Financial Regulation Monthly Breakfast Webcast

19 March 2025

LATHAM & WATKINS

Today’s Topics

HMT’s ‘New approach to regulation’, FCA’s support for the Growth Agenda, and the Consumer Duty Champion	Rob Moulton
The FCA publications on firms’ treatment of vulnerable customers	Becky Critchley
The findings from the FCA’s review of private market valuation practices	Jonathan Ritson-Candler
The EU’s Omnibus package – proposals to simplify the CSRD, CSDDD, and EU Taxonomy	Nicola Higgs
The regulators’ plans to drop proposals on announcing enforcement investigations and on D&I	Anna James

HMT’s ‘New approach to regulation’, FCA’s support for the Growth Agenda, and the Consumer Duty Champion

Rob Moulton

FCA speech on Growth

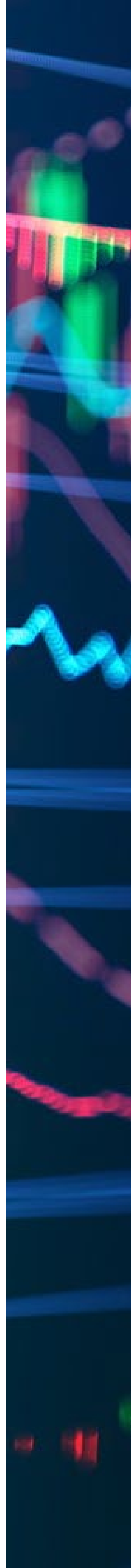
- FCA's approach
  - Work at pace to support these initiatives: industry "may be surprised in the coming weeks at the pace"
  - References to the "50 or so" proposals in the January letter to the PM (but examples include Consolidated Tape for bonds)

Headlines

- Remove the need for a Consumer Duty Champion
  - Further FCA consultations on retail protection will ask the question whether Consumer Duty makes further rules unnecessary
  - FCA received 170 responses to its consultation on removing rules in light of the introduction of the Consumer Duty
- Request for articulation of the government’s appetite for risk
  - “We would value metrics…we hope you will engage in this debate”
- Not currently anticipating further mass redress events

HMT – new approach to ensure regulators support growth

- Monday 17 March Downing Street Meeting with PM
- Refers to abolition of Payment Systems Regulator (into FCA)
- Review of the number of PRA and FCA’s “have regards” factors
- Economic Secretary to the Treasury is to further examine whether the FOS works (“acting, at times, as a quasi-regulator”)
- HMT, PRA, FCA to work to establish concierge service, along with dedicated support and issuing “minded to approve” notices, to new applicants



Key regulator pledges

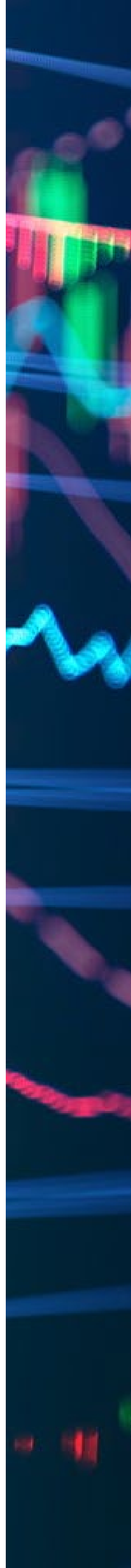
- FCA: dedicated case officer to every firm in sandbox
- FCA: 50% more dedicated supervisors to early and high growth firms
- FCA: Extend pre-application support to all wholesale payments and crypto firms
- FCA: Indicate more often the FCA is “minded to approve” start ups
- FCA: simplify mortgage and advice rules to support greater home ownership
- FCA: work to remove contactless payment limits (£100)
- FCA: accelerate review of capital for specialised trading firms
- PRA and FCA: reduce regulatory reporting requirements
- PRA: consult on matching adjustment investment accelerator for life insurers

The FCA publications on firms’ treatment of vulnerable customers

Becky Critchley

FCA findings from review of treatment of vulnerable customers

- No update to current FCA vulnerable customer guidance (FG21/1)
- No new requirements for firms around the treatment of vulnerable customers
- However, new examples of good and poor practice are provided against the four Consumer Duty outcomes



Key general areas of good practice vs areas for improvement

Area of good practice

- Effective use of data to monitor outcomes
- Offering flexible and tailored consumer support
- Clear and timely communications
- Incorporating consumers' experiences into product and service development processes

