA recognises need for conflicts management to be proportionate to the size, strategy and structure of the relevant firm



Governance and oversight

- **Embed conflicts considerations throughout deal lifecyle**:
  - Build conflicts review into earliest stages of origination
  - Pay particular attention to inherent conflicts of firm being on both sides of the following transactions: (i) related party; (ii) cross fund; and (iii) continuation vehicles
  - Allocations between investors – have dedicated allocations policy and record rationale
  - Re-assess conflicts ahead of further milestones (*e.g.*, exit, onwards sale etc.) and have clear triggers
- **Keep under review**: FCA's primary criticism of firms is not updating conflicts process and governance as business evolves and grows
- **Bespoke training**: Better outcomes flow from tailored training for staff on the firm's approach to conflicts arising from the firm's business model and at transaction level
- **Clear roles and responsibilities**: good governance involves oversight by dedicated conflicts committee, working groups, LP Advisory Committees but reporting lines, escalation processes, ToR and agreed MI should be formalised

Governance and oversight (cont.)

- **Real time escalation to conflicts committee**: as part of standard process for identifying and managing conflicts such as for new deal allocation and transfers of positions between investors
- **Record outcomes**: firms should have clear documentation and records for allocation decisions, where, when and how conflicts were assessed and mitigated
- **Inside information**: be alive to the potential receipt of inside information and ensure appropriate information barriers
- **Disclosure**: should be viewed as supplementary control and transparency to investors only once conflicts appropriately identified, mitigated and documented
- **Gifts and entertainment**: value generally observed to be higher than in the public markets and broader (air travel and sporting events). Ensure clear policy and all G&E received and provided are recorded with clear rationale for approval



Conflicts policies and procedures

- **Tailored matrices and policies covering specific conflicts areas**:
  - Allocation
  - Transfers
  - Personal account dealing
  - Related party / affiliates / cross trades / continuation funds
  - Gifts and entertainment
- **MFNs and investor side letters**: have a documented approach to most favoured nation clauses and side letters to ensure consistency and use as part of broader management of conflicts and investor-fairness





The FCA’s good and poor practices on firms’ use of AI

Becky Critchley

FCA – AI in financial services: good practice and areas for improvement

- FCA sharing examples of good and poor practice from industry engagement, supervisory work and the AI Lab initiatives, including AI Live Testing and the Supercharged Sandbox
- Examples identify common themes and developing practices
- Publication is relevant to a variety of AI use cases, including the use of machine learning, generative AI, and agentic AI
- FCA is not creating new requirements or suggesting a single approach to AI use
- Publication does not replace firms' responsibility for considering what is appropriate and proportionate for their own AI use cases, risks and potential impact



FCA – AI in financial services: good practice and areas for improvement (cont.)

Publication focuses on three core areas:

