FINANCIAL CONDUCT AUTHORITY

Consultation Paper

CP24/2, Part 2

Greater transparency of our enforcement investigations

November 2024

How to respond

We are asking for comments on this Consultation Paper (CP) by **17 February 2025**.

You can send them to us using our online questionnaire on our website.

Or in writing to:

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

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Chapter 1

Overview

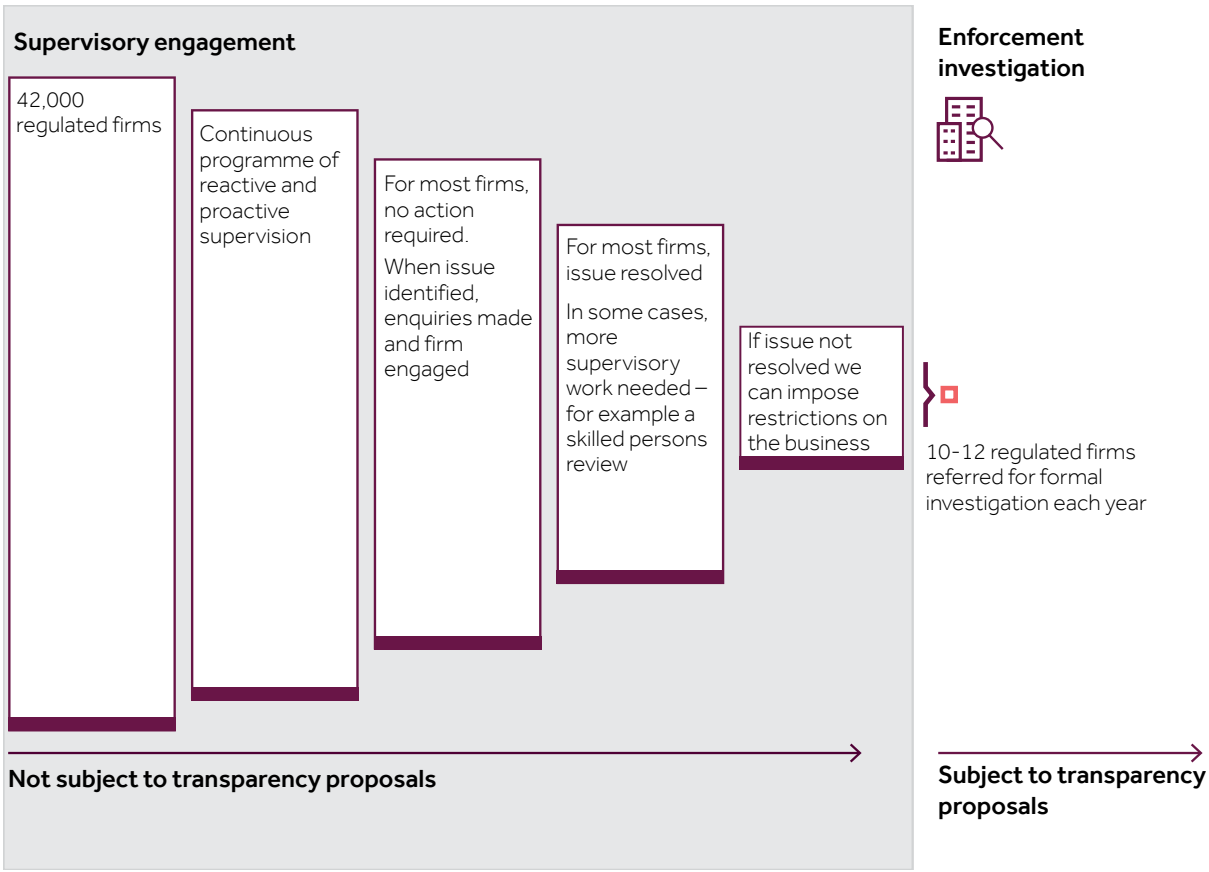
Introduction

1.1 London is the world's second leading financial centre and almost 80% of those we regulate believe we enhance the UK's reputation as a financial centre.

1.2 Over the last few years, we have been steadily strengthening our gateway for authorisation, to prevent firms which could cause significant harm from entering the market, and we are supervising higher-risk firms more assertively. We are now focusing on building a more integrated model across authorisation, supervision and enforcement. Alongside that, we are improving how we undertake our enforcement work. While many firms engage with our supervisory teams, this will only result in enforcement action in a tiny fraction of cases. Enforcement action typically follows an intensive period of supervisory engagement with many opportunities to resolve our concerns.

1.3 Our proposals on increased transparency only involve our enforcement work, not our supervision work.

1.4 Our regulatory model:



1.5 Effective enforcement work reinforces the UK's reputation as a trusted, clean and stable place to do business. That trust is underlined when we investigate thoroughly and at pace, so any wrongdoing can be quickly addressed. To achieve this, we are focusing our portfolio of enforcement cases and aligning it with our strategic priorities. This is resulting in fewer and faster investigations.

1.6 Alongside our increased focus and pace, in February 2024 we proposed a measured increase in transparency about our investigations.

1.7 Currently, we only announce we have opened investigations in 'exceptional circumstances.' This means we rarely say anything about our investigations until they are concluded and we have imposed a sanction for serious misconduct. We do not ordinarily confirm the existence of our investigations even if a firm itself has made this public. This has not always served the public interest.

1.8 Our proposals would enable us to give limited information about an investigation, in a factual and measured way and at a more appropriate moment, when we consider this is in the public interest.

1.9 We consulted on a shift in our approach because we think that:

- By providing information on worrying conduct, we would enable consumers to take action, helping to prevent harm or reducing harm more quickly.
- Greater transparency would support public confidence, reassuring consumers and market participants that we are taking appropriate, prompt action and building trust in the system.
- Greater visibility of some of our investigations would help industry improve their processes more swiftly and address harm sooner. This in turn could help benefit consumers.
- More openness would also improve our own accountability, given how regularly we are asked about specific investigations by parliamentarians and their committees.
- It may encourage witnesses and whistleblowers to come forward.

1.10 Firms benefit from having the badge of FCA authorisation, and their consumers and investors should be able to rely on it as reassurance that a firm will treat them fairly. Where that firm is placed under investigation, it may not always serve consumers' interests for us to withhold that information from them. For example, where we have identified serious concerns about a financial adviser and have been unable to stop the risks to consumers via our normal supervisory engagement, it may be in the public interest for those consumers to know the firm is subject to an enforcement investigation.

1.11 If consumers know about an investigation, they will be in a better position to consider their options. For example, knowing that redress might be coming via an FCA investigation might dissuade consumers from signing up with claims management companies or law firms, meaning they would get to keep more of any redress we ultimately secure.

