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15 July 2020

Financial Regulation Monthly Breakfast Webinar

Overview

- The Government statements (and FCA's reaction) on implementing CSDR, SFTR and BMR/LIBOR post-Brexit
- CFRF Guide: Industry guidance on managing climate risks
- An update on recent enforcement action from the FCA
- The FCA's discussion paper on the future prudential, governance, and remuneration regimes for investment firms under UK IFD/R

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The Government statements (and FCA's reaction) on CSDR, SFTR and BMR/LIBOR post-Brexit

Anne Mainwaring

In-flight legislation

- In-flight legislation is any EU law which is not operative (*i.e.* both in force and applicable) before the end of the transition period
- In-flight legislation cannot be onshored under the powers granted in the European Union (Withdrawal) Act 2018
- Previously, the expectation was that this would be dealt with in the Financial Services (Implementation of Legislation) Bill
- UK policy approach
- Autumn Financial Services Bill

Written statement from Rishi Sunak on the UK's approach to implementing financial services regulatory reforms before the end of the Brexit transition period (1)

- CSDR
  - The UK will not be implementing the EU's new settlement discipline regime, set out in the Central Securities Depositories Regulation, which is due to apply in February 2021
  - UK firms should instead continue to apply the existing industry-led framework
  - Any future legislative changes will be developed through dialogue with the financial services industry, and sufficient time will be provided to prepare for the implementation of any new future regime
  - "*UK trading entities, along with all third country trading entities, are still likely to be brought into scope of the EU CSDR, as it applies at EU settlement level and requires trading parties to put enforceable contractual arrangements in place importing the mandatory buy-in regime*" (ICMA)

Written statement from Rishi Sunak on the UK’s approach to implementing financial services regulatory reforms before the end of the Brexit transition period (2)

- SFTR
    - The UK will not implement the reporting obligation under the EU’s **Securities Financing Transactions Regulation** for non-financial counterparties (NFCs), which is due to apply in the EU from January 2021
    - Accordingly, the FCA will not require NFCs established in the UK to put in place arrangements to meet the reporting obligation under the onshored UK SFTR regime

Amendments to the onshored Benchmarks Regulation (1)

- Firms must continue to migrate away from LIBOR as a reference in their financial contracts and cannot rely on the benchmark’s continued publication as the current voluntary agreement between the FCA and LIBOR panel banks will expire after end-2021
- The Government, however, recognises that the interim timetable for transition has been slowed by COVID-19
- “*It is in the interests of financial markets and their customers that the pool of contracts referencing LIBOR is shrunk to an irreducible core ahead of LIBOR’s expected cessation, leaving behind only those contracts that genuinely have no or inappropriate alternatives and no realistic ability to be renegotiated or amended*”

Amendments to the onshored Benchmarks Regulation (2)

- The Government will make certain legislative changes to help deal with this narrow pool of “tough legacy” contracts, including extending the circumstances in which the FCA may require an administrator to change the methodology of a critical benchmark in circumstances where action is necessary to protect consumers and/or to ensure market integrity
- Separately, the Government also announced that it will amend UK BMR to ensure continued market access to third country benchmarks until end-2025

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CFRF Guide: Industry guidance on managing climate risks

Nicola Higgs

Climate risk management: Current landscape

EU

SFDR	**FMPs** and **FAs** to disclose sustainability risk management policy on website.
MiFID II	Take into account sustainability risks when complying with the MiFID II organisational requirements and integrate sustainability risk into risk management policies and procedures which identify the risks relating to the firm's activities, processes and systems. This includes setting the level of risk tolerated by the firm taking into account sustainability risks.
AIFMD	The risk management policy shall comprise such procedures as are necessary to enable the AIFM to assess for each AIF it manages the exposure of that AIF to market, liquidity, sustainability and counterparty risks, and the exposure of the AIF to all other relevant risks, including operational risks, which may be material for each AIF it manages.
UCITS	The risk management policy shall comprise such procedures as are necessary to enable the management company to assess for each UCITS it manages the exposure of that UCITS to market, liquidity, sustainability and counterparty risks, and the exposure of the UCITS to all other risks, including operational risks, which may be material for each UCITS it manages.
Solvency II	Actions to be taken by the insurance or reinsurance undertaking to assess and manage the risk of loss or of adverse change in the values of insurance and reinsurance liabilities, resulting from inadequate pricing and provisioning assumptions due to internal or external factors, including sustainability risks. Actions to be taken by the insurance or reinsurance undertaking to ensure that sustainability risks relating to the investment portfolio are properly identified, assessed and managed.