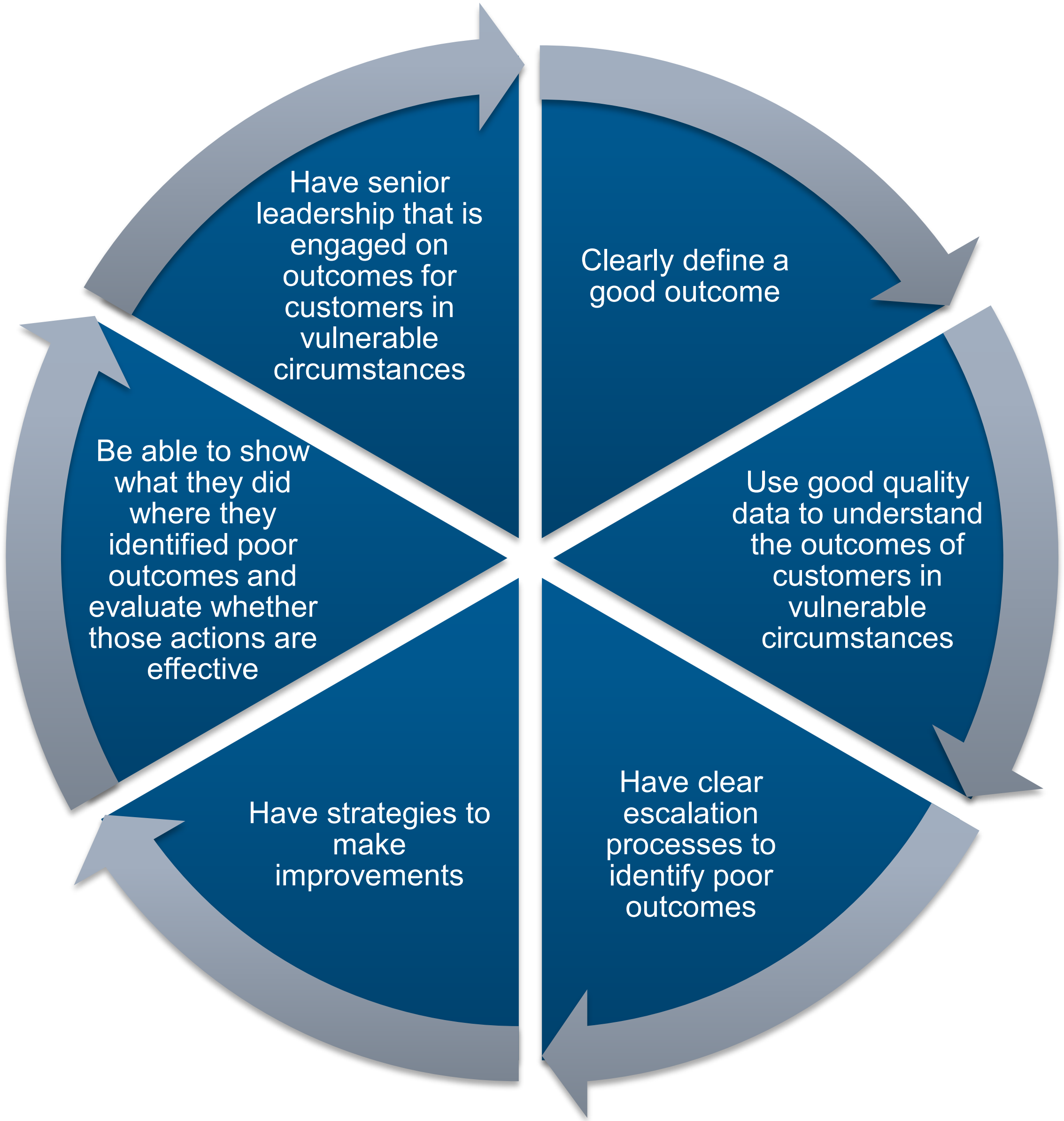
Areas for improvement

- Ineffective outcomes monitoring
- Failure to give appropriate support
- Failure to communicate clearly to meet the needs of customers in vulnerable circumstances
- Lack of tailored training and embedding consumers' needs into product and service design

FCA findings from review of treatment of vulnerable customers

- FCA findings are set out against the following key expectations and requirements under the Consumer Duty:
  - Governance and outcomes monitoring
  - Consumer support
  - Consumer understanding
  - Products and services