1.12 Where firms are unregulated, our tools to prevent and mitigate harm prior to an investigation are significantly reduced. There may be a clear consumer benefit in these types of cases to inform existing or potential consumers of our investigation.

1.13 The proposals would be in line with our statutory requirement to exercise our functions transparently and are achievable in a way which is consistent with all our statutory objectives.

1.14 As we said in February, given the specific legal considerations regarding information about individuals, we are not proposing to change our existing approach. That means we will not generally announce when we have opened an investigation into a named individual.

1.15 A measure of greater transparency of our investigations would bring us in line with other UK partner regulators. It would affect only a subset of the very small number of regulated firms we investigate. We typically open investigations into around 10 to 12 regulated firms each year. Under our proposals, we would not announce in all cases, but only when, having weighed all the circumstances, we consider this would further the public interest. Such an announcement may not come at the start of an investigation but at an appropriate later stage. In many cases an anonymised announcement would be sufficient to meet this public interest, or a reactive announcement if a firm itself announced it was under investigation.

1.16 Many of our investigations already become publicly known, most often when firms disclose the fact themselves. As a result, there may be instances under our proposals where we might want to confirm reactively that we are investigating, for example, when a firm has itself announced or in response to a direct request from a parliamentary committee. Our current approach does not allow us to do this, unless exceptional circumstances exist.

1.17 Our proposals came as a surprise and we should have introduced them in a better way, including signalling them in the Regulatory Initiatives Grid. That meant initial conversations about these proposals were not as constructive as we had hoped. It also meant that the essence of what we were proposing – of seeking to serve the public interest more effectively in a relatively small number of cases – became obscured.

1.18 Since we published the consultation, we have been speaking to the industry about our proposals. We have held over 40 meetings and roundtables with external stakeholders, most of whom are firms and trade associations. We have also met with consumer groups, government, law firms, parliament, and regulators – including appearing in front of the Treasury Select Committee and the House of Lords Financial Services Regulation Committee. We have taken on board the wide range of constructive feedback to help re-shape our proposals.

1.19 We have listened carefully to the feedback to our original proposals. We have re-drafted those proposals to try and address the concerns raised and give more clarity on how they would work in practice. We are also providing more data and case studies explaining how we could make announcement decisions.

1.20 We are making 4 significant changes to our initial proposals:

1. Proposing that the impact of an announcement on the relevant firm will form part of our public interest test and be central to our consideration of whether to announce an investigation and name a firm.

2. Suggesting we give firms a copy of any draft announcement and 10 business days' notice to make their representations to us, with a further 2 business days' notice of publication of any announcement if we decide to proceed after taking these representations into account. Originally, we had proposed only 1 day. The new proposed period will also give firms time to consider whether they want, or are required, to make an announcement themselves or make representations that they should be able to do so, for example on a timetable aligned with their wider financial announcements.
3. Including the potential for an announcement to seriously disrupt public confidence in the financial system or the market as a new factor in the public interest test.
4. Making it clear that we will not make proactive announcements of investigations that are already ongoing when any proposals come into effect. So these proposals will apply only to proactive announcements of investigations opened after the proposals come into effect. We may reactively confirm ongoing investigations which are already in the public domain, where this is in the public interest. The exceptional circumstances test will continue to apply to any potential proactive announcements in relation to the existing portfolio of investigations.

1.21 Our Board plans to decide on the proposals in the first quarter of 2025. Ahead of that, we intend to further engage with stakeholders to inform our approach. We continue to welcome feedback. We hope the greater detail in this paper gives a helpful basis for those discussions.

1.22 We hope, too, this assists ongoing parliamentary scrutiny, including by the Commons Treasury and Lords Financial Services Regulation Committees.

Chapter 2

Responses to our proposals

2.1 The consultation on our original proposals closed on 30 April 2024 and we received 133 responses, as well as further feedback through ongoing discussions with multiple stakeholders.

2.2 We are very grateful to all those who have engaged for their constructive and thoughtful responses.

2.3 There was support for our overall enforcement objectives, and agreement that it would be helpful to have more detail on how we carry out this work. There was wide recognition of the positive impact of more timely information on issues we are investigating.

2.4 Consumer groups, whistleblower advocates and transparency campaigners favoured greater transparency about investigations, as did some of our enforcement partners.

2.5 Firms and industry groups felt strongly that our existing 'exceptional circumstances' policy was sufficiently broad to allow us to announce in more cases. They also wanted greater detail about the proposed public interest test and challenged us on how much notice we would give firms before any announcement.

2.6 Some industry respondents accepted there would be circumstances where announcements may be needed, particularly to help protect consumers. Some accepted that there could be an operational benefit, in encouraging witnesses and others with relevant information to come forward.

2.7 In response to the feedback, we are providing further detail of how we could adapt our proposals.

2.8 A number of stakeholders requested a cost benefit analysis (CBA) of the proposals. Legislation requires us to provide CBAs for new rules, and it is our policy to produce a CBA for guidance on rules. These proposals do not relate to rules or guidance on rules.

2.9 Our proposals do not impose rules on regulated firms or others or require them to take any particular steps. They would impact a very small number of regulated firms, and impose no direct costs on other regulated firms. The potential impacts on firms which we do name will be specific to the circumstances – and the 10-day period we have proposed would give them the opportunity to make representations on that impact, which we would take into account when weighing up the decision on whether to make an announcement. Further information on our approach to CBAs can be found in our Statement of Policy.[1]

1 https://www.fca.org.uk/publication/corporate/statement-policy-cba.pdf

2.10 We have however included information in this document to understand the potential implications of our proposals. This includes analysis of the number of firms impacted and information about the likely number of proactive announcements under our proposals. We also provide evidence about the proportion of FCA investigations already in the public domain together with information on how share prices move following regulatory announcements. We welcome any further data and evidence from respondents on these issues.

Chapter 3

Our enforcement approach

Focus

3.1 We received strong feedback that, because historically 65% of our cases have resulted in no further action, we risk unfairly naming firms we subsequently find have not committed wrongdoing. We have also considered the risk that this could undermine the benefits that our proposals are seeking to achieve.

3.2 We understand this concern. We expect the number of cases involving regulated firms that are closed with no further action to reduce significantly due to our increased focus. And by limiting any proactive announcements under our proposals only to future cases opened under this new approach, with fewer expected to result in no further action, we hope this provides further reassurance on this issue.

3.3 Our enforcement portfolio has changed. On 1 April 2023, we had 220 open enforcement operations. By 28 November 2024, this number had reduced to 147.

