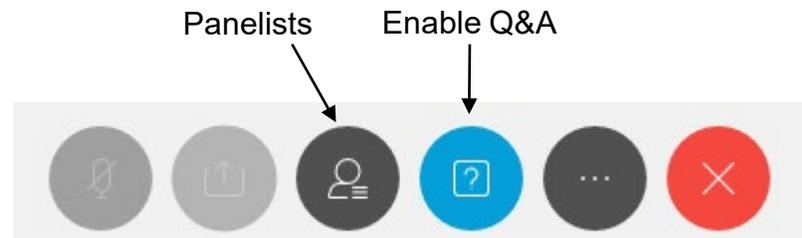
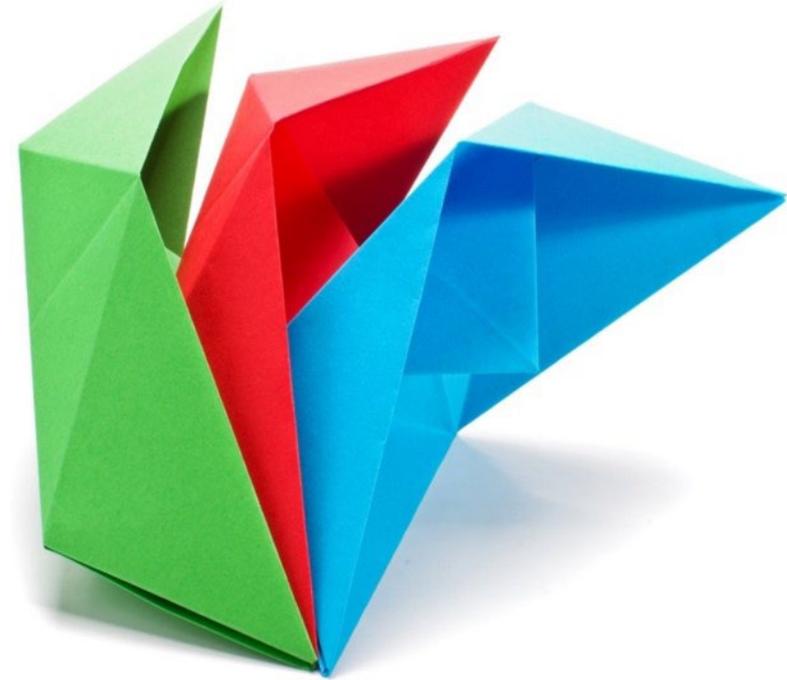


# Housekeeping

- On joining the session your microphone will be muted and your video will be turned off
- You will not be able to enable your video or un-mute your microphone during the session
- To activate the Q&A function click  the Q&A box will appear on the right hand panel
- To submit a question use the Q&A function, send your question to “**All Panellists**”
- If you experience any technical issues and cannot submit these via Q&A please call +44 203 088 7196 or +44 203 088 7450





## Fog in Channel: the taking back control edition

Bob Penn, Kirsty Taylor, Oonagh Harrison and John Budd

19 November 2020

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# What we are going to discuss today

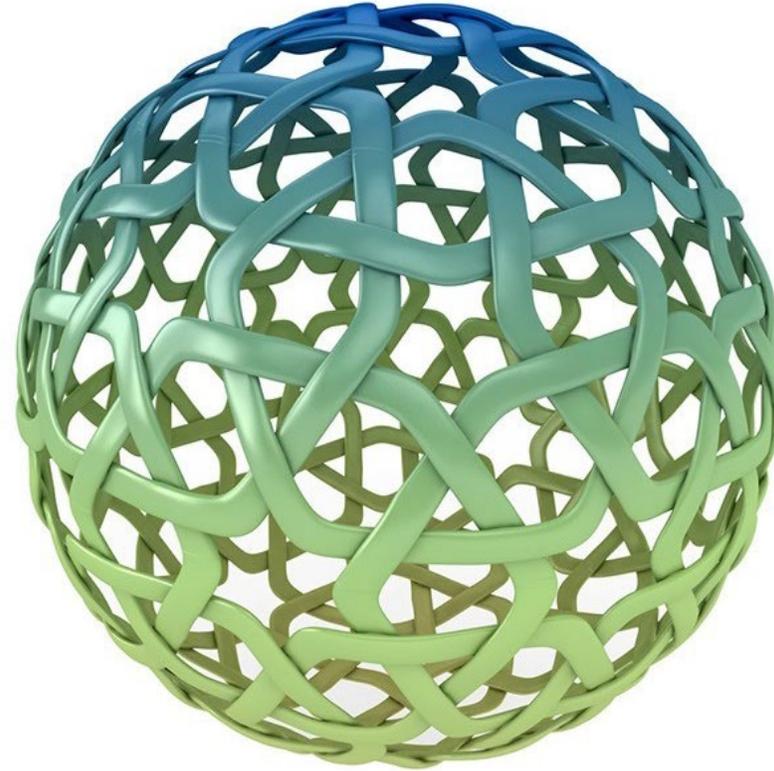
**1. General Update**

**2. The Financial Services Bill**

**3. FCA Approach to International Firms**

**4. Future Regulatory Framework**

# ALLEN & OVERY



General update

# ESMA statements on reporting and operation of databases and IT systems



# EBA reminders

1	UK authorised firms – authorisations and establishments
2	UK third party providers – eIDAS certificates
3	WTR requirements on payments from / to the UK
4	EU based customers

