Consultation Response

FCA CP24/2 Part 2 Greater transparency of our enforcement investigations

17 February 2025

The Association for Financial Markets in Europe (AFME) and the International Swaps and Derivatives Association (ISDA) welcome the opportunity to comment on FCA CP24/2 Part 2 Greater transparency of our enforcement investigations

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is registered on the EU Transparency Register, registration number 65110063986-76.

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Assessing what is in the public interest

Staged decision-making process (see paras 4.1 – 4.10)

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

Q1. Do you have any comments on the proposed staged decision-making process to announce investigations?

- Our members firms remain opposed to the proposal: it is harmful to UK competitiveness and growth, does not support the FCA's secondary competitiveness objective, and is disproportionate to the issues the FCA seeks to address. It will also render the FCA an international outlier as compared to other national financial services regulators. The FCA can more effectively achieve the aims of the proposals (preventing/reducing consumer harm, public confidence, improved industry standards, improved accountability, encouraging witnesses/whistleblowers) with a revised interpretation of its existing exceptional circumstances test.
- On the first stage (public interest):
    - The revised public interest criteria still gives the FCA unnecessarily broad discretion.

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- The FCA requires the firm to show that publishing would be "likely to have a severe impact" on the firm or on third parties. The current exceptional circumstances test (EG 6.1) provides that the FCA will consider the "potential prejudice" it believes may be caused to the subject of the investigation. The public interest test therefore presents a significantly higher (and potentially insurmountable) bar than the current exceptional circumstances test and it is not at all clear why that should be the case.
- The FCA's new approach is to pursue fewer, but more select, enforcement cases, including opening enforcement investigations on a sample basis where the FCA sees similar potential misconduct in a particular sector. Accordingly, there is higher risk of unfairness and harm to firms who happen to be chosen for investigation and this fact is subsequently made subject to an FCA announcement – consequences not suffered by other firms who could have been, but were not, selected by the FCA despite potentially similar misconduct.
- It is insufficient to say that impact of this wide discretion will be limited by the FCA's intended low yearly enforcement case volume. Market events may lead to a higher number of investigations opened. Later enforcement teams may adopt different approaches in future. The policy should be future-proofed to not be volume-dependent i.e. to work equally well with high or low case volume.

- On the second stage (when to announce):
  - The test isn't especially informative, and it's difficult to see how the test here is conceptually distinct from the first stage (public interest).
  - The test is at odds with other statements/justifications for the proposal in the CP. As the proposals indicate, nearly all investigations into regulated firms will begin after lengthy supervisory engagement, by which point the FCA may have already imposed and published formal requirements on a firm. In these circumstances the FCA says it may announce an investigation at an early stage. Where investigations are opened without preceding supervisory engagement, a 3-month period (between opening a case and considering announcement) is short in the context of a typical case lifecycle and is unlikely to afford firms sufficient time to defend against allegations of regulatory breach. In both instances, the test fails to take into account the of number of investigations closed without action and reinforces the idea that firms will be considered "guilty until proven innocent" if these proposals are enacted.
- The case studies only reflect the first factor in favour of publication (i.e, the matter is already disclosed). The operation in practice of the other factors remain entirely uncertain. There is a lack of transparency from the FCA about how the test will be applied in practice – exacerbated by the breadth of the proposed discretion. There are no case studies concerning unregulated firms.
- If the proposals go forward, there should be a new mandatory "pre-engagement" stage before the "first stage" (public interest). Whilst the FCA has indicated in its dialogue with the industry that it would generally engage with firms under investigation regarding possible publication, this is not confirmed in the proposals or draft rules. In this stage, where possible, the FCA would communicate its views to the firm and the firm would be given an opportunity to respond accordingly including with remedial action. This response and remediation should bear significant weight in making decisions about whether and what to announce, and this is not addressed in the proposals.

<u>The revised public interest assessment (see paras 4.1 – 4.10)</u>

We have identified potentially relevant factors to consider when deciding if an announcement could be in the public interest.

Q2. Do you have any comments on the factors we have identified, or further factors we should consider?

