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Submitted via online response form & by post to:

CP24-2 Part 2
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

17 February 2025

Dear FCA,

Financial Services Consumer Panel response to FCA CP 24/2, Part 2: Greater transparency of our enforcement investigations

The Financial Services Consumer Panel (the Panel) welcomes the opportunity to provide further feedback to Part 2 of the FCA's consultation on greater transparency of its enforcement investigations. The Panel expresses our appreciation that, based on feedback from stakeholders, the FCA acknowledges lessons learned and is willing to revisit its proposals.

The Panel provided our response to the initial consultation on 30th April 2024¹, which should be read in conjunction with this letter, which is generally structured according to the headings in the consultation paper.

Overview

As noted in our original response, the Panel supports greater transparency of the actions the FCA is taking relating to firm investigations, as we believe that, overall, this will further consumer protection and trust in financial services. Consumers will have greater information with which to make appropriate decisions regarding firms and their services, and firms will have greater incentive to treat their customers in accordance with the Consumer Duty.

We agree that publication of enforcement investigations by the FCA will be very helpful. However, it is worth reiterating that the Panel has

¹ [20240430_final_fscp_response_to_fca_cp_24-2_enforcement_approach.pdf](#)

previously expressed the position that firms should bear the greatest responsibility for addressing potential client harms, including proactively informing and supporting their customers when the firm is being investigated.

The Panel agrees with the FCA position that it may not be appropriate to publicly name individuals when they are acting on behalf of an authorised firm. However, the ever-evolving context of social media means that this may not apply in this particular space. Given that this is the medium where the greatest volume of mis and dis-information is likely to exist, it is absolutely essential that the FCA acts urgently when it investigates and identifies violations of regulated activities by individuals who are not within the FCA's regulatory scope. This may include publishing the names of those individuals².

We also believe that publication only under the "exceptional circumstances" threshold can leave consumers open to considerable continued harm. Once the potential for consumer harm has been identified, the FCA must use its full suite of tools, such as enhanced supervision, skilled persons reports, etc. to reduce or eliminate the harm, including providing information to the public. These should all be based on well-documented cost-benefit analyses. Delays in publication of information can also lead to increased redress costs to firms or to greater FSCS compensation, and higher firm fees, if a firm becomes insolvent. These outcomes are also likely to ultimately impact consumers as firms will pass through costs to their customers.

Enforcement Approach

Focus

The Panel understands the need for improved FCA efficiencies and speed of delivery by a focus only on the enforcement investigations which are likely to result in material outcomes. However, we believe that the FCA must then implement alternative data collection and analyses and supervisory approaches to address the issues that might have been subject to investigation under the previous framework. This is particularly true in regard to firms that are subject to a programme of reactive rather than proactive supervision.

As part of the FCA's analyses, it would be beneficial to see the number of enforcement actions according to firm category and size. If a particular type of firm forms a material percentage of enforcement actions, then, in addition to the benefits listed in paragraph 1.9, the Panel is of the view that the FCA should explicitly direct new applicant firms to relevant

² ['Finfluencers' charged for promoting unauthorised trading scheme | FCA](#)

publications of enforcement actions with the expectation that they will gain clarity on what constitutes good and poor practice, reducing the likelihood that consumers will be harmed.

Transparency

The presentation of information relating to past enforcement actions is helpful and suggests that the proposals by the FCA are unlikely to have an impact on firms that are complying with the Consumer Duty. We also agree that reducing the number of investigations that result in no further action is likely to be helpful for firms, but believe this is also helpful for consumers, as it is likely to reduce firm costs that will be passed on to them. However, as noted previously, we do believe that the FCA should continue to collect data and / or more proactively supervise these firms whenever there is any question as to whether a firm is complying with the Consumer Duty.

Furthermore, the Panel supports the position that the FCA is able to confirm that an investigation is taking place when the information has been already published by the firm. In addition, if a firm is required to publish notice of an investigation by another regulatory or law enforcement body, the Panel is of the view that, if the FCA is also investigating the firm, the FCA should generally also confirm this publicly.

Investigations into unregulated firms

The Panel believes that, for unregulated firms performing regulated activities, the default position should be to announce any investigation, as the potential for consumer harm already exists. As the Panel has suggested previously, the new version of the FCA register should provide this information. The FCA should only withhold an announcement if it determines that there are greater risks to consumers by publishing or if publishing will materially jeopardise the FCA's investigation.

