

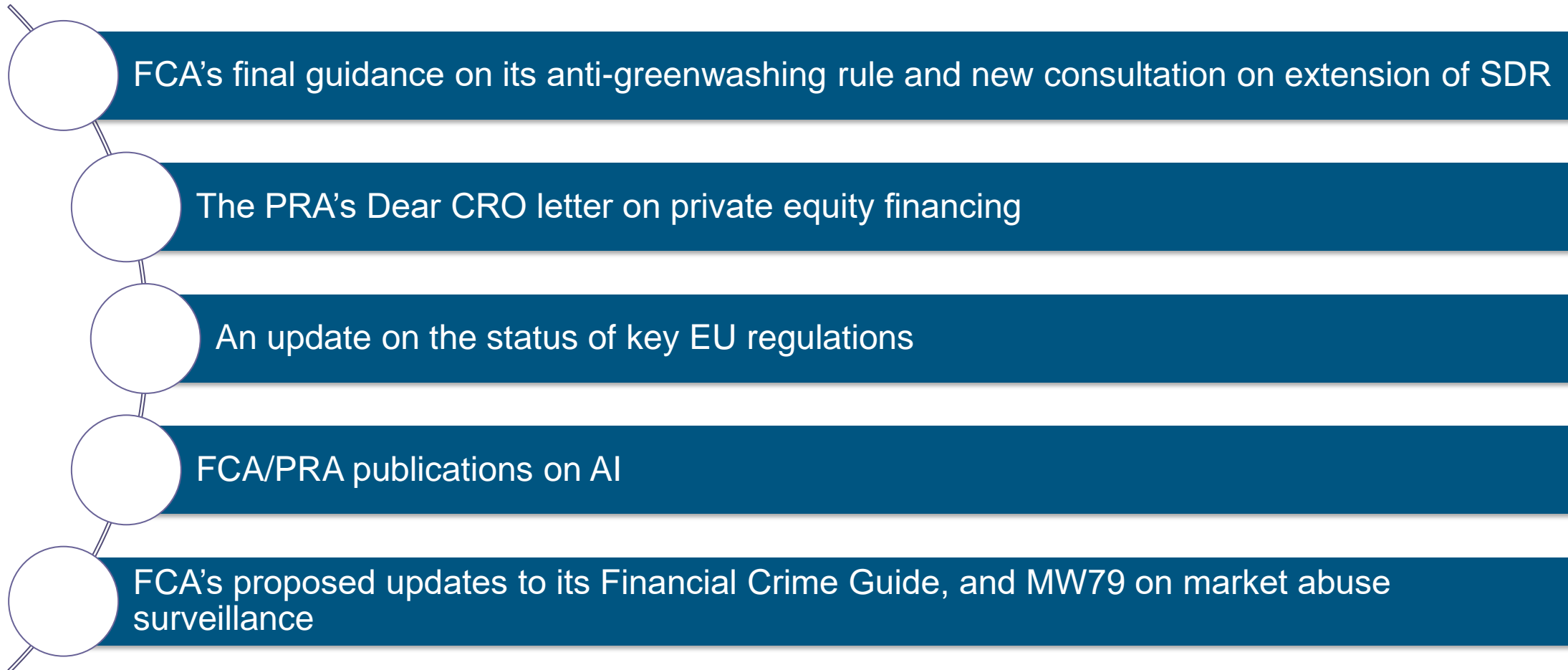
A blue-toned background image featuring a financial line chart with multiple data series and a grid. The chart shows various trends, including a sharp decline followed by a recovery and another peak.

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15 May 2024

Financial Regulation Monthly Breakfast Seminar

Overview



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The FCA's final guidance on its anti-greenwashing rule and consultation on extending the SDR and investment labelling regime to portfolio management

Ella McGinn

FCA's anti-greenwashing rule guidance (1)

- On 23 April 2024, FCA published its final guidance (FG23/4) on its new anti-greenwashing rule – comes into force on 31 May 2024
- Any reference made to the sustainability characteristics of financial products and services must be **consistent with the sustainability characteristics** of the product or service and be **fair, clear, and not misleading**
- Builds on existing “fair, clear and not misleading” requirements for financial products and services (e.g. Principle 7, COBS 4.2, CONC 3.3)
- Consistent with CMA and ASA guidance
- FCA may take supervisory or enforcement action where there is risk of consumer harm or where serious misconduct may have taken place