- The proposal in its entirety is opposed: it is harmful to UK competitiveness and growth, does not support the FCA's secondary competitiveness objective, and is disproportionate to the issues the FCA seeks to address. It will also render the FCA an international outlier as compared to other national financial services regulators. The FCA can more effectively achieve the aims of the proposals (preventing/reducing consumer harm, public confidence, improved industry standards, improved accountability, encouraging witnesses/whistleblowers) with a revised interpretation of its existing exceptional circumstances test.
- There are more factors in favour of publication than against and a better balance between them should be struck. There is a very high bar to engage the factors against publication. The opposite is true for the factors in favour of publication.
- The case studies only reflect the first factor in favour of publication (i.e., the matter is already disclosed). The operation in practice of the others remain entirely uncertain. There is a lack of transparency from the FCA about how the test will be applied in practice – exacerbated by the breadth of the proposed discretion. There are no case studies concerning unregulated firms.
- It is inappropriate to reference firm size as "particularly relevant" to whether publication would have a severe impact on the firm or third parties, with "the impact on smaller firms potentially greater". This poses a level playing field concern. It suggests that larger or multi-sector firms will be subject to adverse treatment. To help mitigate this, when considering whether publication would have a "severe impact", the impact should be considered on a business-by-business and product-by-product basis as well as a firm and third-party basis. Even for a larger firm, publication could have a significant negative impact on in its activity in a specific sector or market. Overall share price impact is insufficient as the sole measure of impact for listed companies and is not applicable to all regulated firms.
- If the public interest test is to be kept, then additional factors should be included:
    - Whether the firm in question is regulated. For unregulated firms, the FCA's toolset is more limited (and costly), weighing in favour of publication. The reverse is true for regulated firms (and it is noted that in many cases, when exercised, the FCA's formal powers of intervention and enforcement against regulated firms may be or are routinely publicised).
    - Whether the publication is proactive, anonymous or reactive (in ascending order of likelihood of publication).
    - Whether the public interest may be adequately met via anonymous publication, or whether – in limited emergency situations e.g. major threats to the FCA's objectives – named publication is necessary.

<u>Applying our proposals to our existing investigations (see para 4.12)</u>

We are amending our proposals to make clear that we would only announce or update on existing investigations where the announcement would be reactive.

Q3. Do you have any comments on this suggested change?

- We agree with this, but it does not resolve the proposal in its entirety, which we oppose: it is harmful to UK competitiveness and growth, does not support the FCA's secondary competitiveness objective, and is disproportionate to the issues the FCA seeks to address.

Giving firms time to respond (see paras 4.14 – 4.16)

We would generally share a copy of the proposed announcement and provide firms with at least 10 business days to make any representations to us. This may also give firms time to consider whether they want, or may be required, to make an announcement themselves. If, after considering the firm's representations, we still decide to publish an announcement, we would share our reasons and give firms a copy of the final text at least 2 business days before we publish it.

Q4. Do you have any comments on these proposals?

- The proposal in its entirety is opposed: it is harmful to UK competitiveness and growth, does not support the FCA's secondary competitiveness objective, and is disproportionate to the issues the FCA seeks to address. It will also render the FCA an international outlier as compared to other national financial services regulators. The FCA can more effectively achieve the aims of the proposals (preventing/reducing consumer harm, public confidence, improved industry standards, improved accountability, encouraging witnesses/whistleblowers) with a revised interpretation of its existing exceptional circumstances test.
- Whilst the relaxation in deadline is welcome, it does not resolve the significant issues with the proposals nor affect member firms' opposition to them e.g. on proportionality, fairness, and competitiveness grounds.
- Substantial and concerning uncertainties remain about the process for representations to be made and the FCA to take them into account. The FCA should offer a clear and well-defined proposal for this process. This should at a minimum address the following outstanding issues:
    - Should representations be directed towards the decision-makers, appointed investigators, supervisors or someone else?
    - Will decisions about publication be taken by a suitably independent decision-maker? In discussion the FCA has indicated that a decision of whether or not to publish would be taken by the Co-Heads of Enforcement, but we have yet to see this confirmed in the proposals or draft rules.
    - Would representations be made in writing or orally (and if only sometimes orally, then in what circumstances)?
    - Will the FCA place limits on the length and format of firms' representations?
    - What length of time will the FCA have to consider firms' representations?

- Will the FCA's reasons be provided in detail, to provide comfort to firms that their representations have been fully and fairly considered?
- What formal process of response/reply and dialogue will be prescribed?

