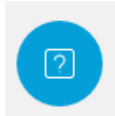
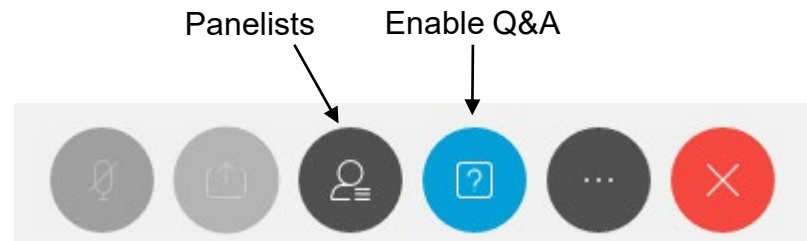
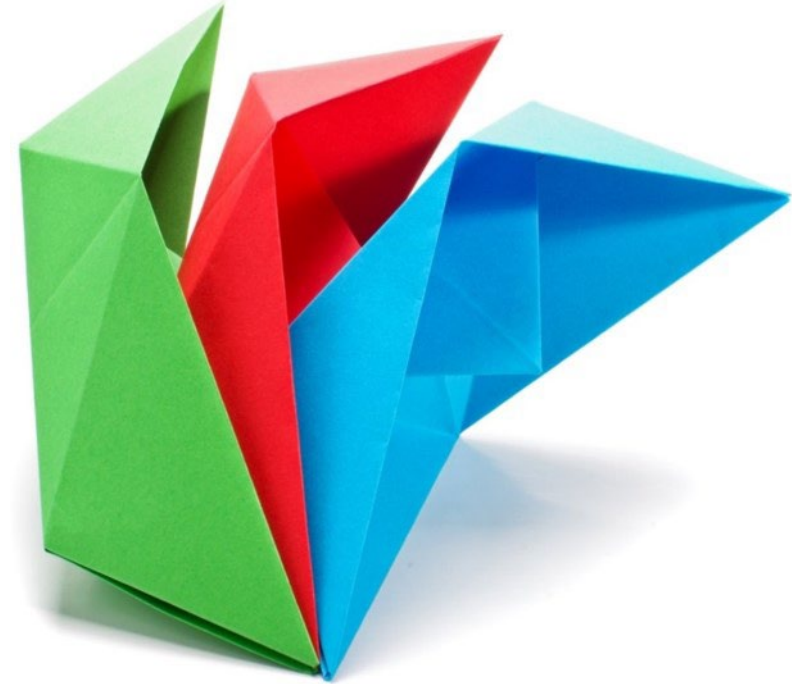


Housekeeping

- 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 payment services and fintech edition

Bob Penn, Kirsty Taylor, Martin Dowdall

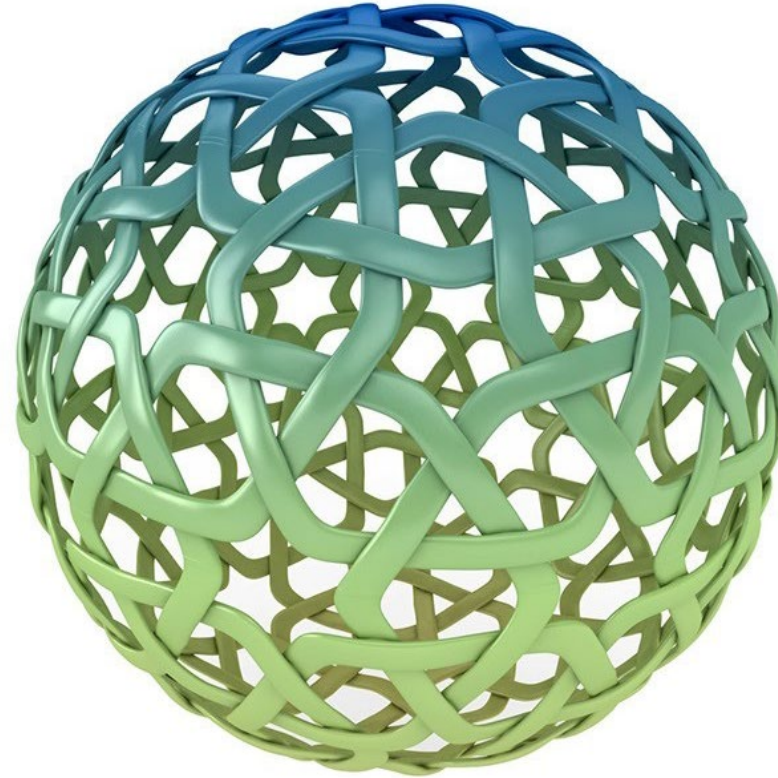
22 October 2020

What we are going to discuss today

1. General update

2. Brexit – considerations for payment services providers

ALLEN & OVERY



General update

The end of the road?

