

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 sharp decline.

LATHAM & WATKINS

11 January 2023

Financial Regulation Monthly Breakfast Seminar

Overview



The Edinburgh regulatory reform proposals

An update on MAR – the EU Listing Act, the Urra market manipulation fine, and Market Watch 71

PMB 42: FCA's messages for firms on climate-related financial disclosures in 2023



LATHAM & WATKINS

The Edinburgh regulatory reform proposals
Rob Moulton and Becky Critchley

Edinburgh reform proposals – background

- General lack of strategic direction in UK regulation post-Brexit
 - Inertia without knowing what a deal looked like, or what role equivalence might play
 - Regulators busy enough just onshoring EU legislation
 - Some political instability more generally(!)
- UK regulators focused tactically instead, within political and legal confines
- Four key themes emerge:
 - ESG
 - Consumer Duty / protection
 - Conduct and culture / diversity
 - Technical divergence measures

Edinburgh reform proposals – key themes

- Government is prepared to “think big” and potentially dismantle key pillars of the UK regime
- Areas to be tackled include some that are very UK in nature (ringfencing; SMCR; investment research unbundling)
- UK’s global (rather than European) competitiveness is now the key driver for de-regulatory purposes
 - SMCR discussion focuses on global inbound investment fears
 - Investment research focuses on what other major international markets are doing
- Some proposals are actually long overdue updates, and others brand new measures, which are being dressed up as reforms
- This is a sizeable package which will drive regulatory change in the UK to 2024 at least (so the government must think the changes will be worth it)

Edinburgh reforms proposals – topics for today's session

- Ringfencing
- Investment research unbundling
- Wholesale Markets reform, and MiFID
- Short Selling Regime
- UK consolidated tape
- Accelerated settlement
- Consumer credit
- PRIIPs
- SMCR
- Sustainable finance

Edinburgh reforms proposals – topics for today's session

- Other notable areas not covered today:
 - Solvency II
 - Payment Accounts Regulations
 - Building Societies Act
 - Long term investment fund proposals
 - VAT treatment of fund management
 - Securitisation

Edinburgh reforms proposals – ringfencing

- Skeoch report in March 2022
- New Consultation open until mid-2023, with an intention to make “near term reforms” influenced by Skeoch
- Intention is to take groups without significant investment banking operations outside the regime (question over how significant)
- Permitting additional risk taking by remaining ringfenced banks
 - Ability to hedge mortality risks (to write lifetime mortgages)
 - Ability to enter into inflation swaps (to boost financing of investments)
 - Ability to take stakes in FinTechs who might partner with the bank
- Raise de minimis threshold to GBP 35 billion(?)
- Remove from ringfencing requirement any “resolvable” banks
- Better for incumbents, or challengers?

Edinburgh reforms proposals – investment research

- Context – recent UK and EU reforms to relax original MiFID II rules in this area
- HMT focused on the UK being out of line with other major international financial centres
- Important to UK competitiveness that it can “attract companies to list and grow”
- Could be a major pulling of the rug from under the FCA

Edinburgh reforms proposals – WMR / SMRR (prospectuses / MiFID)

- Scrap EU prospectus regime, and replace it (using FSMB's new Designated Activities Regime) with a Public Offer and Admission to Trading Regime
 - Implement the Hill report
 - Requirement for a prospectus on most first listings, with the FCA to set rules for when a prospectus might also be required later
- Implement the Austin report on secondary capital raising
 - Implement pre-emption changes
- Implement previously-announced MiFID reforms on secondary markets
 - Overhaul SI regime
 - Amend position limits for commodities regime
 - etc

Edinburgh reforms proposals – Short Selling Regulation

- Entire regime likely to be re-written or scrapped
- Shows strong support for benefits of short selling generally
- Initial focus will be on shares (sovereign debt and CDS may follow later)
- Review will concentrate on whether the regime actually limits settlement failures
- Consider whether there is any benefit to the disclosure or reporting regime at all
- Review whether the Market Maker Exemption is efficient, or indeed necessary
- Consider the necessity of the (never used) emergency powers
- Call for evidence closes 5 March 2023
- Final proposals expected 2023

Edinburgh reforms proposals – UK consolidated tape

- Proposal to develop legislative framework for a UK consolidated tape
- EU making similar proposals
 - But is UK liquidity really as fragmented as in the EU?

