

The background of the slide is a dark blue gradient overlaid with various financial market data visualizations. It includes multiple candlestick charts in green and red, several blue and red moving average lines, and a prominent red dashed trend line that slopes upwards from the bottom left towards the top right. The overall aesthetic is high-tech and professional, typical of a financial institution's branding.

Financial Regulation Monthly Breakfast Webcast

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LATHAM & WATKINS

Today's Topics

The FCA's multi-firm review of algorithmic trading controls	Rob Moulton
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The latest on the Consumer Duty	Ella McGinn
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The FCA's consultation on a motor finance redress scheme	Nicola Higgs
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The PRA and FCA Policy Statements on restating the MiFID Org Reg	Rob Moulton
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Arranging deals in investments – revisited	Rob Moulton
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The background of the slide is a complex financial market chart. It features a dark blue background with various data series. There are green and red candlesticks representing price movements. Overlaid on these are several lines: a solid blue line, a dashed red line, and a solid red line. A horizontal white line with a jagged, noisy pattern runs across the middle of the chart. The overall aesthetic is technical and data-driven, typical of financial analysis software.

The FCA's multi-firm review of algorithmic trading controls

Rob Moulton

Introduction

- FCA sampled principal trading firms for good and bad practices
- Says its guidance creates “no new requirements”
- Highlights liquidity criticality of algo trading firms, and challenges of ensuring compliance and risk management keep pace with technology and speed



Findings – governance

- Self-assessment and validation
 - Improved since 2018 review, but varied widely across firms
 - Compliance need “at least a general understanding” of how algos work
 - Some firms relied too much on risk to drive these self-assessment processes
- Deployment
 - Many firms require multiple approvals prior to deployment
 - Elevated scrutiny for new markets was praised
 - Significant challenge was often provided by compliance in dialogue with developers
 - Some firms had unclear procedures for testing and deployment, and had not documented the definition of a material change

Findings – development and testing

- Conformance testing
 - FCA criticised poorly defined conformance testing procedures
 - Critical to ensure conformance with system used by relevant trading venue
- Simulation testing
 - The best firms revised stress testing as new market events occurred
 - But some firms lack sophistication, or focused on operational effectiveness rather than a wide range of market scenarios
- Controls on deployment and risk controls
 - Firms praised when submitting small pilot trades to live environment
 - Firms criticised when ownership of deployment, and pre and post trade controls, was poorly defined



Findings – market abuse surveillance

- FCA particularly focused on this area (fines, Market Watch etc)
 - Firms praised for customising surveillance to type of trading and venues
 - Many firms had effective procedures for keeping on top of alerts
 - Some had not invested sufficiently in surveillance
 - Many faced resourcing pressures and alerts took too long to be investigated



The background of the slide is a complex, abstract representation of financial data. It features a dark blue background with various colored lines and patterns. There are green and red candlestick-like shapes scattered throughout, suggesting stock market activity. Overlaid on these are several lines in blue, red, and white, some of which appear to be moving averages or trend lines. The overall effect is one of dynamic, high-tech financial analysis.

The latest on the Consumer Duty

Ella McGinn

Streamlining regulatory requirements

- On 30 September 2025, the FCA published an update on its work to streamline retail conduct requirements in light of the Consumer Duty
- FCA published an initial action plan in March 2025, and promised to report back on next steps in September
- Webpage sets out work completed, work underway, new work added as a result of the Leeds Reforms, and further new commitments
- FCA plans to run a series of sector-level roundtables to gather firm feedback on this workstream over the course of 2026, and will provide a further update on next steps in 2026

Key actions

- Q4 2025:
 - Provide more clarity on supervisory approach and expectations where firms work together to manufacture products
 - Consult on updates to client categorisation rules
 - Consult on updating specific areas of outdated Handbook rules and guidance, including changes to COLL and CASS, removing outdated references, and a discussion on the pilot of small firm guides
 - Issue Policy Statement on assessment of value reporting for asset managers
 - Issue Policy Statement on simplifying insurance rules
- Q1 2026:
 - Consult on consumer credit advertising, to identify opportunities to reduce the level of prescription currently required and to be more outcomes-focused (Policy Statement expected H2 2026)
 - Pilot small firm guides for consumer finance firms

Key actions (cont.)