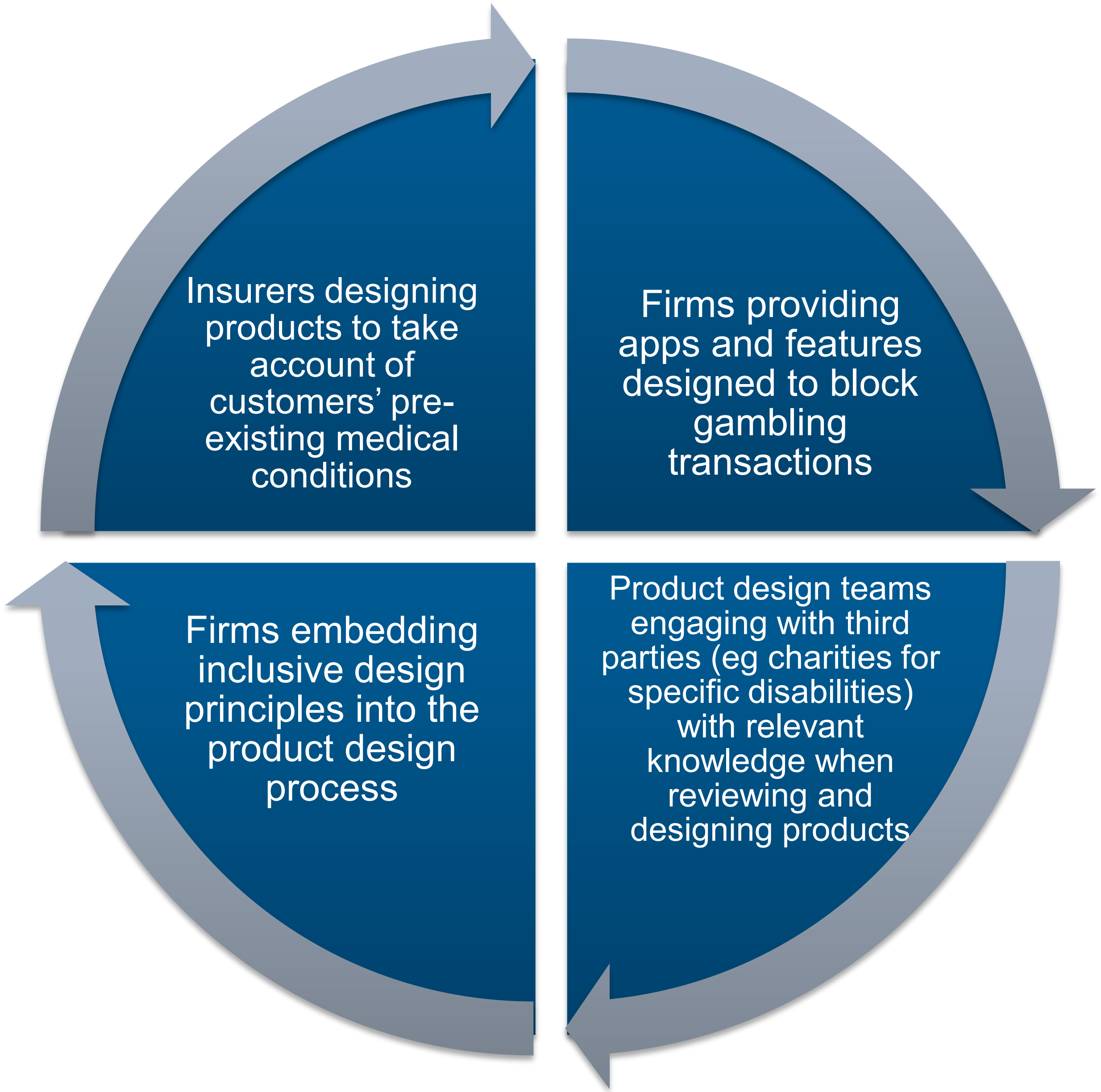
Governance and Outcomes Monitoring

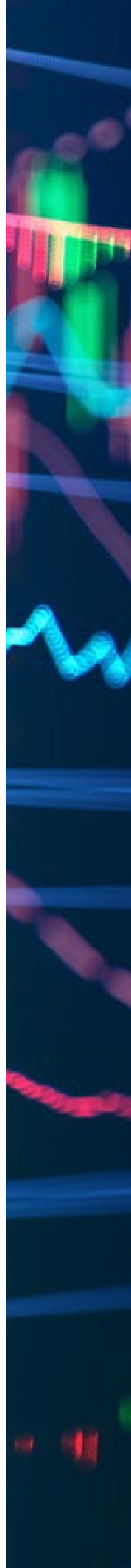


Consumer Support

Consumer Understanding

Products and Services





Next steps for firms

- Re-visit vulnerability frameworks
- Gap analysis against the areas of good practice
- Identify any similarities with areas for improvement
- Pay particular attention to MI and what else existing data can demonstrate
- Ensure specific good and poor outcomes for each product or service are captured
- Be aware that the FCA will take account of outcomes for customers in vulnerable circumstances across future FCA work on Consumer Duty

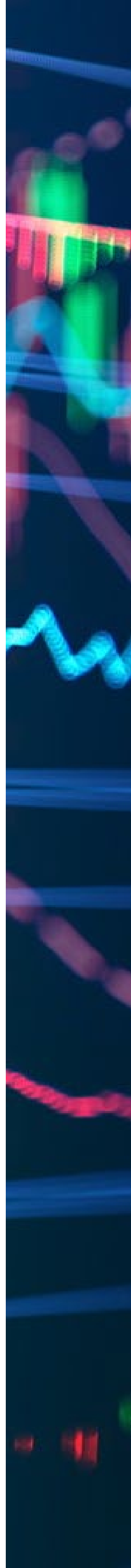
The findings from the FCA's review of private market valuation practices

Jonathan Ritson-Candler

FCA publishes results of multi-firm review

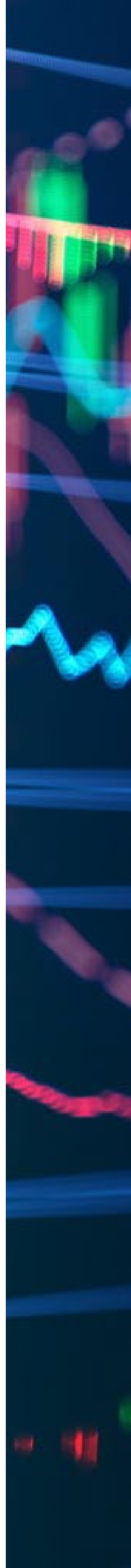
- On 5 March 2025, the FCA published a webpage setting out the results of its multi-firm review of the valuation processes implemented by UK regulated firms for private market assets
- FCA's review included UK firms:
    - Managing funds (e.g., UK AIFMs, but not UCITS managers); and/or
    - Providing portfolio management and/or advisory services to firms,