3.4 We have raised the bar for opening an investigation and strengthened pre-investigation triage processes, considering whether:

- an investigation is most likely to drive impactful deterrence across the industry, and
- whether we can use our other tools to stop and reduce harm, rather than opening a formal investigation.

3.5 We do not expect our approach to reduce our regulatory impact. We have, for example, achieved public enforcement outcomes in 38 cases so far this year, compared to 27 in 2023.

3.6 While we cannot accurately predict the types of misconduct we will need to address each year, we will report regularly on the action we take following investigation and the proportion of cases where we take no action. And if we go ahead with our proposals, we will also report annually on the numbers of cases where we made an investigation announcement and then took no further action. This will allow for full scrutiny of our approach.

Pace

3.7 Investigations closed in 2023/24 took an average of 42 months to complete. Many more recently opened operations will take far less time and, in some cases, less than half that time.

3.8 Recent examples include:

- Successfully prosecuting an individual for running a network of illegal crypto ATMs following a 15-month investigation.
- Taking action against CB Payments Limited – part of the Coinbase Group – within 16 months of opening an investigation.
- We fined Starling Bank £29m for financial crime failings after a 14-month investigation.
- We fined Volkswagen Finance £5m over failures in their treatment of customers in financial difficulty, with redress of £22m, after a 13-month investigation.

Transparency

3.9 Many of our investigations are already in the public domain, but generally not because we have announced them.

3.10 As of 28 November 2024, we had 41 open investigations into regulated and/or listed or publicly traded firms, of which:

- 23 are in the public domain (15 were made public by the firm, we made 6 public during the investigation stage and we made 2 public through our formal statutory processes around the publication of Warning Notice Statements and Decision Notices).
- We anticipate that investigations into 3 firms that are not in the public domain are likely to reach a public outcome by mid-2025.

3.11 The remaining 15 not in the public domain are likely to take longer to resolve. While our proposals would not apply to existing investigations, we have considered how we might have applied our proposed public interest criteria to these cases.

- 6 are covert or involve sensitive information and we believe it would not be in the public interest to announce.
- 2 are cases where there may be public interest factors in favour of announcing but we consider it likely that any announcements would be on an anonymised basis.
- 7 are cases where there may also be public interest factors in favour of announcing but in these cases possibly on a named basis.

3.12 Of the 7 in the last category above:

- 6 are subject to public supervisory action or previous enforcement action. 2 of these involve affiliated firms in the same group. There have been requests for information from MPs relating to 3 of the firms.
- 1 involves a firm that has been subject to non-public supervisory action and is now in administration – and we expect the administrator may make the investigation public at some point as part of its reporting to creditors.

3.13 This data is inevitably backward-looking. But we hope it gives a sense, based on recent experience, of the small incremental number of future cases that may be made public because of our proposals.

3.14 In the coming months, it is possible that some firms may make their own disclosures, which will further reduce the number of non-public cases.

3.15 When we wrote to the Treasury Select Committee on 7 May 2024, we noted that in 2023/24 we had opened 11 investigations into regulated firms. We stated that the fact of our investigation had been made public in 6 cases, 1 by us and 5 by the firms themselves. Following further disclosures by firms under investigation and settlement of cases, only 3 cases opened in 2023/24 into regulated firms are not currently in the public domain. And we anticipate that 2 of these may become public by mid-2025.

3.16 We have also reviewed cases opened since we updated our enforcement approach and streamlined our investigation portfolio, to understand what proportion of cases we might proactively announce and name under our revised proposals. This analysis is for illustrative purposes only because we would not look to apply our proposals retrospectively if they come into effect.

3.17 Of the investigations we opened into 15 regulated firms between April 2023 and 28 November 2024:

- We announced 1 under our existing policy.
- 1 was made public (not by the FCA) very shortly after the opening of the investigation.
- 4 are part of the same group of companies and in fact comprise a single FCA 'operation'. These investigations have been disclosed by the parent firm in its US filings.
- 1 is our investigation into CB Payments Limited (part of the Coinbase Group). We consider it may have been in the public interest to announce and name the firm, and have included this as a case study below.
- 1 is our investigation into Starling Bank Limited relating to its anti-money laundering and sanctions framework. It is unlikely we would have made a named announcement of this investigation under our proposals when we opened this investigation, but we may have made an anonymous announcement. We may also have confirmed reactively when the firm itself announced the fact of the investigation.
- 2 regulated firms are being investigated as part of the same operation which led to the arrest of two individuals suspected of running an illegal cryptoasset exchange. We issued a press release without naming the individuals or firms. We do not consider it would have been in the public interest to name the firms under investigation under our proposals.
- 2 are currently covert investigations and an announcement at this stage may undermine the integrity of our investigations. However, it is likely that the operational reasons for keeping one of these investigations covert will soon fall away. At that stage, it may be in the public interest to announce this investigation and name the firm, because the case concerns significant consumer detriment.

- The remaining 3 investigations are also not public. It is unlikely that it would be in the public interest to make a named or anonymous announcement about 1 of these given potential wider market impact. It may have been in the public interest to make an anonymous announcement of the second case. And there are public interest factors which mean we may have considered making a named announcement of the third investigation.

3.18 The language we used in our consultation unhelpfully gave an impression of a fundamental change in approach. Our goal was to explain how our overall enforcement plan aims to shift how quickly we act and allow us to confirm disclosures made by others as well as, in a small number of cases, make proactive announcements. Based on this review of past and current cases, we expect that the incremental number of proactive named announcements we might look to make under our proposals would be small.

3.19 Some respondents have asked why we cannot achieve these aims under our existing policy of announcing in 'exceptional circumstances'. The figures above show that it is already 'exceptional' for the FCA to refer a regulated firm for a formal investigation. So for one of these investigations to meet the further threshold of being 'exceptional' within that cohort is a high bar, requiring the surrounding circumstances to be particularly unusual or unprecedented. And accordingly, over the 23 years the current policy has been in place, we have rarely announced our investigations. For example, of our open cases as at 28 November 2024 involving regulated and/or listed or publicly traded firms, we have only announced 14% of these. This is typically around 1 or 2 per year. That has created an expectation around how we interpret 'exceptional' – that we will never announce our investigations, whether proactively or reactively, unless the circumstances are particularly unusual or rare.

3.20 As well as the 'exceptional' factor, our current publicity policy sets out a narrower set of reasons for announcing compared to our proposed public interest framework. For example, it does not include where another enforcement agency has announced its investigation. Nor does it provide for us to reactively confirm the existence of an investigation where it has been announced by a firm.