FMP – Financial market participant: Firms providing portfolio management services; AIFMDs; UCITS Man Co.s; Insurers (insurance based investment products); pension providers; VC funds
FA – Financial advisor

UK

Banks & Insurers
CFRF Guide also relevant to asset managers

April 2019: PS 11/19 Approaches to managing the financial risks from climate change (inc. SS 3/19)

June 2020: Climate Financial Risk Forum (CFRF) Guide

July 2020: Dear CEO Letter - Thematic feedback from PRA's review of firms

Implementation by end-2021

CFRF Guide: Overview

CFRF Guide: FCA and PRA established the Climate Financial Risk Forum (CFRF) to facilitate and accelerate a shared approach to the understanding and mitigation of the financial risks, and capture the opportunities, posed by climate change. The CFRF Guide is written by industry, for industry

CFRF Membership:

Banks	Insurers	Asset managers	Other
BNP Paribas HSBC JP Morgan RBS Yorkshire Building Society	Aviva Legal & General Lloyd's of London RSA Insurance Group Zurich Insurance Group	BlackRock Invesco Schroders Standard Life Aberdeen The international business of Federated Hermes	Green Finance Institute London Stock Exchange Group

What are Climate Financial Risks?

- Physical risk: relate to specific weather events (such as heatwaves, floods, wildfires and storms) and longer-term shifts in the climate (such as changes in precipitation, extreme weather variability, sea level rise, and rising mean temperatures)

- Transition risk: failing to transition to net zero greenhouse gas emissions in line with climate-related developments in policy and regulation

CFRF Guide: Risk Management (1)

- Risk governance: Effective governance should ensure that there is understanding, oversight and accountability for financial risks arising from climate change (collectively termed as “climate risk”) at all levels of an institution

- Risk management frameworks: Central risk frameworks and relevant policies should be updated to embed physical and transition risks. Treat climate risk as a cross-cutting risk type that manifests through most of the established risk types. Link climate risks with established risk types (underwriting, credit, operational and financial market)

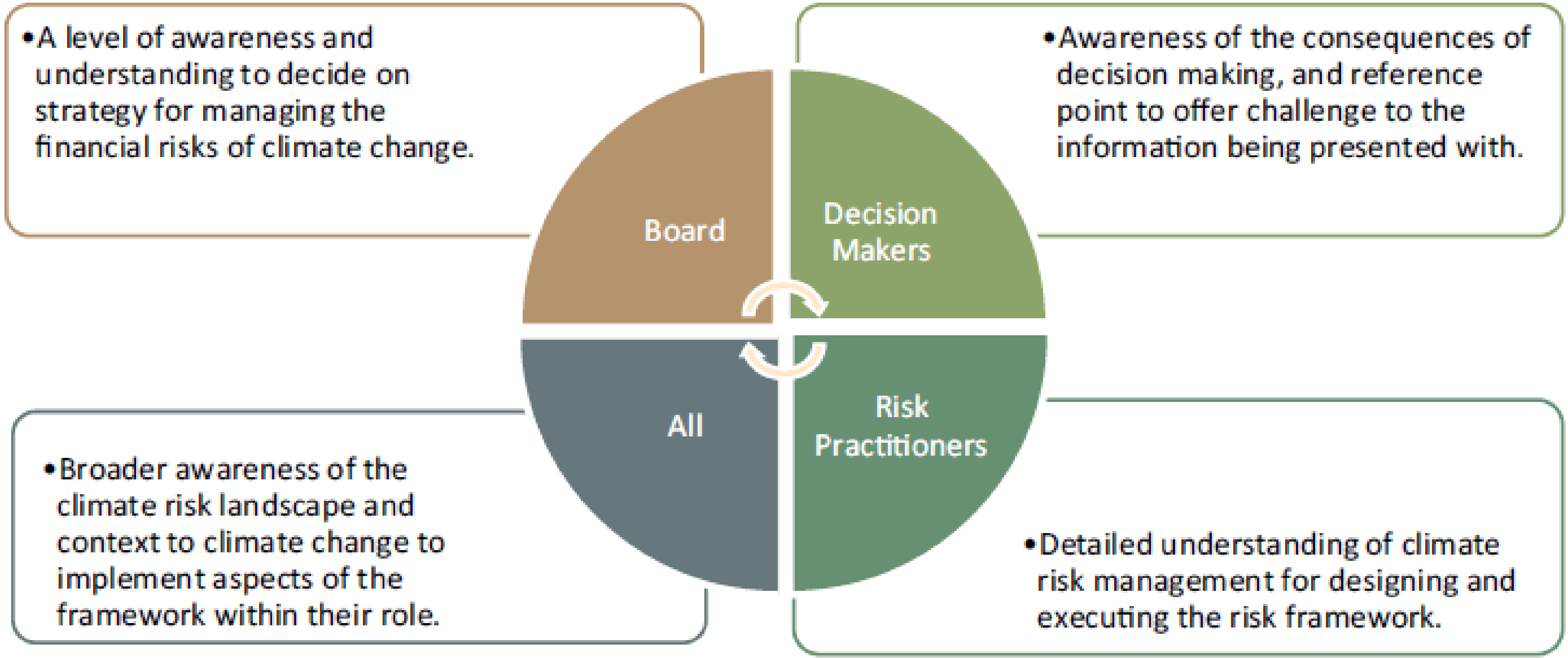
- Risk appetite: Consider both statements and metrics in relation to climate risk appetite. Reflect and communicate the level of climate financial risk that an institution is willing to take, tailored to the business model, and may incorporate broader considerations based on Environmental, Social and Governance (ESG), reputational risk or corporate responsibility, (*e.g.* following a no-harm approach) which may already be in place within the firm. The appetite should be translated into risk limits for each operational team, either through KPIs / KRIs and linked to objectives. For example, lenders/ underwriters/ investment managers will need to consider whether their customers’ climate risk profile is aligned with the institution’s climate risk appetite, and, if it isn’t aligned, whether customers are taking action to reduce their climate risk so it will align in the future