  For private equity, venture capital, private debt and infrastructure assets that are not public market assets
- Review focussed on the robustness of firms' valuation processes and governance, given that valuing private market assets necessarily involves a judgement-based approach
- FCA did not independently validate firms' fair value assessments for specific assets
- Firms are expected to use the findings of the review, particularly the examples of good practice and actions for firms, to benchmark their practices



Governance of valuation process and functional independence

- FCA demonstrates preference for specific valuation committees that are clearly accountable for valuation and have robust oversight of the valuation process
  - Ensure there are comprehensive meeting minutes to reflect this
- Full-scope UK AIFMs that perform valuations internally, must ensure that the valuations function is functionally independent
  - FCA expects firms to assess whether they have sufficient independence in their valuation functions and the voting membership of the valuations committee to ensure effective control and expert challenge
  - Namely, staff with individuals that are not otherwise involved in portfolio management, with valuation expertise



Managing conflicts of interest

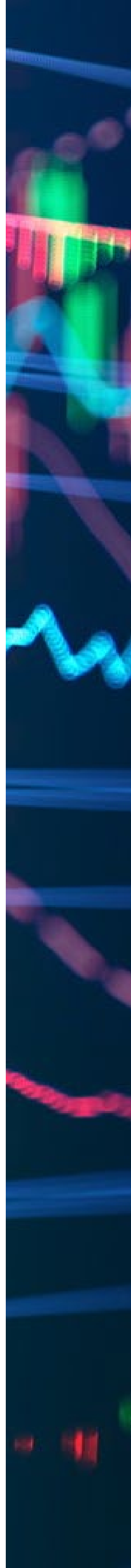
FCA identifies broad array of potential conflicts that can arise between a firm that is valuing private assets and its clients or investors, or between different groups of investors:

- **Investor fees**: conflicts can arise where the fees charged to investors are determined by refence to valuations, such as management fees being tied to the fund's NAV
- **Asset transfers**: conflicts can arise where the manager's valuation impacts the transfer price affecting buyers, sellers and remaining investors. FCA does not appear convinced that the transfer price is primarily determined by the price an incoming investor is willing to pay, in a vacuum without reference to the valuations
- **Redemptions & subscriptions**: the same issues arise where these are priced by reference to the fund's NAV
- **Secured borrowing**: conflict can arise where valuations could be inflated to attract greater / better borrowing or to avoid breaching an LTV covenant
- **Investor marketing**: when firms use unrealised performance of existing funds to support fundraising for new vehicles – that performance is based on the firm's valuations. FCA cites good practice as documenting this conflict and separating realised and unrealised investments in marketing materials, making clear unrealised gains are per the firm's internal valuations
- **Employee remuneration**: should not be directly linked to valuations. But firms to be aware of other linkages e.g., variable pay linked to NAV over a defined period of time

Valuation policies and procedures

FCA emphasises the importance of clear and consistent valuation policies and procedures and identifies examples of good practice:

- **Auditors:** the majority of sample firms stated external auditors typically reviewed violations for all assets and the FCA emphasises the benefit of having auditors involved in valuation committee meetings and rotating auditor firms to avoid conflicts
- **Backtesting:** comparing the value of a realised asset upon exit to the last valuation estimate to assess the accuracy and precision of the valuation process
- **Comprehensive valuation policies:** adherence to which can be readily tested
- **Frequency of valuations:** the FCA provides statistics by asset type as to the frequency of valuations – most common across asset types is quarterly
- **Ad hoc valuations:** implement a defined process (including qualitative and quantitative thresholds) for ad hoc valuations outside of the ordinary cycle
- **Disclosure to investors:** FCA has provided statistic of what information firms disclose to whom (*e.g.*, NAV, individual asset values, valuation policy etc.) – helpful to benchmark your firm and FCA asks firms to review and improve their disclosures
- **Valuation methodologies:** market v income approach
- **Third party valuation advisers:** use of independent third party – most typically to run full independent valuation

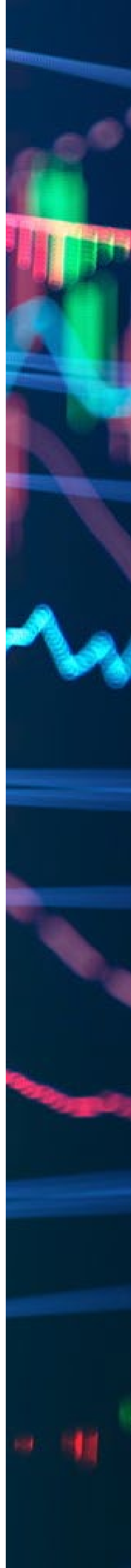


FCA asset management and alternatives portfolio Dear CEO letter

- Dear CEO letter published 26 February 2025, setting out the FCA's current supervision priorities
- Referred to in multi-firm review and focus on firms reviewing their conflicts of interest
- FCA will also consider as part of UK AIFMD review. FCA indicates it will engage with industry to "streamline regulatory requirements and collect data that is proportionate to our supervisory needs and cost-effective for firms"
- Firms should discuss with the Board, ExCom and SMFs and consider what steps, if any, are required to address risks in letter

FCA asset management and alternatives portfolio Dear CEO letter (cont.)