3.21 While we anticipate that we would only increase the number of proactive announcements into regulated firms by a small amount, that could potentially double the small number of proactive announcements we currently make. This would take us significantly beyond our current approach to 'exceptional circumstances'. Additionally, and as highlighted by the data above, a significant number of our investigations currently end up in the public domain but we cannot confirm our involvement. The amendments to our policy will enable us to make reactive announcements, which will again increase the number of investigations we announce. Taken together, our view is that it would not have been appropriate to make this shift in approach without consulting and seeking views on these proposals.

3.22 Respondents have also asked about our power to make these types of announcements. As explained above, we are not seeking to do something new. We already occasionally announce and name subjects of our investigations under our existing policy.

Investigations into unregulated firms

3.23 Our enforcement work directly reduces the damage that fraud and financial crime cause to UK markets' international reputation, growth and competitiveness. Much of the focus around our consultation has involved investigations into regulated and listed or publicly traded firms. However, over 60% of our firm investigations are into unregulated firms. In these cases, we often suspect criminality and may have issued a public consumer warning.

3.24 By taking action against firms conducting authorised business without permission – often responsible for scams – our work helps maintain confidence in the regulated sector. This also reduces costs to regulated firms, who otherwise pay the costs of fraud through reimbursement or compensation levies.

3.25 Our transparency proposals would equally apply to our investigations into unregulated firms. Our authorisation and supervision powers do not apply to firms which operate outside our perimeter. While we are able to resolve the vast majority of issues that arise with regulated firms because of those powers, those tools are not available to us for unregulated firms.

3.26 Further, the Financial Ombudsman Service and the Financial Services Compensation Scheme are not available to clients of unregulated firms. And typically these firms are not subject to public reporting requirements, meaning that consumers would likely only be aware of the existence of an FCA investigation if we made a proactive announcement.

3.27 Therefore, announcing and naming in these types of investigations may well be in the public interest where it helps to alert consumers that they may have been victims of a fraud or might prevent others becoming victims. In the right cases, publicity might also help us identify witnesses who could help with our investigation. Given the large numbers of investigations that we conduct in this category, they would not automatically meet our 'exceptional circumstances' test, even though there is often significant consumer harm.

3.28 A number of industry respondents accepted the need to warn consumers in fraud-type investigations.

Chapter 4

Understanding how the proposals might work in practice

Factors in assessing the public interest

4.1 Stakeholders have asked for more detail of how we would weigh the public interest to help them understand when we would be likely to announce an investigation and in what level of detail.

4.2 If we were to take our proposals forward, we anticipate taking a decision in stages, focusing on what is reasonable and proportionate at each step.

4.3 Through this consultation, we will engage further on how this might work.

4.4 First, **whether any announcement of the investigation would be in the public interest**.

4.5 We have identified the potentially relevant factors, detailed below, to consider when deciding if an announcement could be in the public interest. These are also likely to be relevant to whether we would name the firm concerned in any announcement. These factors build on our original proposals and also draw directly from helpful feedback.

4.6 In response, we propose expressly including the impact on those under investigation as a factor we would always take into account, as well as the impact on the financial system or markets. We also propose removing the general reference to 'otherwise advancing one or more of our statutory objectives' from the list of factors.

4.7 Second, **when we might make any announcement**. Factors we might consider here include if information is already public and, if so, whether we could proactively announce an investigation or reactively confirm one. And at what point any harm reduction, reassurance or educational benefit would be greatest.

4.8 We will very often start an investigation into a regulated firm following an extensive period of supervisory engagement. In these circumstances, we will already have a good understanding of the issues and may also have imposed and published formal requirements on the firm. Those factors might mean that an announcement would be in the public interest early in the investigation.

4.9 In other instances, we would need to undertake more initial investigative work to learn more about the facts. In those circumstances, it seems unlikely that it would be in the public interest to announce until our investigation is more advanced. Under our current processes we undertake a thorough review at the 3-month point, which would likely be the earliest point at which we would consider the question of announcement. In this way, we should also limit the number of announcements we make of investigations that end in no further action.

4.10 Finally, **what we might announce**. We would carefully consider the content of any announcement and whether naming the firm was in the public interest. There will be many instances where it is not. For example, where the potential impact on a firm outweighs the potential benefit, and harm can be reduced or educational benefit achieved without doing so. Firm size may be particularly relevant in this consideration.

Factors in favour of publication or naming	Factors mitigating against publication or naming
Information about the matters under investigation is already in the public domain, including through: • public FCA regulatory action • a market announcement or other publication • disclosures made by the subject, other firms or organisations or any regulatory body • publicity around an investigation by another regulatory body or law enforcement agency • media reporting or any other publicity	Publishing could cause serious market or sector impact, financial instability, wider systemic disruption or impact, or seriously disrupt public confidence in the financial system or the market.
Publishing is likely to be in the interests of potentially affected customers, consumers or investors and/or customers, consumers or investors more generally.	Publishing would be likely to have a severe impact on the firm or on third parties, in particular, the firm's current or former directors and/or employees. Firm size may be particularly relevant, with the impact on smaller firms potentially greater. The age and/or stage of development of a firm may also be relevant, recognising that impact might be greater on a more newly established firm.
Publishing is likely to prevent direct or indirect consumer harm, for example in cases of suspected fraud.	Publishing is likely to have an adverse impact on the interests of customers, consumers or investors.
Publication is likely to be in the interests of creditors. For example, if the firm under investigation is insolvent or in administration.	Publishing could hamper an FCA investigation or an investigation by another regulatory body or law enforcement agency. For example, if confidential sources risk being compromised or evidence of wrongdoing is put at greater risk of being destroyed.
There has been public concern about the matters under investigation, and public trust and confidence is likely to be maintained by providing reassurance we are taking appropriate action.	

Factors in favour of publication or naming	Factors mitigating against publication or naming
Publishing would provide an educational benefit for firms and market users to understand the types of conduct we are investigating and could drive better compliance with our rules or other requirements. This may be particularly relevant where we are looking to raise awareness and drive compliance in new areas of regulation, areas where we have identified greater levels of risk, or where the issues under investigation align with wider national policy concerns (for example in relation to economic crime). We would also consider whether the issues under investigation are areas where the FCA has already been clear with the industry about concerns.	
Publishing is likely to have an operational benefit by encouraging potential witnesses or whistleblowers to come forward.	
Publishing would help improve our accountability to parliamentary committees by enabling us to share more information in response to significant queries about our involvement in particular issues.	

