

[A version of these comments was submitted to the Financial Conduct Authority.]

17 February 2025

Via Online Submission Form

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

Re: CP24/2 Part 2: Greater Transparency of our Enforcement Investigations

To Whom It May Concern:

The Investment Adviser Association (IAA)¹ appreciates this opportunity to comment on the Financial Conduct Authority’s (FCA’s) second consultation relating to publicizing enforcement actions.² As we noted in our comments³ to the FCA’s first consultation,⁴ we recognize the importance of regulatory transparency and understand the rationale behind potentially publicizing certain investigations.

The IAA also appreciates that the FCA has taken public steps to reassure the industry that this authority is only intended to be used in rare circumstances and “would affect only a subset of the very small number of regulated firms [the FCA] investigate[s],”⁵ and then only with respect

¹ The IAA is the leading organization in the United States dedicated to advancing the interests of fiduciary investment advisers. For more than 85 years, the IAA has been advocating for advisers before the U.S. Congress and U.S. and global regulators, promoting best practices and providing education and resources to empower advisers to effectively serve their clients, the capital markets, and the U.S. economy. The IAA’s member firms manage more than \$35 trillion in assets for a wide variety of individual and institutional clients, including pension plans, trusts, mutual funds, private funds, endowments, foundations, and corporations. For more information, please visit www.investmentadviser.org.

² FCA, *Greater transparency of our enforcement investigations, Consultation Paper 24/2, Part 2* (28 Nov. 2024), available at <https://www.fca.org.uk/publication/consultation/cp24-2-part-2.pdf> (**Second Consultation**).

³ See *IAA Comments on UK FCA Consultation Paper: Enforcement Guide and Publicising Enforcement Investigations* (30 Apr. 2024), available at <https://www.investmentadviser.org/resources/iaa-comments-on-uk-fca-consultation-paper-enforcement-guide-and-publicising-enforcement-investigations/> (**Initial Comment Letter**).

⁴ FCA, *Consultation Paper, Our Enforcement Guide and publicising enforcement investigations—a new approach*, CP24/2 (27 Feb. 2024), available at <https://www.fca.org.uk/publication/consultation/cp24-2.pdf>.

⁵ Second Consultation at 1.15. See also Testimony of Nikhil Rathi, Chief Executive, FCA, House of Lords Financial Services Regulation Committee 13 Nov. 2024) at p. 7 (“We are not talking large numbers because 60% are already disclosed by the firms themselves, or by us. Going forward with only 11 or 12 regulated firm investigations being open, we are talking about incremental transparency each year—two to three maybe.”), available at committees.parliament.uk/oralevidence/14996/pdf/.

to firms, and not individuals.⁶ We further appreciate that the FCA took steps in the Second Consultation to address some industry concerns by requiring the FCA to consider the impact of a public announcement on the targeted firm as part of the public interest test, give firms the opportunity to review any draft announcement before it is made, and allow firms time to respond.

However, and as noted in our Initial Comment Letter, the IAA believes that the FCA already has the authority to inform the public of an investigation before findings are made if it deems that “extraordinary circumstances” are present. We remain unclear why this existing authority is not sufficient to achieve the FCA’s investor protection objectives.

We also remain concerned that the FCA’s proposed policy to publish the names of firms under investigation before any findings have been made will be highly prejudicial to impacted firms, potentially damaging to individuals serving in senior manager and board positions, and confusing to clients, and will not serve the public interest. Premature public announcements can needlessly damage a firm’s reputation, especially in the many cases where the investigation ultimately finds no wrongdoing, and this damage will likely last well beyond the end of an investigation. The Second Consultation also fails to adequately consider the impact on a firm’s individual employees and its current and former directors, even if they are not the intended subject or target of the investigation.⁷ As the FCA is aware, the names of individuals performing or who previously performed senior management functions and directorship roles at a firm are publicly available on the FCA Register. These individuals may become unintended collateral damage and their professional reputation and employment mobility may be unfairly prejudiced by a premature announcement of this nature.

For the reasons discussed above, we urge the FCA to maintain its current practice of confidentiality of investigations until formal administrative or legal action is taken.⁸

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⁶ See Speech by Nikhil Rathi, FCA Chief Executive, delivered at the City Dinner, Mansion House, *Growth: mission impossible* (17 Oct. 2024), available at [Growth: mission possible | FCA](#).

⁷ This is a significant departure from the FCA’s current practice where the FCA “will consider the potential prejudice that it believes may be caused to any persons who are, or who are likely to be, a subject of the investigation.” *FCA Handbook*, EG 6.1.3, available at <https://www.handbook.fca.org.uk/handbook/EG/6/1.html>.

⁸ As discussed in our Initial Comment Letter, this is consistent with the approach of the U.S. Securities and Exchange Commission.

We appreciate your consideration of our comments on this important issue. Please do not hesitate to contact the undersigned at 1 (202) 293-4222 if we can be of further assistance.

Respectfully Submitted,

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