- Q2 2026:
 - Consult on removing business with non-UK customers from the scope of the Duty (Policy Statement expected Q4 2026)
 - Consult on changes to rules on the application and requirements of the Duty, including through distribution chains (Policy Statement expected Q4 2026)
- 2026:
 - Review core definitions to promote consistency and clarity
 - Consult on updates to retail banking disclosure rules

Application of the Duty to wholesale firms

- Nikhil Rathi letter to Rachel Reeves, outlining plans to address concerns about the application of the Consumer Duty for firms primarily engaged in wholesale activity
- FCA considers it right for the Duty to apply to some wholesale firms' activities, for example when they create products and services that are intended for sale to retail consumers
- However, firms have raised concerns, including that they face disproportionate compliance costs in proving that their activities have no material impact on retail customers
- FCA has noticed that some firms appear to have taken an unduly prescriptive or administrative approach when implementing the Duty, going further than the FCA intended, and it wants to correct this imbalance

Application of the Duty to wholesale firms (cont.)

- Letter includes a four-point action plan that the FCA intends to implement in response to these concerns (also included in the broader action plan):
 - Issue guidance to provide more clarity on FCA supervisory approach and expectations under the Duty when firms work together to manufacture products for retail customers
 - Consult on updates to the client categorisation framework. FCA hopes to set clearer, up-to-date standards for firms to identify individuals capable of being treated as professional clients. It is considering complementing this with a new test at a high threshold of assets. Also suggests that HM Treasury may wish to consider modernising the legislative exemptions in the Financial Promotion Order and the Promotion of Collective Investment Schemes Order, to dovetail with this work
 - Consult on changes to rules on the application and requirements of the Duty, including through distribution chains, with the aim of making it clearer for firms when the Duty applies. Will include an examination of existing exemptions, and whether to draw a clearer line on business-to-business activities. Will consider if there is a case for further exemptions from elements of the Duty where firms are subject to other regulatory obligations
 - Consult on proposals to remove business with non-UK customers from the scope of the Duty

Consumer Duty focus areas for 2025/26

- FCA also published a webpage on its priorities in its ongoing Consumer Duty supervisory work
- FCA plans four cross-cutting projects:
 - Review of products and services outcome
 - Review of firms' approaches to outcomes monitoring
 - Review of firms' customer journey design
 - Review of the consumer understanding outcome
- FCA (along with the ICO) also plans to provide further clarity on how firms can balance their vulnerability, data sharing, and data protection expectations in Q1 2026

Consumer Duty focus areas for 2025/26 (cont.)

- Sector-specific workstreams include:
 - Fair value in SME business current accounts (feedback by end of 2025)
 - Consumer understanding in the credit card market
 - Tackling poor identification of clients with characteristics of vulnerability by wealth managers
 - Expectations for wealth and advice firms when assessing fair value
 - Retail customers investing in complex exchange traded products (findings expected early 2026)
 - Review of firms' outcomes statements in loan-based crowdfunding (findings expected by end of 2025)
 - Implementation of the Duty by model portfolio services firms (findings expected summer 2026)

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The FCA's consultation on a motor finance redress scheme

Nicola Higgs

FCA Consults on Motor Finance Redress Scheme

- 7 October 2025: FCA published its consultation on a proposed motor finance redress scheme (the Scheme). It is also consulting on extending the deadline for firms to send a final response to certain motor finance complaints to 31 July 2026
- This consultation follows the UK Supreme Court's August 2025 combined judgment in three motor finance commission cases, in which the court sought to carve a more moderate approach to the issues at hand than had been taken by the Court of Appeal

FCA Consults on Motor Finance Redress Scheme (cont.)

- The FCA expects that, while the majority of motor finance agreements will not qualify for compensation, around 44% of all agreements made since 2007 will be considered unfair under the Scheme due to inadequate disclosure of certain details
- The FCA estimates that eligible customers will each receive an average payout of around £700 per agreement in compensation under the Scheme. The total cost of redress to lenders could be around £8.2 billion, plus an estimated £2.8 billion for the cost to firms of implementing the Scheme — which is at the lower end of the FCA's previous estimates

Scope of the Scheme

The FCA is proposing that:

- **Scheme case:** In order to be a “scheme case”, a consumer must have entered into a motor finance agreement with an FCA-regulated lender, or a lender that previously held an OFT licence, and there must have been a commission arrangement connected to that agreement
- **Lookback period:** The Scheme covers motor finance agreements taken out between 6 April 2007 and 1 November 2024, where commission was payable by the lender to the broker. The reason for looking back to 2007 is to achieve parity with the date range for complaints the Financial Ombudsman Service can consider. The FCA gives guidance on how it expects data gaps to be filled for older agreements

