

Enforcement Law and Policy
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

By email

26 April 2024

Dear Sir/Madam,

CP24/2: Our Enforcement Guide and Publicising Enforcement Investigations – A New Approach

The Panel supports the high-level objectives of the proposals but urges caution in the consideration of any changes to publicising enforcement investigations. We appreciate the intent of increasing transparency in this area to provide more impactful deterrents and recognise that, in certain circumstances, disclosure may be appropriate. There is some precedent in other jurisdictions; however, there is risk that publication could damage, not enhance, market confidence in the UK financial services sector.

Our primary concern is that, for individual firms, publicity of a formal investigation could give rise to prejudice that may impact their reputation in the long term, even if no wrongdoing is found and no action taken (e.g., if “news” about a firm’s investigation appears / remains at the top of the list of results for that company in prominent search engines). There could also be a potentially unwarranted and negative impact on individuals within those firms. There is also the possibility of reputation damage to the FCA if it is perceived to be harming firms or individuals without ultimate cause.

The success of UK financial services firms (however small or large) relies on their reputation, which can be lost quickly and is very difficult to rebuild. The publication of investigation decisions could raise questions in the minds of investors, consumers and market participants about potential wider issues within the sector, leading to a loss of consumer trust, and potential implications for market stability and the relative appeal of UK financial services to investors.

Our strong view is that, given the potential risks involved for UK financial services, the bar for meeting the public interest test for disclosure should be set high and the criteria fully transparent. We would expect that to weigh up potential consumer protection benefits against the potential detriment for firms, as well as consider whether an announcement would promote confidence in the integrity of the market. Firms would also need to be given the opportunity to reduce or mitigate identified issues ahead of any decision to take formal action.

On the wider context, we welcome the focus on strengthening and streamlining enforcement processes, including prioritising cases of strategic significance and giving greater attention to reducing investigation duration. These improvements should help build consumer and investor confidence that the FCA is taking a more assertive approach to preventing and reducing harm.

We would be happy to discuss any of these points further.

Yours faithfully,

[signed]

Matt Hammerstein
Chair, FCA Practitioner Panel