- Risk assessment: (1) Research climate change risks (credit risk, financial market risk, operational risk); (2) define and operationalise risk appetite: (a) assess materiality; (b) embed risk appetite into underwriting standards; (c) consider climate change risk for the valuation of reserves; (3) assess processes data and tools

- Risk mitigation plan: The risk mitigation plan will enable firms to stay within risk appetite under a forward-looking perspective and should consider short and long (10 – 30 years) term risks. Use scenarios to test the risk mitigation plan

CFRF Guide: Risk Management (2)

Training & culture:



CFRF Guide: Disclosure (1)

Phase 1: Focus on high level, mainly qualitative, disclosures

Suggested timeline to complete this phase is mid-2021

- Governance: Put in place and disclose governance arrangements – board oversight and management roles, for example arrangements for an appropriately staffed cross-business climate change working group
- Pathfinder strategy and risk management work: Assess what actions are already in place and develop and disclose a firm-level strategy. Agree and start to implement risk analysis processes to assess the climate-related financial risks and opportunities the firm faces, disclose the process by which this is undertaken and start to disclose basic metrics
- Disclose strategy and risk management processes: As risk assessment and management becomes more in depth, disclose metrics for monitoring material risks. Disclose proportion of assets analysed. Publish charts/graphic representations of high-level risk "heat maps". Develop stretch metrics that are used to measure and monitor exposure to the identified risks

Phase 2: Focus on adding quantitative disclosures and complete roll out

Suggested timeline for this phase is mid-2021 to end of 2022

- Disclose financial resilience and targets: Disclose financial impacts from scenario analysis, demonstrating an assessment of resilience to climate-related financial risks at firm and, where relevant, product level, set targets for the firm and disclose qualitative information and quantitative, ideally stretch level (and as possible advanced) metrics
- Roll out complete: Full disclosure, including targets and commitments (including on executive remuneration) that the firm is deploying to actively contribute to achieving a net zero carbon economy by 2050

Note: The UK Government has set out an expectation that all listed companies and large asset owners should disclose in line with the TCFD by 2022. This applies to UK premium listed issuers from 2021

CFRF Guide: Disclosure (2)

TCFD 7 principles for effective disclosure

- Represent relevant information
- Be specific and complete
- Be clear, balanced, and understandable
- Be consistent over time
- Be comparable among companies within a sector, industry, or portfolio
- Be reliable, verifiable and objective
- Be provided on a timely basis

Audience focus areas

- Firm & product level disclosure
- The potential for absolute financial loss
- The potential for relative financial loss (peer comparison)
- The potential for the firm to mitigate these risks and adapt to future developments through effective strategy

Governance	Strategy	Risk Management	Metrics and Targets
Preparer View Climate is embedded in our processes so it is challenging to discuss separately in our governance disclosures	**Preparer View** Disclosing scenario analysis assumptions is difficult due to their inclusion of confidential business information	**Preparer View** Climate is integrated into our normal risk management processes and therefore does not require separate disclosure	**Preparer View** GHG emissions or carbon footprint metrics are not reflective of our climate-related risks of opportunities
User View The most useful element of disclosures on governance is information on how companies integrate climate-related risks into the governance framework and the associated roles and responsibilities	**User View** Information on the scenarios and assumptions used, as well as financial impact of climate-related issues on the organization would improve the usefulness of disclosures	**User View** The most useful element of disclosures on risk management is information on how companies measure and manage climate-related risks	**User View** Information on GHG emissions is a useful element of climate-related financial disclosures

CFRF Guide: Disclosure (3)