Consumer Duty and consumers in vulnerable circumstances

- *How firms use AI to achieve good consumer outcomes*

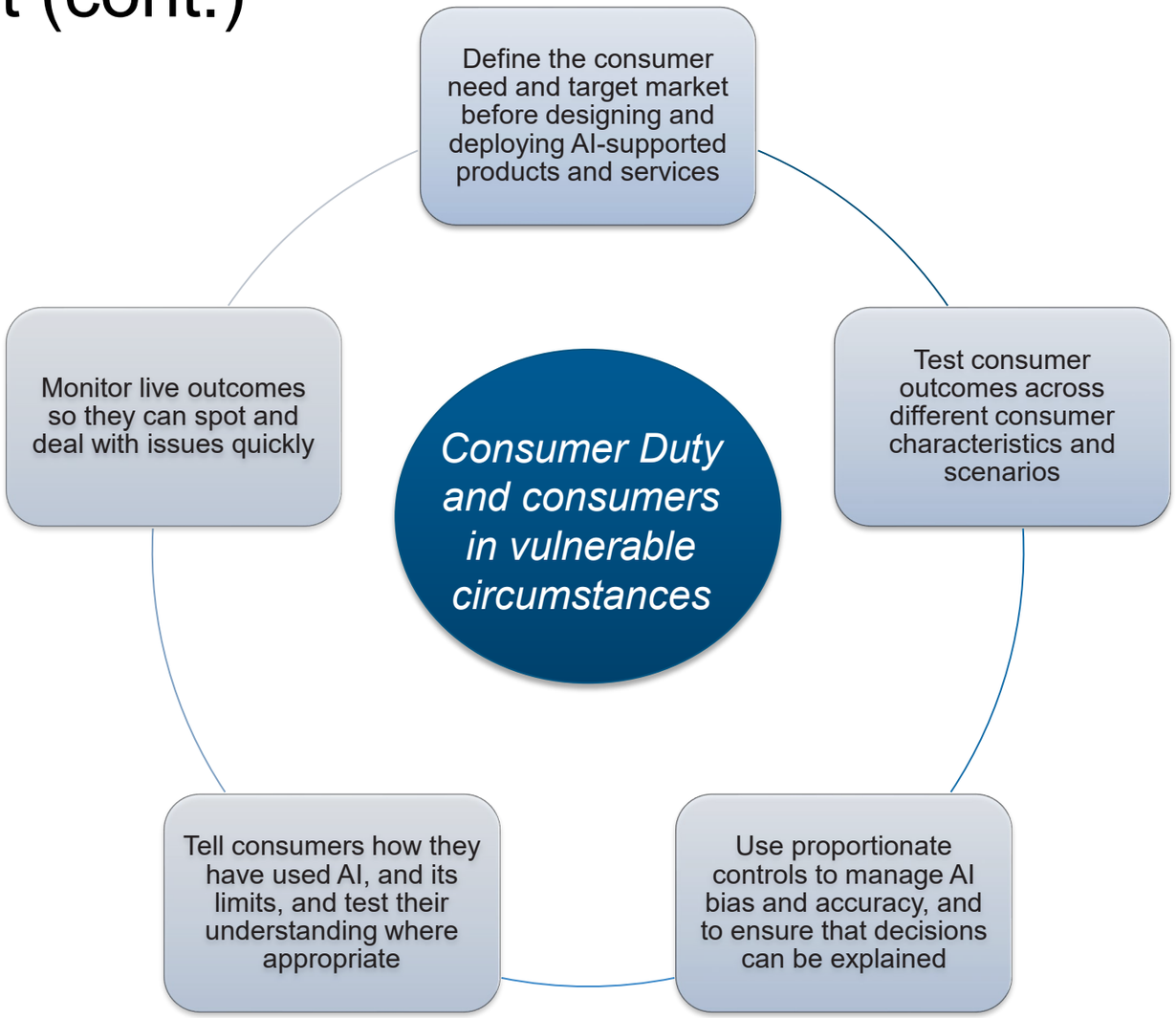
Governance and accountability

- *How firms oversee and effectively govern across the AI lifecycle*

Operational resilience

- *How firms make sure they deploy AI securely and sustainably*

FCA – AI in financial services: good practice and areas for improvement (cont.)



