A response by UK Finance to the FCA's Consultation Paper 24/2

on its Enforcement Guide and publicising enforcement investigations – a new approach

April | 2024

Introduction

UK Finance is the collective voice for the banking and finance industry. Representing 300 firms, we're a centre of trust, expertise and collaboration at the heart of financial services, championing a thriving sector and building a better society.

We are pleased to respond to the FCA's **CP24/2** on its new approach to enforcement guidance and publicising enforcement investigations. We are disappointed that the expected launch of this Consultation Paper (CP) was not foreshadowed in the Regulatory Initiatives Grid. Had it been, we would have sought to engage on this topic prior to such a seminal set of change as are being proposed.

We support the FCA's efforts to be more transparent about its approach to enforcement, the benefits to firms and consumers of publicising areas of concern for the FCA more contemporaneously and the desire to speed up enforcement cases. The FCA already has mechanisms to achieve these outcomes.

We emphatically believe that publicly announcing the commencement of/updates on an investigation could be harmful to wider financial stability as well as to the firm that is subject of the investigation. The regrettable absence of a cost benefit analysis leaves us without any evidence that the FCA has taken this significant risk into account.

Key Messages

UK Finance and its members also share the FCA's desire to protect consumers from harm. So, we support an aim to 'prevent harm before, rather than enforce after'. The speed of investigations is important to ensure that lessons can be learned quickly, in order to make markets safer and even better functioning. In our view this can be delivered within the existing enforcement framework. UK Finance and our members are keen to work with the FCA to ensure the existing regulatory toolkit is fully utilised to achieve this. Importantly, the FCA should seek to align this work with the PRA's approach to enforcement, to mitigate the risk of regulatory divergence.

The FCA's objectives can be achieved without changing its existing framework to only announce the start/update of an investigation in exceptional cases. The FCA could instead provide, for example, a monthly or quarterly anonymised summary of key areas of enforcement activity, including the number of new investigations commenced, the nature of the firm(s)/sectors involved and the type of issues which are under investigation, through a publication analogous to its Market Watch.

The naming of individual firms gives rise to serious financial stability and other concerns. Naming firms as being under investigation by the FCA may unnerve customers, depositors, employees, investors, analysts, suppliers, distributors, intermediaries, rating agencies and other stakeholders. This could cause unnecessary risk to the stability of the

markets and has the potential to influence consumer and/or investor behaviour, potentially resulting in decisions to exit certain firms, undermining the safety and soundness of the named firm and perhaps similar firms that the FCA is seeking to educate and deter. This will have negative consequential impacts on each firm's brand and prospects, and, more broadly, on trust and confidence in financial services, and may lead to false markets in or suspensions of trading in the securities of listed companies, litigation, complaints, FOS referrals, data subject access requests, and market wide disruption.

The FCA can already publicise investigations, in exceptional circumstances, if it considers that an announcement is desirable to bring forward witnesses (FCA Handbook, EG 6.1), among other objectives. The consultation does not provide sufficient evidence to support a departure from this approach nor explain why it cannot achieve its aims without naming firms.

We understand this initiative is part of a wider review of its plans to create an Integrated Regulatory Model (IRM). The FCA should consult more broadly on this**.** Enforcement is the final stage of the pipeline within this new model, which flows from authorisation to supervisory engagement and finally enforcement. We therefore think that it is not optimal that the FCA has decided to consult on the final element of this rather than consulting on the whole IRM holistically or in stages starting at the beginning, so that industry can understand how these new proposed changes fit into the wider framework. We note that FCA's business plan 23/24 already has as a key activity: "Use our additional resource to increase the number of firms we take action against." If this relates to unregulated firms, it is welcome. If this refers to regulated firms, we would welcome the opportunity to work together with the FCA on initiatives to reduce the need for enforcement, which should be a last resort.

No other other G7 country currently takes the FCA's proposed approach. A comparative analysis - see Annex A demonstrates that no regulator in any leading economy publishes the subjects of an investigation at its commencement in the way that the FCA is proposing. Out of 26 regimes, only two countries namely South Africa and Singapore, whose markets are not comparable to that of the UK's financial market, have a somewhat similar regime as that proposed by CP 24/2. Prior to any announcement, unlike the FCA's proposals, the Monetary Authority of Singapore is required to consider whether an announcement will jeopardise the investigation or prejudice court proceedings. A comparable regulator, such as the US's Securities and Exchange Commission conducts all its investigations privately[1] . The current proposals would make the FCA an outlier and firms that are regulated by the FCA less attractive for investment.

Similarly, a comparative analysis at Annex B has been completed of other UK regulators. UKF members' view is that these regulators also differ in their approach from the FCA's proposals

[1] SEC.gov | How Investigations Work

and largely do not publish details of investigations. In instances where regulators do, they oversee very different markets to the financial market, where there is little competition, and the potential impact is much less severe on market stability.

Response to Questions

In responding to some of the FCA's questions we have suggested alternative approaches or sought clarification, doing so in the spirit of constructive engagement. However, this should not be interpreted as acquiescence to the FCA's proposals that it will announce the commencement of an investigation and name the firm involved.

Question 1 *Do you agree with our proposal to announce our investigations, including the names of the subjects, and publish updates on those investigations, when in the public interest? Please give reasons for your answer.*

We emphatically do not. We believe that this proposal runs contrary to the FCA's strategic and operational objectives, as detailed below and, in addition, has the potential to harm the UK's competitiveness and attractiveness as a financial centre. Based on the comparative analysis at Annex A, which shows no other leading economy has anything comparable to the proposals set out by the FCA making the UK an outlier. Much of what the proposal seeks to achieve in terms of transparency could more easily be achieved by publishing information anonymously through other, more generic, less intrusive mechanisms.

We note that the legal ability of the FCA to make confidential information public is limited by s.348 of the Financial Services and Markets Act (FSMA) 2000. The powers that govern the FCA's publications relating to enforcement actions is set out under s.391. These provisions rightly place a significant onus on the FCA to ensure that publication of notices is fair, not prejudicial to consumers' interests and not detrimental to the stability of the UK financial system. Where the FCA publishes information about a Warning Notice it has issued, it makes clear that the Warning Notice does not represent the final decision of the FCA, and that before any final decision is made the subject has a right to make representations to the Regulatory Decisions Committee (RDC). These provisions and caveat are in place in recognition of the negative impact on firms caused by the FCA's making an announcement before its final decision. The current proposals will result in the same damage being caused to firms in circumstances where the FCA has yet to make any assessment of the facts, at a point where the only threshold that will have been crossed is that there are 'circumstances suggesting' misconduct. There are no specific provisions which empower the FCA to make public the commencement of an investigation.

The proposals are also contrary to the position on Warning Notice statements, where the FCA does have an express power under s. 391 to publish information. There are certain procedural safeguards in place where the FCA intends to publish information about statutory notices (including when imposing a public censure and own initiative requirements), such as the ability to challenge the FCA's decision before publication and the affording of third-party rights to those identified. The FCA's proposed approach of naming the subjects of investigations does not include such safeguards. It seems a brave interpretation of the FCA's powers to do what

it proposes to do at the outset or during an investigation free of the constraints Parliament expressly provided in the later stages of enforcement.
Two thirds of investigations opened do not lead to findings of misconduct. This suggests that in most cases where investigations are announced, damage will be caused to firms which have not committed any misconduct.

Test of the FCA's proposals against its objectives

Strategic Objective

The FCA's strategic objective is to ensure that the relevant markets function well.

The proposal that a firm be identified when an enforcement investigation is opened will not assist the FCA in meeting that objective and to the contrary will undermine it. The FCA's assertion that announcing the opening of an investigation does not imply misconduct or harm does not consider the likelihood for consumer confusion, market impact and the likely reputational consequences named firm(s), their peers conducting the same business or the industry as a whole would face.

Failing to consider the impact of an early announcement on the subject firm ignores the potentially significant detrimental effect that enforcement investigations have on a firm's operations, which will be exacerbated by publication. It is unrealistic to expect that consumers will not assume some form of wrongdoing by the named firm under investigation. An announcement of this nature is likely to be taken as a strong indication that some wrongdoing or regulatory breach has occurred, even when accompanied by a FCA disclaimer clarifying that investigations are ongoing. Indeed, the new Enforcement guidance itself references 'suspected poor practices'.

Discounting the impact on the subject of an investigation is particularly surprising given the FCA's existing policy which clearly states that potential prejudice to the subject of an investigation is considered when deciding whether (exceptionally) to announce that an investigation has commenced.

At the point of announcement, irreversible reputational damage may be done even though the investigation is still at a nascent stage and before any meaningful evidence has been gathered. Relations with investors, customers, employees, service providers and other stakeholders may also be highly adversely impacted. A subsequent finding of no wrongdoing is unlikely to mitigate the damage caused, particularly if that decision is made a significant amount of time following the investigation being opened. This is especially a risk for smaller firms. We believe that this new, arguably, adversarial approach by the FCA significantly undermines their joint responsibility, with our members and the Bank of England, to ensure that financial markets operate well and that they remain stable.

We understand from recent conversations with the Directors of Enforcement that there may now be recognition of the impact on the firm in the application of the public interest test. However, how this criterion will be applied in practice has not been made clear by the FCA. How will the FCA assess, for example, impacts (both in the UK and in any other relevant

markets) on the firm's balance sheet and ability to withstand the negative publicity, its customer base, its share price or all of these and possible additional factors?

Depending on the nature of the matter under investigation, reputational damage may spill over onto other firms in the sector or more widely, which could in a more extreme case, lead to a disorderly and rapid withdrawal of deposits/investments and/or significant shareholder volatility, potentially causing market dysfunction and undermining the possibility of an orderly wind down. This is particularly concerning in an uncertain macro-economic environment where confidence in UK banks is at an all-time low, and share prices are falling[2]. The proposals would only seek to make UK banks even less attractive for investors who may draw adverse inferences from FCA announcements and perceive there to be unfairness in the way the UK financial system is regulated.

