

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 understands the intent behind the new investigation publicity policy, to amplify the deterrent impact of the FCA's enforcement work, improve transparency and accountability and enhance public confidence. However, we have strong concerns that the proposals could have significant unintended consequences for both consumers and industry.

Our view is that the proposals have the potential to decrease rather than increase public confidence in UK financial services. Many consumers are unlikely to understand the nature of an enforcement investigation and will be discouraged from engaging the services of a business where concerns about its conduct have been raised. An announcement made about a decision to investigate a firm will raise questions of potential misconduct which are likely to linger regardless of whether the firm is subsequently cleared of wrongdoing. Smaller firms with more limited resources and narrow profit margins would be particularly vulnerable to fluctuations in income resulting from a loss of new or existing customers influenced by negative publicity.

There could also be risk to the reputation of financial services more widely, if the perception builds in the media/ general public that there is an underlying issue with certain sectors or types of service. Linked to this, potential investors may be reluctant to invest in UK companies where there are reputational issues or perceptions of problems.

Introducing this change could also risk creating a climate of fear which could have a detrimental effect on firms' relationships with the FCA more generally. Firms may be more circumspect in their dialogue with the FCA, possibly leading to issues being identified later.

Bearing all these risks in mind there should be a high threshold for making public the names of firms that are under an enforcement investigation. While the proposals state that any decision to announce an investigation into a firm would be taken case-by-case, with careful consideration of whether it is in the public interest to do so, they do not set out how this would be assessed. If these proposals are progressed it will be important to publish the proposed framework for deciding whether the public interest test is met, and that opportunity is given for feedback on this process.

Alongside this, we would strongly encourage the FCA to fully explore alternative tools and options to achieve the enhanced deterrence outcomes sought.

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

Yours sincerely,

[signed]

Andy Mielczarek
Chair, FCA Smaller Business Practitioner Panel