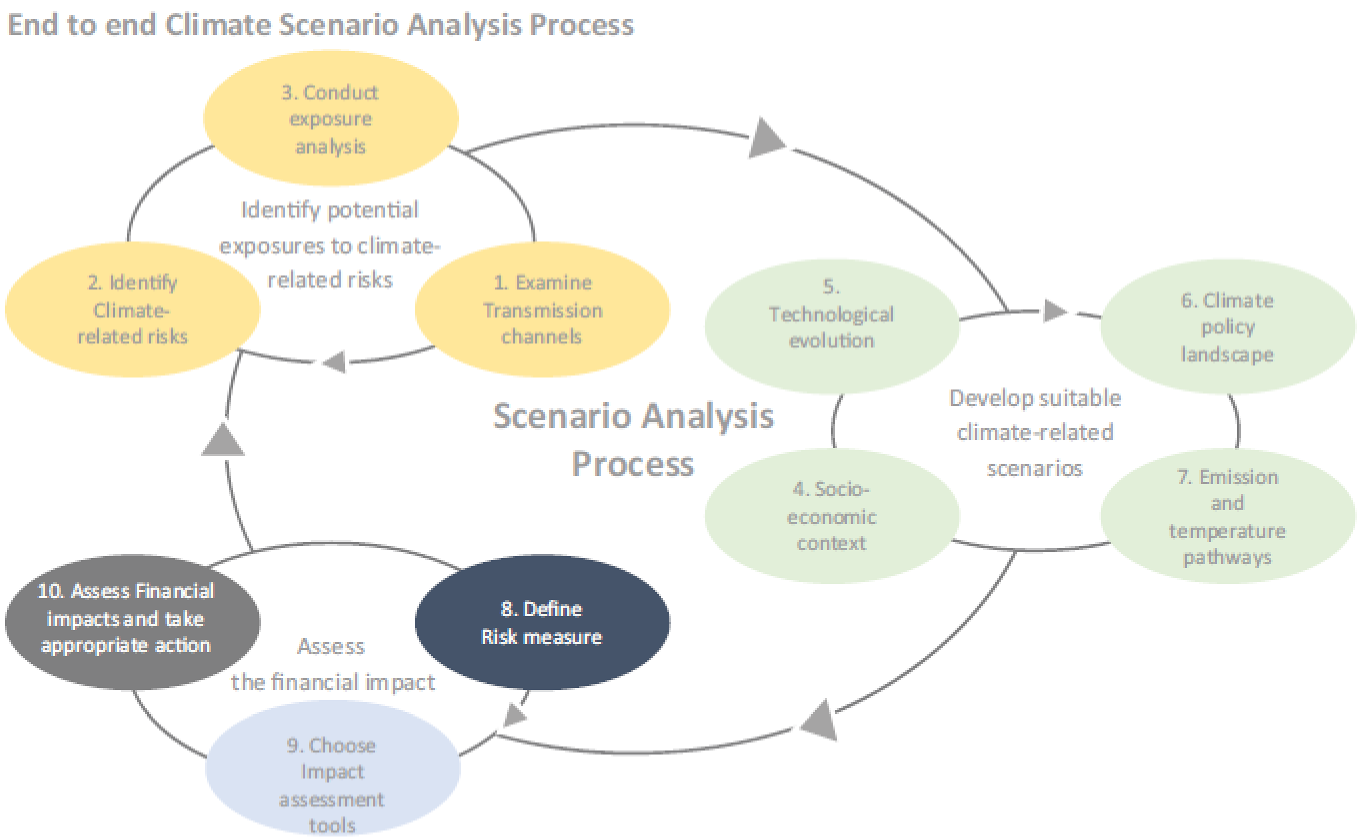
CFRF Guide to Best Practice Disclosures – Corporate Climate Risk Management:

Category		Suggested metrics
Governance	Basic	Number of board/committee meetings per year in which climate-related issues have been a substantive agenda item
		Number of events held per year to train board members and management on climate-related issues
	Stretch	Adjustments to executive remuneration paid during a specific year to reflect performance against specified climate change-related targets
Strategy (inc. firm level engagement)	Basic	Number of memberships of external bodies/organisations/ initiatives pursuing climate-related policy and/or advocacy initiatives
		Proportion of portfolio held at the end of a specific year (a) for which climate change risk metrics have been requested and (b) for which metrics of an acceptable quality have been provided “Portfolio” - public or private assets under management (for asset managers), loan book/bond underwriting activities (for banks, building societies) or underwriting activities (for insurers)
		Proportion of portfolio held at the end of a specific year with which the firm has engaged on climate-related risks and opportunities has been a substantive topic
		Asset managers: proportion of portfolio held at the end of a specific year in which climate-related risk has been a topic for voting in relevant asset classes. This can be aggregated to firm level as appropriate
	Stretch	Results of scenario analysis/stress testing expressed in terms of earnings or value at risk

Note: Separate sector specific templates are provided for Banks, Asset Management and Insurance that provide further guidance on product disclosures

CFRF Guide: Scenario Analysis

Figure 1: End to end Climate Scenario Analysis Process



Business decisions that scenario analysis is relevant to:

Motivation	Time horizon
Disclosure: TCFD	Long
Disclosure: Public reporting (shareholders)	Medium, Long
Disclosure: Public policy advocacy	Long
Business: Underwriting, pricing	Short
Business: Capital	Short
Business: Outwards risk transfer (reinsurance)	Short
Business: Product development	Medium, Long
Business: Business plan	Medium
Business: Risk management	Medium, Long

Climate risk management: Dear CEO Letter

Sam Woods: “*Whilst the Covid-19 pandemic is a present risk and an understandable priority for firms, minimising the future risks from climate change also **requires action now***”

