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Dear Mark,

CP13/8 Publishing information about enforcement warning notices

This is the Financial Services Consumer Panel's response to the Financial Conduct Authority's consultation on publishing information about enforcement warning notices.

We believe publishing information about enforcement warning notices is a welcome step. It has the potential to act as a strong deterrent and arguably deliver quicker outcomes by encouraging firms and individuals to settle cases at an earlier stage.

Consumers need to be provided with appropriate information on firms at the earliest opportunity in order to be in a position to make informed choices about whether or not to deal with them. We believe that the publication of information about warning notices is in the interests of consumers and fair trading businesses seeking to compete on a level playing field. Furthermore, it will help build trust in the regulator as public awareness of its work increases.

We recognise that the issuing of a warning notice is not a course of action taken lightly. In the majority of cases where a warning notice is issued, formal action subsequently follows. Therefore, we believe this measure is proportionate and brings the financial services space in line with civil and criminal procedures, where details of an investigation would be in the public domain at a similar stage of the corresponding process. Ideally, we would like to see more of an indication of the seriousness of the issue being investigated, however, realise there is a balance to be struck.

Presumption to publish

In response to the drafting of the Financial Services Bill 2012 we stated that we did not believe the FCA should be required to consult the firm or individual involved, prior to publishing information about a warning notice. Where it is believed that there is merit in challenging a decision to publish as a matter of course, this will be used as a delaying tactic to put publication off for as long as possible. We therefore agree with the FCA's presumption to publish information about warning notices in all but exceptional circumstances and with the 14 day time bar for warning notice recipients to respond prior to publication.

Whilst we believe that publishing information about warning notices is a positive move, it is not a panacea. CP 13/8 sets out that a warning notice is only issued after the FCA's Enforcement Division has carried out an investigation which may have taken months or in some cases over a year. The reality is that since 2010, the Financial Services Act 2010, also amended by FSMA, allows the regulator up to three years to reach warning notice stage.

Transparency

The Panel has long argued that transparency can be a legitimate regulatory tool. We commissioned research on this topic in 2010 and in a subsequent position paper set out where more could be done, either through legislative change or action by the regulator, to further utilise this resource.

The Panel believes that the regulator should go even further in publically disclosing information in pursuit of its objectives. Although section 348 of FSMA prohibits the sharing of specific types of information, section 349 allows regulations to be made by Treasury to modify the effect of section 348 for the purposes of facilitating a public function. We have set out further ways in which we feel the regulator can be more flexible within legislative boundaries, in our response to the FCA's Transparency discussion paper¹.

In particular, we would like to see the publication of complaints data by brand, information on firms' compliance with financial promotions rules and the results of mystery shopping exercises. This would align with a wider move to empower consumer through earlier access to information. We note that only last week the Ministry of Justice launched a claims management company checker tool to help consumers identify the firms who are under investigation². This demonstrates that achieving this level of transparency is possible.

Yours sincerely

Adam Phillips
Chair
Financial Services Consumer Panel

¹ <http://www.fs-cp.org.uk/publications/pdf/CP-response-Transparency-DP20130426.pdf>

² http://www.citizensadvice.org.uk/index/pressoffice/press_index/press_20130607.htm