In its **DP08/3** '*Transparency as a Regulatory Tool'*, the FSA recognised that publication may create '*unwarranted public concern about the matters and persons within the scope of an investigation. It may put consumers' funds at risk or do unwarranted damage to the reputation of firms, issuers or individuals involved'.* In the same discussion paper, the FSA recognised that *"significant procedural safeguards were specifically built into FSMA in order to prevent the casual, rash or unchallenged use by the regulator of public statements that could damage a financial services firm's reputation and commercial standing"*

In the time since the publication of this paper this risk has increased due to the ubiquitous (and at times spurious or malicious) use of social media and rapid transmission of (mis)information by commentators who may or may not understand the issues on which they are providing opinions. The rapid run on Silicon Valley Bank US (SVB US) deposits in March last year demonstrated how quickly (within a short window of two days) concerns around the soundness of a firm can be spread through social media and how flighty deposits can become as a result of online banking. This was specifically called out in the Federal Reserve's review of SVB US , which stated that '*Social media enabled depositors to instantly spread concerns about a bank run, and technology enabled immediate withdrawals of funding'*. This also led to some banks in the US with similar business models to SVB US experiencing deposit outflows as depositors and investors looked for the next weakest link. We share the historic concerns of the FSA that should investigations be made public depositors and investors are likely to lose confidence in firms. This will affect the share price of publicly listed firms and potentially resulting in mass withdrawal of deposits from banks and building societies or investments from funds. The announcement could also in practice disqualify the firm from bidding on new business while it is known to be under investigation (e.g., through RFI processes) which will reduce the competitiveness of UK markets.

[2] Chancellor convenes bank CEO summit over valuation concerns | Business News | Sky News

In a recent address by Therese Chambers on 7 March 2024 at Blackstone Chambers, she indicated that FCA's Enforcement division would employ a more targeted model designed to have a more impactful deterrent effect. As a result, the industry should not expect the FCA to bring 'one hundred pension transfers cases' where a smaller number would suffice to deter other firms from similar misconduct. With that in mind, the potential for certain firms to be named as being under investigation for a certain type of misconduct in a market, with other firms committing the same misconduct but not being placed under investigation is high. In addition to the inherent unfairness, the FCA risks misleading consumers who may be inclined to switch financial services provider to a firm not so named, which may also be engaged in the same misconduct or worse as by naming a single firm the FCA implies that they are the worst offender.

Operational Objectives

Neither do the proposals, in our view support each of the FCA's operational objectives.

The ***consumer protection*** objective will not be supported. The announcement of the instigation of an investigation may result in consumers being unnecessarily concerned about the safety of the firm, based on their perception of information that is not necessarily accurate and may in fact, at a later point, turn out to be unfounded, given that most investigations do not result in a finding of wrong doing. This risk would be increased by the potential for widespread social media/press comment. As a result, consumers may liquidate their investments at a point in time which results in them being less able to meet their long-term investment objectives, resulting in poor consumer outcomes. We question whether this supports the FCA's assertion that early publication of a subject's identity is in the public interest. Firms need to be able to demonstrate that they are taking the right action to address any concerns. An early announcement may hamper the ability of firms to work with the FCA, for instance, to address Consumer Duty obligations when it has not yet been established that firms acted in a way that did not deliver good outcomes for retail customers. This is because firms may deploy resources to deal with the fallout from the announcement as opposed to concentrating on the investigation.

Recent FCA statements[3] have indicated that the regulator is keen to balance its own objectives. In a recent speech on '*Investing in Outcomes*', Mr Rathi concluded that the FCA aims "*to act proportionately, based on evidence. To collect more if we needed it. To balance our objectives. To mitigate the risk of unintended consequences*." However, it is unclear from the FCA's proposals within CP 24/2 how it proposes to balance its objectives, significantly favouring transparency to the cost of fairness (based on the FCA's own statistic of 65% of cases being closed with no action) and a risk to the stability of markets.

It is possible that the new enforcement approach may create unnecessary conflict between the FCA and firms, slowing down the investigation. The proposals set out in this consultation, and as set out in the speech, appear to be inconsistent with stated supervisory approaches.

Instead, we believe that further confidence in the FCA's enforcement capabilities would be better achieved by a commitment to improving and streamlining the enforcement process, progressing cases quickly and bringing them to a rapid conclusion. We recognise that some of the FCA's proposals in CP24/2 seek to expedite investigations, which we support.

But where cases drag on, in some cases for several years, firms can face significant uncertainty which may lead to failure. An initial announcement of an investigation being started will likely exacerbate this negative impact.

It is highly likely that third parties, including claims management companies (CMCs), may infer that the FCA has already determined that misconduct has occurred. So once an investigation is announced there is a high risk that CMCs will start provoking dissatisfaction amongst the firm's customers and the prospects of redress for as far back they can go (especially if the period under an announced investigation is not itself disclosed) leading to a significant increase in complaints received by the firm and actions commenced by CMCs. Firms may spend a significant amount of management time and resource dealing with these complaints and, potentially, wide ranging applications for pre-action disclosure of relevant documents. This would place an unnecessary burden on firms whose efforts should be concentrated on working with the FCA to advance the investigation.

This will also exacerbate the already significant backlog in the court system and potentially impose considerably on a firm's attention and resources while cooperating with the investigation. Early announcement of the instigation of an investigation is likely also to put strain on the resources of the FOS, and potentially the FSCS as well as having a significant operational impact on the firm. It is also unclear how the FOS would determine a complaint is fair and reasonable whilst a firm is under investigation (and its work may have the potential to interfere with or even prejudice the FCA's own investigation). As currently exists in relation to motor commissions there would be no hold on FOS determining one or more complaints against a firm which is the subject of an announced investigation, with the potential for contagion if a complaint is upheld or confusion, if it is not.

Reputational issues affecting firms may also impact consumer confidence and may precipitate complaints, DSARs and other unwelcome claimant interest and activity at a time when the relevant firm is focused on responding to the investigation.

Additionally, if investigations are subsequently closed without finding, as we believe the majority of cases currently are, there is a real risk that any public interest benefit is lost as observers of the FCA process may suffer fatigue and scepticism. Currently only about 35% of cases commenced result in enforcement action, and a large proportion will materially change in scope from the outset of an investigation to its conclusion. So, there is a real risk that even in relation to this subset of cases, publicity at the outset is misleading.

The ***market integrity objective*** will not be supported as the announcement of the commencement of an investigation will likely be interpreted by the public and other

stakeholders as an indication of culpability, resulting in reputational damage and a loss in value of the firm. This may damage the orderly operation of the financial markets with the loss of investor/consumer confidence harming market stability. It could also harm the welfare and future employability of employees of a named firm and firms' access to capital. We do not believe the FCA has sufficiently considered the impact of the release of unsubstantiated and potentially inflammatory information across social and traditional media in developing its proposals. The proposed use of disclaimers will not be sufficient to prevent the potentially irreversible reputational impact of an announcement being made.

Currently according to the FCA's recent letter to Lord Forsyth the average length of an investigation is 43 months for cases closed in 2023/2024. We are concerned that naming firms will, perversely, lengthen this already long enforcement process[4],, as this will change the dynamic between the FCA and named firms especially as consideration will need to be given throughout the investigation to the possibility of the FCA making further announcements about developments. There is also a risk that firms with good grounds to challenge, may not do so due to the commercial pressure to settle, which would not benefit industry as a whole. Admissions made by a named firm to secure a settlement may also lead to a greater risk of prejudice to individuals should the FCA then pursue enforcement against them, as seen in the LIBOR investigations.

Based on the present enforcement process, firms may be more likely to settle a matter which has been kept confidential as a negotiated agreement, and which results in an announcement at the conclusion of that matter, as this will likely be reputationally less damaging than multiple disclosures. If on the other hand, an announcement has been made at the outset, having already experienced the reputational damage from a public announcement, firms may be less inclined to settle.

In Nikhil Rathi's drafted speech to the Digital Regulation Cooperation Forum, in defence of the FCA's proposal he pointed to a public warning issued regarding the crypto firm FTX[5] that was operating in the UK. This is not a sound example in that this relates to a warning relating to an unauthorised business, which the FCA already routinely issues Warning Notices.

While the FCA has helpfully confirmed that it does not intend to name individuals under investigation, we are nonetheless concerned that individuals within named firms will be easily identifiable from their role and/or scrutiny of the FCA Register or firms' annual reports or websites. This could lead to speculation about their potential culpability and risks worse

[4] The average time to case closure where FCA enforcement action is taken is 57 months. **Letter from Lord Forsyth of Drumlean to Nikhil Rathi regarding the FCA's consultation CP24-2 on publicising enforcement investigations (parliament.uk)**

[5] **Navigating the UK's Digital Regulation Landscape: Where are we headed? | FCA**

outcomes for individuals within the firm who can readily be identified as associated with the issue that the FCA is investigating. They will have the Sword of Damocles hanging over them.

We support competition in financial markets but are concerned that the FCA's proposals may undermine the FCA's ***competition objective***.

Naming of an individual product provider may result, in the worst-case scenario, in its permanent withdrawal from the market, reducing consumer choice and competition, or in the least bad case scenario withdrawal until an investigation is completed. It may also result in higher professional indemnity insurance premiums for similar firms.

This is likely to impact smaller firms particularly hard, damaging their financial resilience and resulting in greater costs for the FSCS should a firm fail, even though the investigation may show (as is by the FCA's own admission, the case in 65% of investigations) that there was no intrinsic failure in product design or delivery.

Similarly, if introduced, third country providers may be dissuaded from operating in the UK, reducing the attractiveness and international competitiveness of the UK as a financial centre and depriving British investors of the widest range of innovative product choice.

Secondary Objective

Finally, we support the FCA's **secondary competitiveness objective** but are concerned that this consultation will not advance that objective. Annex 3 to the consultation ('Compatibility statement') asserts that the impact on education, deterrence, trust, reassurance and confidence of the market of the proposals will serve to deliver against the new objective. We are unclear on the evidence that supports these assertions and note that these criteria are different to the metrics published by the Government against which this particular objective should be measured.

As set out earlier this year, the FCA's effectiveness at embedding the secondary objective will be measured against five success indicators including operational efficiency and management information, international competitiveness, regulatory burden, policy implementation and digital innovation. None of the attributes highlighted by the FCA in its consultation fall neatly into one of these categories, so our members question the relevance of these criteria and why the FCA is seeking to redefine existing measures.