FCA's anti-greenwashing rule guidance (2)

- Final guidance closely follows the draft guidance – additional examples and clearer expectations on scope and interaction with other parts of the FCA Handbook – to be reviewed and added to over time
- FCA confirms anti-greenwashing rule applies when a firm:
 - < communicates with clients in the UK in relation to a product or service
 - < communicates a financial promotion (or approves a financial promotion for communication) to a person in the UK
- FCA clarifies that entity-level sustainability claims and disclosures fall under other rules and expectations but may be considered as part of the **‘representative picture’** in a decision-making process
- Finalised Guidance is principles-based so it can be applied across all sectors and audiences (e.g. professional vs retail)

FCA's anti-greenwashing rule guidance (3)

- FCA expects sustainability references to be:
 - < Correct and capable of being substantiated
 - < Clear and presented in a way that can be understood
 - < Complete – they should not omit or hide important information and should consider the full life cycle of the product or service
 - < Comparisons to other products or services are fair and meaningful

FCA's anti-greenwashing rule guidance (4)

- New examples of good practice:
 - < Greenwashing risk associated with supporting high-emitting companies seeking to reduce carbon emissions – independently verified transition planning metrics and regular reporting
 - < Claims about social characteristics – clear and robust standard for selection of investee companies, including criteria that align with international standards, monitoring, and addressing issues that arise, all clearly disclosed
- Reliance on third parties for data and information
 - < FCA states firms should consider the appropriateness of relying on data, research, analytical resources and other information provided by third parties to substantiate the claims they are making
 - < Limitations of any information, data or metrics used in a claim should be clearly and prominently disclosed

FCA CP24/8 – Extending SDR to portfolio management (1)

- On 23 April 2024, FCA published its consultation on extending the SDR and investment labelling regime to portfolio management (CP24/8)
- Captures firms providing all forms of portfolio management services from an establishment maintained by the portfolio manager in the UK
- Excludes services provided to clients overseas, or a client that is a fund or AIFM or management company for or on behalf of a fund
- Portfolio management is defined as:
 - < managing investments, or
 - < private equity or other private market activities consisting of either advising on investments or managing investments on a recurring or ongoing basis in connection with an arrangement, the predominant purpose of which is investment in unlisted securities

FCA CP24/8 – Extending SDR to portfolio management (2)

- Four voluntary investment labels, naming and marketing rules for products and services with sustainability characteristics (which do not qualify for a label), disclosure requirements, and requirements for distributors

UK portfolio manager's client base	Investment labels and associated disclosures	Naming and marketing rules, and associated disclosures	Entity-level disclosures	Anti-greenwashing rule
UK retail clients	Available for use – firms using a label must produce the associated disclosures	Apply	Apply	Applies
Professional clients	Available for use – firms using a label must produce the associated disclosures	Do not apply	Apply	Applies

FCA CP24/8 – Extending SDR to portfolio management (3)

- **Investment labels:** Sustainability Focus, Sustainability Improvers, Sustainability Impact, and Sustainability Mixed Goals
 - < Meet general and specific criteria relating to label on an ongoing basis, and comply with the associated disclosure requirements and firm-level requirements
 - < 70% of the gross value of the portfolio invested in accordance with the sustainability objective
 - < Table of each requirement's application to portfolio managers sets out FCA expectations
 - < Where a portfolio invests in assets that are either UK and/or overseas funds, portfolio manager will need to assess and ensure labelling criteria met for the overall portfolio
 - < Portfolio managers still need to diligence funds with a label

FCA CP24/8 – Extending SDR to portfolio management (4)

- **Naming and marketing rules** would apply where portfolio management offerings marketed to retail investors use sustainability-related terms
 - < Portfolio management offering must have sustainability characteristics and its name must accurately reflect those characteristics
 - < Terms ‘sustainable’, ‘sustainability’, ‘impact’ and any variation of those terms must not be used
 - < Same types of disclosures as required for labelled products
 - < Statement to clarify that the offering does not have a label and the reason why – publish or provide this information to the retail investor
 - < Portfolio manager must not imply that the whole portfolio is ‘sustainable’ where a portfolio does not use label but invests in some funds that have labels
 - < Ensure that financial promotions relating to an offering are consistent with label and associated disclosures