- Member firms are concerned that this process might be seen as "rubber-stamping" an FCA decision to disclose. The proposal does not provide sufficient information to ensure the decision-making process is or will be designed to be sufficiently rigorous.
- As AFME members' understanding of the proposals has evolved, it has become clear that the presently proposed notice periods are inadequate for firms with complex structures, in particular those regulated in multiple jurisdictions. For example, once the FCA tells such a firm that it intends to publish, the firm will need to take relevant steps with respect to regulators / authorities in other jurisdictions, appropriately obtain legal advice and go through required internal governance processes. Ten days' notice of intention to publish, and two days' notice of publication, are both insufficient for this work to complete.

Safeguards (see para 4.17 – 4.19)

We have provided detail on our process when deciding whether to announce.

Q5. Do you have any comments on these proposals?

- The proposal in its entirety is opposed: it is harmful to UK competitiveness and growth, does not support the FCA's secondary competitiveness objective, and is disproportionate to the issues the FCA seeks to address. It will also render the FCA an international outlier as compared to other national financial services regulators. The FCA can more effectively achieve the aims of the proposals (preventing/reducing consumer harm, public confidence, improved industry standards, improved accountability, encouraging witnesses/whistleblowers) with a revised interpretation of its existing exceptional circumstances test.
- Member firms are concerned that the proposed decision-making process might be seen as "rubber-stamping" an FCA decision to disclose.
- Although the FCA has said that the decision makers (the Executive Directors) are independent from the case teams, the decision will still be taken within the Enforcement Division. The statutory framework for Warning Notices provides a key role for the RDC. Some form of oversight from outside the Enforcement Division would clearly be appropriate here, given the considerable harm that could result to firms and individuals from these announcements.
- The proposals do not address how the FCA would manage a situation where other regulators (e.g. abroad) take issue with a proposed disclosure or disclosure could potentially prejudice an investigation or hinder the detection or prosecution of criminal offences in another jurisdiction.

Case Studies

Case Study 1 – British Steel Pension Scheme (see para 5.4 – 5.12)

Q6. Do you have any comments on this case study?

- The example announcement could have been made under a revised interpretation of the exceptional circumstances test. Instead, in the case study, there is an unduly narrow reading of existing "exceptional circumstances" test. Clearly the sheer number of cases of poor advice to beneficiaries of the same pension scheme – so far as to be systemic – was "exceptional". It is absurd to disregard this factor, and limit consideration only to the *type* of failing when determining whether there are "exceptional circumstances". Nothing in the text of the current exceptional circumstances test as set out in EG justifies this reading of the rules.
- A separate question arises. Under the current EG 6, the FCA must first consider whether there are exceptional circumstances. Where this is answered in the affirmative, the FCA must then consider whether it should in fact publish. In this case study, the answer to the second question could well have been "no", particularly because publication would not have enhanced consumer protection: the FCA commenced its investigations after it had used its interventions powers to halt the business of the relevant firms and instituted a redress scheme.

Case Study 2 – Citigroup Global Markets Limited (see para 5.13 – 5.20)

Q7. Do you have any comments on this case study?

In the CGML example, CGML made a public statement to say that it was involved.

- The FCA reactively announcing that they had commenced an enforcement investigation is a significantly different message than the one released by CGML and would not have been appropriate in this case as the enforcement investigation was not in the public domain.
- The goals of the FCA on deterrence and education would have been better achieved by utilising their existing tools, including market watches and Dear CEO letters once the investigation was finalised, issues understood, and lessons learned.
- An anonymous and thematic announcement post investigation on the lessons learned is the better way to educate the market. An announcement that an investigation has commenced will never sufficiently educate the market as it will not enlighten market participants with a clear message on the issues and the remediation needed.

Case study 3 – PricewaterhouseCoopers LLP (see para 5.21 – 5.28)

Q8. Do you have any comments on this case study?

- The issue could have been addressed a with reactive announcement once information was already sufficiently in the public domain (for example when the FRC announced its investigation). LCF entered administration two years before the FCA began investigating PwC and there was significant public (and

government) concern about the firm's collapse. The FCA had also already published a supervisory notice all of which would justify a reactive confirmatory announcement.

- This case was clearly "exceptional" – it was the first published FCA investigation of its kind into an auditor.

Case Study 4 – CB Payments Limited (see para 5.29 – 5.40)

Q9. Do you have any comments on this case study?