4.11 We welcome views on this greater detail on the public interest considerations.

Applying our proposals to our existing investigations

4.12 In our consultation paper, we said that if we go ahead with our proposals, they would apply both to future investigations and to those that are ongoing when we introduce our new policy. Firms told us they were concerned about us applying our proposals retrospectively. So we are amending our proposals to make clear that we would only announce or update on existing investigations where the announcement would be reactive. That is, where the fact of the investigation is already in the public domain and it would be in the public interest for us to reactively confirm the fact of the investigation. We would not look to make any proactive announcements of investigations that are already ongoing at the point that any proposals come into effect – for those investigations the exceptional circumstances test would continue to apply.

4.13 We welcome views on this suggested change.

Giving firms time to respond

4.14 Allowing firms time to provide their views on whether, when and what we announce must be part of any proposal we take forward. Firms told us clearly that 1 business day is not enough time to do this effectively, with most thinking that at least 5 days would be needed. We agree that, in most cases, we can give more notice. However, there will be some extreme cases where this will not be appropriate, such as when serious fraud appears to be happening.

4.15 Having heard respondents' concerns, our current thinking is that we would generally share a copy of the proposed announcement and provide firms with at least 10 business days to make any representations to us. This may also give firms time to consider whether they want, or may be required, to make an announcement themselves.

4.16 If, after considering the firm's representations, we still decide to publish an announcement, we would share our reasons and give firms a copy of the final text at least 2 business days before we publish it.

Safeguards

4.17 We will only take decisions on whether to announce after we have considered the firm's representations along with any legal issues, for example to ensure any announcement complies with relevant personal data and human rights legislation. Decisions will always be made at Executive Director level. The decision maker will be provided with information about any representations received, along with legal advice from an FCA lawyer who has not been part of the investigation team. The Board will keep the implementation of any revised policy under review.

4.18 The proposed notice periods of 10 and 2 days would provide ample opportunity for a firm to raise a legal challenge if it wished to. This would typically be heard in private.

4.19 Some respondents have raised the Davis Review and concerns about how we would handle market sensitive information. When deciding whether to make an announcement we would proactively consider any market sensitivity issues and discuss these with the firm. Here, we would take into account our and the firm's obligations under the Market Abuse Regulation (MAR). If an announcement of an investigation may be market sensitive, we would ensure we handled this appropriately and in line with relevant FCA procedures. In these circumstances, it is likely that the firm would also be issuing its own announcement in line with its separate disclosure and reporting obligations. We would generally be content for the firm to announce first in line with their obligations, with a reactive confirmation from us.

4.20 We welcome views on these proposed revisions.

Chapter 5

Case studies

5.1 We have reviewed previous cases to help illustrate how these public interest considerations might apply in practice. We analysed public outcomes into regulated firms over the past 2 years which we did not announce at the time under the exceptional circumstances test. We identified the following 4 cases as the clearest examples where there may have been a public interest in announcing and naming the firm under investigation.

5.2 In each case, we explain the reasons why it may have been in the public interest to name the firm. These are different for each case, but include where we consider there could be some specific benefits to consumers, or where there is already concern in the public domain.

5.3 Under our proposals, we would seek representations from the subject before reaching a final decision. It may be that those representations would lead us to take a different approach than that suggested in the cases discussed below. But we think it is useful to use these case studies to illustrate the types of considerations that would need to be weighed against each other.

Case Study 1 – British Steel Penson Scheme (BSPS)

5.4 In 2018 we opened multiple investigations into suspected unsuitable pension transfer advice given to BSPS members. This followed intensive supervisory activity. We identified that almost half (46%) of the BSPS members who transferred out did so after being given unsuitable advice. We later introduced a consumer redress scheme, only the second time we have done so.

5.5 This suspected unsuitable advice caused significant concern for the affected steelworkers and their representatives, including in parliament. Steelworkers and their representatives made repeated, urgent requests to our contact centre so they could understand whether their advisers were trustworthy.

5.6 While we made public that we had a large number of ongoing investigations into this poor advice, we did not name any firms.

5.7 In 2022 the Public Accounts Committee (PAC) said we 'must look into whether it would be an option to publish lists of those under investigation, where there are significant grounds to believe they are committing serious harm to consumers'. We did not announce these investigations under our present policy as investigations into poor investment advice aren't exceptional. So, while the scale of the BSPS scandal was exceptional, each firm investigation was not. Had we announced all the investigations we opened, we would have announced significantly more than we have generally done under our existing policy, given the low number of regulated firms we open investigations into each year and again taking us out of the 'exceptional circumstances' threshold.

Factors when considering whether to announce or name

5.8 By being open earlier, we could have alerted BSPS members to potential problems with the advice they had been given.

5.9 An announcement could have provided reassurance given widespread public concern.

5.10 Some of the firms involved were relatively small and they, and their staff, could be significantly affected by announcing and naming them. The firms would have been able to make representations to us about this, which we would have carefully considered before making a decision. We would also have taken account of the fact that by the point we launched the investigations, all the firms under investigation already had substantial public restrictions placed on them.

5.11 In these circumstances, as the PAC recommended, we believe it may well have been in the public interest for us to announce the investigations we had underway into named firms. The announcement could have been worded along the following lines:

'The FCA is investigating firms X, Y, Z in relation to pension transfer advice given to BSPS members. All of these firms are already restricted from giving further transfer advice. Any affected consumers should review the fact sheet provided detailing steps they can take. We have not reached any conclusions whether regulatory requirements have been breached.'

5.12 Given the existing information about our supervisory action, the long history of engagement with the firms and because early notice may have been of benefit to their clients, under the proposals we would be likely to announce close to the decision to investigate.

Case study 2 – Citigroup Global Markets Limited ('CGM')

5.13 In 2022, CGM was publicly identified as responsible for trading that coincided with very significant disruption in several European stock markets. There was ongoing public and media discussion about whether CGM's trading controls had been at fault and speculation about how regulators would respond.

5.14 We opened an investigation into CGM but did not publish anything until our investigation ended and we issued a Final Notice imposing a £27.77m penalty 2 years later. The Prudential Regulation Authority ('PRA') issued its own Final Notice on the same day.

5.15 We did not announce this investigation under our 'exceptional circumstances' test. CGM's controls failed to prevent a mistaken trade being executed. While this was serious, market abuse systems and controls cases are not exceptional within our portfolio. Flash crashes are not particularly rare, this one was brief and CGM almost immediately announced its trading error.

Factors when considering whether to announce or name

5.16 The extensive media interest reflected significant public and industry concern, with a resulting risk that trust in key markets was being damaged by trading activity conducted in the UK. Information about the issue was already in the public domain. CGM had

publicly referred to its role in the trading incident and our potential involvement was assumed. An announcement that we were investigating would have reassured investors and other market participants that we took these incidents very seriously, helping to maintain trust and confidence. And it would have brought clarity and helped to address any speculation. We do not think in these circumstances that the existence of an investigation would have been a surprise to market participants.