FCA CP24/8 – Extending SDR to portfolio management (5)

- **Disclosure requirements** – same types of disclosures as for asset managers:
 - < Consumer-facing and product-level disclosures for firms using investment labels or in scope of the naming and marketing rules
 - < Entity-level disclosures for all firms with over £5 billion in AUM
- **Distributor requirements** – same as for asset managers
 - < Distributors (e.g. financial advisers, platforms) must communicate labels used for portfolio management offerings and provide access to associated consumer-facing disclosures to retail investors, either on a relevant digital medium for the product or using the channel they would ordinarily use to communicate information

FCA CP24/8 – Extending SDR to portfolio management (6)

- Consultation closes on 14 June 2024
- FCA plans to publish final rules in the second half of 2024 and align most of the commencement dates with the regime for asset managers:

Measure	Date
Investment labels available for use	2 December 2024
Naming and marketing rules apply	2 December 2024
Deadline for first ongoing product-level disclosures	2 December 2025
Entity-level disclosures required for firms with AUM above £50 billion	2 December 2025
Entity-level disclosures required for firms with AUM above £5 billion	2 December 2026



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The PRA's Dear CRO letter on its thematic review of
private equity related financing activities
Nicola Higgs

Banks offering private equity financing (1)

- 23 April 2024: PRA issued a Dear CRO (SMF 4) Letter noting:
 - < New forms of PE financing are emerging:
 1. NAV based loans secured against PE fund assets
 2. Facilities backed by LP interests
 - < Notable structural changes within markets that support banks' existing and longstanding base of PE related financing businesses
 - Growth of private credit markets
 - A degree of consolidation in banks that provide subscription financing credit facilities to PE funds globally
- Banks are typically exposed to multiple forms of counterparty and credit risks linked to the PE sector. On a combined basis, these exposures are often significant and have complex interlinkages

Banks offering private equity financing (2)

- The Dear CEO Letter follows a thematic review focused on the adequacy of banks' risk management frameworks that govern their private equity linked financing businesses and related derivatives exposures
- By 30 August 2024: Banks need to conduct a gap analysis of their risk management against certain thematic trends:
 - < Data aggregation and a holistic approach to risk management
 - Overarching risk management framework for PE sector related exposures
 - Exposures linked to individual financial sponsors
 - < Credit and counterparty risk interlinkages
 - Overlapping financial claims and collateral exposures
 - < Stress testing
 - < Board level reporting

Other areas of regulatory scrutiny of PE sector

- Change of control approvals:
 - < Increased regulatory scrutiny of PE structures in the context of financial services acquisitions (inc. in the case of small acquisitions at the port co level)
 - < Examples of regulatory information requests include:
 - Upper Tier / UBOs
 - Leverage
 - Consolidation
 - Funding commitments



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An update on the status of key EU financial services files ahead of the EU Parliamentary elections, including the EU Listing Act, CRD VI, and the Retail Investment Strategy
Rob Moulton

Upcoming EU elections

- There has been a push to finalise many files prior to the European Parliamentary elections in June
- The Parliament has approved a number of key files in recent months, including at its final Plenary session in April
- These changes are EU-specific and will not necessarily be replicated in the UK – therefore they represent key areas of actual and potential regulatory divergence
- For files that have not been finalised, the new Parliament may choose to take a new approach and adopt a different negotiating mandate

EU revisions to key financial services files (1)