- Letter follows April 2019 Supervisory Statement (SS 3/19) - builds on the expectations set out in that statement, provides observations on good practice, and sets out next steps for implementation
- Implementation plans were due by October 2019. Originally no deadline for full implementation: “*Firms should have fully embedded their approaches to managing climate-related financial risks by the **end of 2021***”
- Capital adequacy: “*you should be able to explain what steps your firm has taken to ensure that, where appropriate, capital levels adequately cover the risks to which your firm is, or might be, exposed*”
- Key messages:

Governance	Risk management	Scenario analysis	Disclosure
• Firms’ **strategic responses need to be clearer** and firms need to continue developing tools that inform business decisions. Climate management information should be communicated more consistently and actively discussed at board level. • Firms could **better demonstrate an appreciation of the far-reaching breadth and magnitude of the risks** and a clearer understanding of their relationship to financial risks.	• Metrics and quantification are the most challenging aspect of assessing climate-related financial risks. The **science, data or tools are not yet sufficient to estimate the risks accurately**. Firms should ensure that identified risks are recognised through the use of reasonable proxies / assumptions. • Risk management processes are at the early stages of development. Firms need to implement integrated policies, thresholds, mitigation strategies, monitoring capabilities and risk appetites.	Firms have **significant gaps in their capabilities**, data and tools and have not yet integrated scenario analysis into their broader risk assessments. The development of a proportionate and integrated approach to scenario analysis by the end of 2021 will require many firms to increase their capabilities materially in the near-term.	Firms’ appetite for making climate disclosures is limited by capabilities and as a result some firms are yet to make any associated disclosures. Capabilities will need to be **materially improved** to facilitate future disclosures.

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An update on recent enforcement action from the FCA

Jon Holland

Commerzbank Final Notice – June 2020

- Financial crime is still front and centre
- Penalty of £37,805,400 (reduced from £54,007,800 as a result of stage 1 settlement discount)

Commerzbank Final Notice – June 2020 (cont.)

- Commerzbank breached Principle 3 (duty to “. . . *take reasonable care to organise and control* [a firm’s] *affairs responsibly and effectively, with adequate risk management systems* . . .”)
    - Commerzbank London is “. . . *a hub for sales, trading and the due diligence process for a significant number of* [Commerzbank’s] *global customers . . .”*
    - The FCA required Commerzbank London to appoint a skilled person in May 2017 and Commerzbank “agreed” wide ranging restrictions on its business, which are still in place

Commerzbank Final Notice – June 2020 (cont.)

- The skilled person identified – and the FCA found:
  - Shortcomings in financial crime controls applicable to intermediaries
  - Inadequate identification and control of risks associated with PEPs
  - Failures to adhere to the policy for verifying beneficial ownership, including in relation to high-risk clients
  - No comprehensive documented process or criteria for terminating relationships for financial crime risk
  - Backlog of outstanding CDD checks due to inadequate staffing
  - Failure to articulate and understand risks and issues at more senior levels
  - Exceptions process for CDD checks / refreshes that was ". . . *out of control . . .*"
  - Automated monitoring tool that was ". . . *not fit for purpose . . .*"

Commerzbank Final Notice – June 2020 (cont.)

- All of which followed:
  - Repeated visits by the FCA to discuss AML issues
  - Enforcement action by US regulators (NY DFS) in 2015

In other AML news . . .

- The EU has:
  - Started legal action against the Netherlands, Belgium and Austria for failing to enforce 4MLD and issued second-stage warnings to Italy, the Czech Republic and Denmark
  - Published the EU list of high risk jurisdictions under 4MLD
    - Currently: Afghanistan; Democratic People's Republic of Korea; Iran; Iraq; Pakistan; Syria; Trinidad & Tobago; Uganda; Vanuatu; and Yemen
    - Absent improvements in their policies and systems and controls, the following jurisdictions will be added to the list from 1 October 2020: Bahamas; Barbados; Botswana; Cambodia; Ghana; Jamaica; Mauritius; Mongolia; Myanmar; Nicaragua; Panama; and Zimbabwe

Redcentric Final Notice – June 2020

- Redcentric (an IT service provider) received a public censure for market abuse contrary to s118(1)(a) FSMA by publishing false information about its net debt and holdings of cash and cash equivalents in November 2015 and June 2016
  - Redcentric published its unaudited interim results for the half year ending 30 September 2015 on 9 November 2015 (the 9 November 2015 Statement). These stated that net bank debt was “£16.5m” and that cash and cash equivalents were £9,984,000
  - Redcentric published its audited financial year end results for the year to 31 March 2016 on 16 June 2016 (the 16 June 2016 Statement). These stated that it had “Total net borrowings of £25.3m” and that cash and cash equivalents were £8,492,000

Redcentric Final Notice – June 2020 (cont.)