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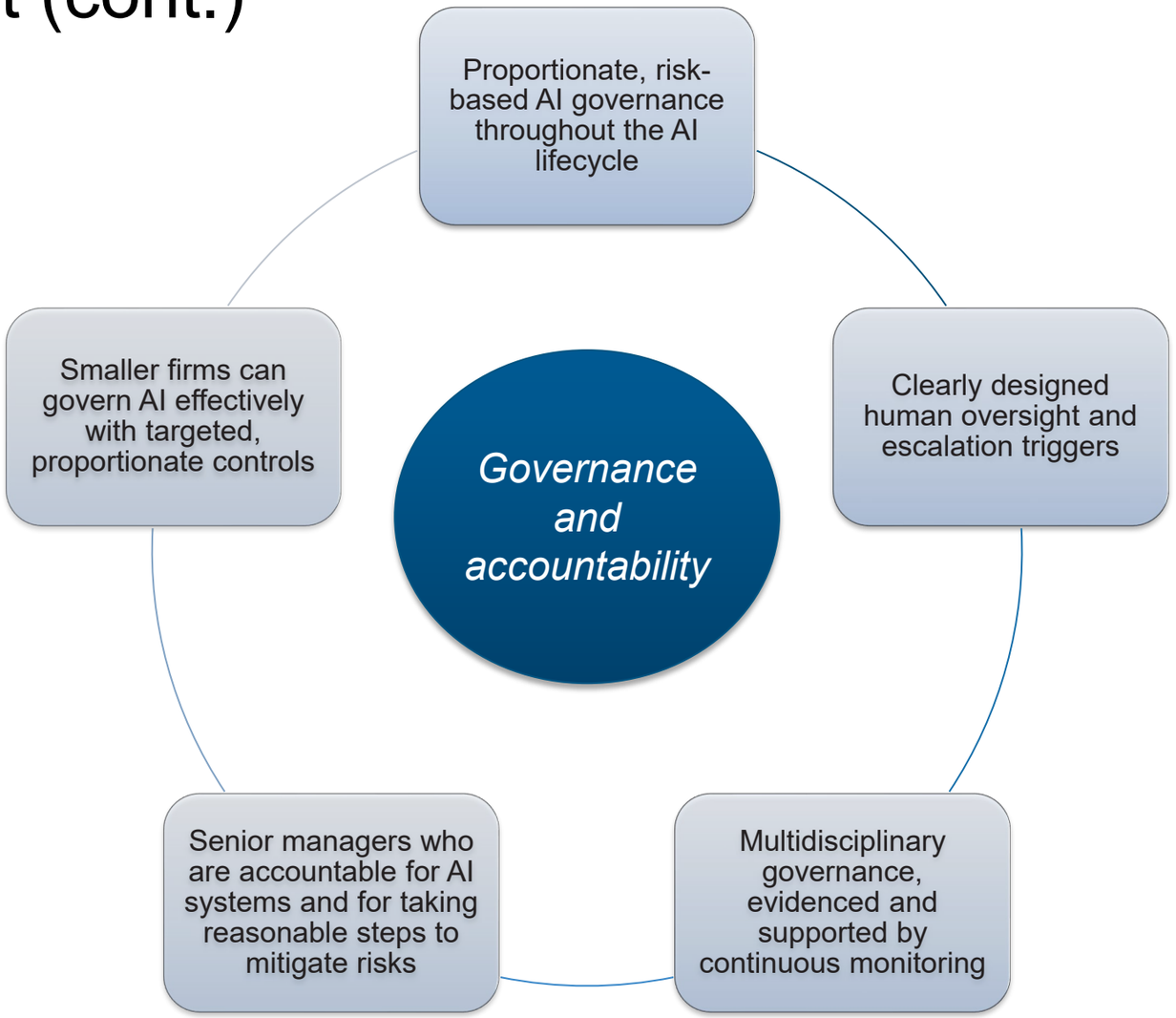