- The utility of disclosure would have been limited given the FCA's very short investigation time.
- If the FCA had immediate concerns about consumer harm here, it could have publicised its 2020 VREQ with a reminder to the relevant sector of its expectations; or its Dear CEO letter (published during the investigation) could have better demonstrated its focus on the area and communicated its expectations to the sector. For these reasons, even assuming there were exceptional circumstances, publication may have done little to advance the FCA's objectives and should not have been actioned.
- The quoted paragraph 5.38 is a standard form disclosure made in every Annual Report and therefore irrelevant to the FCA's determination whether or not a disclosure is justified.

Where we might announce but not name the firm (see paras 5.41 – 5.48)

Q10. Do you have any comments on the examples provided of when we might announce but not name the firm?

- The proposal in its entirety is opposed: it is harmful to UK competitiveness and growth, does not support the FCA's secondary competitiveness objective, and is disproportionate to the issues the FCA seeks to address.
- Anonymised publication and/or an Enforcement Watch publication would generally constitute a better approach to the issues the FCA indicates it wishes to address here. This could be coupled with a revised interpretation of the exceptional circumstances test for outlier cases.

Impact of proposals on firms (see paras 6.1 – 6.15)

We propose including impact as a factor in our public interest framework with a 10-day window for representations.

Q11. Do you have any comments, data or evidence on the potential impact of our proposals on firms?

- It is very difficult to provide data about something that has not yet happened / or is in place anywhere else. The FCA's expectation that firms would be able to provide information to demonstrate that publishing would be "*likely to have a severe impact*" on the firm, is unrealistic. A key member firm concern here is that the impact of an announcement would be difficult to predict and introduce uncertainty. This is one of the reasons why the exceptional circumstances "*potential prejudice*" test (as noted above) is more appropriate.

Competitiveness (see para 6.16 – 6.29)

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

Q12. Do you have any comments, data or evidence on the potential impact of our proposals on growth and competitiveness?

- The proposal would harm the competitiveness of the UK financial services market.
- Certainty and predictability are the cornerstones of a regulatory framework that fosters competitiveness and growth. Regulatory uncertainty significantly harms this, particularly on matters affecting the public reputation of firms and individuals, which can be deeply consequential to future business prospects. Capital allocators are aware of this and make investment decisions accordingly.
- Making 'public interest' the determining factor here makes the question of publication far more difficult to anticipate. What the 'public' requires (or demands) is a far less predictable, more subjective determiner (and likely a significantly easier condition to satisfy) than a requirement that the circumstances of an investigation be 'exceptional'. This proposal would therefore replace a reasonably predictable test for publication with a test that is highly uncertain at the risk of harming firms operating in the U.K.
- We disagree with the FCA's characterisation of this proposal as "an incremental shift in current practice rather than wholesale change". To have the power (regardless of how often it is used) to announce that a firm is subject to a new FCA investigation is a significant change in approach. It challenges firms' settled expectations that they will be treated as "innocent until proven guilty." It is also clear that an announcement of this type by the regulator – particularly where that regulator has emphasised that it will be focusing on investigating priority cases – will lead the press and the public to assume that something bad has happened. Not only is it a "wholesale change" in approach, it's also unnecessary when a simple adjustment to the nature or application of the current test would sufficiently address the concerns the FCA is trying to address.
- The proposal would make the FCA an outlier amongst financial services regulators both domestically and internationally. No other national financial services regulator has a policy on investigation publicity that is as broad and subjective as the one the FCA is proposing here. This will damage the prospects for UK inbound investment and innovation and thus competitiveness and growth.
    - The CP compares the FCA's powers to those of other domestic regulators. This is not comparing like with like. Many of these are regulating monopolies or oligopolies. Crucially, they are not regulating a leading global financial market making a substantial contribution to the UK economy. The only appropriate comparators are the PRA, which has no policy permitting the publication of information about investigations (nor has it, we understand, any intention of proposing this) and other international financial regulators, none of which have powers comparable to the ones the FCA proposes to arrogate to itself here.

- The FCA has made much in bilateral discussions of the comparison with the SEC in terms of publicity for investigations. Again, there are significant differences between the FCA and SEC here. Although SEC complaints are arguably in the public domain earlier than FCA investigations (with listed firms likely to announce they are under investigation upon receipt of a Wells Notice), the SEC must go to court to begin an investigation. The FCA does not have to satisfy any comparable requirement before launching an investigation.

