

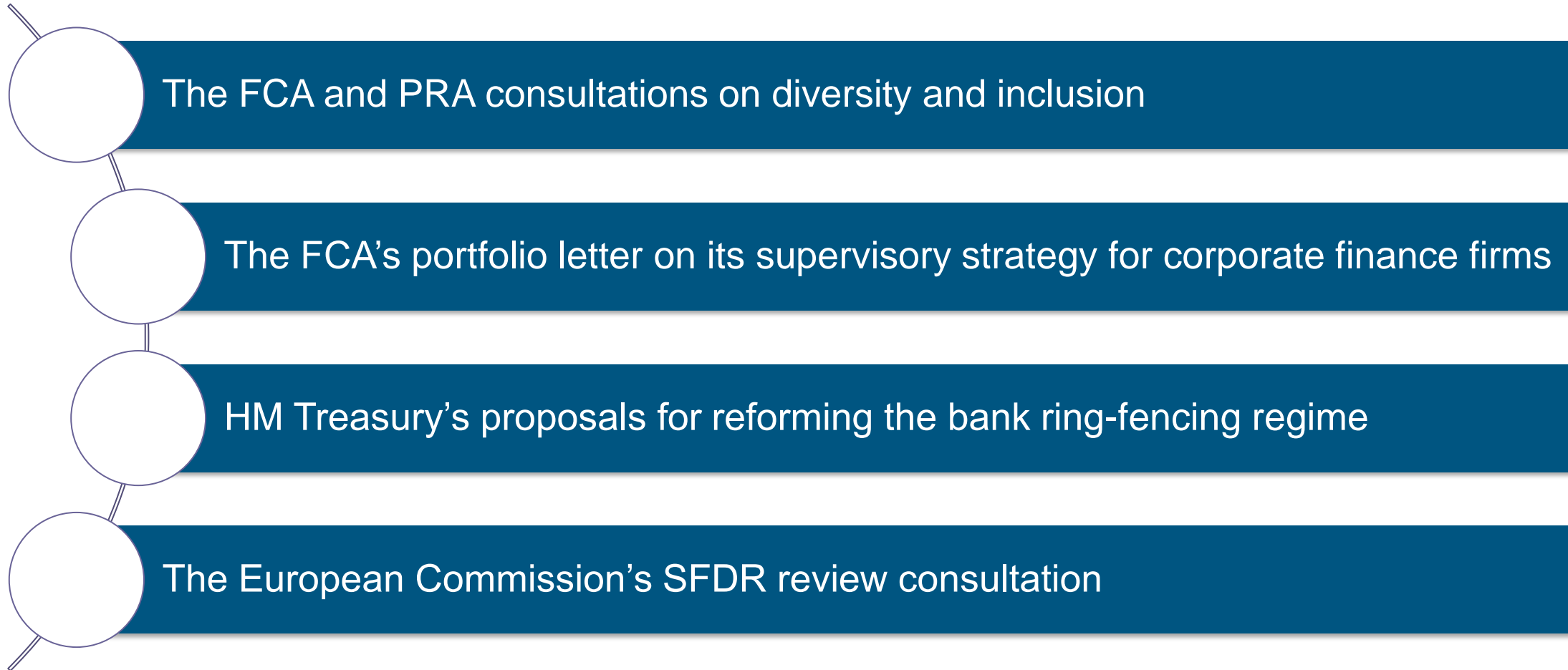
A blue-toned background image featuring a financial line chart with multiple data series and a grid. The chart shows various trends, including a sharp decline followed by a recovery and another decline.

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11 October 2023

Financial Regulation Monthly Breakfast Seminar

Overview



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The FCA and PRA consultations on diversity and
inclusion
Ella McGinn

Diversity & Inclusion (“D&I”) Consultation Papers

- The FCA and the PRA have published separate (but related) consultations which aim to formalise how firms approach D&I
- Some measures overlap between the regulators, whilst others are separate – dual-regulated firms must read both papers
- There are some measures which apply to all firms, but some of the more granular requirements apply only to larger firms
- The regulators hope to (i) create healthier firm cultures; (ii) reduce groupthink; (iii) unlock new talent; and (iv) foster a greater understanding of, and provision for, diverse consumer needs

Proposed D&I requirements – scope

- Firms with 251 or more employees (larger firms) (and in some cases all dual-regulated firms subject to the CRR or Solvency II parts of the PRA Handbook) will need to comply with new D&I requirements
 - Average number of employees over a rolling three-year period as at a specified annual reference date
- Limited Scope SMCR Firms excluded
- Requirements relate to strategy, targets and monitoring, reporting, disclosure, and governance
- Expectation that firms that fall below the larger firm threshold may still comply with certain requirements on a voluntary basis
- Larger firms must consider D&I matters as a non-financial risk and treat appropriately within the firm's governance structures

Proposed D&I requirements – scope (cont.)