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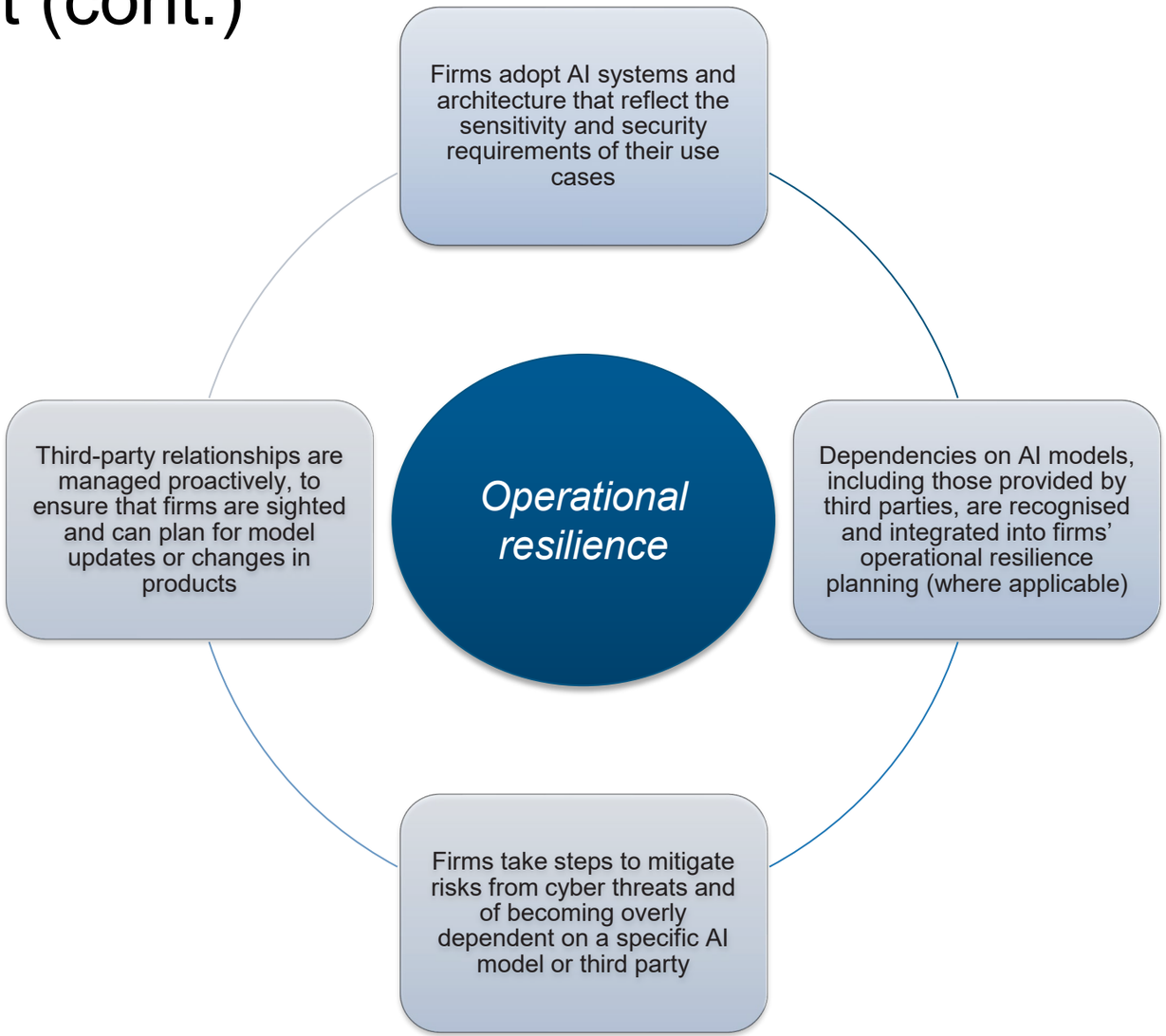
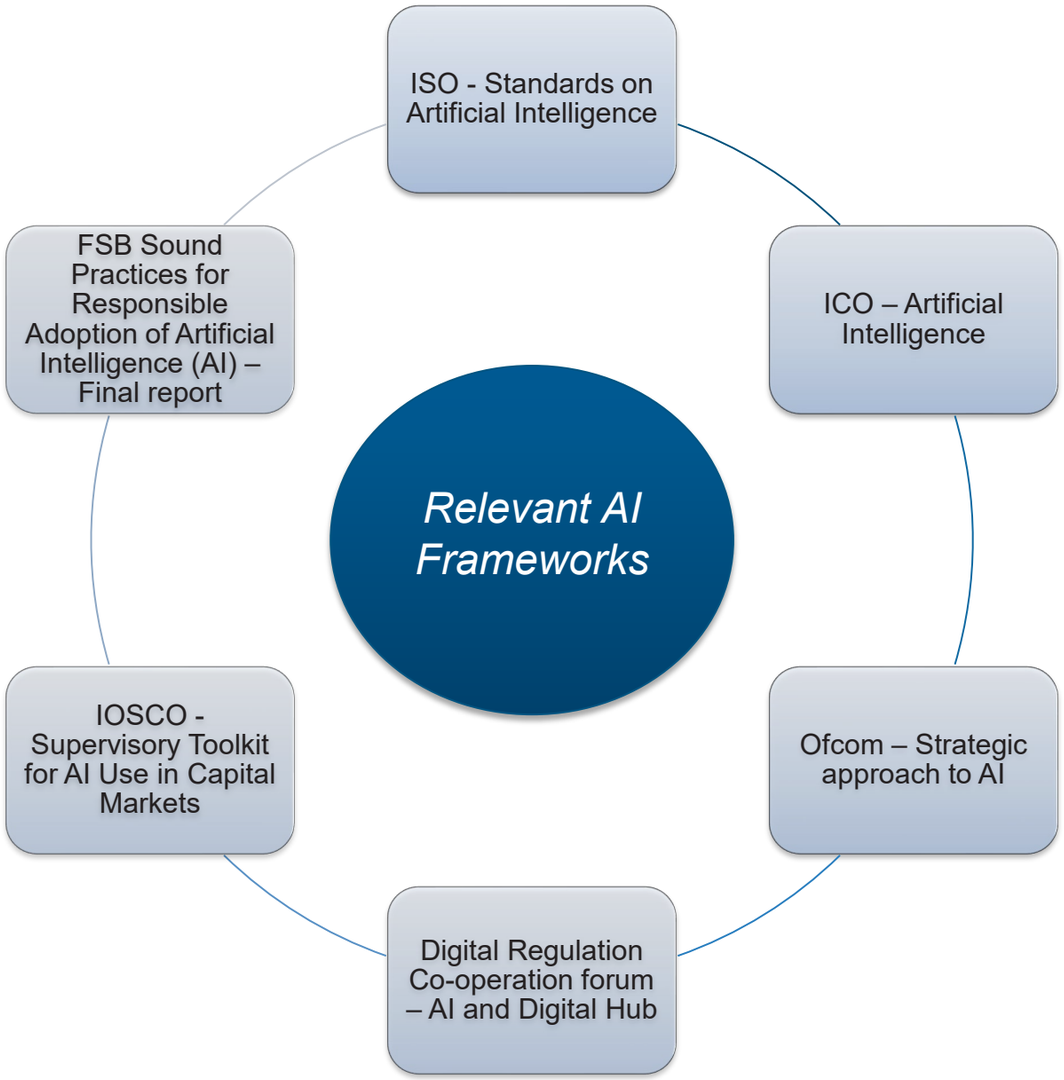