Proposals working in practice

From the Panel's perspective, the key reason for publishing an announcement is to prevent consumer harm. Therefore, if at any point in an investigation, the FCA finds that there is material consumer harm, it should consider making an announcement. The Panel would prefer to see the FCA define a materiality threshold (eg, value, number, % of specific customer cohorts) rather than at the point of a 3-month review as mentioned in paragraph 4.9.

We appreciate that public announcements of investigations may, in some cases, have adverse effects (although the research highlighted in paragraphs 6.9 to 6.11 indicated otherwise). The FCA has made it clear

that they will factor in the various risks across a situation, considering those associated with both the decision to announce and not to announce before publication. We also believe that providing firms with a draft announcement for review and response within a 10 business-day period gives them ample opportunity to challenge and / or react to the FCA's position. However, as explained in 4.14, the Panel also expects the FCA to publish earlier, or to take alternative urgent immediate action, in the event that further material harm to consumers might occur during this period.

Whilst the list of factors in favour of or mitigating against publication seem thorough, they are quite high level. Therefore, the Panel is of the view that this should be used as a framework for the FCA to document their decision processes, including measurable analyses of inputs and expected outcomes. Furthermore, the Panel would expect the FCA to have a crisis plan readied to address any consequences of their decision. A post-issue review should compare the pre-decision expectations with the ultimate outcomes to document and support their approach and for lessons learned.

Case studies

The case studies presented are helpful to understand the FCA's previous approach to announcing investigations. The British Steel Pension Scheme (BSPS) is particularly relevant. It highlights an issue with the definition / interpretation of the word 'exceptional'. It appears, based on the BSPS situation, that the exceptional circumstances test only applied to unusual events rather than those where the impact was particularly large or problematic. The Panel would suggest that this is either not the correct term to use or the correct interpretation of it. In any event, we do not believe that the exceptional circumstances test, as currently used, is an appropriate approach, contrary to some of the other feedback that has been received.

The Panel is also concerned with the brevity of the proposed potential notices, bearing in mind that they will be read by consumers who will not be familiar with the specifics of the situation, and who may overreact to the notice, e.g., the Citibank Capital Markets case study. Before publishing a notice, the Panel would suggest that the FCA test it on uninformed consumers to gauge their understanding of the message, and emotional and behavioural responses.

We agree that FCA announcements are likely to deter similar behaviour by other firms, but there may also be situations where an announcement may help to put consumers on notice that some behaviours might be illegal, for example, acting as an unregulated finfluencer or considering

insider trading. Encouraging whistleblowers is also a potential positive outcome of an FCA announcement.

Impact on firms-impact on consumers

While the Panel agrees that the impact on firms is a relevant consideration that should be taken into account by the FCA when deciding on the form of any announcement, the Panel is concerned by the proposal that this factor would 'be central to' its consideration.

We think this is placing too much emphasis on this single factor. We note that firms will always be able to contend that naming them for the first time in connection with any enforcement investigation will harm their interests. We fear it may well be too difficult for the FCA to obtain sufficient confidence to the contrary – especially where such importance appears to be attached to the risk to the firm.

Further, it is possible that while a decision to name a firm in any enforcement announcement could be expected to have material negative consequences for the firm, a decision to not name could have even more significant consequences for consumers or the market more generally. We would be concerned if the FCA's proposed approach to have the impact on the firm 'central' to its consideration would prevent the FCA from naming the firm in such a situation.

Whilst the value of listed firms may be impacted if there is publication of an enforcement investigation, investors should have this information so that they can make proper decisions about their investments. As mentioned in paragraph 6.10, the change in share price may be positive or negative, depending on the situation. Thus, whilst we believe that listed status should be a consideration by the FCA, it should not prohibit publication of an enforcement investigation.

Conclusion

The Panel recognises widely reported concerns within the financial services industry and by the House of Lords Financial Services Regulation Committee³, and whilst there is still room for added detail as we also noted above, the Panel believes that the documentation provided in the consultation, as well as updates to the proposals, should provide additional confidence that publication of enforcement investigations will only take place once a thorough and fair assessment has been made.

The Panel takes the view that if firms comply with the Consumer Duty and other FCA principles, they are far less likely to be subject to enforcement

³ [House of Lords Financial Services Regulation Committee 1st Report of Session 2024-25 – Naming and shaming: how not to regulate](#)

action. But for those firms who violate these principles, it is critical for the FCA to take action. Where there is clear evidence of wrongdoing and consumer harm, we support the FCA's proposals for publishing enforcement investigations.

Yours sincerely,

Helen Charlton
Chair of the Financial Services Consumer Panel