Measure	Key Points	Likely Timing
Revisions to MiFID II / MiFIR	<ul style="list-style-type: none"> ▪ Provides the framework for the emergence of an EU consolidated tape ▪ New general ban on PFOF ▪ Replacing the DVC with a new single volume cap, using an EU-wide threshold of 7% ▪ Amendments to the SI regime and introduction of designated publishing entity regime ▪ Changes to the scope of the transaction reporting regime ▪ Amendments to the STO and DTO 	<p>Final text adopted and published in the Official Journal.</p> <p>Directive has transposition deadline of 29 September 2025. Regulation took effect on 28 March 2024, although some provisions are subject to transitional arrangements.</p>
EU Listing Act (changes to MiFID II, MAR, and the Prospectus Regulation)	<ul style="list-style-type: none"> ▪ Changes to the EU Prospectus Regulation, including changes to the threshold for producing a prospectus, changes to format and content requirements, introducing new types of prospectus, and changes to the equivalence regime for third-country prospectuses ▪ Changes to the MiFID II research unbundling rules ▪ Various amendments to MAR, including changes to the buy-back, market sounding, and insider list regimes, clarification of the disclosure requirements for listed issuers in relation to a protracted process, and changes to the provisions on PDMRs 	<p>Final texts adopted and to be published in the Official Journal.</p> <p>MiFID research changes will apply 18 months plus one day from entry into force.</p> <p>Some prospectus regime and MAR changes will apply immediately upon entry into force, while others will apply 15 or 18 months later.</p>

EU revisions to key financial services files (2)

Measure	Key Points	Likely Timing
EMIR 3	<ul style="list-style-type: none">▪ New requirement for parties subject to the clearing obligation to have an active account with an EU CCP▪ Requirement to inform clients about the option to clear derivatives contracts at an EU CCP▪ Additional reporting requirements	Final approval expected to take place in autumn 2024, with publication in the Official Journal following. Will apply from the date of entry into force (with some exceptions).
CRR III / CRD VI	<ul style="list-style-type: none">▪ Implement outstanding elements of the Basel III framework▪ Additional rules on ESG risks▪ New provisions on the assessment of candidates for banks' boards▪ New framework for third-country branches, including new requirements for branches of third-country banks to apply for authorisation as a branch in the EU	<p>Final texts adopted and to be published in the Official Journal.</p> <p>Regulation will apply from 1 January 2025 (with some exceptions).</p> <p>Directive has an 18-month and one day transposition period, with a further 12-month transitional period for authorisation applications.</p>

EU revisions to key financial services files (3)

Measure	Key Points	Likely Timing
AIFMD II	<ul style="list-style-type: none"> ▪ New loan origination regime ▪ Extension to scope of permitted activities ▪ Changes to rules on depositaries and delegation ▪ Extension to rules on liquidity risk management for open-ended funds ▪ Additional disclosure and reporting requirements 	<p>Final text adopted and published in the Official Journal.</p> <p>Transposition deadline of 16 April 2026.</p>
Anti-money laundering and countering the financing of terrorism legislative package	<ul style="list-style-type: none"> ▪ Establishing a new European Anti-Money Laundering Authority (AMLA) ▪ New Rulebook Regulation to harmonise AML/CTF rules across the EU ▪ MLD6 to replace the existing MLD and update and supplement various elements 	<p>Final texts adopted and to be published in the Official Journal.</p> <p>The AMLA Regulation will apply from 1 July 2025 (with some exceptions).</p> <p>The Rulebook Regulation will apply 36 months from the date of entry into force (with some exceptions).</p> <p>MLD6 will have a transposition deadline 36 months from the date of entry into force (with some exceptions).</p>

EU revisions to key financial services files (4)

Measure	Key Points	Likely Timing
ESG Ratings Regulation	<ul style="list-style-type: none">▪ New rules to regulate the provision of ESG ratings in the EU▪ Will capture third-country ESG ratings providers, but only if they actively distribute their ESG ratings into the EU	Final approval expected to take place in autumn 2024, with publication in the Official Journal following. Will apply 18 months after entry into force.
CSDDD	<ul style="list-style-type: none">▪ Will require companies to conduct due diligence to identify and assess environmental and human rights issues across their value chain, and to take steps to prevent and eliminate them▪ Will apply to EU companies with more than 1,000 employees on average and net worldwide turnover above €450 million, and non-EU companies with net turnover above €450 million in the EU▪ Downstream rules will not apply to financial undertakings	Likely to enter into force in autumn 2024, with first application date for the largest companies three years thereafter (2027). CSDDD will apply on a staggered basis. The Commission must review the inclusion of financial undertakings and submit a report no later than two years after entry into force.