We strongly agree that the furthering of the secondary competitiveness objective is a valid reason for introducing changes to regulation or operational processes. However, it is vital that the regulators demonstrate how any such changes deliver against it, using the metrics it has agreed with the Government only. So far, the FCA has made no such assessment; we encourage it to do so.

The proposals as drafted are disproportionate given that the FCA's statutory threshold for opening an enforcement case is quite low (there only needs to be circumstances suggesting that a firm or individual may have breached one or more of the FCA's rules/principles) and the small proportion of total enforcement cases that currently ultimately result in sanctions. The proposal may give a distorted picture of conduct in UK financial services if investigation

subjects are regularly published. Annex A[6] demonstrates that should the FCA pursue this policy change it will be an international outlier which may result in the UK being viewed as a less attractive location for financial services firms, when considering the relative features of different regulatory regimes. Currently no G7 regulator routinely publicly names firms that are under investigation, contrary to the FCA's assertions in the CP. Although the FCA suggests that Singapore already has a similar policy, as Annex A shows, empirically the announcement of investigations which are ongoing and not yet concluded is rare and is not something which the MAS does routinely, having announced only 9 investigations over the past decade.

Annex B provides a similar analysis of UK regulators' approaches, from which we draw a similar conclusion, that other regulators in the UK, as in third countries, contrary to the FCA's view, do not routinely make a public announcement that an enforcement investigation has been opened or act in a way that is anywhere remotely comparable to the FCA's proposals,

Whilst the energy watchdog, Ofgem is able to publish details regarding open investigations, probes into energy companies are rarely of systemic significance, rarely causing customers to withdraw funds, move energy providers or significantly move share prices[7]. This is largely because there are few listed UK energy companies for consumers to choose from, unlike in financial services, where the unintended consequences of publishing details of investigations will likely be much more severe.

The work the FCA does in preventing 'bad actors' entering the market, including from overseas, in part to reduce financial crime, is fully supported by our members. Although the proposed measures might deter firms the FCA would not wish to see operating in the UK, there is a risk that other perfectly respectable firms will be deterred too.

Clarification

It should not be inferred that by requesting clarification UK Finance and its members are agreeing with the FCA's proposals to announce the commencement of an investigation and name the firm involved.

- What is the FCA's expectation of how often it would announce/provide updates on an investigation and the subject of an investigation?
- What will the sign-off and governance process be for the FCA to announce an investigation?
- We query the FCA's references to the approaches of other regulators such as the CMA, OFCOM and OFGEM. In contrast to the FCA the CMA has an explicit statutory power permitting the announcement of an investigation. In the case of the CMA this happens at later stage in the process than the FCA seems to be proposing, only once

[6] Both Annexes A & B have been helpfully prepared by our associate member CMS Cameron McKenna Nabarro Olswang LLP

[7] UK 'name and shame' plans take regulatory transparency too far (ft.com)

a decision has been taken to open a formal investigation. These regulators are not comparable. We wonder if these are the right comparisons given the potential subject matter of FCA investigations, the number of firms regulated by the FCA (over 40,000) compared to the 6 main energy suppliers in the UK regulated by Ofgem and the FCA's greater inclination to commence criminal (including dual track criminal / civil) investigations?

- What data points are required in order for the FCA to consider the impact on subjects?
- What criteria will be used to determine the investigation cases that are named retrospectively (i.e., are already live)? Does the FCA still propose to publicise in two thirds of the cases that are already opened and on what basis?
- What additional benefit does transparency provide? For example, where a firm is named as under investigation but other firms who may be similarly 'implicated' are not.
- Whilst we appreciate the confirmation that there will be no presumption in favour of announcing, the factors proposed in the new public interest framework lack the clarity necessary for firms to understand how these will be applied. Further detail on the public interest test would be helpful, including examples of how the FCA sees this operating in practice.

Alternatives/Suggestions

It should not be inferred that by making these alternatives or suggestions UK Finance and its members are agreeing with the FCA's proposals to announce the commencement of an investigation and name the firm involved.

- The FCA should publish anonymised data around how their proposals would have applied to the existing portfolio of investigations conducted last year. This could provide transparency across the industry of particular behaviours or risk of breaches that are of concern to the FCA and, if appropriate, where the bulk of the concern resides (i.e., among systemically important vs. market entrants or smaller firms with more niche business models). The FCA should not move away from its current policy of only announcing the subject of an investigation in exceptional circumstances. The new policy needs to be positioned in a way that appropriately takes account of public interest considerations and FCA's statutory duties of confidentiality.
- The FCA should make better use of its existing comprehensive toolkit to strengthen its enforcement approach. For example, more detailed Market Watch type announcements would add transparency to the areas of interest and focus on supervision. More frequent Dear CEO letters would help firms address any gaps and strengthen internal compliance against the risk of failings of other firms or sectors. The investigation process itself could also be sped up, helping other firms to understand the essence of the FCA's concerns, an objective the FCA is seeking to achieve and which we support.

Question 2 *Do you agree with the structure and content of our proposed new public interest framework, including the factors proposed, and the other features of our proposed new policy described in paragraphs 3.5 to 3.12 above? Please give reasons for your answer if you do not agree.*

While we agree transparency is a legitimate regulatory aim and that the FCA should focus on providing information where it is legally able to do so pursuant to FSMA or other applicable legislation (and where it believes that doing so will help it achieve clear regulatory objectives) this proposal goes beyond that legitimate tool.

Announcement as an Educational Tool

The consultation paper states that, due to the slow pace of investigations, by the time regulatory decisions are published, the "reassurance, educational value, and effectiveness of that information…is often significantly reduced." We welcome this acknowledgement by the FCA and understand that it could be helpful to provide information to consumers and market participants about the process and subject matter of investigations more rapidly.

However, legitimate interest in disclosing information must be carefully weighed against potential harm or unfairness to a particular firm, individual or sector/sub-sector of the market. Publicity may not always be in the public interest, and it is not clear why named disclosure of a firm under investigation is necessary to satisfy the public interests identified.

The view that it is educational for other firms to be made aware of an investigation and that they will be able to act appropriately in response, without knowing whether the outcome will be a finding of a compliance failure that may be of wider relevance to firms seems irrational. This is particularly concerning given the low, 35%, rate of investigations which are closed with a finding of wrongdoing and the current long investigation timeline. It will remain unclear potentially for some years what, if any, learnings for industry might be, other than the fact that there is an ongoing investigation. And all whilst named firms will have suffered the negative implications that we have already outlined. It seems to us that the real benefit to be derived from learnings from an investigation would be better served by seeking to conclude and publish its results more quickly rather than by providing incomplete and possibly misleading information at an early stage. The FCA has not included much information on how it intends to make the improvements that are in its handling of investigations and further detail would be welcome, perhaps as part of the consultation on holistic review of the new IRM that we have proposed.

The work the FCA has already been doing in educating industry and the public by publicising their work thematically (e.g., motor finance, use of personal guarantors etc) whilst not naming any firms specifically has been very useful. It carries a higher level of signalling than the FCA's current proposals, as the it would be able to be more fulsome with its concerns. As an educational tool the proposals will affect smaller firms disproportionately as it may be burdensome for them keep up to date with a large number of announcements.

Public Interest framework

In our view the proposed public interest framework is wide and subjective and appears to be non-exhaustive in meaning, as the CP makes clear, that the FCA could also consider other factors on a case by case basis. The FCA's decision-making should be fair, transparent, proportionate and reasonable. Where the decision to publicise will be taken by the FCA "on a *de facto* case-by-case basis, taking all relevant facts and circumstances into account" it may not be possible for a firm to agree that a decision is in fact fair, transparent, proportionate and reasonable. The FCA could nonetheless decide that an announcement would "provide reassurance that we are taking appropriate action" or have a deterrent effect. The FCA's discretion should not be wholly unfettered in this way. Firms should have an opportunity to discuss with the FCA and make representations on their decision to name a firm under investigation.

More broadly there should be an exhaustive list of objective criteria that the FCA should take into account before making a public announcement.

We note that under s. 1B(5) of FSMA 2000, the FCA must have regard to the regulatory principles in s. 3B. This includes the principles that a "*burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction*". Accordingly, the FCA is under a statutory obligation to act proportionately when imposing a burden or restriction on firms and we consider this applies when publishing the names of firms under investigation.

Furthermore in line with the Principles of Good Regulation the FCA should also consider if a public announcement is a reasonable and proportionate response, taking into account the:

- sufficiency of the evidence
- severity of the alleged wrongdoing
- potential detriment to the firm, to individuals and to the market that could arise from a public announcement.

This should be added as a specific test within the public interest test. In particular, there should be an evidential threshold to be met before a public announcement should even be considered.

We note that neither the FCA nor the PRA may publish a warning notice under s.391 FSMA if publication:

- would be unfair to the person with respect to whom the action was taken (or was proposed to be taken);
- prejudicial to the interests of consumers; or
- detrimental to the stability of the UK financial system.

We find it somewhat surprising that similar procedural safeguards are not proposed for public announcements intended to be made before any finding of wrongdoing.

As we note above 'naming and shaming' individual firms will impact the firm's reputation – once the media and other commentators have added their interpretation, accurate or otherwise, which can have a significantly disproportionate effect. There may also be a sectoral or sub sectoral wider market impact. We have seen how allegations in criminal investigations play out in the media and impact the reputation of individuals and firms who are subsequently not charged or found to be not guilty and there is no reason to expect that these types of issues would play out differently.

We remember that in the FSA's **DP08/03** it distanced itself from a 'naming and shaming' strategy, acknowledging that damage can be done to firms even if the 'charge' later turns out to be groundless, or not proceeded with, as currently 65% of investigations are.

Mark Steward (former Director of Enforcement and Market Oversight) made it clear that he viewed the function of investigation as 'diagnostic' enabling the FCA to understand 'what has really happened and what we need to do about it.' We are concerned that naming firms during an early stage of investigation undermines this aim. This could damage the use of investigation as a diagnostic tool, meaning the FCA is less able to gather evidence swiftly. A public announcement at the start of the investigation may force both sides - the firm in question and the FCA - to adopt tougher approaches than might have otherwise been the case. Firms may feel that all of the damage has already been done to their reputation and business model. The FCA may find it more difficult to conclude that investigation should be dropped given its public profile. This runs counter to the objective of coming to factual conclusions about wrongdoing.