# ESMA Q&A on Prospectus Regulation and Transparency Directive



- how issuers that have chosen the UK as their home member state should choose a new home member state when they wish to offer securities to the public or be admitted to trading in the EU27 or EEA EFTA after the end of the transition period,
- the use of prospectuses approved by the FCA after the end of the transition period
- obligations that an issuer - which had the UK as its home member state before end of the transition period and which is admitted to trading on one or more regulated markets in the EU27 member states or the EEA EFTA states - has under the Transparency Directive in relation to disclosing its choice of a new home member state

# EEA Regulators' Websites

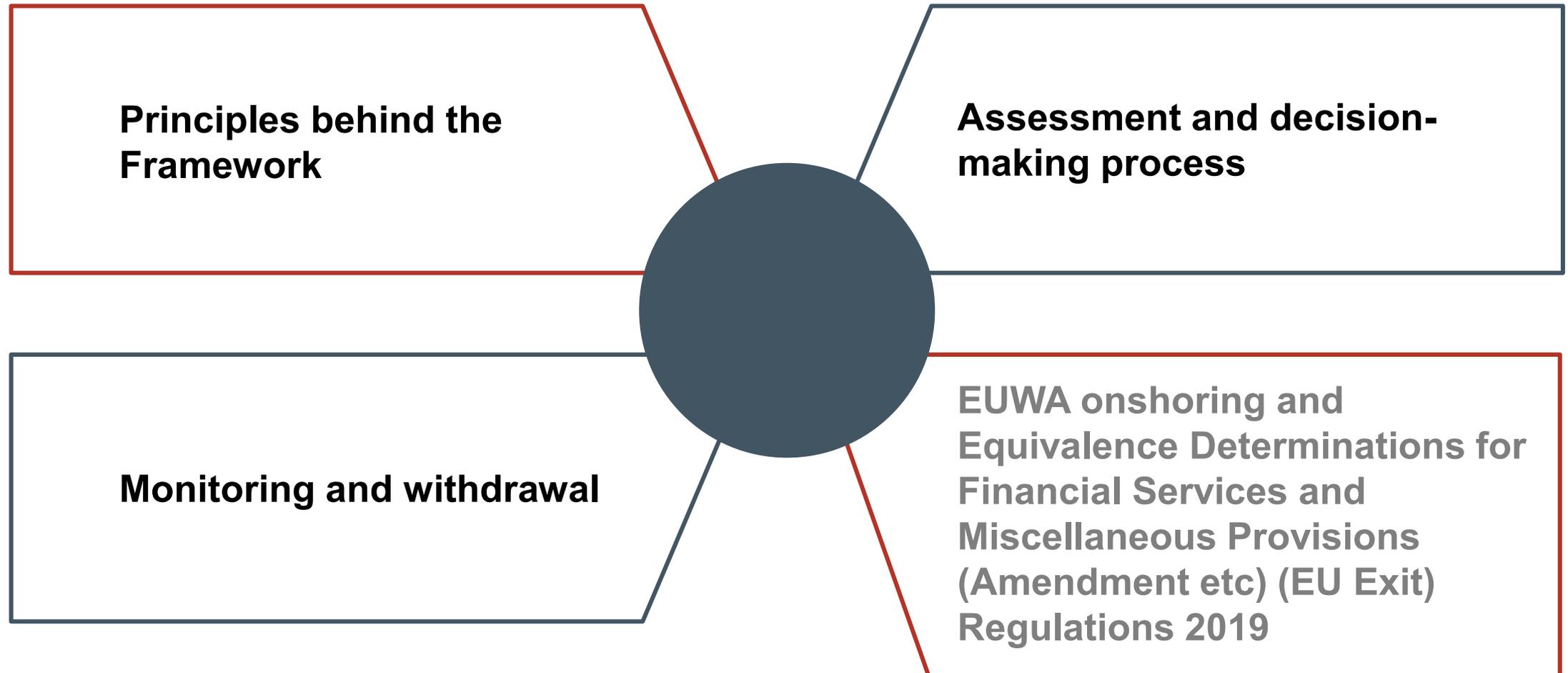


**Table includes links to external national competent authority websites**

- Check for any transitional measures
- Discuss implications of any schemes

**Independent legal advice**

# HMT Guidance for UK equivalence framework



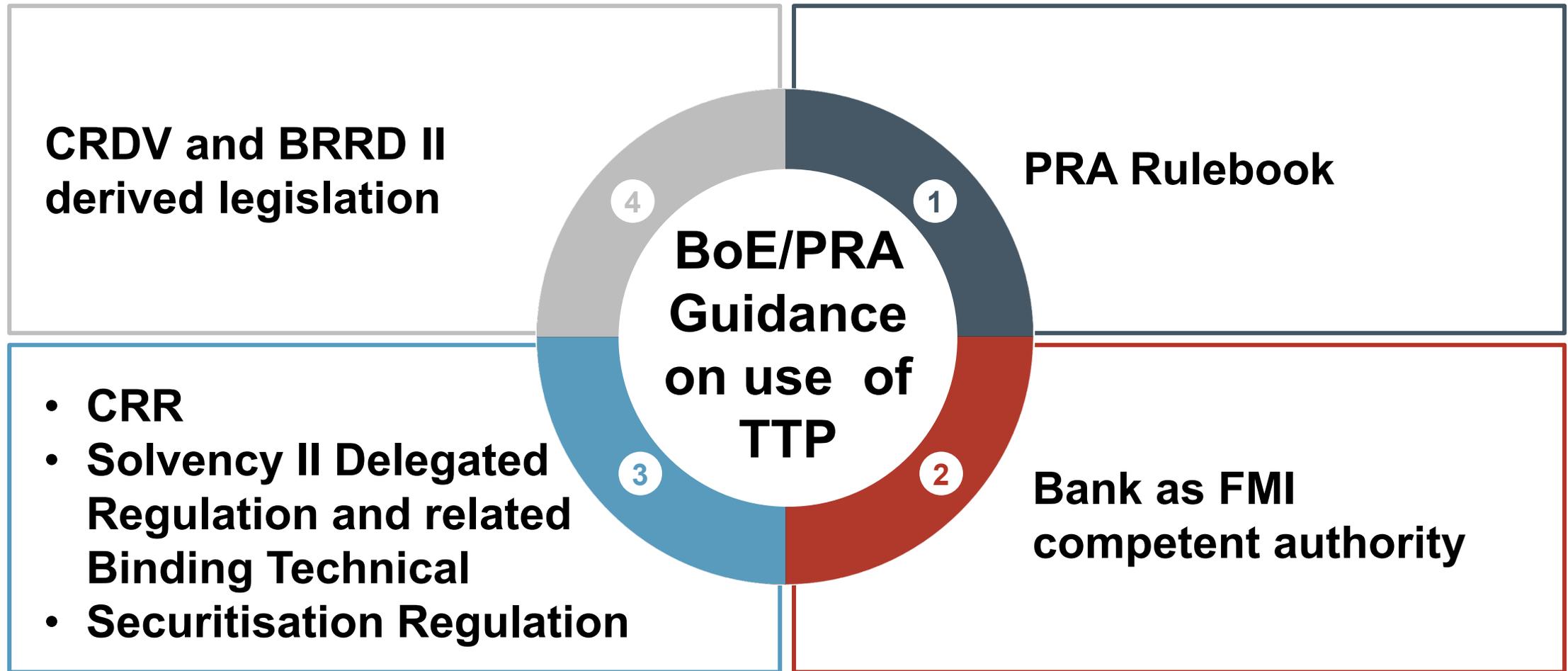
# Good news!

<b>Equivalence decision</b>	<b>Area in which equivalence has been announced</b>
The European Market Infrastructure Regulation (Article 13) Equivalence Directions 2020	Article 13 (partial) of UK European Market Infrastructure Regulation (EMIR)
The European Market Infrastructure Regulation (Article 2A) Equivalence Directions 2020	Article 2a of UK EMIR
Central Counterparties (Equivalence) Regulations 2020	Subject to cooperation arrangements, possibility for recognition of EEA CCPs