EU revisions to key financial services files (5)

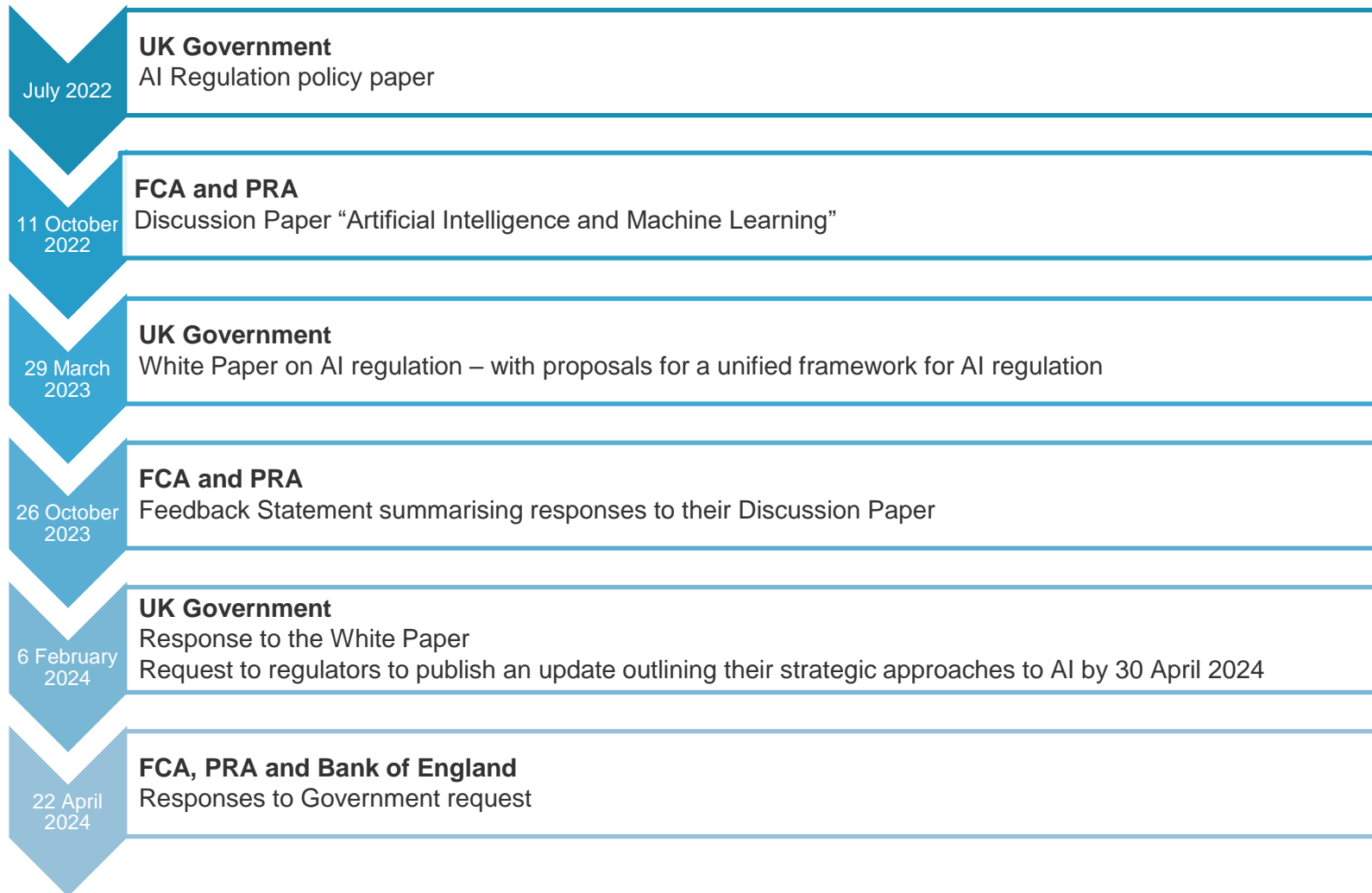
Measure	Key Points	Likely Timing
Retail Investment Strategy (changes to MiFID II, PRIIPs, and other sectoral legislation)	<ul style="list-style-type: none"> ▪ Changes to the inducements regime ▪ Amendments to the product governance regime to include a new “value for money” concept ▪ Changes to the rules on costs and charges ▪ New financial promotions-type regime for marketing communications ▪ Tightening rules on suitability and appropriateness ▪ Proposed changes to the PRIIPs KID 	<p>Parliament has yet to adopt its formal negotiating position; this file will be carried over to the new Parliament in the autumn.</p>
Crisis Management Deposit Insurance Review (CMDI) (changes to BRRD, SRMR, and DGSD)	<ul style="list-style-type: none"> ▪ Resolution framework to apply to any bank, regardless of its size ▪ Modification to the ranking of creditors to make deposit guarantee schemes and the single resolution fund more accessible and limit the use of public support ▪ Expansion of depositor protection coverage to include temporary high deposits resulting from certain life events 	<p>Parliament has agreed its negotiating position and the file will be followed up by the new Parliament after the elections. However, the new Parliament will be free to draw up a new negotiating mandate.</p>
EU Benchmarks Regulation	<ul style="list-style-type: none"> ▪ Reduction in scope to focus on critical benchmarks, significant benchmarks, EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks, and certain commodity benchmarks ▪ Other benchmarks would be subject to a voluntary supervision regime 	<p>Parliament has agreed its negotiating position and the file will be followed up by the new Parliament after the elections. However, the new Parliament will be free to draw up a new negotiating mandate.</p>