5.17 An announcement could have acted as a reminder for firms of our expectations in managing risks from trading, as well as a prompt to assess their own systems and controls.

5.18 CGM would have been able to make representations to us that naming them would cause it, or its employees, significant harm. We would have carefully considered those representations and consulted the PRA before deciding whether and what to announce. We would also have considered whether an announcement would have had an impact on the market.

5.19 Looking at these considerations and considering CGM's size and position as part of a larger group, we may have decided it was in the public interest both to have announced that we had an investigation underway and to name CGM. Illustrative wording for a potential notice might have been:

'The Financial Conduct Authority has begun an investigation into Citigroup Global Markets Limited in connection with its trading in European shares on 2 May 2022. We have not reached any conclusions as to whether regulatory requirements have been breached.'

5.20 In deciding when to announce, we would have been more likely to publish any notice closer in time to the market events to provide early reassurance to the market and because of information already in the public domain.

Case study – 3: PricewaterhouseCoopers LLP (PwC)

5.21 In July 2021, we opened an investigation into PwC over its disclosures to us in its capacity as auditor of London Capital & Finance plc (LCF).

5.22 Under our exceptional circumstances policy, we did not announce our PwC investigation. However, the Financial Reporting Council (FRC), in line with its routine approach, had previously announced it had opened an investigation into audits of LCF by PwC and 2 other named firms. Regulators, particularly the FRC, frequently scrutinise the role of auditors in firms that collapse owing consumers money. Our current policy does not include concurrent investigations by other regulators or enforcement agencies as a factor we consider in announcing. This is a gap that our proposals look to address.

5.23 On 16 August 2024, when our investigation concluded, we announced we had fined PwC £15m for failing to tell us of its reasonable belief in a potential fraud at LCF.

Factors when considering whether to announce or name

5.24 There was significant public concern, both into the suspected fraud at LCF and the associated responsibilities of its auditors, both before and after the FRC's announcement. The FCA had faced significant public scrutiny, including from parliament, about the issues at LCF and its regulatory response. Announcing our investigation into one of those auditors could provide reassurance to consumers, investors (including potential fraud victims) and the public that we were investigating matters alongside our regulatory partner, the FRC. To be clear, there were no concerns that PwC was itself involved in the underlying fraud at LCF.

5.25 It was also already public that 2 other firms had audited LCF and were under FRC investigation. Not naming PwC as the subject of our investigation, while naming LCF, may have unfairly harmed those other firms.

5.26 PwC would have been able to make representations to us on whether an announcement would cause disproportionate harm to it or its individual staff, which we would have carefully considered before reaching a decision.

5.27 In these circumstances, it might have been in the public interest to announce that we had an investigation underway into PwC. An illustration of our potential announcement could be:

'The Financial Conduct Authority has begun an investigation into PricewaterhouseCoopers LLP in connection with its role as auditor of London Capital & Finance. We have not reached any conclusions as to whether regulatory requirements have been breached.'

5.28 In contrast to our investigation into BSPS, this was not an area for which we had a previous supervisory workplan or detailed supervisory engagement. It is therefore unlikely we would have made any announcement at the very start of the investigation, as we would need to spend time initially testing the evidence to better establish the basis for our concerns.

Case Study – 4: CB Payments Limited

5.29 In 2023, we opened an investigation into CB Payments Limited ('CBPL'). CBPL is part of the Coinbase Group, which operates a prominent and globally accessible cryptoasset trading platform. CBPL does not currently undertake cryptoasset transactions for customers, but it acts as a gateway for customers to trade cryptoassets via other entities within the Coinbase Group. CBPL is not currently registered to undertake cryptoasset activities in the UK, but is authorised to provide payment services.

5.30 The decision to open our investigation followed close supervisory engagement over concerns about the effectiveness of CBPL's financial crime control framework. In 2020, while working to enhance the framework, and in light of these concerns, the firm agreed a requirement preventing it from taking on new customers identified as 'high risk'. As it appeared that CBPL had potentially breached this requirement we opened an enforcement case. Under our exceptional circumstances policy, we did not announce

our investigation into CBPL at the time. This investigation was not clearly 'exceptional' when placed against our cases generally, given that typically around 15% of these involve potential anti money laundering and financial crime systems and controls issues.

5.31 On 25 July 2024, we announced that we had fined CBPL £3.5m for control failings that meant it had repeatedly breached the requirement not to take on high-risk customers. In our Notice we recognised that CBPL had cooperated with the FCA throughout the investigation and its commitment to ensuring that it has an effective financial crime framework in place.

Factors when considering whether to announce or name

5.32 Whilst in most cases relating to financial crime systems and controls we wouldn't name the firm, there are specific factors in this case which mean that the public interest may have been served by a different approach.

5.33 This was our first case under Electronic Money Regulations 2011 and our first action against a firm enabling crypto asset trading. The money laundering risks associated with crypto are clear. While we welcome the competition and innovation we have seen in the payments sector, there are risks in this sector which we need to manage, with payments firms and firms which facilitate trading in cryptoassets being at particular risk of being abused by those seeking to launder money. Across the entire global crypto sector, crypto research firm Chainalysis has previously reported that at least $24.2 billion worth of crypto was sent to illicit crypto wallet addresses in 2023.

5.34 The issues in this case reflect a pattern of concerns which we highlighted in our March 2023 letter to firms' CEOs. Announcing our investigation would have helped demonstrate our focus in this developing area, helping to deter wider misconduct and to protect the integrity of the UK financial system. Wider publicity would also align with recommendation 17 of the UK's economic crime plan for 2023-26 to develop a 4P approach (Prevent, Protect, Prepare, Pursue) to target criminal use of FinTech, and linked enablers such as e-money institutions.

5.35 And, given Coinbase's size and significant market share (the most popular cryptoasset exchange by UK retail customer numbers), a generic disclosure may not have been sufficient to meet the public interest. And an anonymous announcement may have led to unhelpful speculation impacting smaller firms in this growth area. This was also a case where the firm had been subject to extensive supervisory engagement and we had concerns it was not complying with formal requirements already put in place to address the FCA's concerns.

5.36 Around the time we opened our investigation, the Coinbase Group was already subject to public scrutiny from other regulators, including the NYDFS, US SEC and German BaFIN. Against this backdrop, an announcement of our own investigation may have given market users reassurance that we were closely engaged and taking appropriate action. This may have helped to foster public trust and confidence in the market more generally.

5.37 Before making an announcement, we would have considered all other relevant facts and circumstances, including the firm's representations about any disproportionate impact. This may have included considering the risk that the firm's financial promotions provider would withdraw, and the impact this could have on the firm and consumers.