“

There is no point in resuming talks and going round and round in circles again

<government source>

”

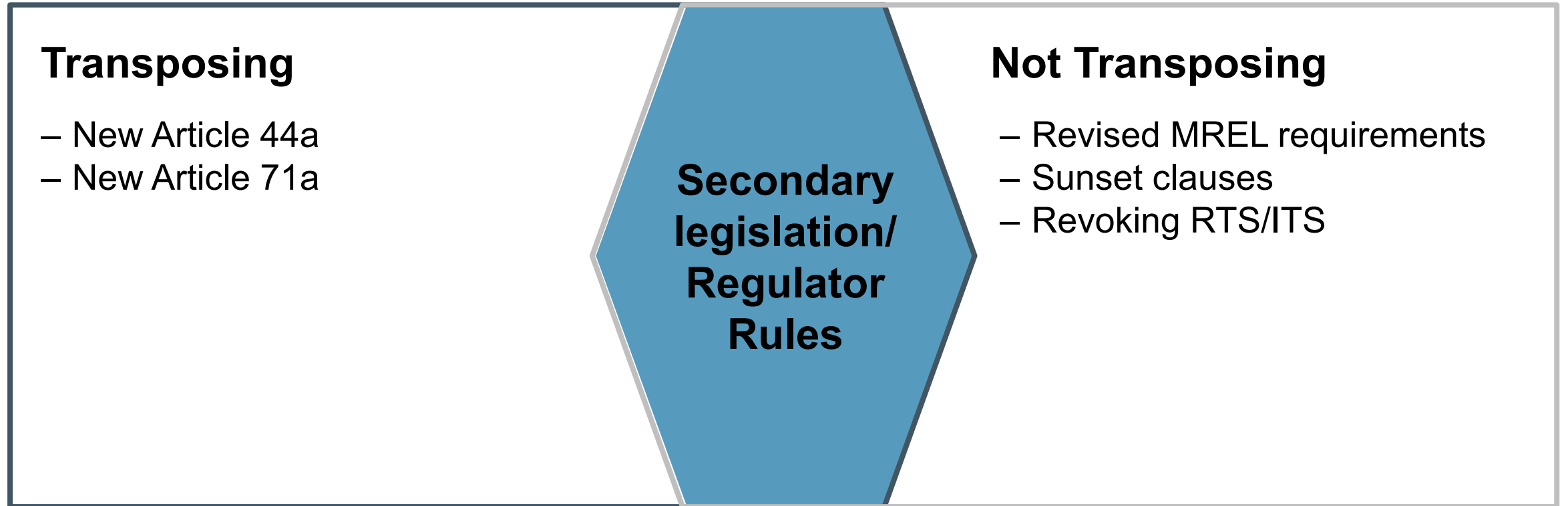
FCA on account closures



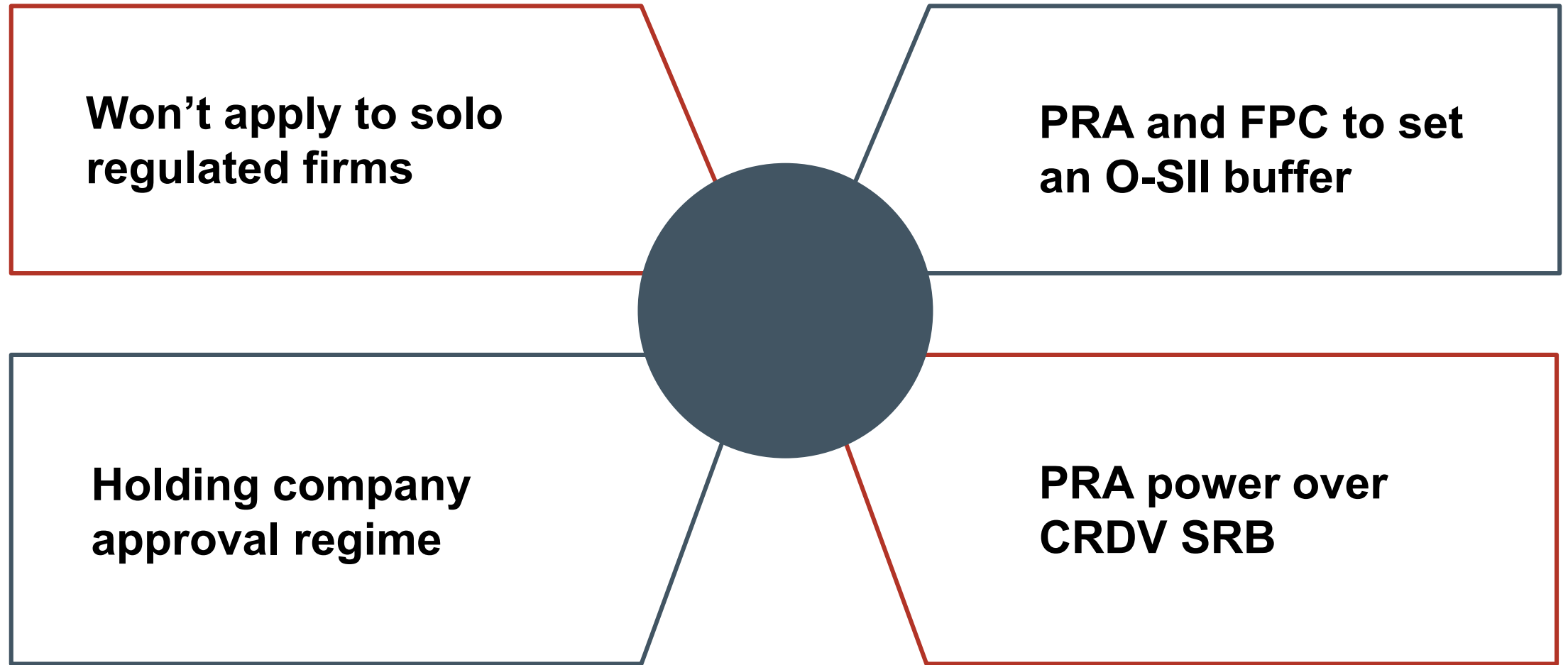
PRA/FCA Dear CEO Letter

- 01 Continuity of wholesale banking business and contracts
- 02 Data
- 03 Trading venues
- 04 Payments
- 05 Provision of retail banking services

HMT consultation response on the transposition of BRRDII



HMT consultation response on transposition of CRDV



PRA second consultation on the implementation of CRDV (CP 17/20)

New SIs

Draft Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020

- makes transitional and saving provision concerning trade repositories and securitisation repositories
- updates cross-references for EU regulations, such that they refer to the correct version at IP completion day
- amends and revokes aspects of retained EU law / related UK law

Draft Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020

Transposing / enabling transposition of BRRD II (see also HMT consultation response)

Draft Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020

Transposing / enabling transposition of CRDV (see also HMT consultation response)

HOL EU Services Sub-Committee on financial services after Brexit



01

When will EU publish equivalence determinations?



02

When will Government publish outcomes of its assessments?



