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FCA adjusts its controversial investigations transparency proposals – here’s what you need to know

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The much-anticipated follow-up to the FCA’s proposals on transparency in enforcement investigations (CP 24/2) has finally landed in the form of a “Part 2” Consultation Paper – [CP 24/2 “Greater transparency of our enforcement investigations”](#).

This new CP notes that the FCA’s extensive engagement with stakeholders following the February 2024 CP, including industry representatives and consumer groups, has been instrumental in shaping the current proposals.

The CP reiterates the rationale behind the proposed changes – to improve transparency in the FCA’s enforcement investigations by moving from disclosing cases only in “exceptional circumstances” to offering limited, timely information when it serves the public interest on the basis that this will: (i) protect consumers by providing alerts about ongoing investigations; (ii) bolster public confidence and trust in the financial system; (iii) facilitate proactive industry improvements; (iv) encourage whistleblowers and witnesses (notably, this is now referred to specifically in the context of investigations into unregulated firms and tied to consumer protection) ; and (v) enhancing FCA accountability. The CP asserts that this policy aligns the FCA with other UK regulators and is designed to increase the visibility of critical issues without unduly affecting firms, particularly smaller entities.

The second CP emphasises that the FCA’s refreshed approach to enforcement, with its greater emphasis on resolving issues as part of supervisory discussions and greater triage at the investigation opening stage, means that it plans on opening ‘only 10-12’ enforcement cases annually. This, it argues, means that the proposals for greater transparency will only impact a small proportion of the 42,000 firms the FCA regulates, and even then, publication may often come only after a long period of supervisory engagement.

Following significant stakeholder feedback – and widespread resistance from industry, the previous government and the House of Lords – the FCA has made some welcome refinements to its proposals in an effort to address the concerns raised.

- The FCA now sees announcements of new investigations occurring at a variety of points during an investigation, rather than just at the outset with updates as the case progresses. Crucially, there is a suggestion that the FCA would not think it appropriate to announce an investigation unless or until it has a good understanding of the relevant facts and issues. For investigations arising from

lengthy supervisory engagement this might mean that the FCA felt able to announce as soon as the case moves into enforcement; for investigations that become necessary more quickly, more time would be taken.

- The 'public interest' test now explicitly includes consideration of the impact of an announcement on the firm in question. The factors in favour of an announcement still outweigh those militating against one, but this is still an important development. The FCA also indicates that in many cases 'an anonymised announcement would be sufficient.'
- There is a significant emphasis on 'confirmatory' announcements, in circumstances where either a firm has already announced that it is being investigated, another regulator has announced an investigation into the same set of facts, or there has been a specific question asked eg by a Parliamentary Committee. Indeed it is difficult not to conclude that its perceived inability to do this under the current framework is the core issue the FCA wants to address with these proposals. Publicity elsewhere is listed as a specific factor in favour of an announcement in the revised public interest test. It's important to note that the point at which firms might be required (under MAR or other corporate reporting obligations) announce investigations is generally towards the end of the investigation, when the likely conclusions and penalty are relatively clear. Rarely do firms feel it necessary to do so early in the enforcement investigation process.
- The proposed notice period is increased from one to ten business days i.e. for firms to respond to potential public disclosures e.g. in light of potential impact on market stability and firm reputation. The revised approach integrates a public interest test and focuses on informing the public in a way that minimises negative impacts on firms. The FCA's goal is to incrementally implement these transparency measures while maintaining the integrity and stability of the financial sector, supported by an analysis of past cases to guide future actions.
- The FCA has confirmed that the new policy will only apply to investigations opened after the new policy takes effect.

The consultation closes on 17 February 2025, and the FCA Board is expected to make a decision on the proposals in the first quarter of 2025.

In the meantime, we're very much looking forward to hosting FCA Enforcement co-head Therese Chambers at our offices next week for her to discuss these new proposals directly with our clients.