For these reasons we disagree with the FCA's proposal not to include the impact of a publication decision on the firm subject to investigation as a specified factor in the proposed public interest framework. It should be inserted.

It is unclear how any of the public interest factors are best met by releasing information about enforcement investigations and we believe that the anticipated benefits of doing so will, in nearly all cases, be outweighed by the significant drawbacks we have highlighted in this response.

Alternatives/suggestions

It should not be inferred that by making these alternatives or suggestions UK Finance and its members are agreeing with the FCA's proposals to announce the commencement of an investigation and name the firm involved.

- There are safeguards to protect identities built into many legal frameworks, e.g., Tribunal proceedings – we suggest that these safeguards should be considered in this context.
- Deterrence and providing reassurance that the FCA is taking appropriate action can be achieved by making public less specific information about the number of

investigations the FCA is taking forward, and more general anonymised information about the subject matter of the investigations.

- We strongly suggest that announcement at commencement or during an investigation is only made on an extraordinary basis, if at all. For example, announcement may be justified where (incorrect) information is leaked or otherwise already in the public domain.
- As an absolute minimum, the FCA should consider the potential impact on the employees, shareholders and other stakeholders of the investigation subject. This is particularly relevant where the FCA acknowledges that their announcement "*is potentially market sensitive*". By expressly acknowledging the potential harm but refusing to consider it when determining whether to name an investigation subject, the FCA is eroding foundational and longstanding principles of justice that an accused is innocent until proven guilty, a point we raised with vigour in the debate on the initial proposals on the "reverse burden of proof" as the SM&CR regime was being shaped by regulators.

Question 3 *Do you agree with our approach to announcements and updates where the subject is an individual? Please give reasons for your answer if you do not agree.*

Naming of Individuals and Confidentiality Concerns

We note that the FCA confirms that it would not usually name individuals, but states that there will be circumstances – in the public interest - where they may do so. All the points made above apply to any decision to name an individual. Additionally, the balancing exercise referenced should weigh more firmly against naming individuals as the detriment they can suffer is even more significant. So, we are pleased that the FCA's proposals appear to recognise this.

As we note above, depending on the nature of the investigation, it will be possible, to identify individuals at the firm in question who are likely to be subjects of interest to the FCA as their enquiries into a firm continue.

Individuals may be readily identified from the description of an investigation into a named firm, for instance through the FCA Register and other publicly available information. Confidentiality requirements apply to the FCA under FSMA. FSMA grants individuals "third party rights" under section 393 in relation to issuing a Warning Notice. However, the FCA makes no reference in its Consultation Paper to assessing impact on individual rights when considering publication at this proposed, much earlier stage. It is not clear how this can be reconciled with investigation subjects' reasonable expectations of privacy or with rights protected by the Human Rights Act 1998. As a result, we believe this may be open to legal challenge incurring costs for both plaintiff and the FCA.

Further, publication of the opening of enforcement investigations will rightly hold the FCA to greater account in its aspiration to conclude investigations more quickly. This may increase pressure on the FCA to cut corners to allow it to draw investigations to a close more rapidly.

This may reduce the likelihood that the process reveals what has actually happened in the issue under investigation. Although a targeted investigative approach in contrast to a no stone unturned approach will be more appropriate in certain circumstances, and likely welcomed by firms when used appropriately, there is invariably a balance to be struck. An expedited approach (for example, where data led, using samples) risks investigations being concluded in circumstances where a comprehensive interrogation of all relevant facts and matters has not been undertaken.

Firms might also come under greater pressure to agree outcomes to protect against the harm caused by remaining under investigation for a lengthy period, given the proposal to announce the commencement of an investigation, along with any updates would bring this process into the public domain regardless of their nature in our view, would mean repeated negative publicity for the firm. Hasty admissions made by firms to secure an early settlement may have a consequentially detrimental impact on individuals, where those admissions are then used by the FCA to pursue enforcement against individuals.

Wellbeing

This proposal underestimates the potential impact on individuals, albeit that these factors are already present to an extent when a firm or individual is under investigation.

Some of these harms include the potentially long-lasting career consequences for impacted individuals – and it is difficult to see how such an announcement could be considered fair before culpability has been determined. Potential impacts to an individual's wellbeing include the risk of triggering significant harm as a result of stress and publicity, impact on employment mobility and knock-on impacts on family or home life.

In our view the level of detail contemplated in the announcement that an investigation has been commenced against a firm is likely to render it relatively straightforward to deduce which SMF is responsible. There are significant concerns around fairness, natural justice, human rights and wellbeing of the individual and future career implications if it becomes common knowledge that an individual is involved in an investigation.

As a result, we believe strongly that the identity of individuals subject to or implicated in an investigation should not be disclosed under any circumstances, unless and until any wrongdoing has been sufficiently proven. Furthermore, other than in very exceptional circumstances, no announcement made by the FCA should allow for the identification of an individual (e.g., the relevant SMF) through other publicly available information for example the FCA Register).

The points made above, in answer to question 2, about the need for a fair and transparent procedure to ensure that the FCA's decision is both reasonable and proportionate, taking into account all relevant factors (not just the public interest in disclosure) applies equally to the proposal to name individuals.

Alternatively by including the industry sector and regulatory or legal provisions the investigation relates to, a summary of the suspected breach, failing or other misconduct being

investigated, and clarification that opening an investigation does not imply the FCA has reached a conclusion, the FCA would meet the aims and not need to name any firm.

If the purpose of these proposals is to demonstrate proactivity, efficiency and decisiveness in tackling issues, this outcome could be achieved through means other than announcements and updates naming firms, which will likely also implicate individuals with damaging personal consequences. As we suggest above these could include Market Watch type mechanisms or Dear CEO letters.

Clarification

It should not be inferred that by requesting clarification UK Finance and its members are agreeing with the FCA's proposals to announce the commencement of an investigation and name the firm involved.

- It would be helpful for the FCA to set out in more precise terms the circumstances where it can lawfully make an announcement and it would be in the public interest to do so.
- It would be helpful to understand the FCA's approach in circumstances where an individual is inextricably linked to an investigation and whether this could frustrate the FCA's efforts regarding announcement and/or result in a disparate approach to announcements.
- We would like to understand more about how the proposed approach will sit with the confidentiality requirements under section **348 FSMA**. In particular, if the information the FCA announces derives from information which it has received under section 348 of FSMA. We would appreciate further detail of all the factors that the FCA would take into account in considering both whether to make a public announcement at all and whether to name specific individuals.

Alternatives/suggestions:

It should not be inferred that by making these alternatives or suggestions UK Finance and its members are agreeing with the FCA's proposals to announce the commencement of an investigation and name the firm involved.

- The FCA should include robust language akin to the CMA's around the FCA not reaching a view on there being sufficient evidence of a breach.
- Where the investigation involves corporate criminal conduct, any announcement of the investigation should make clear the higher burden of proof on the prosecution required to obtain a conviction.
- The FCA should not include the individual subject of the investigation, or otherwise allow for the identification of the subject of the investigation through publicly available information, except in very limited situations.
- To ensure GDPR and issues relating to ECHR such as Art 6 (right to a fair trial) and Art 8 (right to privacy are properly considered the FCA should secure complete legal advice about aspects of law that may have a bearing on its proposals.

- The FCA should issue periodic publications summarising, on an anonymised basis, the themes of their investigations.

Question 4 *Do you agree with the proposed content of our announcements? Please give reasons for your answer if you do not agree.*

Market Signalling and Disclosures

In the FCA's letter of 18 March to us and the other trade associations it was asserted as a fact that a listed firm is already required to make an announcement if it believes the fact of the investigation is likely, in itself, to affect its share price. This assertion seriously misstates the requirements of UK MAR. Nor does the consultation recognise the impact of an announcement on other companies, if they also have listed securities, and which may, as a result of the named announcement of another firm, need to seek a suspension in the trading of their own securities and/or make an announcement under the Listing Principles to avoid a false market. Overseas-listed parents of UK firms may also be required to disclose UK investigations of named firms impacting them, in their home securities market.

Alongside MAR, IAS 37 requires a firm to recognise a provision if a legal or constructive obligation has arisen as a result of past events, such as a regulatory investigation, and that payment of such obligation is more likely than not and can be reliably estimated. It is unlikely that the announcement of the instigation of an enforcement investigation would necessarily meet these tests, so do not think firms would be disclosing them as the FCA suggests. IAS 37 also requires firms to recognise a contingent liability where there are possible obligations whose existence will be confirmed by uncertain future events that are not wholly within the control of the entity. Perversely, the announcement of a named firm investigation may cause multiple other firms to recognise a contingent liability for a matter which proves unfounded in relation to the firm under investigation but until then causes 'possible obligations whose existence will be confirmed by uncertain future events'.

These announcements are made after due consideration by firms and their advisers, which is completely at odds with the frankly unrealistically short, (up to), one day, timeline the FCA is proposing. Company announcements of this nature, where they are made, will seek to provide as much fair and balanced information as possible to the market. We are sceptical that the FCA's announcement will be made with similar deep consideration, let alone give time for the firm to offer corrections for factual accuracy and fair balance

The proposals seek to circumvent the safeguards enshrined in FSMA against harm and unfairness in the use of enforcement powers and override the clear intent of the legislature. If Parliament thought due process and safeguards were necessary for statements about Warning Notices and public censure, then it is our view that they are even more necessary in respect of public announcements about ongoing investigations where the existence of misconduct has not yet been determined. If Parliament had intended for the FCA to exercise its powers in the way proposed it would have provided a specific statutory basis for it to do so (complete with due process and safeguards).

Unlisted firms, with a similar business model/product suite may be similarly negatively affected by collateral damage arising from the announcement that an enforcement investigation is underway against a listed firm.

As conceived in the CP the proposed content of the announcement is theoretically concise, although the FCA clearly leaves the door open to providing greater detail. Brevity risks failing to tell the full story, for example omitting mitigating circumstances, which might be helpful in ensuring a wider view of the reasons why the investigation has been opened. By announcing at the beginning of the investigation the FCA is also unlikely to have any understanding of such mitigating circumstances that affect this case as the necessary work will not have started.