The Capital Requirements Regulation Equivalence Directions 2020	Articles 107 (3), 114(7), 115(4), 116(5), 132(3), 142(2) and 391 of the UK Capital Requirements Regulation
The Benchmarks Regulation Equivalence Directions 2020	Article 30 UK Benchmarks Regulation

# Good news!

<b>Equivalence decision</b>	<b>Area in which equivalence has been announced</b>
The Short Selling Regulation Equivalence Directions 2020	Article 17 the Short Selling Regulation
The Credit Rating Agencies Regulation Equivalence Directions 2020	Article 5 of the Credit Rating Agencies Regulation
The Central Securities Depositories Regulation Equivalence Directions 2020	Article 25 of the Central Securities Depositories Regulation
The Solvency 2 Regulation Equivalence Directions 2020	Articles 378, 379 and 380 of the Solvency II Regulation
The Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) (No. 2) Regulations 2020	Audit equivalence to the EEA States and approve as adequate their audit competent authorities
More?	

# BoE/PRA Guidance on TTP



# FCA Expectations of EEA Firms



## **EEA firms conducting business in the UK**

- TPR?
- FSCR?

**Treat Customers Fairly**

# New SIs

## **Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2020**

Extend transitional arrangements which enable specified categories of Gibraltar-based firms to provide financial services in the UK and facilitate the access by similar types of UK-based firms to Gibraltar's financial services market