- The proposals especially harm the attractiveness of the UK for firms headquartered abroad to establish a UK branch or subsidiary. Such firms often hold market-leading positions in their home markets and are subject to significantly greater regulatory and public scrutiny there. Since nearly all international / third country regulators do not publish information about ongoing investigations into firms, FCA publication of this information would receive significant attention in those other jurisdictions, disproportionately harming those firms' reputations in their home markets (and share prices, if listed there).

- The proposals would compromise growth and competitiveness by dissuading top talent from taking senior management roles in the UK, apprehensive that they may in practice be readily identifiable from disclosure (even if not expressly named) for example by colleagues and/or recruiters.

- The FCA already has sufficient existing tools to operate an efficient enforcement function that will encourage industry to learn from the mistakes of others, improve standards across industry whilst simultaneously promoting the UK Growth agenda and underpinning the reliability of financial services. It does not need to introduce a "name and shame" culture which would make it an outlier amongst the key international markets to which the UK is comparable.

- The FCA stresses that its proposals would affect only the (currently) 10-12 firms referred for formal investigation each year from an overall population of 42,000 regulated firms. This is irrelevant, particularly to growth and competitiveness concerns. The proportion of UK firms typically referred to enforcement is already known and therefore factored into investment decision-making. Of concern here is the way the current proposals would exacerbate and introduce unpredictability to the impact of that risk.

- When assessing scale, it is more relevant to consider the following: that of the FCA's 41 open investigations into regulated firms, it proactively published information about six under the current 'exceptional circumstances' test (absent the firm first publishing, or the publication of formal FCA statutory notices). The FCA says that there may be public interest factors in favour of publication in a further nine. If all were published, this would result in 2.5x the number of investigations published – a significant increase in the impact of the risk to firms' reputations here. Moreover, this would mean nearly a quarter of the FCA's investigations would be publicised. This is not an "incremental shift" in approach.

- Due to the lack of clarity and considerable latitude and discretion embedded within the public interest test, it is difficult to predict whether any given investigation would be published in practice – which

introduces uncertainty. Higher risk and higher uncertainty, especially combined, are harmful to investment and therefore growth and competitiveness.

Other comments

Q13. Do you have any other comments in response to our paper?

- The proposed public interest test is a solution without a problem. Indeed, it is still not clear to AFME members precisely what issues the FCA is attempting to address with these proposals:
    - A broad public interest test arguably goes far beyond what's needed to tackle the FCA's current frustration in cases where an investigation has been announced (e.g. by a firm itself) or there is some other immediate public interest, media speculation or Parliamentary scrutiny.
    - The FCA identifies educational value, however the case study example disclosures are very brief and offer little in the way of information. They are likely to raise more questions than they answer.
    - Given the FCA's intention to investigate more rapidly, there is now less need for interim or early disclosures to mitigate the challenges of extensive investigation periods.
    - Customers' interests are arguably well served by publicising relevant supervisory interventions (as in the BSPS actions referenced in the case studies).
    - Anonymised disclosures (e.g. an Enforcement Watch publication), when compared to named disclosures, will almost always deliver equally well on the FCA's goals of market education, guidance and encouraging behaviour change. Addressing concerns generally to the market underlines the fact that this is something the FCA requires *all* firms to consider. Using a notice about a specific investigation to highlight concerns makes it easier for firms to distinguish and dismiss these as applying only to the firm subject to enforcement.
    - One of the FCA's primary concerns is to protect consumers in relation to unregulated firms. Given this, whether the relevant firm is unregulated should be a leading and often determinative factor within the FCA's test for publication – yet it does not appear at all within these proposals.
- Whilst the FCA has attempted to address concerns raised by respondents/the industry, the proposals remain in substance based on the same principles/outcomes to which we and others objected in early 2024. Further, the earlier rationale for the proposals is undermined in various ways across this second consultation paper – for example, the case study announcements provide little to no educational value to the market; and the FCA is bringing down investigation times, so there is less of a gap between the start of an investigation and its conclusion.
- AFME members fundamentally disagree with the fact that this is a broad tool with insufficient safeguards and uncertain application. The multi-factorial detail within the proposed public interest

test disguises the fundamental ambiguity and discretion at its heart. The proposals would implement a wide-ranging, deeply qualitative and therefore highly discretionary tool, with wholly insufficient safeguards around its use and no measure to assure that decisions are made consistently across all cases.