Proposal	Firms in scope
Guidance on Non-Financial Misconduct	All FSMA firms with a Part 4A permission and where relevant Threshold Conditions and existing chapters of the Handbook apply
Data Reporting	<p>All FSMA firms with a Part 4A permission need to report their number of employees annually, excluding all Limited Scope SMCR firms</p> <p>All FSMA firms with a Part 4A permission with 251 or more employees have additional reporting obligations, excluding all Limited Scope SMCR firms</p>
D&I Strategy	<p>Dual-regulated CRR and Solvency II firms of any size (firms to which the CRR or Solvency II parts of the PRA Rulebook apply)</p> <p>All other FSMA firms with a Part 4A permission that have 251 or more employees, excluding all Limited Scope SMCR firms</p>

Proposed D&I requirements – scope (cont.)

Proposal	Firms in scope
Data Disclosure	All FSMA firms with a Part 4A permission with 251 or more employees, excluding all Limited Scope SMCR firms
Setting Targets	
Risk & Governance	
Monitoring	Dual-regulated CRR and Solvency II firms of any size (firms to which the CRR or Solvency II parts of the PRA Rulebook apply)
Board Governance	Dual-regulated CRR and Solvency II firms of any size (firms to which the CRR or Solvency II parts of the PRA Rulebook apply)
Senior Managers	Dual-regulated CRR and Solvency II firms of any size (firms to which the CRR or Solvency II parts of the PRA Rulebook apply)

Proposed D&I requirements – strategy

- D&I strategy should include the firm's current progress and consider appropriate goals, including at a minimum:
 - The firm's D&I objectives and goals
 - A plan for meeting and measuring progress against those objectives and goals
 - A summary of the arrangements in place to identify and manage any obstacles to meeting the objectives and goals
 - Ways to ensure adequate knowledge amongst staff of the D&I strategy
- The strategy must be easily accessible and free to obtain (e.g. on website) and maintained by the board
- FCA notes existing shortcomings with D&I policies it has observed – including failing to clearly explain the strategy's purpose, and a lack of detailed actions explaining how a firm intends to achieve its aims

Proposed D&I requirements – strategy (cont.)

- For **third-country branches**, relevant aspects of the D&I strategy proposals should be considered in the context of any D&I strategy covering the branch at an international group level.
- No FCA proposals on D&I strategies for boards (board recruitment, succession planning, talent pipelines).
- PRA is proposing to amend the existing requirements for board recruitment and policies to promote board diversity that apply to CRR and Solvency II firms, to require such firms to put in place a **strategy promoting D&I for the board** (also applicable to sub-committees):
 - Publish board D&I strategy on firm's website.
 - PRA will also update its rules to include diversity as a consideration in succession planning.

Proposed D&I requirements – targets & monitoring

- Larger firms to set “stretching but realistic” targets to address underrepresentation, with at least one target for the board, senior leadership, and the employee population as a whole
- Firms may choose to set inclusion targets on a voluntary basis
- The PRA expects CRR and Solvency II firms to set targets for gender and ethnicity at a minimum
- Firms to disclose the rationale for the targets chosen

Proposed D&I requirements – targets & monitoring (cont.)

- Review and update targets regularly and publicly disclose targets and progress annually
- For CRR and Solvency II firms, senior managers responsible for D&I would also need to be able to explain the rationale for setting the targets the firm has chosen and how this supports the implementation of their D&I strategy and policies
 - D&I to be monitored internally so improvements can be made

Proposed D&I requirements – reporting & disclosure

- A new regulatory return for D&I, to be submitted annually via RegData
- All firms (except Limited Scope SMCR firms) to report their average number of employees using the return for scoping purposes
- Larger firms would need to report additional D&I data – both mandatory and voluntary demographic metrics (voluntary may move to mandatory at a later date)
 - **Mandatory:** age; sex or gender (firms can choose one); disability or long-term health condition(s); ethnicity; religion; and sexual orientation
 - **Voluntary:** sex or gender (whichever is not included in a firm's mandatory disclosure); gender identity; socioeconomic background; and parental/carer responsibilities

Proposed D&I requirements – reporting & disclosure (cont.)