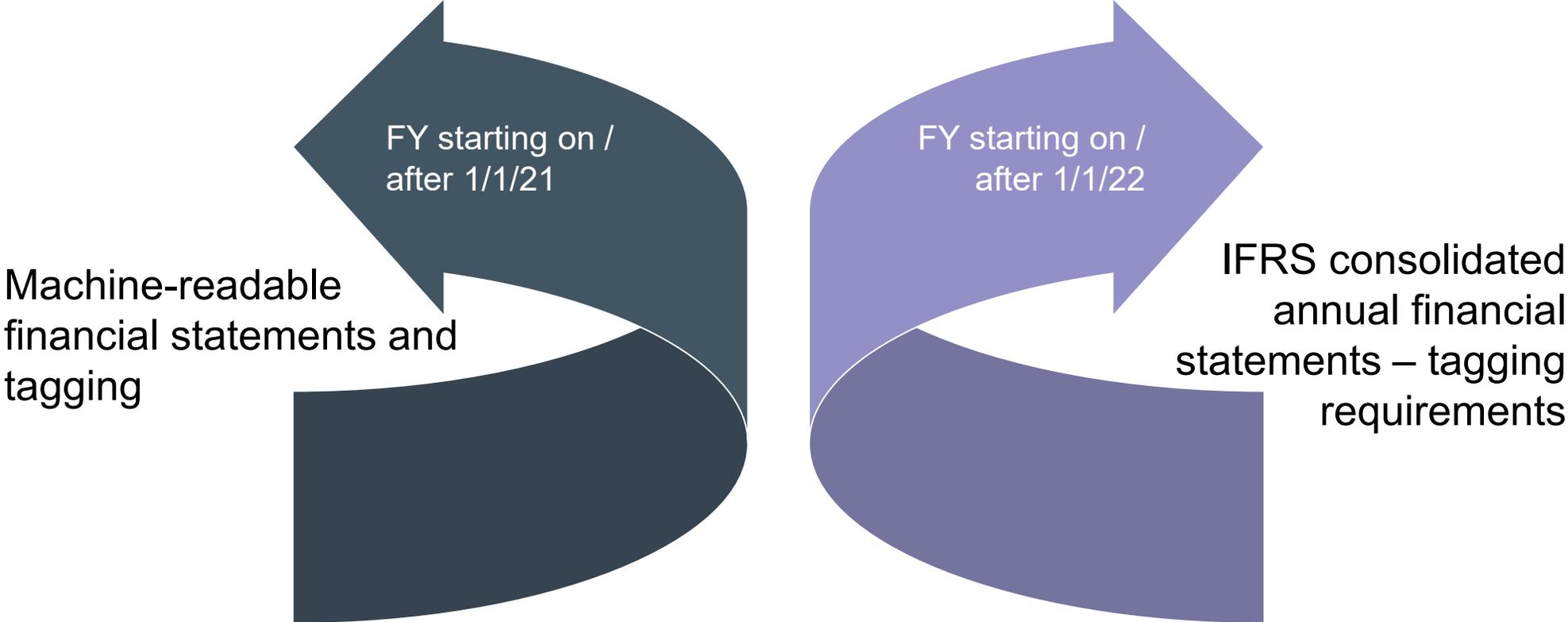
## **Sanctions (EU Exit) (Consequential Provisions) (Amendment) Regulations 2020**

Amends the ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019, the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019 and the Counter Terrorism (Sanctions) (EU Exit) Regulations 2019

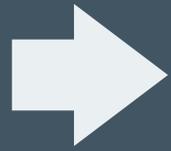
## **The Financial Services and Economic and Monetary Policy (Consequential Amendments) (EU Exit) Regulations 2020**

Updates references to "exit day" to "IP completion day"

# FCA PS on ESEF Reform



# UK Emissions Trading Scheme



## The Greenhouse Gas Emissions Trading Scheme Order 2020

- First trading period commences 1 January 2021



- Scope / role of regulators



- Requirements to monitor and report GHG emissions



- Cap and trajectory

# Speeches of intent

**Nikhil Rathi, FCA Chief Executive.** The FCA is ready to support the UK government to fulfil its commitment to at least match the ambition of the EU sustainable finance action plan in the UK

**Sam Woods, BoE Deputy Governor for Prudential Regulation and PRA CEO.** PRA is considering using the flexibility available once the EU CRR regime ceases to apply in the UK to introduce simpler prudential requirements for small banks and building societies.

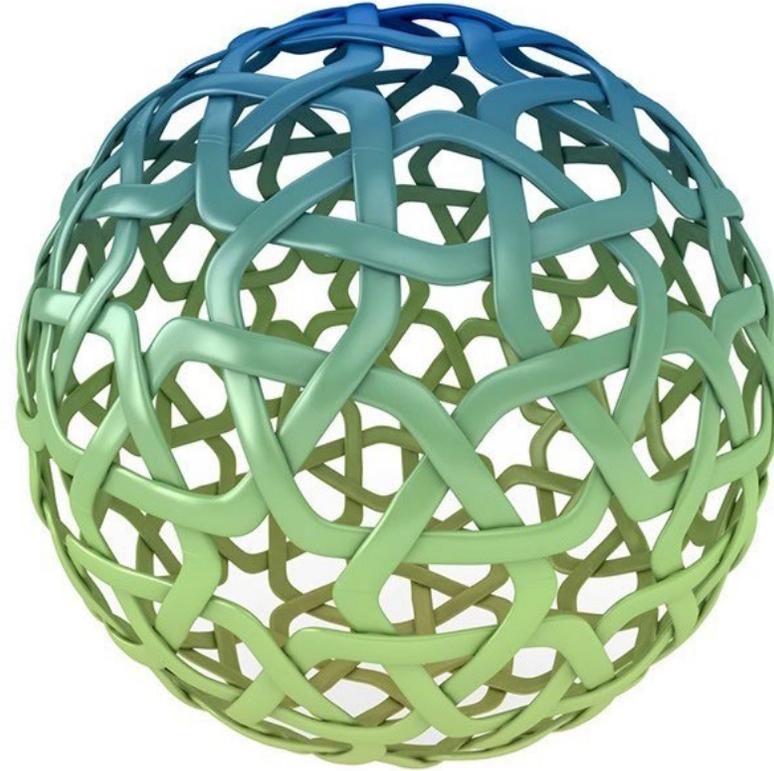
**Rishi Sunak, Chancellor of the Exchequer.**

*Access to UK Markets:* HMT will launch a call for evidence on the UK's overseas regime, establish a taskforce on the UK's listings regime and consult shortly on the UK's regime for investment funds.