Edinburgh reforms proposals – accelerated settlement

- Set up industry taskforce to look at benefits of a “T+1” standard settlement period
- Initial findings due December 2023
- Full report and recommendations in 2024
- This has proved a major exercise when undertaken in other jurisdictions and is likely to be a medium rather than short term priority

Edinburgh reforms proposals – consumer credit

- Consultation on changes to the framework governing consumer credit, closes 17 March 2023
- Current regime complicated and fragmented and split between the Consumer Credit Act 1974 (with extensive secondary legislation) and the FCA rules
- Transfer of responsibility to the FCA, with a limited range of provisions potentially remaining in legislation
- Must maintain the same degree of consumer protection:
 - Changes to formality requirements?
 - Same sanctions for non-compliance?

Edinburgh reforms proposals – PRIIPs

- Consultation on reform of PRIIPs KID regime, closes 3 March 2023
- Entire regime likely to be scrapped
- Views are sought on whether:
 - Retail disclosure should aim to ensure that an investor is empowered to make well-informed decisions related to the product that they are purchasing, rather than focusing on comparability
 - Disclosure requirements should be flexible, with prescriptive requirements for format and structure only when deemed necessary by the FCA
 - PRIIPs-related retail disclosure elements in legislation should not be maintained
 - There are any wider obstacles that prevent or discourage firms from offering investment products from different jurisdictions to UK retail investors
 - A less prescriptive disclosure regime would facilitate innovative disclosure formats
 - There are other priorities for retail disclosure reform that the Government and the FCA should consider in future

Edinburgh reforms proposals – SMCR

- The Government and the FCA and PRA will separately commence a review of the Senior Managers & Certification Regime in Q1 2023
- The Government will launch a call for evidence to look at the legislative framework of the regime. Asks for views on:
 - The regime's effectiveness, scope and proportionality
 - Potential improvements and reforms

Edinburgh reforms proposals – SMCR

- The FCA and PRA will review the regulatory framework
- What can we expect?
 - Wholesale overhaul unlikely
 - Limitation of scope?
 - UK based directors?
 - PRA regulated only?
 - Limitation to key functions only?
 - CEO accepts responsibility?

Edinburgh reforms proposals – sustainable finance

- Financial system to play a major role in the delivery of the UK's net-zero target and confirms it will:
 - Publish an updated Green Finance Strategy in early 2023
 - Issue a consultation in Q1 2023 on bringing ESG ratings providers into the regulatory perimeter
- HM Treasury will also join the industry-led ESG Data and Ratings Code of Conduct Working Group, recently convened by the FCA, as an observer

Edinburgh reforms proposals – approach to tranches and next steps

Approach to prioritisation

- The Government has identified 43 “core” files of retained EU financial services law (set out in Annex I to the Policy Statement) and it intends to carry out the repeal of this legislation by dividing it into a series of tranches
- Work is already underway to review, repeal, reform and replace the first tranche
- ‘Significant’ progress to be made on tranches 1 and 2 by end 2023
- Full process of reviewing and replacement of EU law may take several years

Edinburgh reforms proposals – approach to tranches and next steps

Tranches 1 and 2

- The 43 files split into ‘tranches’. Tranche 1:
 - The Wholesale Markets Review (amending UK MiFID framework)
 - Lord Hill’s Listing Review (following which the Government will commence the repeal of the Prospectus Regulation)
 - The Securitisation Review
 - Review of Solvency II Directive

Edinburgh reforms proposals – approach to tranches and next steps

- “Twin-track” approach to Tranche 2. Tranche 2 files include the following:
 - Remaining elements of the Wholesale Markets Review and Solvency II
 - PRIIPs
 - Short Selling Regulation
 - The Taxonomy Regulation
 - Payment Services Directive and E-Money Directive
 - MMF Regulation and Long-Term Investment Funds Regulation
 - Insurance Mediation and Distribution Directives
 - Capital Requirements Regulation and Directive
 - Consumer information rules in the Payment Accounts Regulations 2015