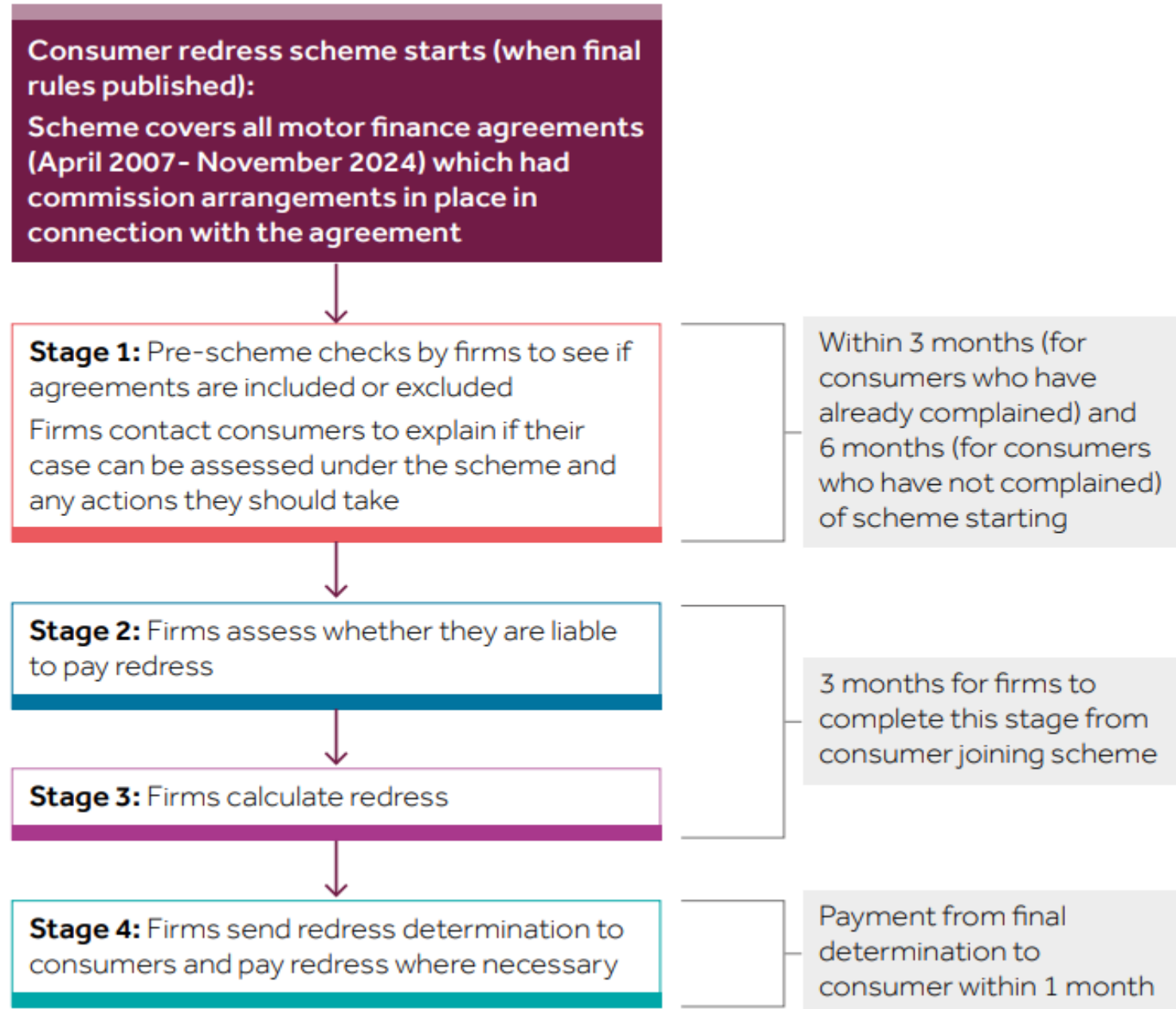
Scope of the Scheme

- **Eligibility factors:** Firms should determine that there was an unfair relationship for the purposes of the Scheme, and therefore redress is payable, where one or more of the following three types of arrangements existed and were not disclosed, or were inadequately disclosed, to the customer:
 - A discretionary commission arrangement (DCA), which allowed the broker to adjust the interest rate the customer would pay to obtain a higher commission
 - A high commission arrangement (where the commission is equal to or greater than 35% of the total cost of credit and 10% of the loan)
 - A contractual arrangement or tie between the lender and broker, which provided exclusive or near exclusive rights to lenders to provide credit
- **Responsibility:** The Scheme will be delivered by lenders, not brokers, although the FCA expects brokers to cooperate in the process, and to refer complaints within the scope of the Scheme to the relevant lender to determine. The FCA has sent a [Dear CEO letter](#) to both lenders and brokers outlining the steps it expects them to take now to prepare for the Scheme