*Payments and digital currencies:* HM Treasury plans to support the payments sector, following the conclusion of the first stage of the Payments Landscape Review, as well as a consultation on stablecoins.

*Sustainable finance.* The Chancellor announced that the UK intends to mandate climate disclosures by large companies and financial institutions by 2025, implement a new "green taxonomy" and issue its first ever Sovereign Green Bond in 2021, subject to market conditions.

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## Financial Services Bill

# Financial Services Bill

## Background:

- Onshoring EU legislation
- Financial Services (Implementation of Legislation) Bill
- Financial Services Bill: designed to “ensure the UK’s world-leading financial services sector continues to thrive and grasp new opportunities on the global stage”.

## Brexit – Inflight & Onshoring

- Prudential rules
- Gibraltar
- Overseas Fund Regime
- UK MiFIR
- PRIIPs
- OTC Derivatives
- Insider dealing & market abuse

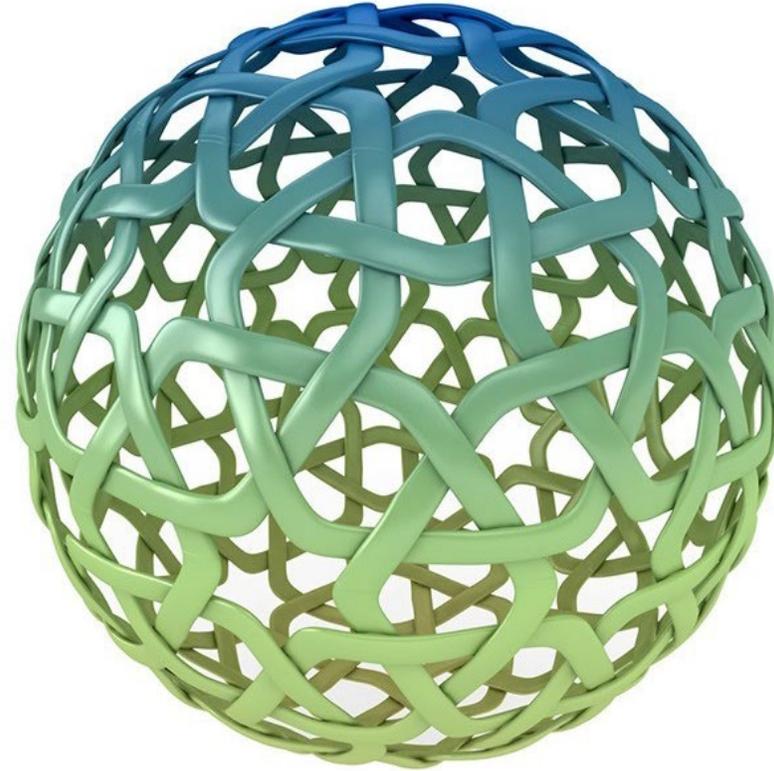
## Financial Services Bill – an overview

## Miscellaneous/Sweep-up

- LIBOR Transition
- De-authorisation
- Debt respite scheme
- Help to save
- Financial collateral
- FCA Chief Executive

## Timing

- Completed second reading in the HoC
- Committee stage started 17/11 and expected to conclude by 3/12
- Written submissions permitted during Committee stage



## FCA approach to international firms

# Financial Conduct Authority CP20/20

- FCA is consulting on its general approach to international firms seeking to provide financial services that require authorisation in the UK.
- CP20/20 does not propose changes to legislation and rules in the FCA Handbook.
- The paper concerns how the FCA proposes to assess international firms against minimum standards when they apply for authorisation and during ongoing supervision.
- Relevant to many of the c. 1500 EEA firms that intend to enter the Temporary Permissions Regime and seek authorisation.
- Responses due by 27 November 2020.
- Output will be a finalised document explaining the FCA's general approach.



## Need for a UK presence

“

*We also expect that [firms] have some form of UK presence, to ensure that we can effectively supervise them for the regulated services they provide. This will impact international firms that do not have any UK presence but wish to be authorised to operate in the UK in future, such as those currently relying on an EEA service passport to serve UK customers. Firms that already have an establishment in the UK are likely to be less impacted.*

<Annex 1, CP20/20>

”