03

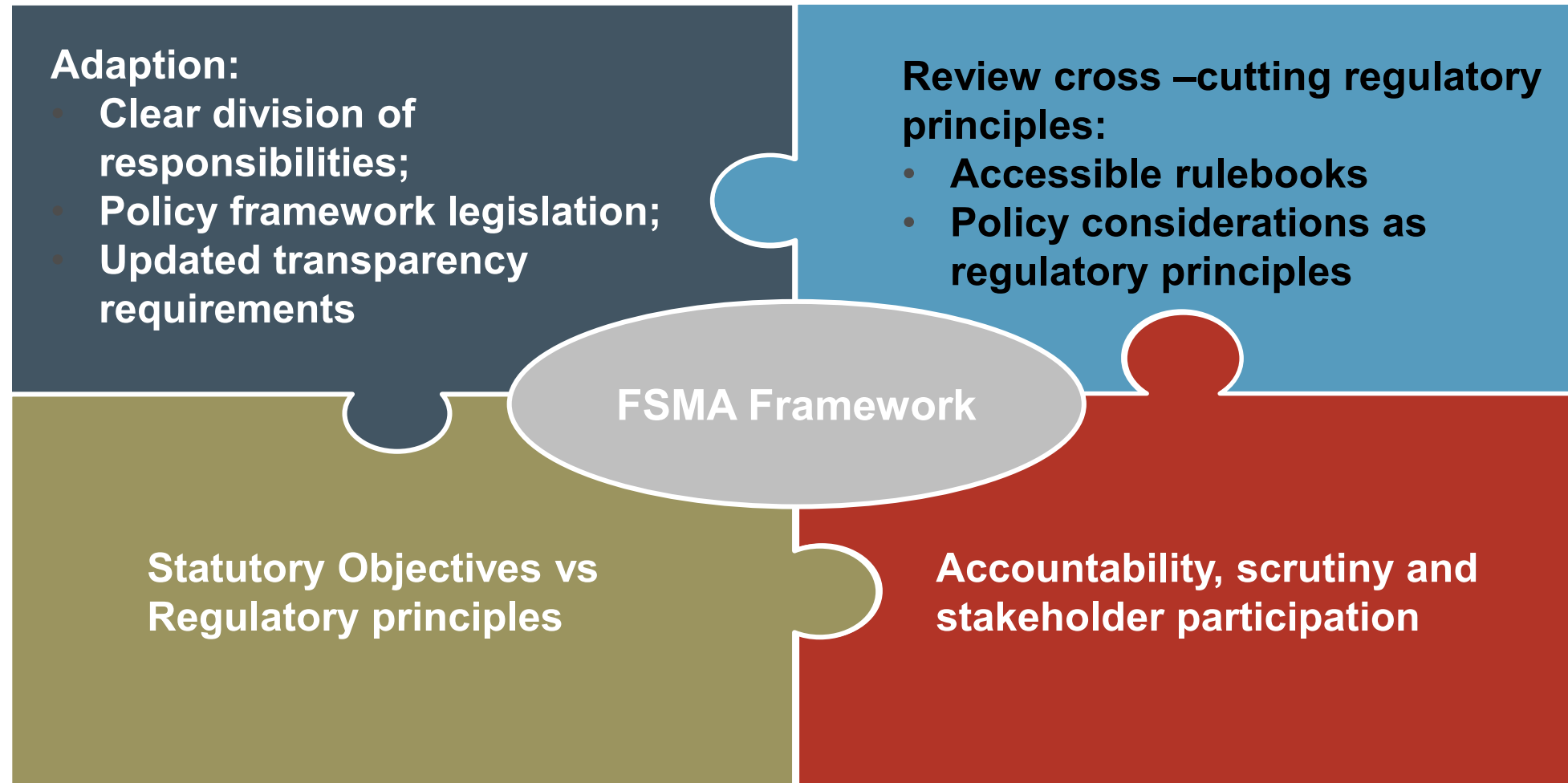
Temporary equivalence for UK CCPs - was this agreed in discussion with the Government?