Rebutting the presumption of unfairness

- Lenders may be able to rebut the presumption of unfairness in certain circumstances, such as when:
 - There is evidence of adequate disclosure of the relevant arrangement in question.
 - In cases only featuring a DCA, the lender can provide evidence that the broker selected the lowest interest rate at which they would not have made any additional commission.
 - Disclosure of the relevant arrangement in question was inadequate, but the lender can provide evidence that the consumer was sufficiently sophisticated to have nonetheless been aware of the relevant feature(s)

Process



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The PRA and FCA Policy Statements on restating the MiFID Org Reg

Rob Moulton

Overview

- Many of the internal organisation rules are contained in legislation
- HMT, PRA and FCA are adopting a “lift and shift” approach
- Therefore, rules will not change (much) but will be easier to change in the future

Key points

- FCA confirms future consultations will occur on:
 - Rationalising the conflicts of interest rules
 - Modernising the client categorisation rules (presumably making the elective professional upgrade easier)
- Changes to the costs and charges regime will appear as part of the CCI workplan
- MiFID optional exemption firms do get specific rule changes
 - No need to report 10% drop in portfolio value
 - Making the “durable medium” definition such that electronic communications are now the default means

Table of destinations

- In the FCA Handbook

Glossary	Articles 2, 3, 16a, 28, 36(1), 77 and 78(3)
SYSC	Articles 21 - 25, 27, 30 - 35, 72, 76 and Annex I
COBS	Articles 29, 36 - 61, 63 - 71, 73 - 75, Annex I, Annex II and Annex IV
MAR	Articles 78 - 79 and Annex III
MAR and REC	Articles 81(1) and 82
DISP	Article 26, Annex I

- Not being restated

	Articles 4 to 11 (relate to the perimeter and are already accommodated in the RAO)
	Articles 12 - 16ZA, 17,18,20, 81(2)
	Articles 83 – 89 (not re-stated as part of this exercise)

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Arranging deals in investments – revisited

Rob Moulton

Introduction

- Article 25(1) and 25(2) Regulated Activities Order have created more litigation and confusion than (in our experience) any other aspect of the RAO
- 25(1) – making arrangements (bringing two parties together and helping them)
- 25(2) – making arrangements “with a view” to the participants going on to enter into transactions

Judicial considerations

- Focus on whether a mere introduction can amount to an arrangement and, if not, what other actions might do
- “A person may make “arrangements” within Article 25 even if its actions do not involve or facilitate the execution of each step necessary for entering into and completing the transaction” (*Re The Inertia Partnership*)
- *Watersheds* case found that a mere introduction was “too nebulous and too remote”
 - FCA disagreed and re-wrote PERG 2.7.7B to try to contradict it
- Courts reluctant entirely to align with FCA
- *Avacade* case represents high watermark for the expansive view because it suggests arrangements are caught if they are “performed with a view to encouraging or assisting the deal to happen”

Judicial considerations

- Practical Examples
 - Regulated arrangements
 - Receiving agent (entity that receives and administers investors' money)
 - Helping complete or check application forms (perhaps beyond mere personal details)
 - Not a regulated arrangement
 - Courier delivering documents
 - Bank cashing a cheque
 - Corporate financier suggesting potential investor's identity to corporate
- Notes of caution
 - Cases often involve retail clients in difficult circumstances having suffered losses
 - No case has gone to the higher courts

Recent Thought Leadership

- [FCA Consults on Motor Finance Redress Scheme](#)
- [EU Sustainability: State of Play — Sustainable Finance](#)
- [Arranging Deals in Investments — Revisited](#)



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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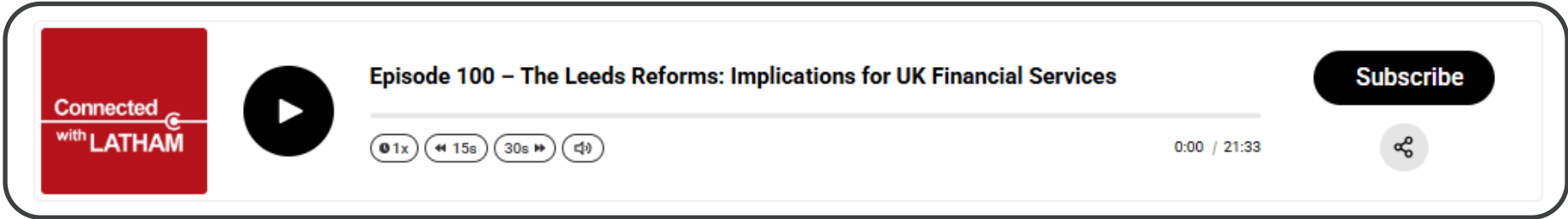
The Leeds Reforms: Implications for UK Financial Services