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## Scope of CP20/20

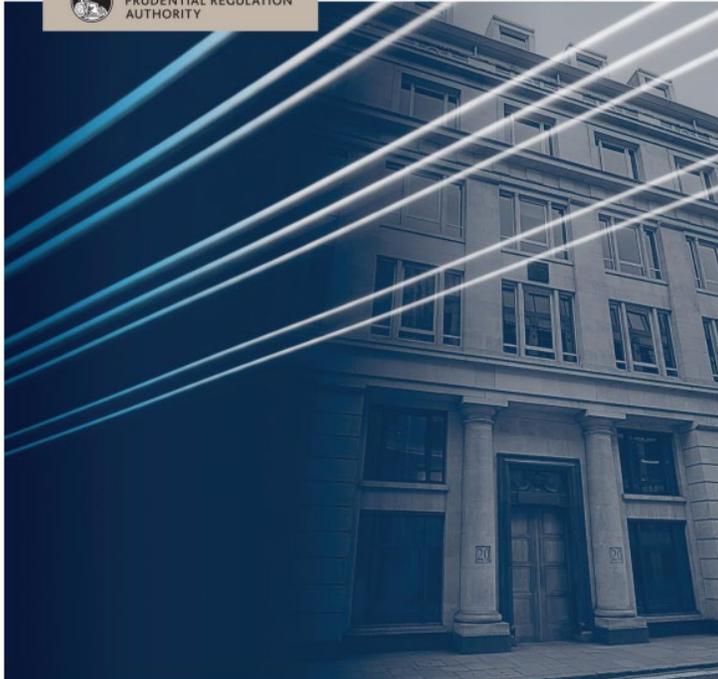
- Covers firms seeking authorisation under Part 4A of the Financial Services and Markets Act 2000 (“FSMA”). Both solo and dual-regulated firms.
- The relevant minimum standards these firms must meet are the “threshold conditions” set out in Schedule 6 of FSMA and the “COND” part of the FCA Handbook.
- CP20/20 is not directly relevant to:
  - Firms that do not require authorisation in the UK, e.g. those relying on the “overseas persons exclusion”.
  - Firms requiring authorisation/registration under the Payment Services Regulations 2017 and E-Money Regulations 2011.
  - Depositories, trustees and managers of UK authorised funds.
  - International alternative investment fund managers.
  - International benchmark administrators.

# PRA counterpart

Supervisory Statement | SS1/18

International banks: the Prudential  
Regulation Authority's approach to  
branch authorisation and supervision

March 2018



- Counterpart to CP20/20 is PRA SS1/18, “*International banks: the Prudential Regulation Authority’s approach to branch authorisation and supervision*” (March 2018).
- Also relevant for dual-regulated firms.

# Risks of harm posed by international firms

## Retail harm

*“Protection for the UK office’s retail customers, through redress and supervisory oversight for example, could be less effective, especially if the international firm becomes insolvent or exits the UK.”*

## Client assets harm

*“The UK rules that protect client money or custody assets safeguarded through the UK office and the home state insolvency regime which become applicable if the international firm fails may not be aligned. This misalignment could negatively impact the outcome for UK clients.”*

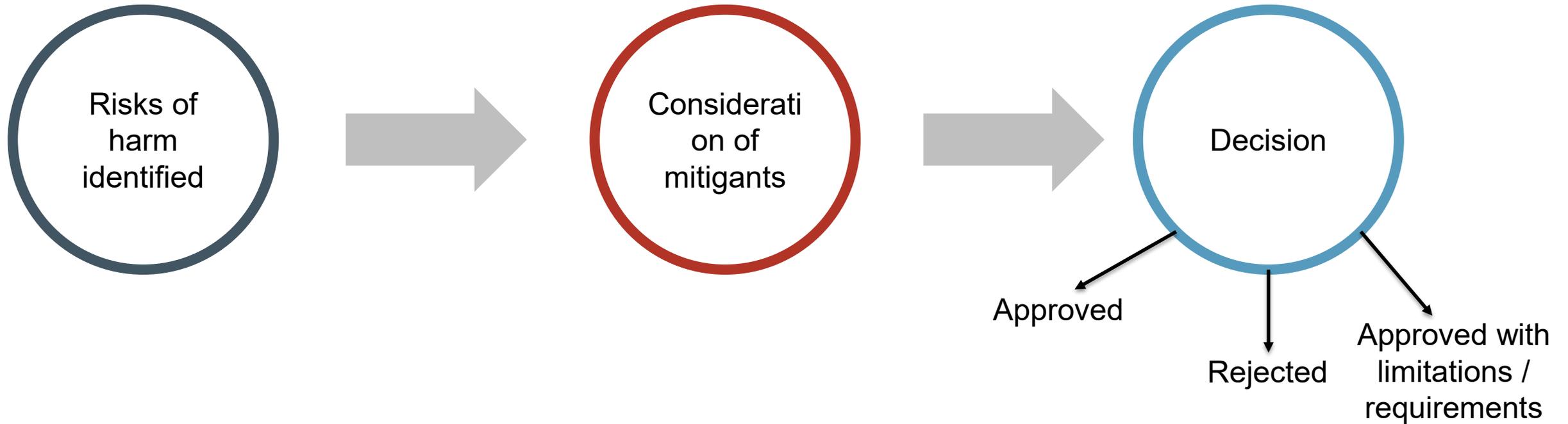
## Wholesale harm

*“Shocks or risks that originate from the international firm’s overseas offices could, in some circumstances, be more difficult to detect or prevent and could be passed easily to its UK office, affecting the stability and integrity of the UK markets in which it operates or to which it is connected.”*

# Areas of focus for FCA

- Ability to supervise conduct of UK business
- Potential outcomes in an insolvency situation
- Role and accountability of the firm's senior management
- Supervisory cooperation of firm's home state regulator