FCA – AI in financial services: good practice and areas for improvement (cont.)

- Key themes:
  - AI deployment should be consumer-led rather than technology-led;
  - governance must cover the full AI lifecycle and be in place before deployment;
  - Senior Managers remain personally accountable for AI risks within their areas of responsibility; and
  - firms must avoid overreliance on single providers or models
- Supervisory scrutiny of firms' AI use is set to increase
- FCA will expect firms to be able to evidence how they are meeting expectations



Relevant AI Frameworks





A round-up of recent markets-related developments

Rob Moulton

Wholesale banks supervision – Insights 3

FCA has published further learnings gained from supervisory work concerning wholesale banks

- **AI**
  - Committees not tracking conditional approvals (were the conditions met?)
  - Permitting use cases to progress to production by granting undocumented exceptions
  - Insufficient training, testing and maintenance of kill switches
  - Incomplete AI inventories
- **Resilience**
  - Weak data management causes problems – for instance, data not ingested into fin crime control due to coding defect
  - Weaknesses in controls, such as an algo interacting with its own OMS leading to the unintended accumulation of a very significant intraday position



Wholesale banks supervision – Insights 3 (cont.)

- **Financial crime and market abuse**
  - Firms warned against accidentally providing services to firms that ought to be (but are not) registered to carry on Annex 1 activities
  - Similar message for securitisations – ensuring enhanced due diligence is carried out on credit-granting originators which are not CRR or FCA authorised firms
- **Management of conflicts of interest and trading conduct**
  - Prime brokerage
    - FCA looked at six PB businesses
    - Found limited evidence of sharing client information (some firms citing confidentiality concerns)
    - FCA does not require “unrestricted information sharing, but we did see arrangements that enabled relevant risk information to be made available to those responsible for client risk decisions”
  - RFQ controls
    - FCA identified weaknesses in fat finger controls – failure to maintain inventories of controls in place, testing not undertaken (comprehensively or consistently)

Market Watch 86

- Observations from FCA's visits to seven UK retail brokerage firms to assess the effectiveness of their market abuse surveillance arrangements
  - Assessed retail brokers, but observations are more widely applicable
- FCA found material weaknesses in how firms' arrangements had been designed and implemented, and how they operated in practice, and required all firms that took part in the review to strengthen their surveillance arrangements
- Key findings include:
  - FCA saw poor decision-making when some firms were assessing whether suspicious activity should be escalated or reported to the FCA, and several firms applied a threshold for reasonable suspicion that was too high
  - FCA saw insufficient understanding of the surveillance systems being used in some firms, and alert calibrations that were not suitably tailored to the firm's business
  - FCA found weak governance and oversight arrangements, including senior managers displaying limited knowledge of key surveillance activities, and surveillance responsibilities being split across different functions without one individual having oversight of end-to-end activities
  - FCA found some firms had not considered all relevant characteristics of their business model when carrying out their market abuse risk assessments

ESMA final Guidelines on DDII

- Final version of ESMA's updated Guidelines on the delay in the disclosure of inside information (DDII) under EU MAR, following the Listing Act changes to EU MAR
- Listing Act changes mean that inside information in relation to intermediate steps in a protracted process no longer needs to be disclosed
- Addition of new legitimate interests, including:
  - Where the issuer is requested not to disclose information by a public authority
  - When the issuer needs to collect additional information about an exceptional event or circumstance that is not immediately available in order to enable a correct assessment of the information by the market
  - When the issuer may risk the loss of business opportunities as a result of the disclosure of sensitive commercial information
  - When a new board appointment or senior manager has not yet informed their current employer of their intention to terminate their employment contract
  - When companies within the same group have close economic and operational links such that immediate disclosure by the issuer would cause a direct prejudice to the issuer and undermine the effectiveness of the delay activated by the other company



Good and Poor Practices – CFDs

- FCA follow-up work to November 2025 multi-firm review of CFD providers
  - May 2026 survey asked 81 CFD firms if they had made changes as a result of previous FCA findings
- Key observations include:
  - Most firms had considered the review and made changes, although many of these changes were relatively minor and did not significantly impact price and value
  - Most firms had not changed the level of charges after reviewing them, instead limiting any changes to providing more information about the existing rates
  - Some firms made no material changes while remaining clear outliers for certain charges
  - Many firms do not explain their costs prominently enough in the client journey, or necessarily ensure their communications about costs are be fair and balanced
  - Charges levied for holding a CFD position overnight may not be consistent with firms' price and value obligations under the Consumer Duty, and the information provided about them may not meet consumer understanding requirements



Changes to the EMIR intragroup exemptions regime

- Final HM Treasury SI and final FCA rule and guidance changes now published
- Key changes include:
  - Removing the requirement for intragroup counterparties to be established in an overseas jurisdiction deemed equivalent under UK EMIR to benefit from permanent intragroup exemptions, effectively making the current Temporary Intragroup Exemption Regime (TIGER) permanent
  - Making the regime notification-based, rather than application-based, for exemptions with counterparties established overseas
  - Aligning the intragroup exemption processes for clearing and margin exemptions by reducing the notification period for margin exemptions from 3 months to 30 calendar days, and reducing the supplementary documents required for intragroup margin exemptions
  - Updating relevant Binding Technical Standards and removing redundant EMIR Q&As
- New regime takes effect 1 January 2027
- FCA encourages counterparties wishing to obtain new intragroup margin or clearing exemptions before 1 January 2027 to submit their notifications before 5 December