- Larger firms to also report annually on inclusion metrics covering whether employees feel:
 - Safe to speak up if they observe inappropriate behaviour or misconduct
 - Safe to express disagreement with or challenge the dominant opinion or decision without fear of negative consequences
 - That their contributions are valued and meaningfully considered
 - They are subject to treatment (for example actions or remarks) that has made them feel insulted or badly treated because of their personal characteristics
 - Safe to make an honest mistake
 - That their manager cultivates an inclusive environment at work

Proposed D&I requirements – reporting & disclosure (cont.)

- Larger firms to also provide the following information:
 - The demographic characteristics they have set targets for, as well as their inclusion targets, if any
 - The percentage at which each target has been set
 - The year each target was originally set
 - The year the firm is aiming to meet the target
 - The firm's current level of representation against each target
 - The rationale for the targets set
 - Any further information the firm would like the regulator(s) to consider about targets they have set

Proposed D&I requirements – reporting & disclosure (cont.)

- Provide information at the levels of the board, senior leadership and all employees
- The proposed date for the first set of data from firms is 15 months from the publication of the final rules
- Firms to disclose the same information that they report to the regulators publicly on an annual basis, but as percentages of the numbers of individuals in each category

Proposed D&I requirements - Senior Managers

- FCA has decided not to require a Senior Manager to be assigned responsibility for D&I
- For dual-regulated firms in scope of the prescribed responsibilities (PRs) for culture, the PRA proposes to include responsibility for the development and implementation of D&I strategies within those PRs allocated to SMFs
- For dual-regulated firms not in scope of PRs for culture, at least one SMF would need to be allocated responsibility for implementing the firm's D&I strategy

Proposed D&I requirements - Senior Managers (cont.)

- Senior Managers will need to be able to understand and discuss with the PRA the reasons that firms set certain D&I targets and if they will not be met, the reasons for this
- For executive SMFs, performance against D&I responsibilities should be reflected in variable remuneration decisions

Proposals for non-financial misconduct

- The FCA is proposing new guidance on how firms should consider non-financial misconduct when assessing fitness and propriety or applying the Conduct Rules
- Clearer expectations to achieve more consistent outcomes for the FCA in this area
- The FCA plans to add further explanations in FIT as to how non-financial misconduct can impact an individual's fitness and propriety:
 - Bullying and similar misconduct within the workplace is relevant to fitness and propriety and similarly serious behaviour in a person's personal or private life is also relevant
 - Other examples of non-financial misconduct, such as sexual or racially motivated offences
 - Misconduct in a person's private or personal life

Proposals for non-financial misconduct (cont.)

- The FCA is also proposing additional guidance in **COCON** on the relevance of non-financial misconduct
- COCON does not cover private/personal life
- Expand COCON to cover **serious** instances of bullying, harassment, and similar behaviour towards fellow employees and employees of group companies and contractors
- Guidance on factors to take into account when deciding if behaviour is **serious** enough to amount to a breach and the types of conduct that may amount to a breach

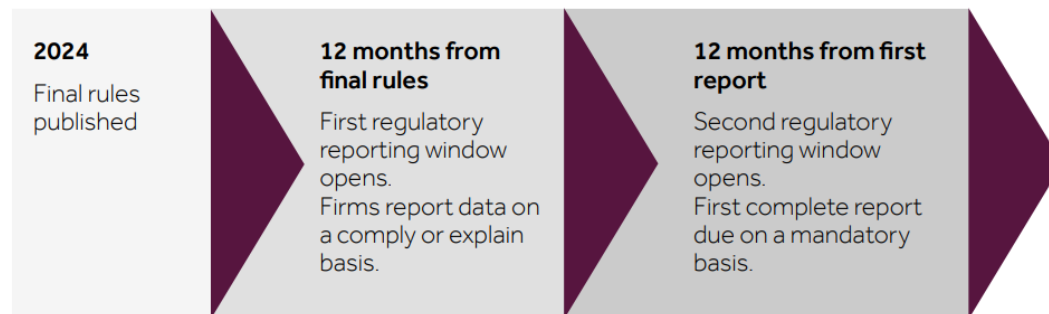
Proposals for non-financial misconduct (cont.)