LATHAM & WATKINS

An update on MAR – the EU Listing Act, the Urra
market manipulation fine, and Market Watch 71
Nicola Higgs

FCA Market Watch 71: Insider Lists

Permanent insiders: FCA observing a downward trend in the numbers of permanent insiders + enhanced monitoring of access to inside information

- Large advisor firms: Numbers decreased from circa 450 → 250
- Methods for reducing access:
 - Registers of events and/or product specific 'permanent insiders'
 - Top to bottom, periodic reviews of the roles of all permanent insiders
 - Comparing records of electronic access to files containing inside information with insider lists
 - Reviews of access to pipeline data, and whether those accessing data require access only to anonymised high-level information (like forecasting), rather than details of transactions / issuer names
 - Necessity of non-deal team employees in particular functions, as well as multiple jurisdictions, having access to inside information

FCA Market Watch 71: Insider Lists

Insider data: FCA reminds firms these should include telephone numbers, dates of birth, and national identification numbers (in addition to names)

- *“Firms not providing all of the information specified in the relevant articles and standards may hinder our reviews of potentially suspicious trading. Principle 11 requires firms to deal with the regulator in an open and cooperative way”*
- **Divergence reminder:** FCA has not made the changes which the EU has made to its Technical Standards for insider lists for SME Growth Market issuers
- **National identifiers:** should contain the relevant national identifier for that individual, defined and designated in accordance with the requirements in Article 6 of RTS 22. The first priority national identifier for UK nationals is the national insurance number. The full suite of national identifiers can be found in Annex II to RTS 22

FCA Market Watch 71: Insider Lists

- **Personal telephone numbers:** must be included
- **Contractors:** include personal details of contractors or otherwise consider whether it is appropriate to give them access to the file
- **Data protection:** UK MAR does not provide an exemption for the provision of personal data in relation to the location of people identified on insider lists and data protection laws in those locations
- **Burden of work:** Firms may store insider lists and personal data separately, and add the personal data to the template when insider lists are requested by the FCA (within 2 business days)

FCA Urra Fines: Market Manipulation

- Dec 2022: FCA has banned and fined three bond traders for market abuse. A referral to the Upper Tribunal is pending

FCA Urra Fines: Market Manipulation

- FCA statement of the facts:
 - Traders were market makers in European Government Bonds (EGB)
 - The traders operated on a secondary dealing desk (i.e. they were not primary dealers in the EGBs): the desk had a limited product range and small market share. The desk often lost money as a result of trading with clients; however, it was strategically important to offer EGBs to clients of other services of the firms
 - Two months before the alleged offenses occurred senior management had increased the “hit” ratio for the desk, requiring the traders to execute a higher proportion of client orders than previously
 - In order for the desk to be successful, and to achieve the increased hit ratio, it was necessary to respond to clients quickly and with as competitive a price as possible. Through the use of the alleged abusive trading strategy, the traders aimed to respond to clients’ RFQs more quickly, and make more competitive prices with increased certainty, in order to increase their hit ratios
 - Although the traders were remunerated based on a range of weighted factors, the performance of the desk was a significant factor when calculating bonuses

FCA Urra Fines: Market Manipulation

- Alleged offense:
 - Traders acted in concert to place:
 - Large orders (relative to others on the exchange at the time) for Italian Government Bond futures that they did not intend to execute
 - Shortly before or shortly after, placing small orders which they did intend to execute on the opposite side of the order book
 - The misleading orders were placed away from the touch, whereas the genuine orders were placed at, or close to, the touch
 - Once the small order had traded (or 50% traded) the large order would be cancelled
 - Traders repeated this pattern of deliberate and intentional market manipulation on a number of occasions
 - 31 occasions where Mr Urra carried out the behaviour by himself and 98 occasions where this was done in concert with the other two traders

EU Listing Act: MAR changes

- **7 Dec 2022:** EC has proposed measures simplifying company listings and capital raises
- A key objective of the EU Listing Act is to alleviate and render more proportionate the pre and post-IPO requirements that apply to companies of varying sizes