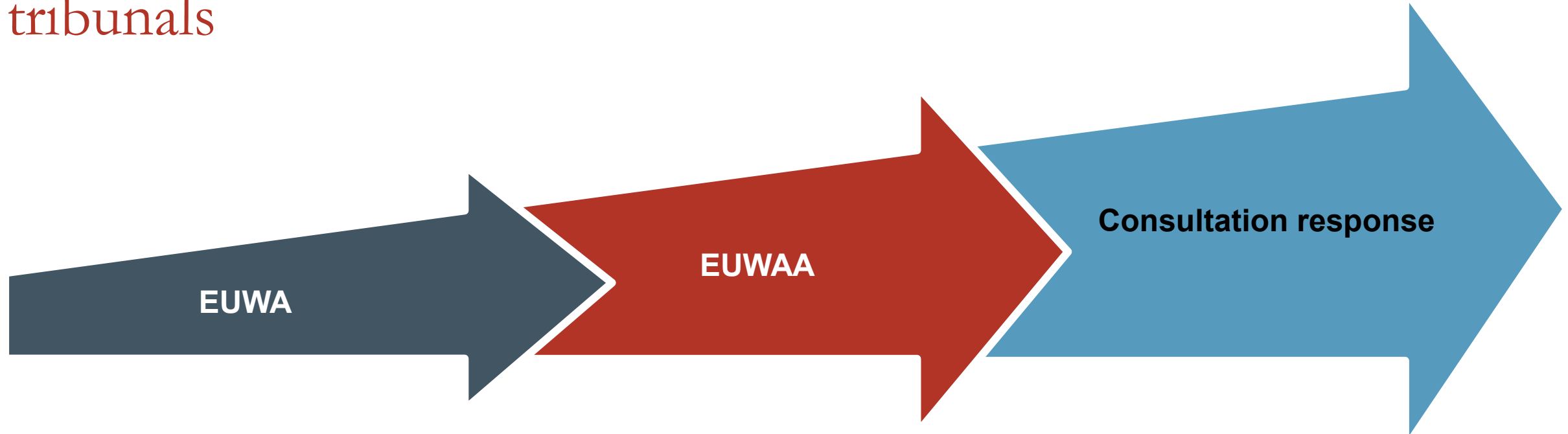
04

Government Guidance on UK's equivalence framework – when will it be published?

HMT consultation on Financial Services Future Regulatory Framework Review



MoJ: Departure from retained EU case law by UK courts and tribunals



- Retained EU case law
- UK Supreme Court and High Court of Justiciary in Scotland power to depart from retained EU case law

- List of courts with power to depart from retained EU case law can be extended
- ‘Consultation on departure from retained EU case law by UK courts and tribunals’ (2 July 2020)

- Power extended to Court of Appeal (or equivalent) level
- Courts to apply same test as UK Supreme Court
- The European Union (Withdrawal) Act 2018 (Relevant Court) (Retained EU Case Law) Regulations 2020