- FCA's supervisory priorities:
  - **Private markets**: cross refers to outcome of multi firm review. Also indicates a new, separate review will start this year into the conflicts of interest at firms managing private assets, including how firms three lines of defence manage conflicts
  - **Market integrity & disruption**: FCA will focus its surveillance on risk management, liquidity management and operational resilience (noting the 31 March 2025 deadline)
  - **Consumer outcomes**: the FCA is continuing the multi-firm review, cited in its 2024 interim portfolio letter, in relation to unit-linked funds – results are due to be published later in 2025. FCA will also commence a review into managed portfolio services and their compliance with the Consumer Duty
  - **Sustainable finance**: FCA will engage with firms to understand how they are implementing labelling, naming and marketing rules under SDR
  - **Financial crime and market abuse**: the FCA is concerned about the increased AML risk present with investments in private assets so has a supervisory focus on firms' AML and CTF and MAR systems and controls in private markets funds

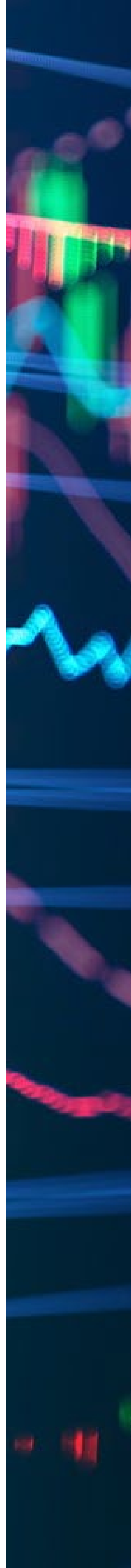


The EU’s Omnibus package – proposals to simplify the CSRD, CSDDD, and EU Taxonomy

Nicola Higgs

EU Omnibus package

- 26 February 2025: EU Omnibus Package released
- Response to concerns that compliance obligations have become unwieldy. As such, the Omnibus is said to align with the Commission's Competitiveness Compass commitment to deliver at least a 25% reduction in administrative burdens, in line with the recommendations from the Draghi Report
- Set of legislative proposals designed to reduce administrative burdens by amending a range of existing EU sustainability frameworks
    - The Corporate Sustainability Reporting Directive (CSRD)
    - The Corporate Sustainability Due Diligence Directive (CSDDD)
    - The EU Taxonomy
    - The Carbon Adjustment Border Adjustment Mechanism (CBAM)



CSRD state of play: pre-/post-Omnibus

Year	Companies required to report	First time application date	Omnibus proposals

2025	▪ Existing **NFRD companies**
	▪ **Issuers** that meet the definition of:
	  ▪ large undertaking +
	  ▪ > 500 employees
		Reporting in 2025
		Reporting on fiscal years beginning on or after 1 Jan 2024
			No specific proposals on timing.
			Companies with less than 1000 e'ees will fall outside scope of CSRD.

2026	▪ **Large undertakings** and **large groups**, which meet at least two of the following criteria
	  ▪ >250 employees or
	  ▪ €50M turnover, or
	  ▪ €25M total assets
		Reporting in 2026
		Reporting on fiscal years beginning on or after 1 Jan 2025
			Postpone the CSRD's application by two years to financial years on or after 1 January 2027.
			Companies with less than 1000 e'ees will fall outside scope of CSRD.

2027	▪ **Listed SMEs**	**Reporting in 2027 [+2 yrs]** Reporting on fiscal years beginning on or after 1 Jan 2026 Optional deferral of first-time application by 2 years	Postpone the CSRD's application by two years to financial years on or after 1 January 2028. The Detailed Directive will effectively remove Wave 3 from the scope of CSRD.
	▪ Certain small and non-complex institutions and captive insurance undertakings as defined in EU regulation	**Reporting in 2027** Reporting on fiscal years beginning on or after 1 Jan 2026	

2029	▪ **Global consolidated level reporting** for non-EU headquartered companies
	  ▪ €150M EU revenues +
	  ▪ at least one a. branch €50M+ in EU revenues, or b. EU-listed or "large" subsidiary
		Reporting in 2029
		Reporting on fiscal years beginning on or after 1 Jan 2028
			Raise threshold for non-EU groups - turnover in the EU above €450 million.
			No proposal to postpone timing.
			No proposed 1000 e'ee threshold for non-EU companies

CSRD state of play: post-Omnibus

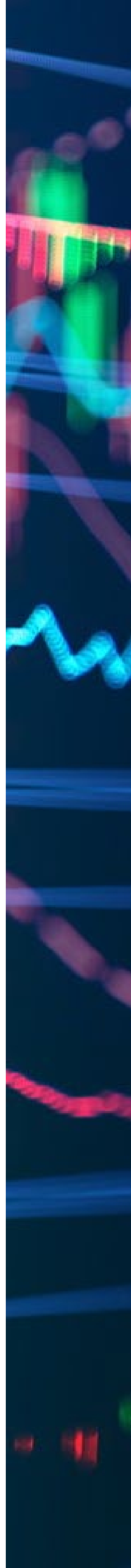
- Scope
  - Removal of approx. 80% of previously in-scope companies by applying the rules to EU companies or EU parents of groups that have:
    - 1,000+ employees
    - either: (a) a turnover above €50 million; or (b) a balance sheet total above €25 million
- ESRS
  - Revision and simplification of the European Sustainability Reporting Standards (ESRS). Discontinuation of sector-specific work
- Double materiality
  - Principle is retained (following rumours of a removal)
- Value chain cap
  - Designed to limit the extent of information requests that CSRD reporting companies may impose on smaller companies within their supply chains
- Assurance
  - Commission no longer has the option to move from “limited” to “reasonable” assurance