5.38 We would also have considered disclosures made by CBPL's parent, Coinbase Global, Inc in the US. For example, in its 2022 Annual Report (before we opened our investigation) it had previously disclosed that it is 'subject to ongoing examinations, oversight, and reviews and currently are, and expect in the future, to be subject to investigations and inquiries, by U.S. federal and state regulators and foreign financial service regulators, many of which have broad discretion to audit and examine our business.'

5.39 Looking at these considerations, we may well have decided it was in the public interest both to have announced that we had an investigation underway and to name CBPL. Given the extensive supervisory engagement before the investigation was opened, it is likely we would have considered announcing shortly after the investigation was opened.

5.40 Illustrative wording for a potential announcement might have been:

'The Financial Conduct Authority is investigating CB Payments Limited in relation to its suspected breaches of a requirement not to take on high-risk customers intended to address potential weaknesses in the firm's financial crime control framework. We have not reached any conclusions as to whether regulatory requirements have been breached.'

Examples – Where we might announce but not name the firm

5.41 There will also be circumstances where there may be benefits to announcing we have opened investigations, but no additional public interest in naming the firms involved.

5.42 A suggestion made in response to our consultation was to publish an 'Enforcement Watch' publication, providing more detail on the themes, topics and trends in our enforcement work. We will explore this idea further. It could have particular benefits where, under our proposals, it might be appropriate to disclose an investigation but not name the firm involved. Giving reactive, anonymous information in this way might be sufficient to meet the public interest, rather than making proactive and anonymous announcements individually.

5.43 For instance, anonymised announcements may be appropriate for many of our investigations into anti-money laundering (AML) and financial crime systems and controls. This is well known as one of our priority areas. Financial crime is highlighted in our current strategy and supervisory work, for example, in multi firm reviews.

5.44 Anonymised announcement of investigations into a firm's cyber security controls may be another area where greater transparency, without naming firms, may be helpful. It could be in the public interest to publish details of any investigations to help other firms identify areas of potential vulnerability in their own businesses, and to underpin better compliance with our requirements. However, there may not be any need to name the firms under investigation to deliver this.

5.45 Another example might be our work on cum-ex, or 'dividend stripping', schemes. Given the importance of protecting the UK's reputation as a financial centre, there may have been a public interest in explaining that we were acting. Our focus on dividend arbitrage would already have been known to firms. Announcements without naming firms could have offered an educational benefit to other firms and helped to drive compliance, reminding them that we will act where firms fail to comply.

5.46 A further example is the critical need for firms to maintain strong systems and controls to detect market abuse. This is vital to market cleanliness, which is a key aspect of the UK's position in global secondary markets. We have previously imposed penalties for failings in these systems. There may have been educational benefit in identifying that we had an investigation under way and of the types of firms under investigation. This would remind other firms of the importance of the relevant requirements earlier on.

5.47 There are also clearly instances when we would not announce because of potentially serious impacts on wider financial stability or a risk of wider negative market impact.

5.48 For any investigations into dual regulated firms, as we do today, we would engage with the PRA on implications of any announcement, including potential prudential concerns and / or financial stability risks.

Chapter 6

Impact on firms

Market value

6.1 One of the most significant concerns raised with us was the potential impact of an announcement on a firm. Respondents to our consultation were particularly concerned about market value and effect on share price. We recognise that this is only one element of the potential impact and would be relevant only for the small minority of our investigations that are into listed or publicly traded firms. However, given respondents' feedback, we have looked carefully at the data on the impact of an investigation into a listed firm becoming known.

6.2 We are grateful for the examples respondents gave us and have examined these carefully.

6.3 A significant number of our investigations already end up in the public domain during the investigative stage, often because firms themselves disclose this as part of their disclosure or reporting obligations. Firms listed in the UK and other issuers of shares publicly traded in the UK (for example on AIM), or on an EU regulated market or trading venue, are already generally required by the Market Abuse Regulation (MAR) to publicly disclose FCA investigations where the fact of those investigations would be inside information. That is, among other things, information that would be likely to have a significant effect on the prices of the relevant firm's financial instruments. A firm subject to MAR which decides that the fact of an investigation is inside information must disclose this to the market as soon as possible. Firms under investigation with listed securities in the US or other overseas locations, or with affiliates or parents who have such securities there, sometimes make public disclosures about our work to their local market. Disclosure obligations on public securities issuers in the US are indeed in some ways more demanding than those in the UK and EU such that relevant firms often publicly announce regulatory investigations to which they are subject early in those investigations.

6.4 We know that when firms announce regulatory activity there can be an impact on share prices. This typically happens when there is detail on the potential financial impact, such as a likely substantial redress bill. Respondents shared the example of Link Fund Solutions, whose Australian parent's – Link Administration Holdings – share price fell by 20.09% on 12 September 2022 after it announced that we were looking to secure redress of up to £306m from the firm. When Link Administration Holdings previously disclosed the fact of the FCA investigation on 18 June 2019, its share price fell by 5.27%.

6.5 It is important to note that it is difficult to isolate the impact of a regulatory announcement on share prices, as there are other factors that will cause share prices to move on a given day, completely unrelated to the regulatory announcement. However, we provide further information below.

6.6 Respondents to our consultation gave 3 specific examples where firms suffered a share price fall following the announcement of an FCA investigation: Partnership Assurance Group which suffered a 7% drop in 2013 after the media reported on an FCA investigation; Quindell Plc whose parent suffered a 14% drop on the announcement of our investigation in 2015; and Countrywide Assured Plc whose parent suffered a 5% drop in 2016.

6.7 However, the data also shows many more instances where announcing an investigation has not immediately led to a fall in a firm's market value. For example, on the day we announced our investigation into Countrywide Assured Plc, we also announced related investigations into 4 other firms that were listed or part of a listed group. Three of these saw a rise in share price, and one had a fall of less than 1%.[2]

6.8 All 5 of these cases were closed with no further action, and provide an insight where we announce an investigation which we proceed to close without taking action. In each of these cases, we took the same approach to publicity when we closed our investigations as when we opened them. We issued press releases and announced on both our website and on RNS (the Regulatory News Service), and our announcements that we were closing our investigations were widely reported in the press.

6.9 We looked at investigations opened into listed or traded firms in 2021 to the end of April 2024 and identified 6 instances where there was a firm disclosure of the investigation to the UK market. We discounted 2 of those instances, because the relevant shares were suspended at the time of the announcement. Of the remaining 4, on the day of all but 1 of those announcements, the relevant firm's share price did not move negatively by more than 1%.[3] That exception was Vanquis Banking Group (VBG) (then called Provident Financial). Its share price dropped 27.7% on 15 March 2021. This fall likely related more to its announcement of redress payments affecting the solvency of its consumer credit division and media commentary than any announcement about FCA activity.