EU Listing Act: MAR changes

- **Delay disclosure of inside information:**
 - Article 17(4) MAR is amended (adopting existing ESMA guidance into legislation): replacing the general condition that delayed disclosure should not mislead the public with the following detailed conditions that must (continue) to be met:
 - The inside information is not materially different from the previous public announcement of the issuer on the matter to which the inside information refers to
 - The inside information does not regard the fact that the issuer's financial objectives are not likely to be met, where such objectives were previously publicly announced
 - The inside information is not in contrast with the market's expectations, where such expectations are based on signals that the issuer has previously sent to the market, including interviews, roadshows or any other type of communication organised by the issuer or with its approval

EU Listing Act: MAR changes

Timing of the notification to delay of disclosure of inside information:

The timing of the notification of the delay to the competent authority is brought forward to the moment immediately after the decision by the issuer to delay disclosure, instead of, ultimately, the moment after the information is disclosed to the public

Intermediate steps of a protracted process:

- Disclosure obligation does not cover the intermediate steps of a “protracted process”
- Issuers are under the obligation to disclose only the information relating to the event that is intended to complete a protracted process at the moment when such information is sufficiently precise

EU Listing Act: MAR changes

PDMR insider trading notification thresholds increased to 20,000 per year:

- Article 19 of the MAR is amended to raise the annual threshold above which transactions conducted by PDMRs must be notified to the issuer and to the competent authorities from EUR 5,000 to EUR 20,000
- The value to which competent authorities may decide to increase the threshold applying at the national level is raised from EUR 20,000 to EUR 50,000



LATHAM & WATKINS

PMB 42: FCA's messages for firms on climate-related financial disclosures in 2023
Anne Mainwaring

PMB 42: FCA's messages for firms on climate-related financial disclosures in 2023

- The FCA introduced TCFD-aligned disclosure requirements for premium listed companies for financial years beginning on or after 1 January 2021 and extended the application to issuers with standard listed equity shares for financial years beginning on or after 1 January 2022
- The first annual financial reports including disclosures subject to these requirements were published from January 2022 and the FCA published its first review of TCFD-aligned disclosures by premium listed commercial companies, and the Financial Reporting Council's complementary analysis, in July 2022

FCA uses PMB 42 to remind companies of its rules, guidance and expectations

The FCA notes that its review highlighted some common reporting gaps and areas for improvement. To help listed companies, their directors and advisers the FCA therefore takes the opportunity in PMB 42 to remind companies of its rules, guidance and expectations, including by:

- Reiterating the importance of building capabilities now to make relevant disclosures
- Reminding companies to assess their disclosures against the TCFD's Guidance for All Sectors and, where relevant, Supplemental Guidance for the Financial Sector and for Non-Financial Groups
- Identifying areas for improvement in listed companies' disclosure of forward-looking information

FCA uses PMB 42 to remind companies of its rules, guidance and expectations

- Encouraging better consideration of climate-related risks and opportunities in financial statements, and better connectivity between non-financial and financial disclosures
- Encouraging listed companies, especially those making net zero commitments, to use the TCFD's Guidance on Metrics, Targets and Transition Plans and, in addition, to consider the UK Transition Plan Taskforce Disclosure Framework and Implementation Guidance, published for consultation in November 2022

FCA next steps

- FCA will continue to monitor listed companies' climate-related financial disclosures under the Listing Rules and as part of this, with the FRC, envisages using multi-firm or thematic reviews again next year to consider TCFD-aligned disclosures made by all listed companies in scope of the FCA's climate-related financial disclosure rules
- The FCA has committed to consulting on adapting its climate-related financial disclosure rules to reference the ISSB's standards once these are finalised and available for use in the UK

FCA next steps

- At the same time the FCA will consult on moving to a mandatory compliance basis. The FCA therefore encourages listed companies to continue to deepen their familiarity with the TCFD's recommendations and further improve internal processes to prepare to disclose effectively against existing and prospective requirements
- The FCA also intends to consult on strengthening its disclosure expectations for transition plans, drawing on the outputs of the Transition Plan Taskforce, once finalised. The FCA therefore encourages companies to engage with the initial TPT outputs issued for consultation and provide feedback on practical implementation via the online sandbox

Podcast: Addressing the Evolving Landscape of ESG

Latham's Global Co-Chair of the Financial Institutions Industry Group, Nicola Higgs, sits down with Lucy McNulty, host of the *Following the Rules* podcast, to discuss how financial services firms should adapt to the constant evolution of ESG requirements.