We note that other regulators, for instance the PRA, may expressly require that a firm does not make an announcement that an investigation is taking place until after it is concluded.

We appreciate that each announcement will make it clear that the opening of an investigation does not imply that the FCA has reached a conclusion about a breach, failing or other misconduct, but it is inevitable that this will be interpreted by all but the most sophisticated observer as boiler plate language which will be overlaid with a 'no smoke without fire' perception that the firm has indeed transgressed FCA Rules.

The proposed one day's notice to be given of an intention to make an announcement will not afford firms any real opportunity to prepare for the impact of an announcement or make any representations to the FCA and we would like more clarity about how the process might work. This may mean that larger firms (who may have the advantage of being able to pursue this) may instead be forced to make applications to the Court. We note that, from the FCA's point of view, the flexibility of process it proposes for itself makes it vulnerable to judicial review on grounds that the decision is unlawful, procedurally unfair or otherwise unreasonable.

The FCA's approach to announcement of RDC decisions allows a more reasonable period of time to make representations to the FCA and apply to the Tribunal, pending which no announcement is made. Where there has been no finding of fact and given the significant implications, we believe a wider right to object to a decision to announce the opening of an investigation would be appropriate.

We also note that before the FCA publishes a warning notice under s.391 FSMA, the FCA is required to consult the persons to whom the notice is given or copied.

A firm's ability to make its own public statements about the opening of an enforcement investigation, once the FCA has already made an announcement will necessarily be limited. Given that full details of the investigation would be confidential, it may be difficult for a firm to properly respond to an announcement or to defend its position, interfering with firms' ability to take their own steps to manage the impact. Given the significant number of investigations which have been closed with no further action, we question whether the potential harm that relevant firms may suffer is proportionate to the FCA's objective of increasing the transparency of its enforcement function.

We also question whether an environment in which firms could be forced into making defensive or confrontational responses (or comment that they are co-operating but note the typical period and outcomes of investigations in general) and/or in which multiple firms are bringing judicial review claims against the FCA would diminish public confidence in financial services products, regulation and firms.

Clarification

It should not be inferred that by requesting clarification UK Finance and its members are agreeing with the FCA's proposals to announce the commencement of an investigation and name the firm involved.

- The FCA has indicated that ahead of any notice period, there would be a meeting with the firm beforehand, as well as "other scoping work". Could the FCA clarify how this will work in practice and how far in advance meetings will be held.
- A maximum of 24 hours' notice pre announcement is an unnecessarily short and unreasonable timeframe to impose on firms. A minimum of 5 working days would be a more appropriate period in which to respond.
- We believe that the FCA should provide sample announcements for review by industry to show how it expects the announcement regime to work in practice.

Question 5 *Do you agree with our proposed methods of publicising an announcement and updates? Please give reasons for your answer if you do not agree.*

Challenging the FCA's decision to make an announcement

We note that the FCA Consultation and draft Enforcement guide is silent about how a firm might be able to make representations against publication. This is made even harder for firms given the proposed (up to) one business day's notification period before the announcement is made. Firms will therefore have very little opportunity to dispute any publication decision, assess the impact that publication will have on its business, engage with stakeholders or prepare its own public response. As set out in the response to question 4, this seems unfair. A firm should be allowed to make representations regarding the decision and a mechanism provided to allow it to appeal against the decision to make a public announcement. This is even more relevant where the firm determines it must make a market announcement.

Timing of an announcement

We believe that the proposed method of publicising an announcement, including the proposal to give the subject no more than one business day's notice, may be inconsistent with the provisions in **section 387** FSMA on Warning Notices, which requires a reasonable notice period of at least 14 days within which firms may make representations to the regulator concerned. Firms should be afforded a reasonable length of time to consider and potentially challenge a decision by the FCA to announce the commencement of an investigation. We understand that the FCA does not want to engage in to-and-fro discussion with the subject of

an investigation but believe that there should be a fair and consistent process which is in the interests of both the FCA as a public body and firms.

Firms should therefore be given a period of some working days, at least 5, to consider their position and engage with other regulators, for example the PRA (where firms are dual-regulated), on its plans and on matters of factual accuracy and fair balance. We regard the principles contained in existing EG 2.2 (as to which please see below) as highly important to retain and apply in this situation if the FCA is proceeding with its proposals.

There are serious international concerns for firms operating across multiple markets and/or are listed on several exchanges. Announcements will undoubtedly be made during one of these exchanges' opening hours, if not the UK exchange's hours. The FCA should, where appropriate, coordinate with a firm's home state regulator prior to making any public announcement in the UK.

Clarification

It should not be inferred that by requesting clarification UK Finance and its members are agreeing with the FCA's proposals to announce the commencement of an investigation and name the firm involved.

- We seek assurances that subjects will be made aware of the investigation some time prior to publication (i.e., not learn of the investigation only when the FCA has already chosen to publish details about it), preferably as part of the scoping process as the firm and the FCA are discussing the potential case.
- Could the FCA provide examples of the circumstances in which the need to announce an investigation could be considered as urgent resulting in it waiving the proposed one day notice period?

Alternatives/suggestions:

It should not be inferred that by making these alternatives or suggestions UK Finance and its members are agreeing with the FCA's proposals to announce the commencement of an investigation and name the firm involved.

- Firms should be given a right of reply with sufficient time to consider the proposed announcement and to highlight to the FCA any considerations which may include adverse market-related impacts that the FCA has not foreseen. The serious unfairness of a one day notice period would be exacerbated in relation to a "*potentially market sensitive*" announcement with the FCA providing notice only upon market close (e.g., 16:30) with their public announcement scheduled for 07:00 the next morning. This would effectively result in 30 minutes of 'working hours' notice. We suggest a 5 working day notice period.
- Consideration of the pros and cons of an announcement should take place as part of the initial scoping discussions.

Question 6 *Do you agree with our proposed approach to publicising investigation updates, outcomes and closures? Please give reasons for your answer if you do not agree.*

Changes to Investigation Scope

Members tell us that the scope of an investigation often changes significantly over its course and results in findings about matters that were not within the original remit and/or matters that were originally included falling away.

We note that having concluded an investigation where no enforcement or other action is taken the FCA proposes to make a public announcement stating this or otherwise amend the original announcement. If an announcement has been made when an investigation is opened (which we strongly disagree with for all the reasons set out above), a public announcement to this effect should also be made. An announcement with a corrective statement or amendment will more effectively draw a line under the investigation rather than leaving it hanging for the public to draw conclusions as we believe an amendment would.

Current Investigations

We understand that once it has finalised its proposals the FCA intends immediately to identify currently ongoing investigations. Based on 2023 figures, and Ms Chambers' estimations of 2/3s of open cases being published, this could be up to 390 cases. The FCA should consider carefully the impact on confidence in the financial system of a possibly very large number of investigations being made public at the same time, particularly as we believe many existing investigations have been undertaken using section166 powers, reflecting a lower level of concern than for instance, a criminal investigation.

Given the FCA's objective to take fewer cases to enforcement, it is questionable whether many of its current cases would meet this new 'threshold' for investigation under these proposals. The FCA should recognise that retroactively announcing investigations which have been running for some time will place firms in particular difficulty as they are likely to be in possession of more information about the matters under investigation than a firm would be at the outset of an investigation, when faced with queries from journalists or investors. In circumstances where the FCA has been candid about actively streamlining its investigation portfolio, there is an additional risk of announcements being made in cases which are later closed before any findings are made.

Question 7 *Do you agree with our proposal that moving our strategic policy information to the website will make information more accessible? Please give reasons if you do not agree.*

Future Rule Changes

Yes, our members agree with sensible proposals to make information more easily accessible and to curate it more helpfully. But we note it will be difficult to access content which has moved on to the FCA's website or readily identify how it has changed. This results in poor

consumer outcomes and cuts out procedural safeguards for investigation subjects, as well as requiring the development of unnecessarily complex compliance processes. However, we are concerned about the FCA's statement that it will not need to consult on future changes to the guidance and the serious unfairness of a one day notice period and disagree that this is a suitable approach in such an impactful area. Unspecified material being moved onto the website does not provide any reassurance that there will be transparency or fairness in the future.

We suggest that the FCA should consult on any substantive changes to their strategic approach.

Question 8 *Do you have any comments on the revised content of chapters 1-6 of EG?*

There is a wholesale revision of Chapters 1 to 6 of the EG, requiring a line-by-line review, which has not been signposted by the CP. The way that the FCA has presented the changes is unnecessarily burdensome and lacks transparency.

By way of example only, we disagree with the amendments to 1.1.8 removing any reference to legal advice being sought where clarification on provisions are required *"If you have any doubt about a legal or other provision or your responsibilities under the Act or other relevant requirements, you should seek appropriate legal advice from your legal adviser."*

The new 2.6.2 is also onerous on firms, and does not allow for exceptions with the proposed wording relating to information requests stating:

2.6.2 Once it has formally issued a requirement (whether or not this has been preceded by a draft), the FCA will not usually agree to an extension of time for complying with the requirement.

Whereas the current EG, states that "*Once it has formally issued a requirement (whether or not this has been preceded by a draft), the FCA will not usually agree to an extension of time for complying with the requirement* ***unless compelling reasons are provided to support an extension request."*** (emphasis added), which accounts for reasonable/compelling exceptions.

Further, at the proposed new chapter 2.7.3, the FCA states that it may refuse the attendance of a legal advisor at interview, for example where that legal advisor has a conflict of interest or owes a duty of disclosure to another person. This fails to consider that lawyers are regulated and under their own professional obligations, and that owing a duty to an employer would not constitute a valid reason to refuse attendance or prejudice an investigation.

A firm under investigation could be significantly disadvantaged if it were to only find out what had been discussed when transcripts are disclosed by the FCA and could add a significant financial and administrative burden in arranging legal advisors for employees.

Clarification

- In what circumstances, would the FCA deem it appropriate for an in-house legal advisor to attend?
- The newly proposed chapter 2.7.8 Interviews Under Arrest does not refer to the procedure which the FCA may follow when seeking assistance from the police. This needs clarification.