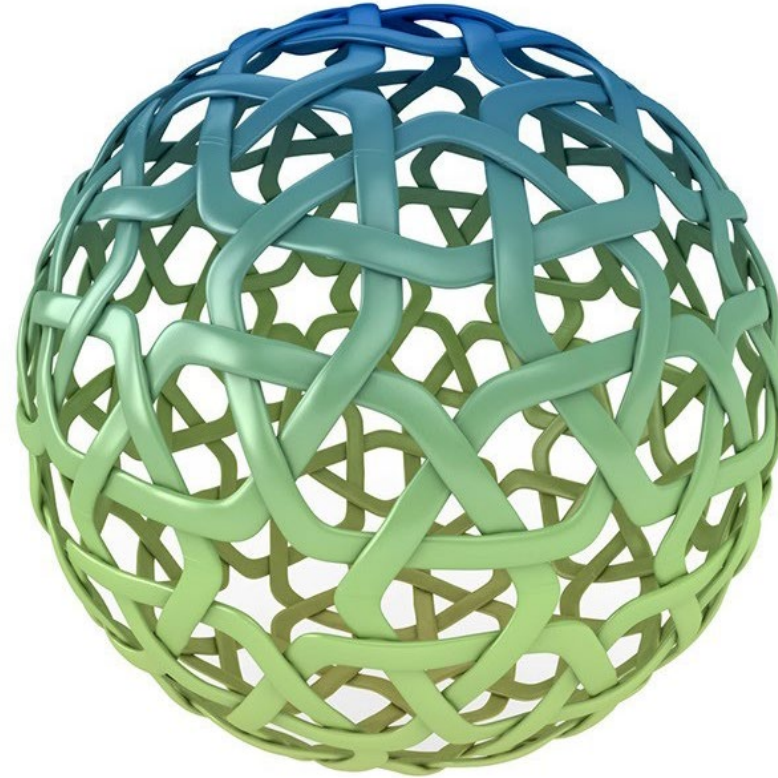
In other news



CFTF / BoE New MOU for Supervision of Cross-Border Clearing Organizations

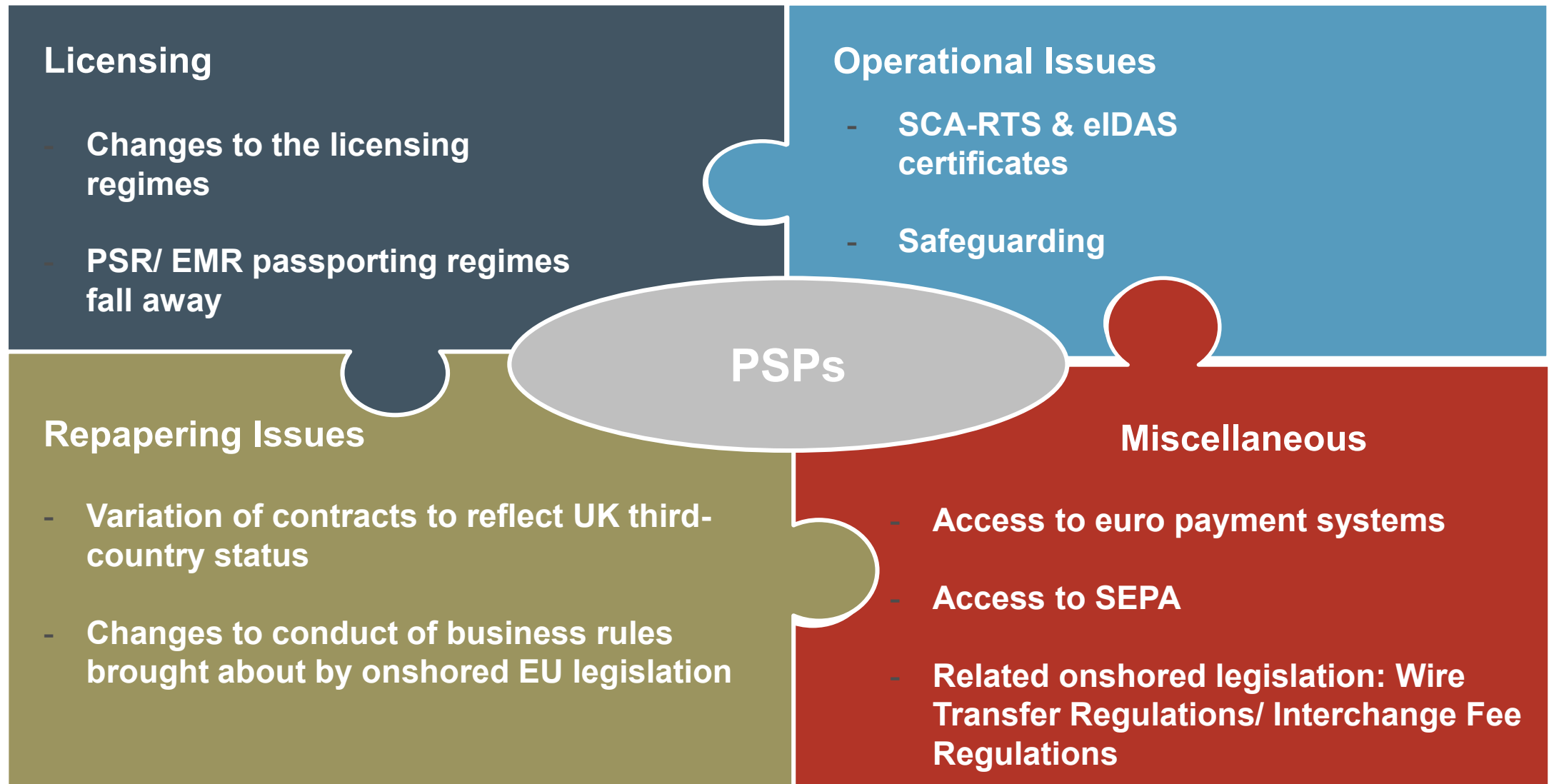
- cooperation and the exchange of information in the supervision and oversight of clearing organizations that operate on a cross-border basis in the United States and in the United Kingdom
 - CCPs home country is primary supervisor
 - Supervision of CCPs that operate in both US and UK based on close co-operation and mutual respect
 - In emergency situations, home authority will take the lead

Supersedes 2009 agreement and follows 2019 joint statement on continuity of derivatives trading and clearing post-Brexit



Brexit – considerations for payment services providers

Key considerations



Reminder: Restructuring issues

1

Licensing position:

- i. Banking groups, will there be a UK entity with the right permissions?
- ii. Potential differing approaches from EU regulators to authorisation (e.g. interpretations of nature of payment services varies).
- iii. EEA PSPs and cross-border payments - in what circumstances do EEA firms need a UK entity when providing cross-border payment services from EEA into the UK?