- Following an independent forensic review, in December 2016 Redcentric announced that:
  - The cumulative overstatement of net assets and profits after tax up to 30 September 2016 was approximately £20.8 million. Approximately £5.9 million of this misstatement arose in the six months ended 30 September 2016
  - The net debt position as at 31 March 2016 was £37.8 million and as at 30 September 2016 net debt was £34.4 million
- The FCA found that:
  - As at 30 September 2015, Redcentric's net debt was approximately £29,545,000 and its cash and cash equivalents were negative £3,061,000
  - As at 31 March 2016, Redcentric's net debt was £37,455,000 and its cash and cash equivalents were negative £3,633,000

Redcentric Final Notice – June 2020 (cont.)

- The FCA also found that:
  - Redcentric knew, or could reasonably have been expected to know, that the information about its net debt and cash and cash equivalents published in its 9 November 2015 Statement and its 16 June 2016 Statement was false and misleading, and that it gave, or was likely to give, a false or misleading impression as to the value of its shares
  - The 9 November 2015 Statement and 16 June 2016 Statement each caused Redcentric's shares to trade at a higher value than they should have done. They continued to do so until Redcentric announced the independent forensic review in December 2016
  - Purchasers of Redcentric's shares during this period paid a higher price than they would have paid if the 9 November 2015 Statement and 16 June 2016 Statement had been accurate and so suffered a loss

Redcentric Final Notice – June 2020 (cont.)

- So far, so (fairly) unremarkable
- But Redcentric avoided a "*substantial fine*" by getting out ahead of the FCA and:
    - Commissioning an independent review immediately upon discovering the issues
    - Proactively offering information to the FCA
    - Making improvements to its systems and controls
    - Implementing a scheme to compensate purchasers of Redcentric's shares who suffered losses as a result of the market abuse resulting in compensation payments estimated at £11.4m

Redcentric Final Notice – June 2020 (cont.)

- “*The approach of the Redcentric Board in proactively devising and implementing a scheme to offer some compensation to shareholders affected by the false market has been exemplary. Furthermore, the evidence and assistance provided by Redcentric has led to a timely conclusion of the FCA’s enquiries and has been of critical assistance*”

- “*The Authority also notes that Redcentric’s customers include numerous NHS Trusts and that it provides vital services in respect of the Covid-19 pandemic. The Authority considers that the imposition of a penalty would give rise to a significant risk of disruption to Redcentric’s business, which may cause significant disruption to those services*”

Foley Decision Notice – July 2020

- Decision Notice because Mr Foley has referred the FCA's decision to the Upper Tribunal
- Subject to the UT's decision, the FCA has imposed a fine of £658,900 and a prohibition from performing any function in relation to any regulated activities for market abuse contrary to s118(7) FSMA

Foley Decision Notice – July 2020 (cont.)

- Mr Foley was CEO of WorldSpreads Limited (“WSL”), a financial spread-betting company, and WorldSpreads Group plc (“WSG”), WSL’s holding company, which was quoted on AIM. He was a CF1 (Director) and CF3 (CEO) at WSL and the majority shareholder of WSG
- WSL and WSG became insolvent in March 2012 when the financial controller of WSL informed WSG’s board of longstanding wrongful treatment of client money at WSL. Initial investigations by WSL and WSG concluded that client money had been commingled with WSL’s own cash leaving a shortfall in the funds owed to clients of approximately £13m. The FSCS has paid out £17.9m in respect of 3,833 claims for client money losses

Foley Decision Notice – July 2020 (cont.)

- According to the FCA:
  - Mr Foley was closely involved with drafting and approving the formal documentation that WSG was obliged to prepare for the purposes of its flotation on AIM in August 2007
  - WSG's Admission Documentation was materially misleading in that:
    - It did not disclose the fact that some WSG executives had made significant loans totalling £1.625m to WSG and its subsidiaries which were not accounted for as loans
    - It did not explain that certain of WSG's subsidiaries "hedged" considerable trading exposures internally with company executives, including using fictitious client trading accounts to hide the arrangements from the companies' auditors
  - Mr Foley was aware of these failures and that WSG failed to declare the internal loans and internal hedging in its annual accounts
  - Mr Foley knew that this gave, or was likely to give, a false or misleading impression to the market

Foley Decision Notice – July 2020 (cont.)

- In addition:
  - Between January 2010 and March 2012 (*i.e.* in the period leading up to insolvency) large spread bets on WSG shares were placed on the trading accounts of four WSL clients which resulted in the purchase of a large number of WSG shares from the market
  - The bets on the trading accounts of two of the clients were placed by Mr Foley without the knowledge of the clients
  - One of the accounts was opened in the name of a family member, who was told it was to "test" the IT system
  - The purchase of the WSG shares as a result of the bets gave a false or misleading impression as to the demand for WSG shares
- Mr Foley denies using the trading accounts of the clients without their knowledge and claims that he entered into secret arrangements with them by which he would benefit from any profits made and underwrite any losses incurred

Foley Decision Notice – July 2020 (cont.)

- Finally:
  - Mr Foley procured unauthorised loans from WSL, as a result of which he was ordered to pay WSL £309,321
- For all these reasons, the FCA decided that Mr Foley was not fit and proper and made the prohibition order

Foley Decision Notice – July 2020 (cont.)