Chapter 2.7.9 (new proposal) relates to the *Interviews in response to a request from an overseas regulator or EEA regulator,* and proposes to remove reference to statutory safeguards as follows:

> *However, the FCA may only use this power if it is satisfied that any information obtained by an overseas regulator as a result of the interview will be subject to safeguards equivalent to those in Part XXIII of the Act (sections 169(8) and 131FA).*

We consider that the requirement for the Chair of the RDC to approve any press release in which the RDC was the decision maker, unless the matter goes to Tribunal, should be retained (EG 6.4).

Question 9 *Are there any chapters set out in paragraph 4.17 that you consider should be kept in full as part of EG?*

The deletion of Chapter 2 will, we think, have the highly material and adverse effect of the removal of these principles and so we think it is very important to retain them:

2.2 FCA There are a number of principles underlying the FCA's approach to the exercise of its enforcement powers:

(1) The effectiveness of the regulatory regime depends to a significant extent on maintaining an open and co-operative relationship between the FCA and those it regulates.

(2) The FCA will seek to exercise its enforcement powers in a manner that is transparent, proportionate, responsive to the issue, and consistent with its publicly stated policies.

(3) The FCA will seek to ensure fair treatment when exercising its enforcement powers.

(4) The FCA will aim to change the behaviour of the person who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance, and where appropriate, to remedy the harm caused by the non-compliance.

Question 10 *Are there any chapters that you consider should be relocated elsewhere?*

We have no comment on this question.

Question 11 *Are there any chapters that you consider can be deleted altogether?*

We have no comment on this question.

Question 12 *Do you agree that the present chapter 8 of EG should be moved from EG and included in SUP 6? Please give reasons if you do not agree.*

We have no comment on this question.

Question 13 *Do you agree with the removal of the restitution chapter from EG? Please give reasons if you do not agree.*

We have no comment on this question.

Question 14 *Do you have any comments on our proposal to retain EG 19 and 20?*

We have no comment on this question.

Question 15 *Do you agree that we should not use private warnings as an alternative to taking formal action and remove any reference to them from EG?*

The FCA should retain the ability to issue private warnings.

The reasons for retaining private warnings for both firms and individuals are well stated in the existing Enforcement Guidance (7.10-7.17). The extracts below remain relevant and good reasons for retaining private warnings:

- The FCA may decide that it is not appropriate, having regard to all the circumstances of the case, to bring formal action for a financial penalty or public censure. This is consistent with the FCA's risk-based approach to enforcement. In such cases, the FCA may give a private warning to make the person aware that they came close to being subject to formal action.

- FCA private warnings are a non-statutory tool. Fundamentally they are no different to any other FCA communication which criticises or expresses concern about a person's conduct. But private warnings are a more serious form of reprimand than would usually be made in the course of ongoing supervisory correspondence.

- Typically, the FCA might give a private warning rather than take formal action where the matter giving cause for concern is minor in nature or degree, or where the person has taken full and immediate remedial action. But there can be no exhaustive list of the conduct or the circumstances which are likely to lead to a private warning rather than more serious action. The FCA will take into account all the circumstances of the case before deciding whether a private warning is appropriate.

- However, the FCA may also issue private warnings in circumstances where the persons involved may not necessarily be authorised or approved. For example, private warnings may be issued in potential cases of market abuse; cases where the FCA has

considered making a prohibition order or a disapplication order; or cases involving breaches of provisions imposed by or under Part VI of the Act (Official Listing).

- The FCA will consider whether it would be desirable and appropriate to inform the approved person's firm (or employer, if different) of the conduct giving rise to the warning and the FCA's response.

- A private warning is not intended to be a determination by the FCA as to whether the recipient has breached the FCA's rules. However, private warnings, together with any comments received in response, will form part of the person's compliance history.

Question 16 *Do you have any comments on our proposed approach to future consultation?*

Enforcement action, or even the announcement that an investigation is underway as the FCA proposes, can have significant effects on firms. We therefore do not agree that additional changes to the Enforcement guide should not be consulted upon in the future. We are pleased that the FCA does not propose to make regular or substantive changes to its Enforcement guide in the future. This will provide some welcome stability for our members and their advisors. Nonetheless any substantive changes should be consulted on.

Responsible Executive

✉ simon.hills@ukfinance.org.uk

☎ +44 (0) 7921 498183

Annex A

Jurisdiction	Public announcement of investigation?	Additional information provided with the response
1. Austria	No	The Austrian Financial Market Authority ("**FMA**") would not routinely announce that it commences investigations against an institution under its supervision. As a general rule (and unless there is a specific basis for acting otherwise), the FMA would rather be restricted by law from making such announcements. The following exemptions to this rule seem to be noteworthy: • Information of the public about certain (rather severe) regulatory measures adopted, e.g., where the distribution of profits or capital has been prohibited, where the continuation of business has been prohibited or where a receiver-type manager has been appointed. This is a right (not an obligation) of the FMA and will usually refer to situations where severe irregularities have been detected that represent a threat to bank creditors and/or where the bank is close to resolution or a withdrawal of its license. By its very nature, this would not refer to the beginning of an investigation but implies that certain regulatory measures have already been taken in reliance of the results of previous investigations (but may of course be at the beginning of further investigations, taking account of the new circumstances). • The right of the FMA (of which it frequently makes use) to warn investors about unlicensed service providers (informing about the fact that a certain person or entity is not entitled to conduct a certain licensed financial services activity). This would, however, concern unlicensed and unsupervised entities, not entities already under supervision;

Jurisdiction	Public announcement of investigation?	Additional information provided with the response
		• "Naming and shaming" provisions (most commonly having an EU law background). Those provisions, however, would mostly apply *after* a certain sanction has been imposed on that institution (i.e., representing the result rather than the beginning of an investigation).
2. Australia	No	Regulators take slightly different approaches in relation to the publication of information around investigations commenced against firms, but other than the Australian Transaction Reports and Analysis Centre ("**AUSTRAC**") do not routinely or regularly publish such investigations. **ASIC** The Australian Securities and Investments Commission ("**ASIC**") is Australia's integrated corporate, markets, financial services and consumer credit regulator. ASIC's **Information Sheet 152** ("**Info 152**") indicates that ASIC may comment on an investigation when it is in the public interest to do so. Info 152 also sets out the factors that ASIC will consider in determining whether it is in the public interest to comment. Info 152 also indicates that: • where ASIC confirms the existence of an investigation, it will generally make no further comment until the investigation is concluded; and • ASIC will only provide updates on the progress of the investigation if it is in the public interest to do so. We note that Info 152 does not deal with the announcement of an investigation (as opposed to commenting in relation to an ongoing investigation), but in our view the same principles will apply. For the sake of completeness, we note that ASIC indicates the number of investigations commenced and ongoing during a 6 month period as part of its **summary of enforcement actions**, but we are not aware of ASIC announcing the commencement of specific investigations against specific firms as a general practice. They will

Jurisdiction	Public announcement of investigation?	Additional information provided with the response
		from time to time indicate that they are undertaking industry-wide surveillance on particular issues. **APRA** The Australian Prudential Regulation Authority ("**APRA**") is Australia's prudential regulator of banks, insurance companies and most superannuation funds. APRA's Enforcement Approach ("**APRA Enforcement Approach**") indicates that APRA will publicise the enforcement actions it takes on a case by case basis. However, APRA will typically make public announcement in the following circumstances: • administrative enforcement actions taken by APRA, such as formal directions and licence conditions or infringement notices; • acceptance of an enforceable undertaking received from a regulated entity or an individual; • disqualifications of accountable persons under the Bank Executive Accountability Regime, or other responsible persons under the prudential framework; and • court-based enforcement actions commenced by APRA. While the APRA Enforcement Approach does not specifically discuss announcements in relation to investigations commenced against firms (and which generally initiates a potential enforcement action), it has on at least one occasion announced the commencement of an investigation and have also commented on it as ongoing investigation. However, we note that this related to a matter which AUSTRAC had already announced that it was conducting an investigation, so this does not reflect APRA's normal practice. **ACCC**

Jurisdiction	Public announcement of investigation?	Additional information provided with the response
		The Australian Competition and Consumer Commission ("**ACCC**") is Australia's national competition, consumer, fair trading and product safety regulator. The ACCC Media Code of Conduct ("**Code of Conduct**") outlines the ACCC's approach in relation to publication of enforcement actions (including investigations). According to the Code of Conduct, the ACCC will refrain from commenting on its investigations, unless it is in the public interest to do so. The ACCC will take a range of factors (specified in the Code of Conduct) into account when considering whether making a statement about an investigation is in the public interest. Although the ACCC publishes the inception of public inquiries (for example the public inquiry into telco services) we are not aware of any specific publications made by the ACCC in relation to an investigations commenced against firms in the sense referred to in your email below. **AUSTRAC** AUSTRAC is the Australian government agency that oversees anti-money laundering and counter-terrorism financing laws and regulations in Australia. AUSTRAC has not published its enforcement approach, however it will from time to time announce the commencement of investigations, see for example this media release.
3. Belgium	No	The details of investigations started against firms are not announced.
4. Brazil	No	Financial and payment institutions are regulated and supervised by the Central Bank of Brazil ("**BCB**"), and the capital (stock) market, by the Securities and Exchange Commission of Brazil ("**CVM**"). Some institutions, such as securities brokers, are supervised by both authorities. According to Supplementary Law No. 105/2001 (Banking Secrecy Act), neither the BCB nor the CVM may disclose the information they obtain during the

Jurisdiction	Public announcement of investigation?	Additional information provided with the response
		supervisory work, regardless of type, except when justified by law/regulation or through a court order. Thus, these authorities will not disclose to the general public when they start investigating an institution. However, they can and often do mention to the public that they are investigating specific themes, without mentioning any institutions or individuals by name. Law No. 13.506/2017, which regulates administrative penalty procedures conducted by the BCB and CVM, does allow for the decisions handed down in the sanctioning proceedings to be published, along with the final judgment, and including general dispositions when institutions choose to enter into a term of commitment to avoid heftier fines. Details of the investigations that led to the decision/term, however, as well as the documents annexed to the procedure, are kept confidential. It must be noted that the penalty procedures start only after the investigative procedures finish. Thus, in most cases, the general public will not even know that an institution was investigated, because most procedures do not end in prosecution.
5. Canada	No	There are a number of regulators that could be in play, and they have different approaches. **OSFI** (the prudential regulator), the **FCAC** (the federal consumer protection regulator) and **Fintrac** (the AML regulator) do not publish anything until they have reached a final finding (and in OSFI's case, usually not then either), whereas the Competition Bureau and securities regulators might or might not announce an investigation, depending on the circumstances.
6. Czech Republic	No	The Czech National Bank ("**CNB**") does not publicly announce details of investigations started against firms. CNB has its internal plan of on-site inspections, but this is not publicly available. Usually, the respective firm is notified a few weeks before the on-site inspection, but this is not publicly available information. After the inspection is finished, the inspections results are published by the CNB on its websites.