CSDDD

- Timing & scope
  - Delay the initial application of CSDDD by one year, to July 2028 for larger companies:
    - EU companies with more than 3,000 employees and more than €900 million net worldwide turnover
    - Non-EU companies with more than €900 million net turnover in the EU
  - The position remains unchanged for all remaining EU and non-EU companies under CSDDD, both in terms of scoping criteria and timing
- Due diligence
  - Limited to the company's own operations and direct (tier 1) business partners. Companies would only be required to look beyond tier 1 if they possess "plausible information" that suggests an adverse impact on environmental or human rights matters beyond tier 1
- Civil liability & penalties:
  - Eliminate the uniform EU-level civil liability, allowing Member States to maintain or adapt their own liability regimes
  - Remove references to minimum caps on financial penalties, provided that penalties remain effective, proportionate, and dissuasive

EU Taxonomy

- Scope
  - Proposal to make Taxonomy reporting voluntary for certain CSRD companies by creating an “opt-in” regime. Under this proposal, CSRD in-scope companies with a net turnover not exceeding €450 million will only be required to disclose Taxonomy information to the extent they claim their activities are aligned or partially aligned with the EU Taxonomy
- Delegated acts: Proposed Level 2 changes:
  - Simplified reporting templates, including a reduction of data points by nearly 70%
  - An exemption from assessing Taxonomy eligibility and alignment for economic activities that are not financially material (i.e., those not exceeding 10% of total turnover, CapEx, or OpEx)
  - Changes to the Green Asset Ratio (GAR) key performance indicators for credit institutions
  - A simplification of the “Do No Significant Harm” (DNSH) criteria (based on two options presented by the Commission)

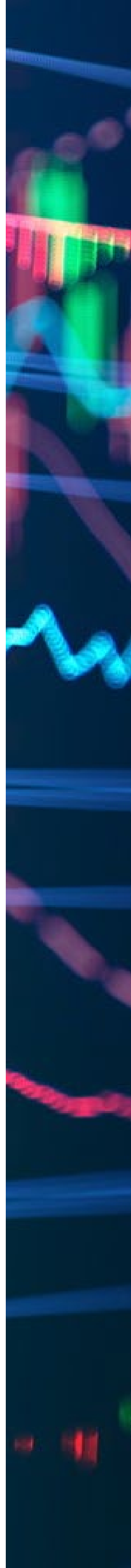


The regulators' plans to drop proposals on announcing enforcement investigations and on D&I

Anna James

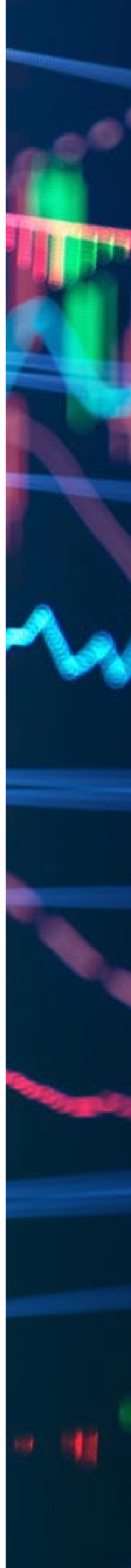
Naming and shaming – how not to regulate

- FCA publishes consultation paper – 27 February 2024
  - Proposed new approach to publicising enforcement investigations as part of FCA's plans to deliver "impactful deterrence"
  - Decision to publish on a case-by-case basis based on a "public interest test"
  - Significant criticism from industry and government
- FCA publishes revised proposals – 28 November 2024
  - FCA made a number of important revisions to the proposal in order to address criticisms. These included increasing the notice period given to firms prior to any announcement, and including both: (i) the impact of an announcement on the firm; and (ii) market ramifications, as part of the public interest test
  - Financial Services Regulation Committee remained unconvinced



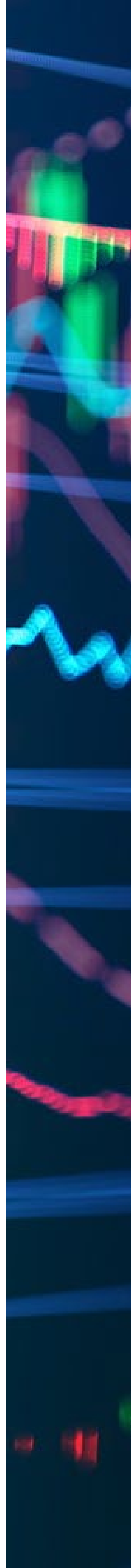
Naming and shaming – how not to regulate (cont.)