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The FCA and PRA publications on their
strategic approaches to AI
Becky Critchley

Recent Timeline



Key points from FCA and PRA April 2024 responses (1)

- FCA maps key elements of the current framework against the government's five principles for AI regulation
- No new sector-specific AI regulation, yet
- Further market-wide, cross-sector diagnostic work

Key points from FCA and PRA April 2024 responses (2)

- FCA will consider ‘adaptations’ to the regulatory framework, particularly in relation to:
 - < Operational resilience
 - < Outsourcing
 - < Critical third parties
- PRA will consider whether clarification on the following areas would be helpful:
 - < Data management
 - < Model risk management
 - < Governance
 - < Operational resilience and third-party risks
 - < Regulators’ own use of AI
- Understanding the impact on financial stability

FPC speech – AI and financial stability

- Risks associated with ‘Deep Learning’
- Three areas should be focused on to ensure that the behaviour of any future algorithms are constrained and controlled:
 - < Training, monitoring and control
 - < Alignment with regulation
 - < Stress testing

What should firms do? (1)

- Firms must be able explain their use of AI to their regulators
- Key to this is explaining how risks associated with the deployment of AI have been identified, assessed and managed

What should firms do? (2)

- How?
 - < Understand, and be able to explain to the regulators, how AI is being used
 - < Understand how legal and regulatory obligations interact with AI use
 - < Risk assessments and ratings
 - < War gaming
 - < Data protection
 - < Systems and controls and governance:
 - AI use register
 - AI policy
 - Expertise
 - Oversight
 - Senior Management and Committee consideration



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The FCA's proposed updates to its
Financial Crime Guide and Market Watch 79
on market abuse surveillance
Jonathan Ritson-Candler

FCA consults on updates to Financial Crime Guide

- On 25 April, FCA published CP24/9, consulting on updates to its Financial Crime Guide (FCG) to ensure it remains clear and reflects its most relevant and recent findings
- Open for feedback until 27 June 2024
- Proposes amendments to the following sections:
 - < Sanctions: updated to reflect already published findings from September 2023 following work done to assess firms' sanctions systems and controls after Russia's invasion of Ukraine
 - < Proliferation financing: firms must identify and assess risks of proliferation financing and FCG updated to reflect this throughout
 - < Transaction monitoring: guidance on using automated monitoring systems

FCA consults on updates to Financial Crime Guide (cont.)

- Proposes amendments to the following sections:
 - < Cryptoassets: update FCG to make clear that firms registered with the FCA for AML purposes also comply with the FCG (including updated travel rule requirements for identifying transferees and transferors of cryptoassets)
 - < Consumer Duty: link and remind firms to consider good outcomes for consumers
 - < Consequential changes: refreshed links, removal of references to EU sources / regulations, updated examples of good and poor practice

European Parliament adopts proposed MLD6 package

- On 24 April 2024, the European Parliament (EP) voted to adopt the proposed MLD6 package comprised of:
 - < Regulation establishing pan-EU AML and CTF authority (AMLA)
 - < A single EU AML and CTF rulebook by way of:
 - AML Regulation: directly applicable, will be supplemented by RTS which AMLA will be responsible for drafting. Changes focused on greater level of harmonisation including in relation to CDD, internal policies and procedures, SARs etc.
 - AML Directive: will repeal and replace MLD4, complements AML Regulation. Contains provisions on the responsibilities and powers of NCAs, sets out rules on establishing and granting access to UBO and bank account registers. Will require Member State implementation
 - < Recast Wire Transfer Regulation: primarily updated to apply the same standards of traceability to transfers in cryptoassets
- Not a maximum harmonisation package meaning MS can still goldplate

European Parliament adopts proposed MLD6 package (cont.)