Jurisdiction	Public announcement of investigation?	Additional information provided with the response
7. France	No	The **AMF** does not advertise this. In extreme cases, it may leak to the market that it is in fact investigating but there are no public announcements.
8. Germany	No	1. The BaFin (Federal Financial Supervisory Authority) publishes certain measures it imposes on institutions or managing directors. It publishes on its website every unappealable fine decision and every measure, that has become final and that has been issued due to an infringement of certain regulations. The type and nature of the offence are also published. Anonymous publication of the decision may be necessary for reasons of data protection or proportionality. 2. If and as long facts justify the assumption or it is established that a company is conduction unauthorized banking business or providing financial services, the BaFin informs the public of this suspicion or this finding, stating the name or company. Investigations against the suspected companies are also published in this context. Additionally, the BaFin publishes its formal prohibition orders on its website. However, the company must be heard prior to the decision to publish the information in order to verify the claims. These publications are intended to uncover fraudulent banking transactions and serve, among other things, to protect consumers.
9. Hong Kong	No	It is not the practice of the Hong Kong Securities and Futures Commission ("**HKSFC**") to publicly announce an investigation. In fact, there is a statutory **provision** in the Securities and Futures Ordinance which requires all persons assisting a HKSFC investigation to maintain secrecy (secrecy provision **here**). Sometimes the HKSFC do publicly announce the fact that an investigation has been commenced / is ongoing. This is mostly done in cases where there is a keen public interest (for example, because there is a large number of fraud victims) or where the investigation is already public knowledge (for example, because a high-

Jurisdiction	Public announcement of investigation?	Additional information provided with the response
		profile raid has been conducted or related enforcement actions have already been taken). A recent example can be found **here** against two former directors.
10. Hungary	No	As a general rule, the financial regulator does not announce neither the mere fact of starting an investigation against a regulated entity, nor the details of any such investigation. The only exception is that in a market surveillance procedure (i.e., when unauthorised services or any market abuse is suspected) the regulator may order, as a temporary measure, to prohibit access to electronic data. This measure will be published on the website of the regulator, and it may imply to the public the starting of an investigation.
11. Italy	No	There is no such rule or practice, and we note it may give rise to a lot of issues including possible claims for damages by investigated firms against the regulator in case such announcements cause reputational issues or even loss of business or decrease of their shares value and eventually no violations are found. Normally the result of investigations (and relevant sanctions) are disclosed only once they are concluded.
12. Ireland	No	The Central Bank of Ireland (the "**Central Bank**") does not publicly announce details of investigations commenced against firms. We are not aware of any intention of the Central Bank to change its approach. The Central Bank regards all investigations as confidential, and all information and material related to an investigation as confidential information. When an investigation is commenced by the Central Bank a notice of investigation is issued to the firm or individual who is the subject of the investigation. Once the investigation phase is complete, and a decision is made to hold an inquiry, the details of the notice of inquiry (which includes details of the suspected prescribed contravention), however, are made public and are published on the Central Bank's website.

Jurisdiction	Public announcement of investigation?	Additional information provided with the response
		Where there is an early resolution by way of settlement, the details of the enforcement actions concluded by way of settlement will also be made available on the Central Bank website.
13. Israel	No	There is no provision in the law which imposes an obligation on the Israel Securities Authority ("**the ISA**") to publish information to the public as soon as it opens investigative procedures against entities However, the ISA is obliged to publish on its website information concerning enforcement measures it has decided to impose on entities, and information regarding Arrangements (as will be detailed below). As a general rule, according to Section 9B of the Securities Law, 1968 (the "Law"): "*The Authority [ISA] will publish its decisions which it believes are of fundamental importance*". The ISA has an Administrative Enforcement Committee, consisting of six members, whose role is to discuss and decide how to treat violations relating to securities. According to section 52 of the Law, if the chairman of the ISA has reasonable grounds to believe that an act or omission has been committed, for which a criminal investigation or administrative investigation can be held, it will decide on holding such investigations in accordance with specific considerations listed in the Law. According to section 52ma, if the chairman of the ISA believes that a violation has been committed, it may decide to open an administrative enforcement procedure and appoint a panel of the Administrative Enforcement Committee to discuss that violation. According to section 52na of the Law, the decision of the panel at the end of the enforcement procedure will be in writing and will be sent to the violator. Under Section 52nb of the Law, if a panel finds that a violation has been committed, it may impose on the violator one or more of the enforcement measures specified in the Law (for example, a financial sanction, payment to the victim of the violation, taking actions to cure the violation and

Jurisdiction	Public announcement of investigation?	Additional information provided with the response
		prevent its recurrence, canceling or suspension of a license or permit, etc.). Subject to certain limited exceptions, under section 54c of the Law, the ISA is required to publish on its website each of the following cases: (i) Notice of entering into an arrangement to avoid taking proceedings or to stop proceedings, subject to conditions ("Arrangement"); (ii) Notification of the violation of an Arrangement by a suspect; (iii) Notice of taking proceedings against a suspect who violated a condition of the Arrangement.
14. Luxembourg	No	The regulator would definitely announce a theme for investigation (e.g., internal governance, AML, MiFID, ESG) but would not announce that it will be investigating X or Y firm on a specific subject. This would not be public information. However, the investigated firm would be forewarned in case of an on-site inspection as to the subject of this on-site investigation.
15. Monaco	No	The Monaco Financial Regulator (the "**CCAF**") does not disclose information to third parties about pending enquiries. The only information disclosed are the CCAF decision (sanction) against entities (nothing automatic about it). They are published on the regulator's website.
16. Netherlands	No	The Dutch financial regulators (**DNB** and **AFM**) do occasionally announce market-wide investigations they commence (so for example an investigation under all payment services providers in the Netherlands or under payment services providers randomly picked whether they comply with certain AML/KYC requirements), but the Dutch financial regulators do not announce investigations it commences against a specific financial institution. Normally publication by the Dutch financial regulators will in principle take place as soon as an enforcement decision following such specific investigation has become irrevocable.

Jurisdiction	Public announcement of investigation?	Additional information provided with the response
17. Norway	No	The Norwegian Financial Supervisory Authority ("**FSA**") (the sole financial regulator) does not routinely announce details of investigations started against firms. The FSA is subject to freedom of information-related regulations which in practice make the *existence of an investigation* public. The details will usually be subject to a relevant exception, making only the title, date and recipient (and certain other metadata) public. There are exceptions to this, but in general the metadata is published in the electronic repository of all official correspondence a few business days after sending a letter, and the metadata will usually reveal the initiation of an investigation. While the details may vary, the metadata will usually not reveal *any details on the subject matter of the investigation*. The FSA routinely publishes the *report* of an investigation in full (with certain details redacted) when the investigation is complete. The press will from time to time through freedom of information requests receive intermediate documents and focus on the investigation before completion.
18. Peru	No	The banking regulator (**SBS**) and also the capital markets regulator (**SMV**) do not make public statements in regards of ongoing investigations, those are treated with reserve. Once there is a final resolution, they issue the statement and published the corresponding sanctions, etc.
19. Poland	No	Such proceedings are – as a rule – covered by the professional/administrative secrecy (i.e. the Polish FSA is not informing the whole market about such proceedings in order to avoid the situation where the rules on the professional/administrative secrecy would not be followed; sometimes – i.e. in the cases where the Polish FSA is of the opinion that the criminal offences may be involved – the Polish FSA is not even informing the financial institution being directly engaged about the PFSA`s actions and the proceeding itself). At the same time the situation when there would be the public disclosure about the investigation is permissible, but it is used very rarely (there was one case in which such

Jurisdiction	Public announcement of investigation?	Additional information provided with the response
		public disclosure has been made in order to protect the Polish capital market).
20. Singapore	Yes  Enforcement Monograph Final Rev	While the MAS routinely **announces** enforcement actions following the conclusion of investigations, its approach to announcing investigations which are yet to be concluded is more nuanced. The abiding principle appears to be whether it is in the public interest in making an announcement of an investigation, and it will also consider whether an announcement will jeopardise the investigation or prejudice court proceedings. The MAS' approach to announcing investigations is set out in section 7 of the attached *Enforcement Monograph*. There is no publicly available data (as far as we are aware) on the number of investigations which have been announced by MAS prior to their conclusion, although these will generally be on the "**News**" section of the MAS website. In the ten years from January 2014, MAS announced the start of nine separate investigations into individual firms, groups or connected individuals. In relation to enforcement actions, MAS' enforcement monograph states that MAS will not announce *every* enforcement action (s. 7.10 of the monograph). Empirically, the announcement of investigations which are ongoing and not yet concluded is rare and is not something which the MAS routinely does. MAS does **publish** an Enforcement Report every 18 months (or so). There have been four reports issued to date, and the latest two reports contain status reports of "Major Ongoing Cases", so will supplement any announcements of investigations which are yet to be concluded. MAS mentioned four ongoing investigations in its Jul 2020 – Dec 2021 **Enforcement Report** as "major" ongoing cases, suggesting what type of investigations are announced. Further, MAS' latest **Enforcement Report** states that 136 cases were opened between January 2022 and June 2023, of which we see that only one was announced. None of these nine investigations is solely MAS-led but is a joint investigation with the Police or with the