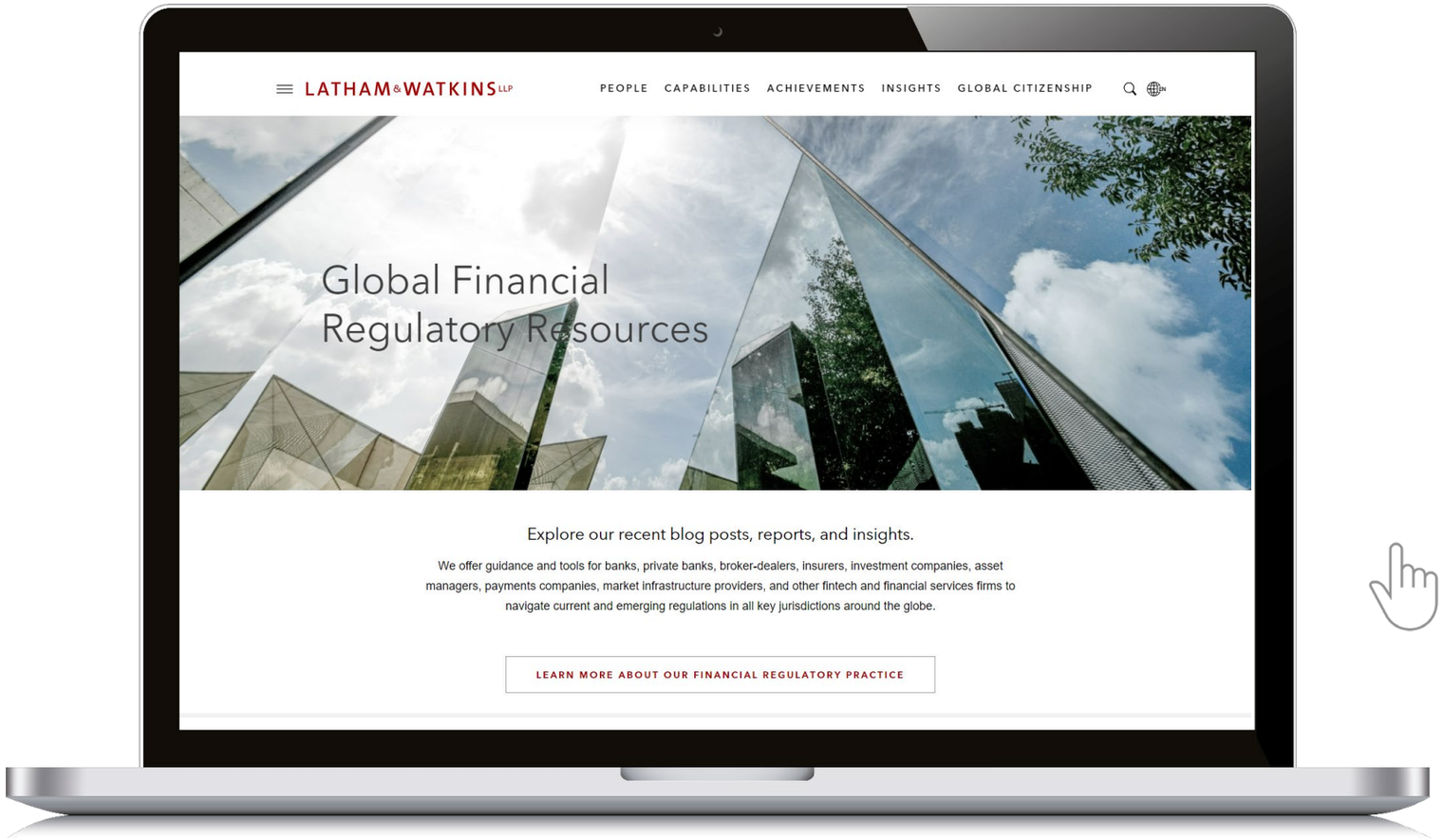
Recent Thought Leadership

- New UK Regulatory Framework for ESG Ratings Providers Finalised
- UK Regulators Consult on Phase 2 SMCR Reforms
- FCA Issues Guidance for Firms on Their Use of AI
- FCA Sets Out Expectations on Firms' Governance Arrangements





Our Global Financial Regulatory Resources Page



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