# The FCA's authorisation process for international firms



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## Risk of subsidiarisation

“

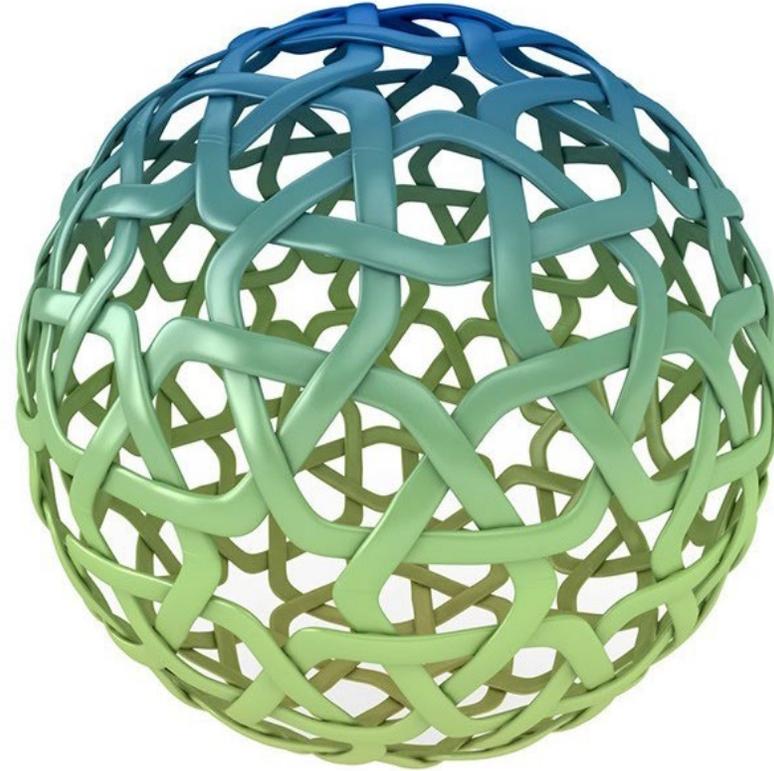
*Where the risk of harm cannot be adequately mitigated for an international firm applying to operate in the UK from a branch, but could be mitigated if that firm undertakes the relevant activity through a UK entity, we may invite the firm to apply for authorisation on that basis to undertake the activity in the UK.*

<Paragraph 2.16, CP20/20>

”

# Potential areas of concern

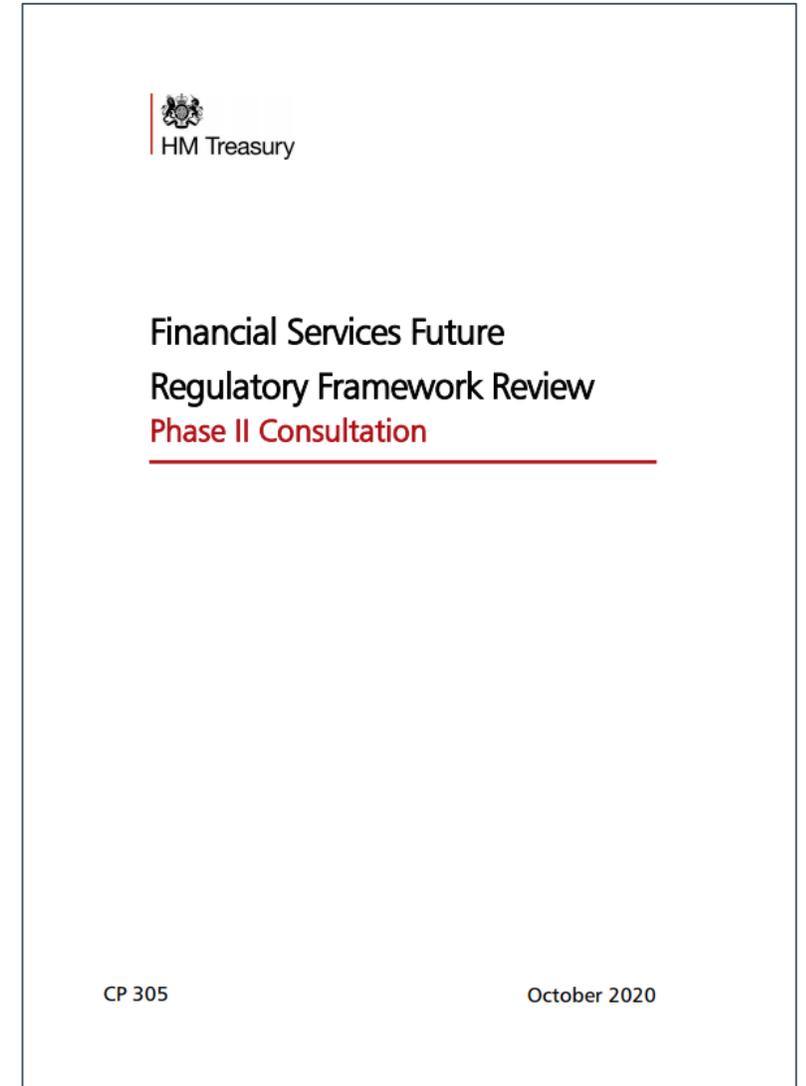
1	In parts, guidance is too vague to be meaningful in practice.
2	More detail in relation to particular jurisdictions would be helpful, e.g. EEA.
3	Expectations of branch management vis-à-vis inbound services are unrealistic and misaligned with existing regulatory framework.
4	Approach needs to fully reflect post-crisis reforms in relation to bank/investment firm resolution.
5	Interaction with PRA's approach could be clearer for dual-regulated firms.