- Also guidance in relation to **regulatory references** where non-financial misconduct may need to be disclosed, including potentially conduct outside of the workplace where relevant to F&P
- Extension of COND guidance on the FCA's Suitability Threshold Condition

Proposed D&I requirements – next steps

- Responses to the consultations are due by 18 December 2023
- The regulators then plan to publish their Policy Statements in 2024, with the final rules and guidance coming into effect in 2025 (12 months after the publication of the Policy Statements)
- Looking ahead, the regulators are not mandating any formal D&I training requirements but firms subject to the new rules will need to familiarise employees with the proposals and in particular the firm's D&I strategy as part of their implementation process

Timeline for implementation



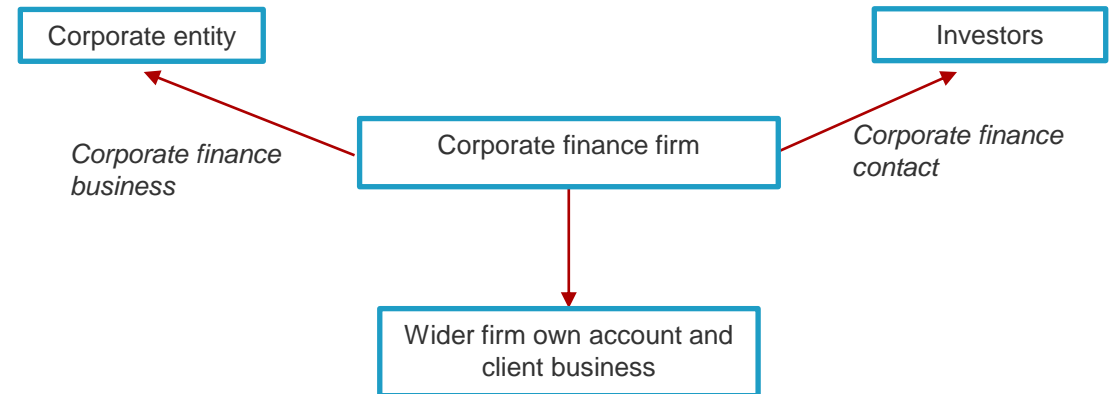


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The FCA's portfolio letter on its supervisory strategy
for corporate finance firms
Becky Critchley

FCA Dear CEO letter to corporate finance firms

- Client categorisation
 - Corporate finance contacts
 - Elective professional clients
 - Financial promotions
- Consumer Duty
 - Proper scoping
 - Considering material influence
- ‘Problem firms’
- Market abuse
 - Systems and controls
 - PAD
 - Conflicts of interest



FCA Dear CEO letter to corporate finance firms (cont.)

- Financial crime
- Financial resilience



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HM Treasury's proposals for reforming the bank ring-fencing regime
Rob Moulton

Background

- Part of the Edinburgh Reforms
- Proposals go beyond the 2022 independent review of ring-fencing
- UK already an outlier in having a ring-fencing regime

Thresholds

- Increase the core deposit threshold from £25 billion to £35 billion
 - Over 90% of UK retail deposits covered
 - Driven by intention to improve competition by medium-sized banks
- New “secondary threshold” will exempt retail-focused banks with trading assets of less than 10% of tier one capital
 - Not available to G-SIBs

Permitted activities

- New permissions
 - Equity investments in UK SMEs and small financial institutions
 - Wider range of trade finance activities, inflation swap derivatives, dealing as principal for limited purposes (e.g. error correction)
- Permit exposures of up to £100,000 to any individual financial institution (to lessen compliance and monitoring burden)
- Permit subsidiaries and branches to be established outside the EEA
 - Must include global core deposits when calculating thresholds
- Four year transition period for M&A

Aligning the ring-fencing and resolution regimes

- Paper looked at whether resolution offers a more comprehensive solution to “too big to fail”
- Responses were mixed, and further consideration will be given in first half of 2024



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The European Commission's SFDR review
consultation
Anne Mainwaring

Potential changes to disclosure requirements

Product level disclosures

- Potential approaches:
 - Build on and develop the distinction between Articles 8 and 9 and the existing concepts embedded in them (such as environmental/social characteristics, sustainable investment, or do no significant harm), complemented by additional (minimum) criteria that more clearly define the products falling within the scope of each article
- vs.
- A product categorisation system focused on the type of investment strategy (promise of positive contribution to certain sustainability objectives, transition focus, etc.)

Potential changes to disclosure requirements (cont.)

- **Standardised product disclosures** - Should the EU impose uniform disclosure requirements for all financial products offered in the EU, regardless of their sustainability-related claims or any other consideration?
 - Approach to PAIs
 - Taxonomy-related disclosures
 - Engagement strategies
 - Exclusions
 - Information about how ESG-related information is used in the investment process
 - Other information

Potential changes to disclosure requirements (cont.)