2

EMRs/ PSRs passporting regimes fall away - different rules payment / e-money firms need to comply with if they enter TPR - e.g.,

- i. use of agents - EEA PIs and EMIs in the TPR will need to notify FCA of existing agents which provide payment/e-money services in UK;
- ii. rules around safeguarding - EEA PIs and EMIs in the TPR will have to comply with safeguarding requirements of onshored PSRs and EMRs in relation to UK customer funds (see slide below).

Operational issues

3 Safeguarding accounts

- PIs & EMRs: Only accounts held with UK banks; central banks of, and credit institutions authorised in **OECD member states**; and credit institutions meeting certain other minimum criteria will be eligible for safeguarding UK customers' funds in / after TPR.
- Bulgaria, Croatia, Cyprus, Liechtenstein, Malta and Romania, are **not** OECD member states.
- UK PIs using EEA insurers and custodians to comply with safeguarding requirements will need to find alternative safeguarding arrangements as these will no longer be eligible providers for safeguarding purposes.

4 SCA-RTS

- FCA published a draft UK version of the SCA-RTS (the **UK-RTS**), which shall take effect in the event of a no-deal Brexit.
- UK-RTS substantially similar to SCA-RTS but there have been several variations in relation to eIDAS certificates (see below), financial thresholds and technical specifications.

eIDAS certificates

- Following recent EBA announcement, eIDAS certificates issued in the EU to UK TPPs will be revoked.
- FCA will require ASPSPs to accept alternative certificates, but will not be prescribing which alternatives should be used.
- Certificates issued by the Open Banking Implementation Entity) one suggested solution.

Repapering

5 UK as a third country

- Post IP completion day, UK will be a third country.
- PIs and EMIs to consider basic contractual amendments to reflect consequential changes (**NB notice periods in PSD2**).
- Firms may prefer to voluntarily meet higher standards for commercial / operational reasons.

6 Onshored PSRs/ EMRs

- Firms to consider which changes they might make to contractual documentation in view of different requirements in onshored PSRs/EMRs, for example:
 - Onshored version of PSRs sets out various changes to the conduct of business rules, e.g. execution times for cross-border payments.
 - Post IP completion day, UK PIs (as third country firms) might be able to avail themselves of lighter conduct of business requirements.
 - Again, firms may prefer to voluntarily meet higher standards for commercial / operational reasons.

Other considerations - payment systems related

7

SEPA End-Date Regulation

- On 7 March 2019, the European Payments Council (EPC) approved the continued participation of UK PSPs in the Single Euro Payments Area (SEPA) schemes after Brexit on 31 Jan 2020.
- Onshored version of this Regulation (the Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations 2018) contains changes to reflect that UK has become a third-country SEPA Member.
- Though EPC announced its decision for continued participation of UK PSPs in the SEPA schemes, this decision will be **subject to periodical revision** to ensure the continued compliance of the UK with the SEPA scheme participation criteria.

8

- Post IP completion day, the **Revised Cross-Border Payments Regulation** shall not be retained under UK law.

9

- **UK PSPs'/ UK EMIs' access to euro payment systems** such as STEP2 and TARGET2.

Other considerations - miscellaneous

11

Money Laundering Regulations/ Wire Transfer Regulations

- Each of these Regulations have been updated by a single piece of onshoring legislation. The changes are mainly to reflect the UK no longer being part of EU AML information-sharing arrangements.

12

Interchange Fee Regulations - under the onshored IFRs:

- Card scheme operators able to set higher interchange fees for cross-border transactions.
- UK merchants could therefore be exposed to such increases and EEA card issuers could receive more interchange fees from transactions with UK merchants.
- Conversely, following the April 2019 Commitments from Visa and MasterCard to the EC, UK issuers will be unable to receive higher interchange fees from transactions involving EEA merchants.
- Also, where both issuer and acquirer are located in the UK, the caps on interchange fees will be set at the same levels as those for intra-EEA payment transactions under EU IFR.

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