Listen to Nicola's episode of *Following the Rules* on [Apple Podcasts](#).



On the 'Following the Rules' podcast about meeting today's ESG requirements

“The ESG regulatory reform agenda presents an unprecedented challenge for management teams of regulated firms and in particular those with an international footprint.”



Nicola Higgs
Partner



10 Key Focus Areas

This annual publication outlines some of the primary focus areas in 2023 for UK-regulated financial services firms. The fundamental consideration of the direction of travel of UK financial services regulation has progressed, and this is borne out across many of the topics covered in this year's publication.



London Financial Regulatory Portal

OUR PRACTICE

MARKETS

+

CULTURE & GOVERNANCE

+

ESG & SUSTAINABLE FINANCE

BREXIT & REGULATORY DIVERGENCE

GUIDES

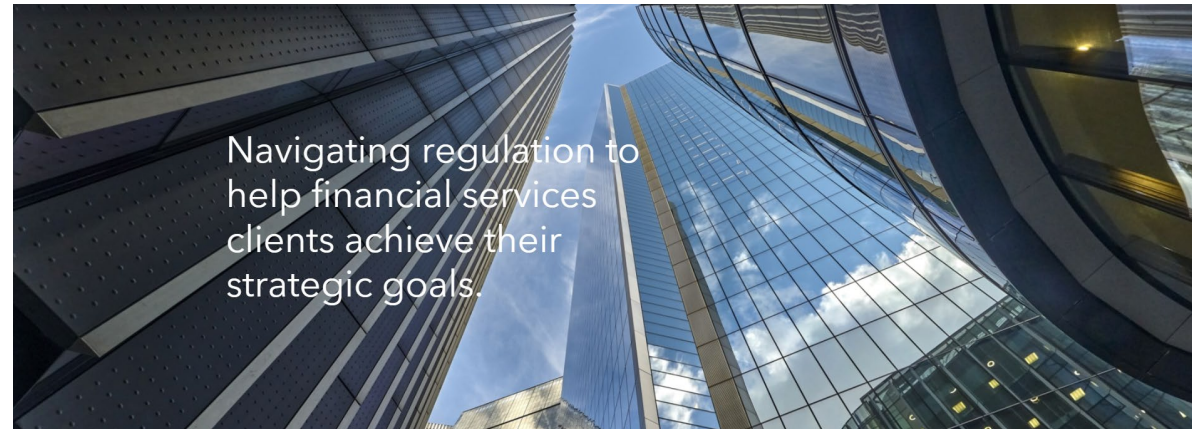
EVENTS

-

EVENTS HOME

MONTHLY BREAKFAST SEMINAR MATERIALS

ALL INSIGHTS



Explore Topics & Resources



Markets

[VIEW MORE](#)



Culture & Governance

[VIEW MORE](#)



ESG & Sustainable Finance

[VIEW MORE](#)



Brexit & Regulatory Divergence

[VIEW MORE](#)



Guides

[VIEW MORE](#)



Insights

[VIEW MORE](#)



Recent Thought Leadership

OUR PRACTICE

MARKETS +

CULTURE & GOVERNANCE +

ESG & SUSTAINABLE FINANCE

BREXIT & REGULATORY DIVERGENCE

GUIDES

EVENTS -

EVENTS HOME

MONTHLY BREAKFAST SEMINAR MATERIALS

ALL INSIGHTS



[Federal Reserve Proposes Climate Risk Guidance for Large Financial Institutions](#)

[The FCA's Approach to Non-Financial Misconduct — A Further Twist](#)

[FCA Recommends Measures Encouraging Diversity and Inclusion in Financial Services](#)