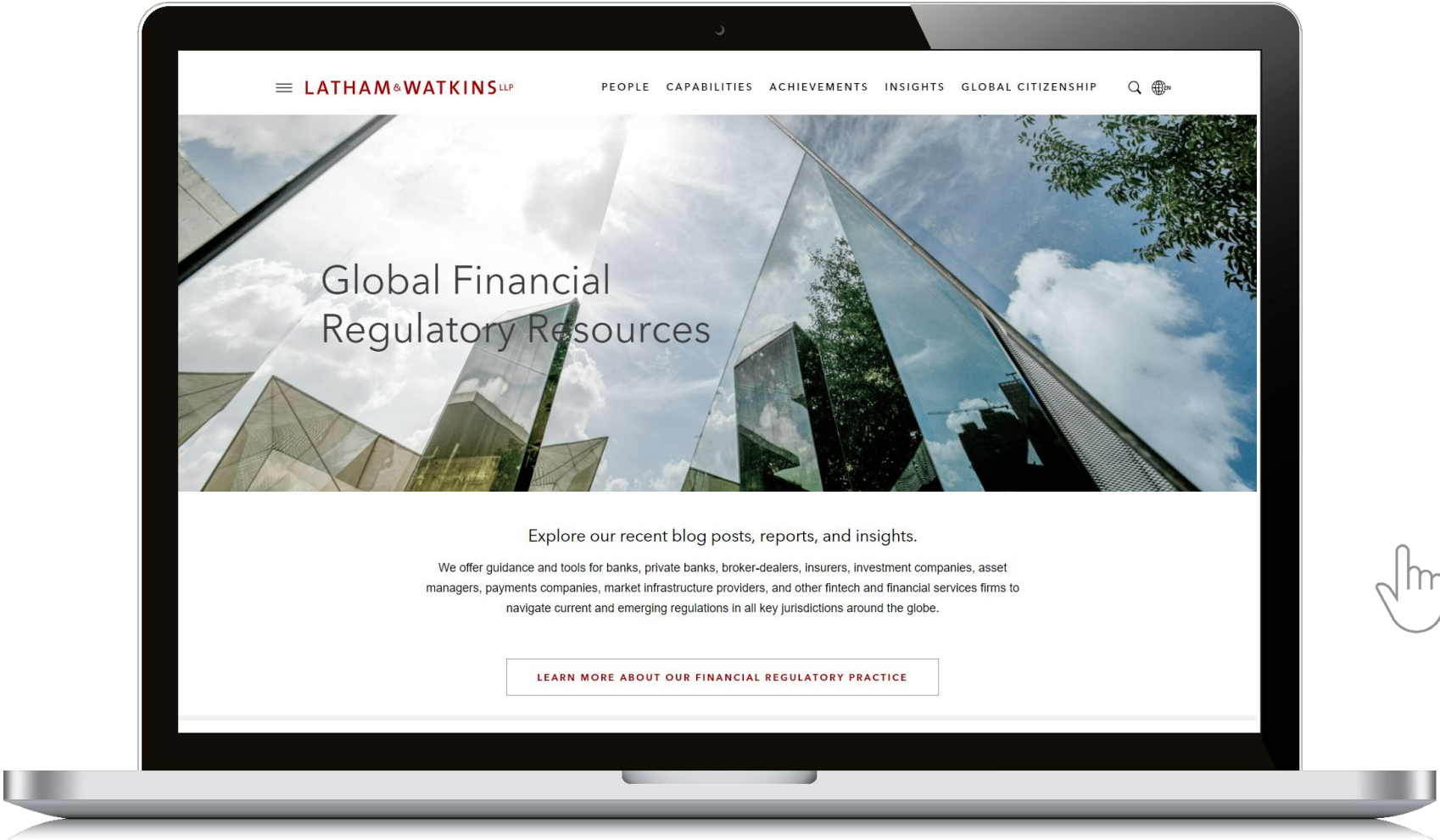
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