- Next step is for Council of the EU to formally adopt the legislation before it is then published in the Official Journal (expected this summer) before entry into force and application:

Legislation	Entry into force	Application
AMLA Regulation	7 days after publication in OJ	1 July 2025 (AMLA will start operating, based in Frankfurt) Subject to certain articles which will apply from date of entry into force (1, 4, 49, 53-55, 57-66, 68-71, 100, 101 and 107) (e.g., establishing AMLA, giving it authority to draft RTS, ITS etc.) and 103 (amendments to ESAs Reg) which will apply from 31 December 2025
MLD6	20 days after publication in OJ	Member States will have 36 months from date of entry into force to transpose MLD6. Subject to certain articles which must be transposed sooner i.e.,: 12 months for Article 74 (amending MLD4 to enable easier pan-EU access to UBO registers), 24 months for Articles 11 to 13 and 15 (access to connected UBO registers), and 60 months for Article 18 (access to property ownership registers) MLD4 repealed 36 months from MLD6's entry into force
MLR	20 days after publication in OJ	36 months from date of entry into force Except in relation to football agents and professional football clubs, to which it shall apply 60 months from the date of entry into force
RWTR	Already published in OJ	Will apply from 30 December 2024

European Parliament adopts proposed MLD6 package (cont.)

- Key headlines:

- < Will be a pan-EU AML and CTF supervisory and enforcement authority, directly supervising the EU firms most at risk of being utilised for money laundering and/or terrorist financing
- < Increased access to new registers (interconnected UBO registers showing both current position and going back 5 years)
- < CDD rules to apply to football clubs and agents from 2029
- < EU-wide cap on cash transactions of €10,000
- < 3rd country ownership of companies / trusts that own EU real estate, to register and disclose UBO (similar to UK Register of Overseas Entities requirements)
- < Increased rules around CDD when trading in luxury goods valued at €250,000 for cars, €7.5m for planes and boats – filing with NCA and potential inclusion in beneficial ownership registers
- < Investments in football clubs and transfers of players subject to CDD

Market Watch 79

- Focuses solely on market abuse surveillance
- Reminds firms to have effective and proportionate market abuse monitoring and surveillance systems and controls, tailored to their business
- FCA has observed issues with:
 - < Faulty implementation
 - < Introduction of bugs when making other changes or updates
 - < All required data not being supplied to systems
- Resulting in examples of:
 - < Segments of business sent to a particular exchange not being monitored
 - < Inconsistent alerts
 - < Missing alerts

Market Watch 79 (cont.)

- Provides examples of poor practice:
 - < Firm failing to link news feed data stream to monitoring system looking for insider dealing which resulted in no alerts being generated
 - < Firm only realised following enquiry from FCA about some suspicious activity and the lack of a STOR
 - < Another firm made a mistake in its in-house solution code where it needed either a client or a prop trade in an instrument that day to detect potential insider dealing. Fine for liquid instruments, problematic for less liquid instruments. Issue was compounded by the fact the system was generating good alerts leading to prolonged period of it going undetected
 - < A firm offered direct market access to a client – by way of direct connectivity to the trading venue. When implementing its third-party monitoring solution, it understood this private order feed had been included but it had not

Market Watch 79 (cont.)

- FCA suggests firms consider its observations in MW79 to check their approach to reviewing surveillance systems:
 - < Check data governance and what steps are being taken to ensure all required data is being input and that all data is accurate and comprehensive
 - < Should model testing involve parameter calibration (venues, actors, securities etc.), logic, coding or data or a combination?
 - < Frequency of testing
 - < Internal approvals, timing and steps required for testing and changes – are they impending required updates?