## Future Regulatory Framework

# Financial Services Future Regulatory Framework Review Phase II CP

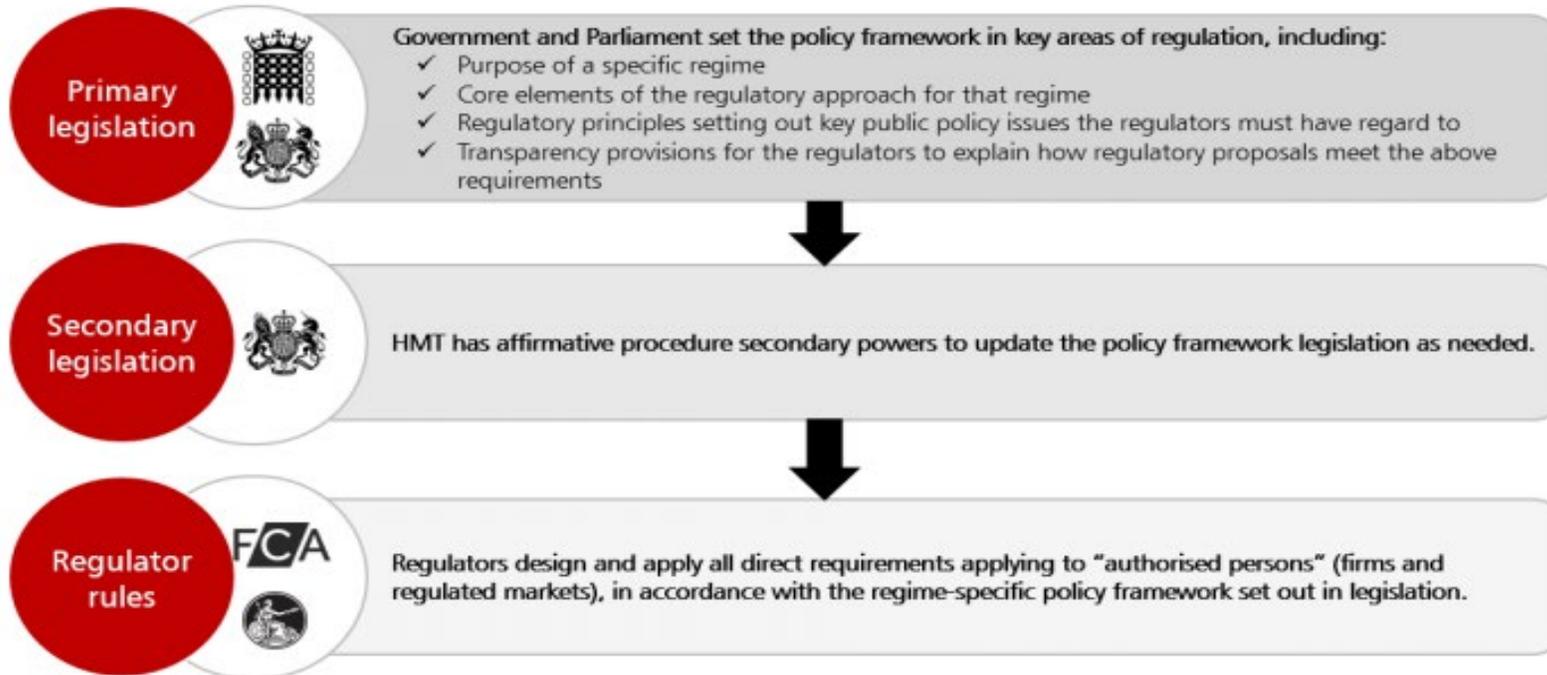
- HMT is consulting on adapting the regulation of financial services to life outside the UK to ensure fitness for purpose.
- Context:
  - ‘De-Europeanising’ the UK framework
  - Reallocating responsibilities between government and the regulators
  - Creating accountability of the regulators and HMT
- Responses due by 19 January 2021.
- Output will be a further consultation in H1 2021.



# Key themes

- FSMA model, and broader UK regulatory structure, is fit for purpose
- EU competence has upset the model – over-political EU process results in too much primary legislation, occupies too much government time, gives too little flex for regulators to make policy and rules and results in a fragmented rulebook
- So what should change?

## Diagram: the proposed allocation of regulatory responsibilities

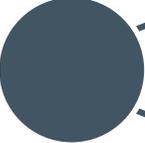


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## Key themes (2)

- Rationalisation
- Coherence
- User-friendly regulation
  - Ease of use
  - Machine readability
- Regulator's statutory objectives
  - Support viability of financial sector? Competitiveness internationally?
- Accountability and Parliamentary scrutiny
  - Coordination between HMT and the regulators
  - Public engagement – consultation; statutory panels
  - Review (possibly independent) of rules
  - Independent scrutiny function?

## So what's on the wish list?



Competitiveness objective?



Obligations to cooperate with foreign regulators?



Streamlining the legal and regulatory structure?



Losing the obviously political elements of the EU acquis – bonus caps for non-banks etc?

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# Contacts at A&O



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