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Our Ref: SA210527A

Dear Mel,

Re: LF Woodford Equity Income Fund

I am writing to you further to my letter of 16 February to provide the Treasury Committee with an update on the FCA's investigation into the circumstances relating to the suspension of the LF Woodford Equity Income Fund.

The investigation has made substantial progress. To date we have conducted 14 witness interviews, with all key interviews now having been completed. The investigation team has also issued over 30 information requirements which has led to the gathering of over 20, 000 items of relevant material from all the key parties.

Information gathering in relation to current lines of enquiries is, accordingly, nearly complete. Further steps will involve further analysis of this information and engagement with experts, including individuals who are able to give expert evidence in any potential proceedings. It is not appropriate to disclose the questions that we think may require answers from an expert or the areas of expertise that we may need to engage. However, in considering cases of this kind, it is normal to engage subject matter experts whose opinion can be relied upon by us and any potential decision-maker in potential proceedings.

Like all investigations, further analysis and legal advice may well give rise to additional lines of enquiry and some witnesses may need to be re-interviewed. Subject to that as well as an opinion from expert witnesses, we are confident the investigation work will be completed by the end of this year.

I appreciate it may be frustrating that I am unable to provide further details regarding the investigation. However, it is necessary to preserve the confidentiality of the matters that are under consideration, in order for the investigation and any potential subsequent disciplinary process to be both credible and fair. In addition, we are constrained by the statutory restrictions relating to the disclosure of confidential information that is received by us.

In order to assist the Committee, please find attached in an Annex to this letter details of the FCA's disciplinary procedures, where, following an investigation, we have found a case to answer. These processes are in place to ensure fair decision-making. Our disciplinary powers, as set out in legislation, are extensive including the ability to impose financial penalties, secure redress, suspend a firm for up to 12 months from undertaking specific regulated activities, and prohibit someone from operating in financial services.

For the reasons set out above, I am unable to give a precise timeline for any public indication of the outcome. However, please be assured that my colleagues and I are appreciative of the importance of the matters under investigation and will seek to expedite those parts of the process that are within our control. This investigation is and will continue to be a priority for the FCA.

The Committee may also wish to note that Woodford Investment Management Limited does not currently hold any permissions from the FCA that would enable it to engage in retail investment activities. In furtherance of our consumer protection objective, we remain in close supervisory contact with the firm and we will continue to engage with authorities in overseas jurisdictions about any potential future activities of the firm or its principals.

Yours sincerely,

Nikhil Rathi
Chief Executive

Annex – overview of the FCA’s disciplinary process

When the FCA considers there to be a case to answer, in the first step of our disciplinary process, we will put our investigative findings to those involved. This is following a separate full evidential and legal review and subsequent approval of the proposed regulatory sanction by two senior individuals on behalf of the FCA. We give the subjects an opportunity to agree with our assessment and, if they do, to agree to pay any penalty and redress or such other outcome we consider is appropriate, or otherwise to comment on and explain what aspects of our assessment they do not agree with. If agreement is not possible, those involved are able to have their cases decided by the Regulatory Decisions Committee (RDC), which is the FCA’s decision-maker for contested disciplinary cases and operationally independent of the investigation.

In the first stage of a typical contested RDC process, the RDC meets with the investigation team and issues a Warning Notice if it considers there is a case to answer. A Decision Notice may then be issued if appropriate after the subjects have been allowed to make representations and the investigation team has responded. Cases may be partly or fully contested, speeding up the process (for example, the subject may agree the facts and liability, but choose to dispute the sanction). Following a Decision Notice, subjects have the option of referring their case to the Upper Tribunal, which is an independent judicial body, to have the case considered afresh.

The RDC process is conducted in private and a case usually remains confidential to the parties unless and until an adverse disciplinary finding is made by way of a Decision Notice which is not challenged by the subject. In certain circumstances, including where it is not unfair on the subject, the RDC may also publish a disciplinary Warning Notice statement, having consulted the person to whom the notice is issued, setting out brief details of the case to answer.

Although the Upper Tribunal can be asked to restrain publication of the RDC’s Decision Notice findings and to proceed in private, it will usually reject any challenge by the subject to the publication of the RDC’s Decision Notice and normally holds its proceedings in public.

In our experience, it can take around six months from the conclusion of the investigation stage to prepare the relevant papers, subject these to the separate evidential and legal review, and engage with the subjects through the initial resolution process. In the absence of an agreed resolution, it may take a further six months to a year for a case to proceed through the RDC. If the case is brought to the Upper Tribunal, this would usually add a year or more for the case to be determined.