- The proposals are disproportionate and unfair to firms under investigation, given that historically the great majority of investigations have resulted in no action (even following intensive supervisory engagement before an investigation was opened). Publication should at the very least only be considered once an FCA investigation has reached a stage at which formal enforcement action is likely; but at that stage the benefit to be gained beyond the publication of a decision/final notice in the ordinary course would in any event be highly limited. The FCA's use of its limited resources and time should focus on improving the quality and focus of FCA investigations, with any changes to the FCA's publication approach postponed until there is a demonstrable track record of improved efficiency and pace in investigations.
- It is unhelpful that CP24/2 part 2 does not annex draft rules for comment. The precise legal tests matter: they shape the power that the FCA will ultimately exercise. Before proceeding further with any proposals, the FCA should further consult on revised draft rules.
- The interpretation of exceptional circumstances in the case studies is not robust. In each instance, it is reasonable to find that exceptional circumstances existed and the FCA could have published. The FCA currently appear to be reading restrictions into the exceptional circumstances test / guidance that simply do not exist.
- The FCA's recent error in publishing the name of a firm subject to a s.166 review demonstrates both that it already publishes anonymised information concerning issues arising with regulated firms and the need to maintain confidentiality in circumstances where the exercise of the FCA's statutory powers could indicate or imply that misconduct has taken place (where no such misconduct has yet been found).
- There are other ways to resolve the problem for which the FCA suggests it is trying to solve. As an alternative to creating a completely new public interest test (with significant increase in discretion for the FCA/potential downsides for regulated firms), a broader interpretation of the "exceptional circumstances" test could be articulated. This could include more specific criteria for what constitutes an exceptional circumstance, allowing for greater flexibility without compromising market stability/harm to firms (and their customers).
- A revised interpretation of exceptional circumstances would achieve this balance more effectively than the proposed changes, as well as more effectively addressing the underlying concerns/reasons for the proposals. Indeed the current exceptional circumstances test set out in the Enforcement Guide already provides that, in determining whether to make a public announcement, the FCA can consider the very factors cited by the proposals as driving the need for more transparency: maintaining public confidence in the financial system or market, protecting consumers or investors, preventing

widespread malpractice, helping the investigation by bringing forward witnesses, and maintaining the smooth operation of the market. If the FCA's own internal interpretation of the exceptional circumstances test has historically been too narrow, this does not mean that the test itself is flawed. The FCA should consult on any proposals to change the wording of the exceptional circumstances test.

- The proposals present significant potential to harm to the growth and competitiveness of the UK financial services industry. Further, an incautious or disproportionate approach to publication may crystallise firm-specific or systemic risks relating to deposit flight and capital and liquidity issues, thereby directly harming consumers. Purely in light of these risks alone, it is imperative that the proposals be subjected to a thorough cost/benefit analysis – not (as the FCA has done) merely an exercise in identifying the relevant "benefits".
- Our members are concerned that, in seeking to have a single policy applicable to all firms, the FCA is drawing a false and unfair equivalence between regulated and unregulated firms. Regulated firms must meet and maintain compliance with strict criteria if they wish to operate in the UK. They dedicate considerable resources to maintaining their adherence to the applicable regulatory regime. The type of unregulated firms against which the FCA acts are invariably those committing criminal offences and seeking to evade the very regulatory framework our members take so seriously.
- Whilst members appreciate the desire to have a single framework applied to all FCA enforcement investigations, the proposals do not distinguish between these two very different categories of firms in any meaningful way. The consultation includes almost no detail about application to unregulated firms, which is surprising given this is put forward by the FCA as a primary driver for the proposals. A single policy framework that does not on its face consider the difference between regulated and unregulated firms simply does not work and is grossly unfair to regulated firms who will bear the brunt of the reputational damage of the proposed change in approach.
- Further, there are no case studies on unregulated firms, which the FCA has emphasised are a key driver for them of these proposals. This deprives the industry of clarity about how the proposals might operate with respect to unregulated firms.
- The suggested approaches within this response to the FCA's second consultation are clearly more appropriate than the FCA's current proposal to address the issues it has indicated it wishes to target here. The suggestions are made constructively.

We would be very happy to meet with the FCA to discuss our response to this consultation if it would be helpful.

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