- FCA announcement – 12 March 2025
  - FCA will not be taking forward the main proposal to introduce a public interest test for announcing enforcement investigations – it will continue to use its existing “exceptional circumstances” test to determine if it should publicise investigations
  - FCA will still take forward certain aspects of the proposals that received broad support: (i) reactively confirming investigations that are officially announced by firms or other regulators; (ii) making public announcements in relation to the potentially unlawful activities of unregulated firms, and regulated firms operating outside the regulatory perimeter; and (iii) publishing greater detail of issues under investigation on an anonymous basis, perhaps via a regular bulletin such as *Enforcement Watch*



Diversity & Inclusion

- FCA and PRA consultations on D&I – papers published 25 September 2023
  - D&I strategy
  - Targets and monitoring
  - Reporting and disclosure
- “Sexism in the City” – Treasury Committee – report published 8 March 2024
  - Diversity and inclusion
  - Barriers facing women
  - Pay
  - Sexual harassment
- FCA/PRA response to the report
  - FCA and PRA announcements – 12 March 2025
  - The regulators will not be taking the D&I proposals forward
  - Avoids unnecessary costs and duplication with related initiatives (employment rights, gender action plans and disability and ethnicity pay gap reporting)
  - Fits better with government’s mandate for regulators to reduce regulatory burdens on firms
  - May revisit after new legislation has had time to bed in



Non-financial misconduct

- FCA announcement - 12 March 2025
  - The FCA will continue to prioritise work to tackle non-financial misconduct
  - FCA is proposing new guidance on how firms should (and how the regulator would) consider non-financial misconduct when assessing fitness and propriety or applying the Conduct Rules
  - Guidance due by the end of June 2025 – *“taking some further time to get this right”*
- FCA to ban Crispin Odey
  - FCA has decided to fine him £1.8m and ban him from the UK financial services industry
  - FCA’s action does not directly concern allegations of sexual misconduct, rather, it concerns Odey’s conduct in connection with a disciplinary process regarding such conduct
  - FCA considered his conduct demonstrated *“a clear lack of integrity and as such, Mr Odey breached ICR 1 and is not a fit and proper person to perform any function in relation to regulated activities”*
  - FCA noted that a *“failure to deal effectively with inappropriate behaviours in the workplace can lead to a culture where people feel unable to report concerns and have confidence that they will be independently and fairly assessed, and creates a risk that issues are not raised and improper conduct is not challenged. This has the potential to put consumers and markets at risk”*

Recent Thought Leadership

- FCA Updates on Growth and the Consumer Duty
- FCA Sets Out Findings From Review of Firms' Treatment of Vulnerable Customers
- FCA Publishes Findings on Private Market Valuation Practices
- Omnibus Package Released: EU Commission Proposes Amendments to Sustainability Obligations
- FCA and PRA Announce Intention to Drop Reform Proposals

Monthly London Webcast Materials

Each month the UK and European Financial Regulatory lawyers at Latham & Watkins host a presentation and discussion covering recent changes to financial services regulation.

VIEW

Financial Regulation Fundamentals: A Latham & Watkins Series

The Financial Regulatory associates at Latham & Watkins are pleased to invite you to join a series of webinars that will cover essential topics in financial services regulation, including recent developments and changes.

The sessions are designed as introductory courses to help attendees build a solid foundation and further enhance their understanding and skills in areas where they may have limited experience. We encourage you to extend this invitation to any colleagues who might find these sessions relevant and beneficial.

Click here to register

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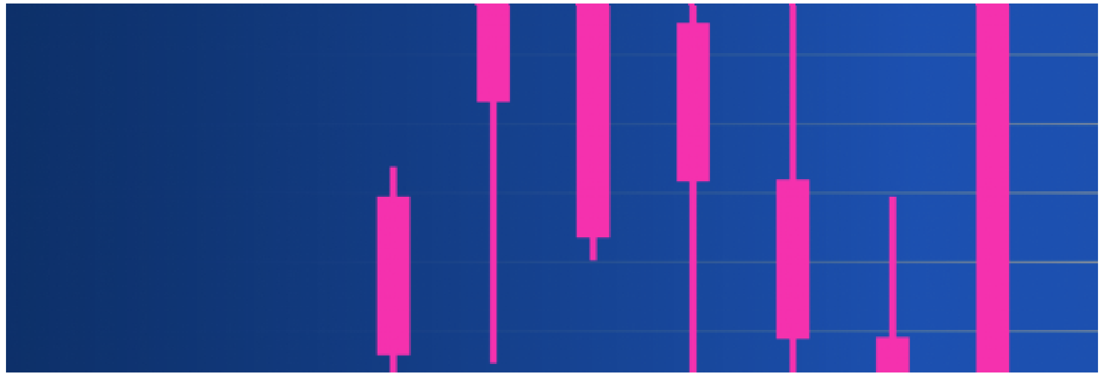
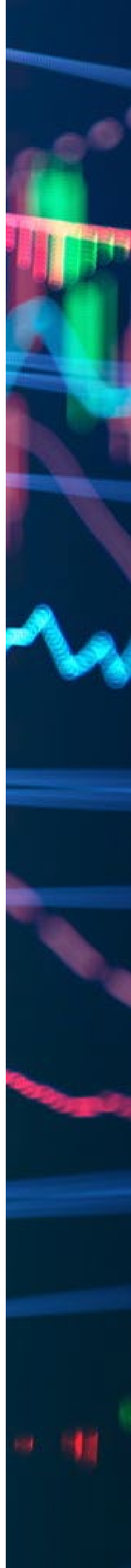


Financial Regulation Fundamentals: A Latham & Watkins Series

Please see below for dates | Noon – 12:45 p.m. GMT

Webcast Dates	Topic
Monday, 24 March	Regulatory Reform Agenda
Monday, 31 March	MiFID: The Fundamentals
Monday, 28 April	MAR Overview
Tuesday, 6 May	Senior Managers/ SMCR
Monday, 12 May	Consumer Duty
Monday, 19 May	Financial Promotions



10 Key Focus Areas for Financial Services Firms in 2025

In this publication and podcast series, we explore some of the core focus areas for UK-regulated financial services firms in the year ahead.

