

## A response to

## PRA CP 9/23

### The Bank of England's approach to enforcement: proposed changes and clarifications

*August 2023*

#### Introduction

UK Finance is the collective voice for the banking and finance industry. Representing more than 300 firms, we act to enhance competitiveness, support customers, and facilitate innovation.

We are pleased to respond to the proposals in [CP9/23](#) on the Bank of England and the Prudential Regulation Authority's enforcement policies and procedures, the PRA's policies and procedures for making supervisory and non-enforcement statutory notice decisions, and to the procedures of the Enforcement Decision Making Committee (EDMC).

#### **Q1: Do you have any views on the PRA's proposals to introduce an Early Account Scheme and the enhanced settlement discount?**

The PRA's objectives in providing a framework for proactive investigation and the ability to substantially accelerate the resolution of a PRA investigation are laudable. We also appreciate the desirability of expediting the information gathering process. There are, however, potential complexities:

1. The six-month indicative timeframe is extremely tight. This is particularly the case given that as the account and accompanying evidence will be compelled, once it has volunteered for the Early Account Scheme (EAS), the firm could be subject to sanctions for non-compliance. On current drafting, extension to this timeframe will only be agreed in exceptional circumstances. The practical impact is that the EAS in its current form is likely to be unrealistic in complex cases, notwithstanding the fact that these are the types of cases where the PRA has the most to gain from an early account.
2. The requirement for a Senior Management attestation is broad and burdensome. When combined with the personal risks associated with providing such an attestation,

this makes it unlikely that firms would volunteer to participate in the EAS in its proposed form.

3. Although the introduction of tangible credit for cooperation is welcome, the fact that this is discretionary diminishes its attractiveness. A potential, discretionary upside of an extra 20% discount is unlikely to provide enough of an incentive for participation. This is particularly the case given the likely loss of legal privilege in the investigation due to PRA participation, and the requirement for early admissions. There is also a lack of clarity as to the types of cases/ circumstances in which a subject's request for EAS is likely to be accepted.
4. There is a lack of clarity relating to the interplay between a firm account and parallel investigations into individuals; as well as how the EAS would work in the event of a joint FCA/ PRA investigation/ involvement of other agencies, all of which give rise to complex practical and legal issues.

## **Q2: Do you have any comments on the PRA's proposed changes to the penalty policy for firms?**

### **Penalty Matrix**

1. There is a risk that the matrix could result in penalties levied on firms (particularly Category 1) being higher than they would likely be under the current regime, particularly as there is no upper limit on penalty for high seriousness Category 1 cases.
2. There is also a risk that penalties will become more arbitrary and less proportionate given the focus on risk to the PRA's statutory objectives and the PRA's assessment of a firm's 'potential impact' (i.e. its potential to adversely affect the stability of the system by failing).
3. There is a lack of clarity as to what would be regarded as low, medium and high seriousness. Practically speaking, low seriousness cases are unlikely to result in a public outcome, which means that in practice, the starting point of the matrix (medium seriousness) for Category 1 firms is already very high, with little differentiation between a top tier 2 firm and a lower tier 1 bank - both set at £75 million.

## **Q3: Do you have any comments on the PRA's proposed changes to the penalty policy for individuals?**

No.

## **Q4: Do you have any comments on the PRA's proposed changes to the serious financial hardship thresholds for individuals?**

No.

**Q5: Do you have any comments on the Bank's proposed changes to the FMI Penalty Policy and the FMI Procedures, and Annex 2 of the new consolidated Bank Enforcement Approach?**

No.

**Q6: Do you have any other comments on the proposed changes to the current PRA Enforcement Approach Document and/or the introduction of the new consolidated Bank Enforcement Approach**

No.

**Q7: Do you have any comments on the proposed new statement of policy relating to the PRA's allocation of decision-making and approach to supervisory decisions?**

No.

**Q8: Do you have any comments on the proposed changes to the EDMC member term limits?**

No, we support the increase in member term limits to ensure expertise is retained and where necessary members working on live cases can continue to contribute to the resolution of the matter(s) they are working on.

**Q9: Do you have any comments on the proposed changes to the EDMC Procedures?**

No.

Of course, we would be delighted to discuss our response, or any questions arising from it, with the Bank of England and PRA if this would be helpful.

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