Jurisdiction	Public announcement of investigation?	Additional information provided with the response
		Commercial Affairs Department (CAD) which is a department of the Singapore Police Force.
21. South Africa	Yes	The financial services regulator, the Financial Sector Conduct Authority ("**FSCA**") takes the approach of announcing the investigations that it commences against entities. In addition, it provides periodic updates on the status of its investigations. Investigations are announced on this **webpage** as well as public warnings. However, there is only one investigation commencement announcement since the start of 2020 **(link)**. A similar approach is followed by South Africa's data privacy regulator, the Information Regulator of South Africa.
22. Spain	No	The Spanish securities regulator (CNMV) is entitled to announce "sanctioning proceedings" which is not the same as the enforcement investigations contemplated by the FCA, but this very rarely happens in practice. As set out by the principles contained within the CNMV's Communication Policy, Article 336 of the Spanish Law on Securities Market establishes that the CNMV may only publish its decision to initiate disciplinary proceedings after notifying the relevant interested parties. Article 336 expressly states that, in order to determine whether to publicly announce disciplinary proceedings, the CNMV, in each case, must balance the public interest (considering the beneficial effects which publication may have on market transparency, market functioning and investor protections) and any damage that would be caused to the subject(s) of the investigation. In practice: It has only been possible for the CNMV to announce the opening of an investigation since 2018, and it has only used this power on few occasions. The CNMV does not provide updates as to the status of any ongoing investigation (including those it has already publicly announced as having been opened)." Announcements

Jurisdiction	Public announcement of investigation?	Additional information provided with the response
		• 11 January 2024, CNMV disclosed that they were investigating Deutsche Bank for some mis-selling of complex financial products to Spanish clients • 8 November 2023, CNMV disclosed they will bring disciplinary proceedings against Miolo Desarrollos, stating this has been announced as it is the first disciplinary case to be opened for non-compliance regarding regulating the advertisement of cryptoassets • 11 July 2023, CNMV issued proceedings against two individuals – not named – part of Grupo Ecoener for financial assistance in Group's floatation. • 23 February 2021, CNMV agreed to initiate disciplinary proceedings against Abengoa and the members of its Board of Directors.
23. Switzerland	No  fedlex-data-admin-ch-eli-cc-2008-736-202	As a general principle, FINMA is bound by law to keep official matters secret (art. 14 FINMASA, attached). However, art. 22 FINMASA provides for the rules related to information, to be made available to the general public by FINMA related to "proceedings". Furthermore, FINMA has published the following related thereto: (i) General Information (ii) On enforcement proceedings (iii) Rulings (iv) Case Reports and (v) Court Decisions.
24. UAE	No	None of the main UAE regulators (Central Bank, DFSA or FSRA) routinely publish details of ongoing investigations.
25. Ukraine	No	Normally, such investigations are not announced publicly, unless the issue is of particular public importance and/or was initiated by a public association or group. It is quite a rare practice for the Ukrainian financial services regulator – the National Bank – to publicly announce its investigations of alleged violations. At the same time, it is worth mentioning that the regulator publicly announces its intentions and specifies

Jurisdiction	Public announcement of investigation?	Additional information provided with the response
		the financial institutions it will inspect annually to ensure regulatory compliance on the financial market, applying a risk-oriented approach.
26. USA	No	Generally, **SEC** and **CFTC** investigations are non-public. The SEC, for instance, may call or send an email, asking for documents or to speak. They may also send a subpoena, which will be non-public / confidential. Generally, the public will find out only if someone leaks the information or if there is an action filed or an announced settlement. They will publicise the outcome of an enforcement action on their websites.

Annex B

FCA ENFORCEMENT PUBLICITY CP24/2

UK REGULATOR APPROACH

Note: this information has been compiled from the websites of the below regulators and supporting material, such as policy documents and reports.			
Regulator	**Public announcement of investigation?**	**Approach to announcements and information on announcements**	**Example of announcements**
1. Advertising Standards Agency	No	The ASA **states** that details of cases must be kept confidential until publication. It will publish final rulings every week and parties will be notified as to when it will be published.	N/A
2. Bank of England	No	The BoE **states** that it does not usually make public the fact it is investigating a firm. It does provide statistics on open investigations conducted by the Bank in its capacity as the PRA and investigations by the Bank into financial market infrastructures and service providers in relation to a recognised payment system. In a **speech** made in June 2023, Oliver Dearie stated that since April 2013 the Bank "*launched more than 70 enforcement investigations and published 25 outcomes against 14 firms and 11 individuals*"	N/A
3. Payment Systems Regulator	No	The PSR **states** it will not usually publish the fact it has opened an enforcement case in respect of a particular matter at the time a case is opened. However, it may consider doing so where, for example, the matter relates	None found

		to a matter of significant strategic importance to it and/or to industry.	
4. Prudential Regulation Authority	No, but may do so going forwards	The PRA **states** that it would not normally make public the fact it is investigating a particular matter. However, the PRA and BoE consulted on the approach to enforcement. Policy Statement 1/24 notes the PRA will not ordinarily make public the fact it is investigating a particular matter, or the identity of any subject, or its preliminary findings unless such publicity would (i) advance its statutory objectives (ii) assist the investigation or (iii) deter more widespread breaches of regulatory requirements. In determining whether to make public announcement, the PRA will consider potential prejudice risk of unfairness/ disproportionate damage. It may also make an announcement when the existence of a PRA investigation has entered the public domain and the PRA concludes no further action is warranted, or the action it proposes to take is materially different to that which entered the public domain. It may exercise discretion in making public Warning Notices.	**Appendix 1 to PS1/24**
5. Solicitors Regulation Authority	No, except in special circumstances	The SRA **states** that investigations are generally conducted confidentially and therefore it does not routinely publish details of ongoing investigations or decisions before any review period has expired or been determined/withdrawn. SRA rules do allow it to publish details regarding ongoing investigations, when it is in the public interest to do so. An example of this is an ongoing investigation into those involved in the Post Office scandal. The SRA has not named any individuals or firms.	**Example** and **Update statement**

6. Civil Aviation Authority	No, except in special circumstances	The CAA states that it will not normally publish information about ongoing enforcement action, or where the matter was concluded voluntarily. There are circumstances where it might be appropriate to publicly comment whilst a process is underway e.g., where there is risk of immediate harm to consumers.	Example 1 investigation into Heathrow after airline complaint. Example 2 with very limited information.
7. Environment Agency	No, except in special circumstances	The EA states it will publish limited information on live criminal investigations but that it generally will not publish information on civil proceedings until an appeal has been determined, or the time for appealing has passed. The enforcement action register only shows formal action taken against firms, and not ongoing investigations.	Example of criminal investigation (jointly led with Ofwat)
8. Gambling Commission	No, except in special circumstances	The GC states that it will not normally publish details of any information or conclusions reached while its investigations are ongoing and will only publicly announce an investigation in exceptional circumstances. An exception may be made where there is speculation in the public domain and/or where those involved have made public statements which need to be responded to in order to avoid misconceptions arising. When investigating criminal matters, the Commission states it will generally consider making a public announcement when suspects are arrested, when search warrants are executed and when charges are laid.	None found No detail in annual reports or enforcement reports.
9. Pensions Regulator	No, except in special circumstances	The PR will publish very limited information on some ongoing criminal investigations.	Ongoing criminal investigations

		Otherwise, the PR states it will generally only publish the outcomes of investigations. It may not publish all outcomes, but will consider its aims, together with the public interest, such as (i) transparency (ii) education and guidance and (iii) deterrence.	Example 1
10. Financial Reporting Council	Yes	The FRC states in its: 1. Audit Enforcement Procedure Publication Policy that it has a discretionary power to publish the commencements of investigations. Decisions to exercise this discretion are taken by the Conduct Committee who take into account whether publication is necessary factors such as: whether publication will result in potential prejudice, help maintain public confidence, protect users of financial statements and investors, prevent malpractice, help contain speculation and contribute to public interest. 2. Accountancy and Actuarial Schemes Publicity Policy that: a. referrals from Accountancy Scheme Participants to commence an investigation *have a presumption* in favour of publication (unless it is not in the public interest) b. referrals from Actuarial Scheme Participants to commence an investigation *have no presumption* in favour of publication. In the five Annual Enforcement Reviews that the FRC has published to date (each	Ongoing investigations webpage Example 1 Example 2 Example 3

		of which covers the year ending 31 March), there were: • 2023: 10 new investigations opened and a total of 38 current investigations. • 2022: 15 new investigations opened and a total of 47 current investigations. • 2021: 16 new investigations opened and a total of 49 current investigations. • 2020: 14 new investigations opened and a total of 42 current investigations. • 2019: 15 new investigations opened and a total of 41 current investigations. We note that there are currently 29 open investigations dating back to 21 November 2018. This indicates that the FRC tends to publish a considerable number, though not all, of announcements regarding the initiation of investigations into auditors, accountants and/or actuaries under the Audit Enforcement Procedure and Accountancy and Actuarial Schemes.	
11. Charity Commission for England and Wales	Yes	The CC states that it is normal practice to issue a public statement confirming that an inquiry has been opened. It is generally in the public interest to do so, however there may be times it is not considered so, such as if it may pose a risk to someone's personal safety or cause severe prejudice.	Investigations are published on this webpage. There have been six statements so far in 2024, 23 in 2023, 25 in 2022 and 13 in 2021. **Example 1**
12. Ofcom	Yes	Ofcom states that it typically publishes details about ongoing investigations, provides updates on key milestones and publishes non-confidential versions of	**Ongoing investigation webpage**

		final decisions. Ofcom may decide not to publish only in exceptional cases where it may have a detrimental impact on third parties. There are currently 12 open cases, dating back to 13 July 2017.	**Example 1** **Example 2**
13. Ofgem	Yes	Ofgem **states** it will publish every case that it opens on its website and may make media announcements, unless it would adversely affect the investigation. In all cases, Ofgem will usually inform the company concerned before publication or making an announcement and it makes clear that opening an investigation does not imply any findings have been made.	**Ongoing investigation webpage** **Example 1** **Example 2** **Example 3**
14. Ofwat	Yes	Ofwat **states** it will publish information on any investigations and actions it takes.	**Ongoing investigation webpage** **Example 1** **Example 2**
15.Competition and Markets Authority	Yes	The CMA announces the commencement of Formal Investigation naming the firms concerned.	**Ongoing investigation webpage** Over the past 5 years the CMA has instigated, on average 68 cases per year.