- Amongst other things:
  - In an email sent fifteen days after WSG's admission to AIM, Mr Foley described the internal hedging arrangements as being ". . . *contrary to all trading standards and ethics for a trading desk. I guarantee you there is [not] a single trading desk in the world where traders take part of the book themselves without shareholder approval and proper procedure* . . ."
- The former CFO and the former Financial Controller of the companies were fined £11,900 (reduced from £468,756 on the grounds of financial hardship) and £105,000 respectively in April 2017. Both were also prohibited from performing any function in relation to any regulated activities

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The FCA's discussion paper on the future prudential, governance, and remuneration regimes for investment firms under UK IFD/R

Rob Moulton

The four types of investment firm

- Systemically important firms (primarily credit institutions) which remain subject to CRD
- Other large firms (total value of consolidated assets above EUR 5 billion), also subject to prudential requirements in CRD
- All investment firms that are not Small Non-Interconnected firms (SNIs)
- SNIs, which are subject to a reduced IFD/R regime

Is a firm an SNI or not?

- AUM less than EUR 1.2 billion
- Client orders handled in cash trades less than EUR 100 million per day
- Client orders handled in derivatives less than EUR 1 billion per day
- Not holding client money or assets
- On and off balance sheet total assets less than EUR 100 million (may be increased to EUR 300 million)
- Total annual gross revenue from investment services and activities less than EUR 30 million

What makes up capital?

- Common Equity Tier 1 (CET1) capital
- Additional Tier 1 (AT1) capital
- Tier 2 (T2) capital
- Similar to existing regime, but with some important alterations
  - Deduction for holdings of capital instruments on a trading book does not apply to most market making holdings

How is capital calculated?

- Initial Capital Requirement (ICR)
  - EUR 75,000, EUR 150,000 or EUR 750,000
- Fixed Overhead Requirement (FOR)
  - Three months’ overheads, applies to all firms for the first time
- K-Factor Requirement (KFR)
  - New, but does not apply to (although may be taken into account by) SNIs

The K-Factor Requirements

- AUM
  - Applies to discretionary and non-discretionary advisory arrangements
  - Delegators have to include these assets, but not delegatees (unless delegator is in a non-comparable third country)
- CMH
  - How much client money is held?
  - Six month rolling period
- ASA
  - Amount of assets safeguarded and administered
  - Rolling six month basis

The K-Factor Requirements (cont.)

- COH
  - Client orders – 0.1% of the value of cash trades, and 0.01% of the value of derivatives
- DTF
  - Daily trading flow excluding orders within the COH calculation
- NPR/CMG
  - Net position risk to calculate trading book risk, with option to use client margin amounts, or internal models, with FCA approval
- TCD
  - Risk of default of a trading counterparty
  - Detailed and complex calculations

Liquidity

- Applies to all non-SNIs
- Critical change as many firms not currently caught by liquidity regimes
- Existing liquidity waivers will lapse
- Calculation of assets and standard haircut approach – for instance, liquid securities are subject to a 55% haircut

Internal Capital and Risk Assessments (ICARA)

- Replace ICAAP
- Similar to operational risk assessments, and a move away from metric-driven risk analysis
- Examples of potential harms include:
    - Mandate breach for asset managers
    - Trading / dealing errors
    - Unsuitable corporate finance advice resulting in law suits
    - Failure to manage transition away from LIBOR
    - etc.

Governance

- Obligation for non-SNIs to have a risk committee made up entirely of NEDs
- Further obligations in relation to remuneration committees for non-SNIs
- FCA considering altering the limit at which these obligations apply from EUR 100 million to EUR 300 million

Remuneration

- SNIs are exempt (unless caught in a group containing non-SNIs)
- Non-SNIs are split into two categories:
    - Rolling four year average balance sheet below EUR 100 million – rules relating to payment in shares rather than cash, deferral, and retention periods for discretionary pension arrangements are disapplied (UK may raise this level to EUR 300 million)
    - For other firms (i.e. above EUR 100 million / EUR 300 million) proportionality “disappears”

Remuneration (cont.)

- Remuneration requirements will apply to individuals whose variable pay is above EUR 50,000 or more than 25% of their overall compensation (change from EUR 500,000 and 33%)
- No fixed bonus caps
- Rules relating to malice and clawback and guaranteed bonuses and buyouts remain

Transitional provisions

- FCA proposes a five year step up for firms changing from lower requirements to the EUR 750,000 requirement
- Future K-Factor on ESG likely to apply from 2022

Upcoming Webcasts

A COMPLIMENTARY WEBCAST

MAR - Current Themes and Insights from the FCA

Thursday, 16 July 2020 | Webcast

Latham & Watkins is pleased to invite you to a panel webcast covering current themes and insights on Market Abuse Regulation. We will be joined by Helen Boyd (acting Head of Department of Markets Policy) and Adam Wreglesworth (Manager for MAR and Primary Markets Policy) from the FCA, who will provide the keynote and join a panel which will cover, amongst other topics; the ESMA review, the latest on Fintech, company dialogue and meetings, and the FCA's recent comments on the use of big data.