- Would **uniform disclosure requirements for some financial products** be a more appropriate approach, regardless of their sustainability-related claims (e.g. products whose assets under management, or equivalent, would exceed a certain threshold to be defined, products intended solely for retail investors)?
- Should there be some **additional disclosure requirements when a product makes a sustainability claim?**

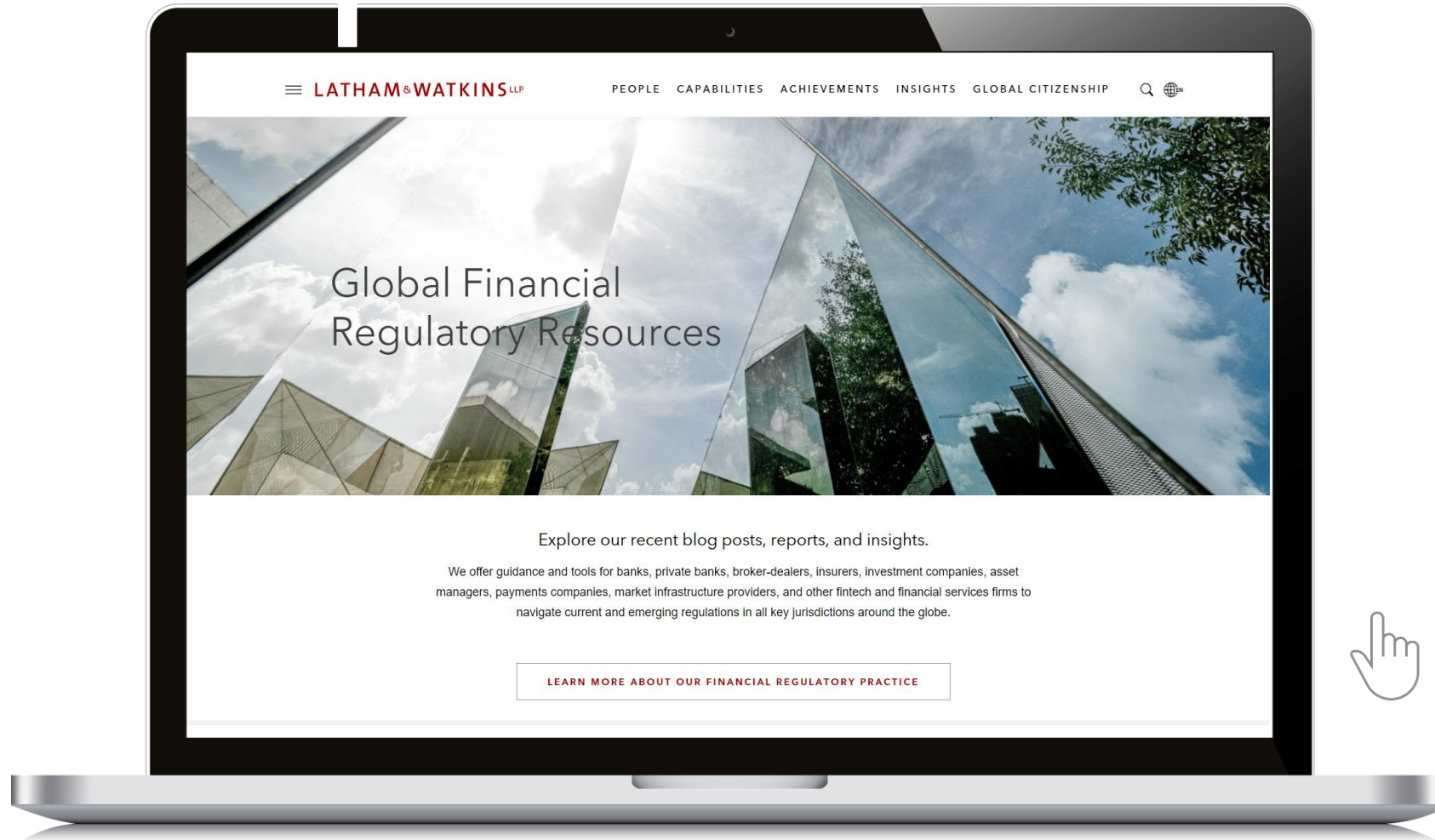
Disclosure locations

- Is it appropriate to have product-related information spread across the precontractual disclosures, in periodic documentation and on websites?

Entity-level disclosures

- Is the SFDR the right place to include entity-level disclosures?
- To what extent is there room for streamlining sustainability-related entity-level requirements across different pieces of legislation?

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- [UK Outlines Bank Ring-Fencing Reforms](#)
- [European Commission Launches Consultation on Sustainable Finance Disclosure Regulation](#)
- [UK Proposes Insurer Resolution Regime](#)
- [UK Introduces Write-Down Procedure for Insurers' Policyholder Liabilities](#)
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