Recent Thought Leadership



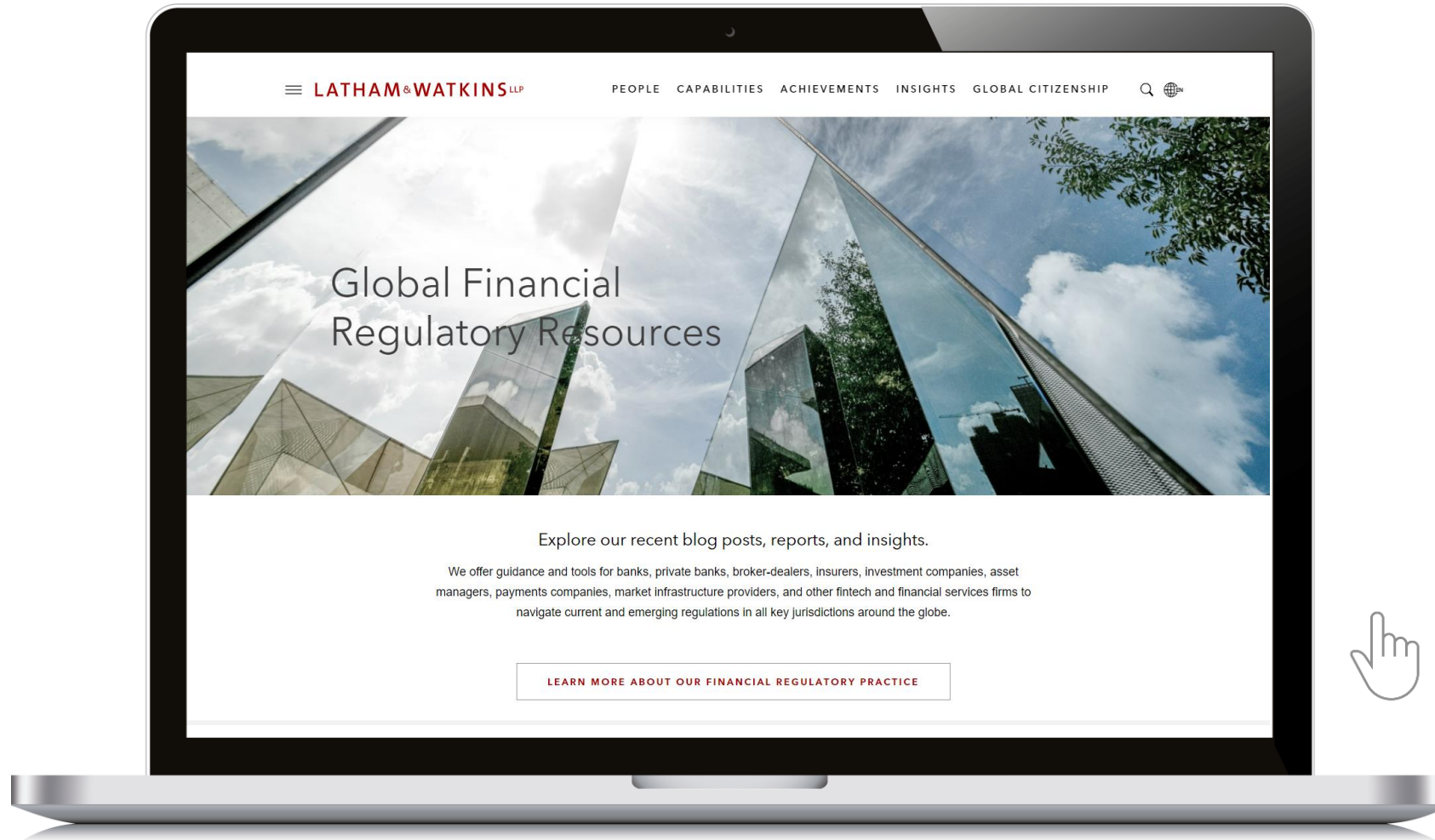
Monthly London Webcast Materials

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

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- [FCA Publishes Final Guidance on Its Anti-Greenwashing Rule](#)
- [ISDA Future Leaders in Derivatives Publishes White Paper on Generative AI](#)
- [FCA and PRA Publish Final Securitisation Rules: Key Points](#)

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