Chatham House Rule will apply.

This promises to be an engaging and insightful webcast.

REGISTER HERE

A COMPLIMENTARY WEBCAST

Conduct, Culture and Covid-19 – The FCA's Perspective and Industry Insights

Wednesday, 22 July 2020 | London

The FCA's recent Insight article 'Conduct, Culture and Covid-19' served as a timely reminder of the importance of maintaining high standards of conduct, and of continuing to ensure a healthy and pervasive workplace culture – notwithstanding the current challenging conditions.

Latham & Watkins' London Financial Regulatory team invite you to a panel webcast, featuring senior FCA representatives, which will explore the ways in which conduct and workplace culture might be affected during these unprecedented times, and what this might mean in practice for financial services firms. This event follows on from our successful February event providing the supervisors' perspective on Conduct and Culture.

The panel, including Ted MacDonald (Senior Advisor behind the 5 Conduct Questions Programme), Olivia Fahy from the FCA, and Martin Pluves (CEO) of the FICC Market Standards Board, will discuss the potential implications of remote working in the current and post-Covid-19 environments. Topics to be covered include: personal accountability, increased risk of misconduct, and maintenance of a healthy work place culture.

Chatham House Rule will apply.

This promises to be an engaging and insightful webcast.

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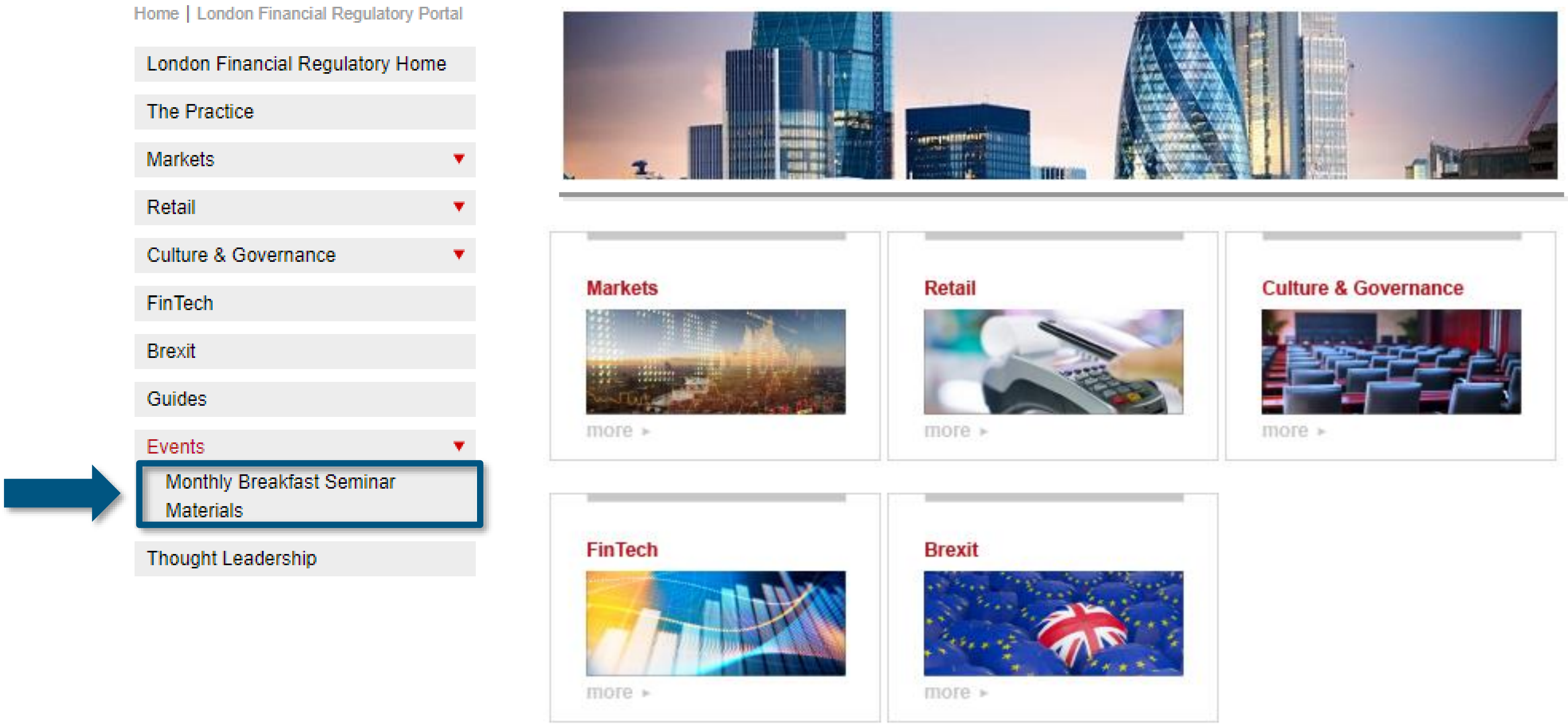

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