The Report

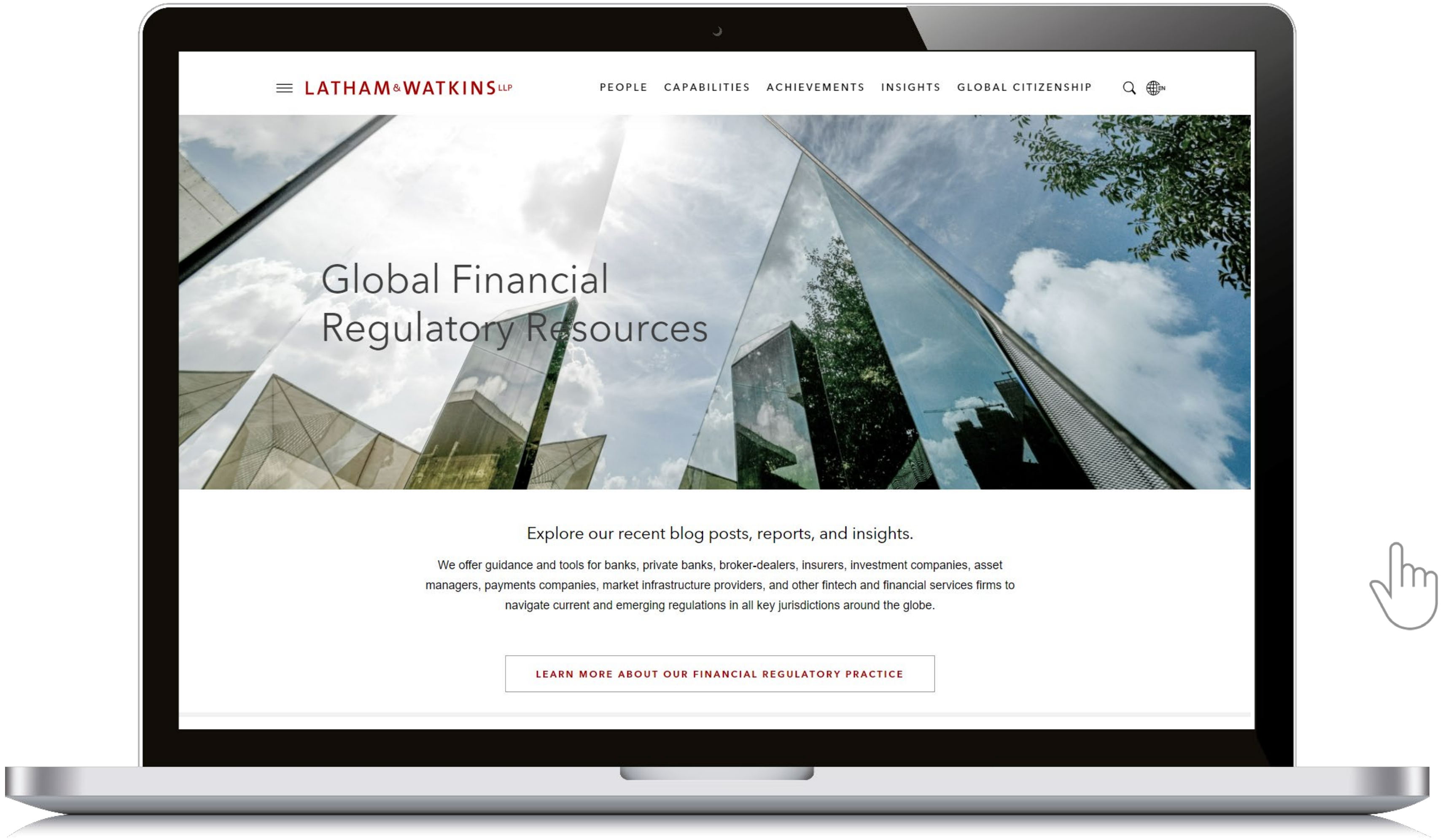
Click the laptop to read the report

Podcast Series

- UK FinReg Focus Areas in 2025: Wholesale Markets
  - We discuss what will likely appear on the reform agenda for wholesale markets in 2025, examining capital markets reforms, changes to the remuneration rules and SMCR, and ongoing work on repealing and restating MiFID II. Available to listen here.
- UK FinReg Focus Areas in 2025: Retail Markets
  - We discuss the key developing areas for retail markets in 2025, breaking down the difficult challenge of balancing risk-taking and growth with consumer protection, discussing what is next for the Consumer Duty, and tracking progress on reforms to the consumer credit and consumer investment regimes. Available to listen here.
- UK FinReg Focus Areas in 2025: Sectoral Trends
  - We discuss the key cross-sector trends for financial services firms in 2025, providing our thoughts on what firms need to be thinking about in relation to the use of AI, the continuing importance of ESG, and the regulatory focus on operational resilience. Available to listen here.

Click here to access all of the materials

Our Global Financial Regulatory Resources Page



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