6.10 As at 28 November 2024, we have published 9 enforcement outcomes so far this year into firms which are listed or are part of a listed group. In 7 of these, there had been some disclosure of our investigation in the UK or abroad before our published outcome. One was Link, discussed above. In 3 cases, the relevant firms' share price rose following the disclosure. In 3 other cases the relevant share prices fell by 0.03% and 0.58% and 6.05%.[4]

6.11 The data tells us that while the announcement of an investigation can be associated with a fall in a firm's share price, that is often not the case. Any impact generally depends very much on the context, including broader market conditions on the day. Further, firms that do announce our investigations may, like VBG, announce other negative news at the same time, such that share price falls may well result from that other news.

2 Lloyds Banking Group (listed group for Scottish Widows) 0.94% fall, Prudential 0.83% rise, Old Mutual 0.21% rise, Deutsche Bank (owner/listed entity for Abbey Life) 3.16% rise.

3 The firms other than Vanquis were Home REIT Plc, WANdisco, Nationwide, Lloyds and Revolution Beauty Group. This includes the instruments listed by Nationwide Building Society, which were unchanged.

4 Metro Bank PLC 6.05% fall, Citigroup (U.S. parent Citigroup Inc) 0.03% fall, TSB Bank Plc (Spanish parent Banco Sabadell) 0.58% fall, Volkswagen (German parent) 0.89% rise, Barclays Bank PLC 8.72% rise, HSBC 1.06% rise.

6.12 For that reason, we would need to consider the impact on a firm on a case-by-case basis. We would do this while also taking a listed or traded firm's disclosure obligations into account, which may mean that a firm will be required to disclose our investigation in any event. Our current thinking is that we would include impact (such as potential share price or market impact) as a factor in the public interest framework, to be considered in the round and depending on the facts and circumstances of each individual investigation. We also envisage that an investigation subject would make representations to us on impact during the 10-day window which would help inform our considerations. We welcome views on this.

Wider and other firm impacts

6.13 Respondents raised the potential of wider firm impacts, including financial stability risks, as well as the risk of loss of clients or counterparties if an investigation became known. While very limited empirical evidence of impact was provided, we are carefully considering these points.

6.14 There are a large number of investigations into banks, for example, that have been disclosed publicly before a settlement has been reached, including in recent months, and we have not identified evidence of financial stability risks materialising. We engage closely with the PRA in such scenarios and would routinely consult with the PRA when deciding whether to make any announcement concerning a dual regulated firm. And our proposed public interest framework expressly provides that in every case, we would always consider whether publishing could cause serious market or sector impact, financial instability, wider systemic disruption or impact, or seriously disrupt public confidence in the financial system or the market.

6.15 Under our revised public interest framework we would also always consider whether an announcement would be likely to have a severe impact on a firm, for example resulting in loss of clients or damage to contractual relationships. In assessing this we would, among other things, consider the size and stage of development of a firm, recognising that the impact on smaller firms or more newly established firms could be greater. We also consider that the additional 10 business days for representations will further enable these concerns to be worked through.

Competitiveness

6.16 The UK has a reputation for integrity, competence and expertise in financial services. High standards of regulation are widely acknowledged to be an important reason for this. Improving how we carry out our enforcement work and creating more impactful deterrence will support the perception, as well as the reality, that UK markets are regulated effectively.

6.17 The industry itself bears many of the costs of financial crime through levies or reimbursement schemes, which negatively affect growth and competitiveness. A more robust approach – including through a modest increase in transparency – should help to reduce some of these burdens.

6.18 With our focus on tackling the most serious harm, the number of regulated firms potentially affected by an investigation is likely to be very small. Typically, we open 10-12 investigations into regulated firms a year (11 in 2023/24, constituting only 8 operations as 1 operation related to a group of affiliated regulated firms and 4 since April 2024, constituting 3 operations), from a regulated population of around 42,000 firms.

6.19 While it is rare for us to confirm a specific investigation is underway, there is often information in the public domain. That is why we see this as an incremental shift in current practice rather than wholesale change, as illustrated by the very limited number of actual case studies we have identified. As noted earlier, of the 41 investigations currently open into regulated firms, only 18 are not in the public domain.

6.20 Therefore, it is unlikely that announcing more of our investigations that would otherwise not become public, would create the perception of widespread misconduct in the UK.

6.21 Providing earlier information to the market about conduct that would be the cause, if proven, of concern may support competitiveness. It could allow firms not subject to investigations to consider their own conduct, allowing them to act to reduce their regulatory and financial risk. The educational benefit delivered by these types of announcements may be of particular benefit to small firms that do not have the resources to obtain the professional compliance advice available to larger firms. Such education may thereby contribute to a better competitive environment by creating a more even playing ground in this regard.

6.22 Earlier public information can support effective mitigation, enabling more effective protection of consumers while supporting public, consumer and investor confidence in UK markets. We typically receive a significant volume of parliamentary requests for more information about firms and areas under investigation.

6.23 We recognise that while a number of other UK regulators announce their investigations, internationally few financial services regulators do. However, no other regulator around the world has the same breadth of responsibilities we have.

6.24 Our remit is unique when compared to international counterparts in terms of its breadth and the range of partners we work with domestically and internationally, going significantly beyond the purely financial services regulation which is typically the case in other jurisdictions.

6.25 There are also expectations around accountability which are unique to the UK among other G7 countries. We are regularly asked by politicians and parliamentary committees whether we are investigating specific issues.

6.26 Different systems play a part. For example, some international counterparts undertake enforcement action through open court, where regulatory concerns play out in public before a judgement is made.

6.27 And unlike some other jurisdictions, we typically open investigations into those we regulate only after extensive supervisory engagement, generally giving firms considerable time to resolve issues before moving to enforcement.

6.28 We provided further detail on international comparisons when we wrote to the House of Lords Financial Services Regulation Committee in April.[5]

6.29 We will continue to carefully consider evidence on growth and competitiveness as we decide on our approach and welcome further feedback.

5 Letter at https://committees.parliament.uk/publications/44575/documents/221409/default/

Chapter 7

Next steps

7.1 We welcome continued feedback on our proposals and views in response to the further detail included in this paper.

7.2 Please share any comments by responding to our online questionnaire by Monday 17 February 2025.

7.3 We look forward to continued engagement, for which we hope this document provides a helpful basis, before our Board makes decisions on the proposals in the first quarter of 2025.

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