12 Endeavour Square
London
E20 1JN

Tel: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 1099
www.fca.org.uk

Dame Harriett Baldwin
Chair
Treasury Sub-Committee on Financial Services Regulations
House of Commons
London
SW1A 0AA

7 May 2024

Dear Dame Harriett,

Thank you for your letter of 1 May 2024 about our consultation on publicising enforcement investigations, in which the Sub-Committee raises a number of important questions.

We have long maintained a presumption against publication of the fact of an enforcement investigation, unless there are exceptional circumstances that warrant disclosure.

Our consultation proposed to move away from a presumption against disclosure to a public interest framework for deciding whether the fact of an investigation should be announced. There would be no presumption in favour of disclosure. In some cases, we consider the public interest would support naming a firm at the appropriate point in our investigative process, in others it would not. The appropriate point may not always be at the outset.

Much discussion around our proposed changes on disclosure has focused on regulated firms; it is important to bear in mind also our work against unauthorised business, especially in light of the role we play in the Government's Economic Crime Plan.

**Investigations opened in 2023/24**

In our letter to the House of Lords Financial Services Regulation Committee of 25 April 2024, we provided information about the investigations into regulated firms and listed companies which we opened in 2023/24. We have provided more, and updated, detail on that group of cases at Annex A to provide context for the answers to your specific questions. We have also provided indicative data in this response which is in the process of being compiled and checked for our Annual Report – any updates will be included in our Annual Report to be laid before Parliament in the Summer.

We now turn to the detailed questions in the order set out in your letter.

**1) Whether the FCA considered finding a method to publicise enforcement investigations anonymously until a decision has been made, thus preventing firms from having their reputation damaged unjustly should the investigation lead to no further action?**

Publicising enforcement investigations anonymously is an option in the consultation and was expressly referred to in our consultation paper. Paragraph 3.7 states:

*"The [public interest] factors set out above are non-exhaustive. We will assess whether to publish an announcement or update and what it should contain,* ***including whether to name*** *the subject of the investigation, on a case-by-case basis, taking all relevant facts and circumstances into account."*

We expressly addressed the fact that this proposed more transparent approach, to name investigation subjects where it is in the public interest to do so, may raise concerns about

the potential impact on subjects. (See paragraph 3.8 of the consultation paper.) We also stated that we would maintain our current policy of not generally announcing investigations into individuals, because of data protection and other legislation.

The proposed policy is clear that we would consider "all relevant facts and circumstances" in deciding whether to announce an investigation, and whether to include the name of the subject of the investigation. This would include the potentially disproportionate impact on subjects of the investigation. You will see from the cases in Annex A that a number of firms disclose the fact of an investigation themselves (see Cases 2-7).

There may be reasons specific to the case in question why it is in the public interest to name firms in a factual and measured way. For example:

i) Where there is potential misconduct that is public already. Consider a major customer service disruption over a number of days at a large retail bank; an announcement that "The FCA is investigating the circumstances relating to the customer service disruption at a major retail bank on [time period]" would not secure anonymity as the name of the bank in question would be guessed quickly.

ii) A high level description with anonymity of suspected misconduct that could only be on the part of a firm of a certain type may also prompt speculation as to which firm or firms are being investigated and lead to those not being investigated to issue a denial, with subsequent rounds of speculation focusing on those firms that have not issued a denial.

iii) We may be concerned about potential ongoing and significant consumer detriment. This was the point that the Public Accounts Committee highlighted in their report on the British Steel Pension Scheme (BSPS) in 2022 when they asked us to look into publishing names of firms under investigation that pose serious risks to consumers.[1] BSPS campaigners have made a similar point.[2]

iv) We may need to reassure consumers that we are investigating a particular firm, for example allegations of serious investment fraud affecting a significant number of consumers. These cases attract significant parliamentary interest with understandable questions about what we are/are not doing and why.

v) We may want to encourage potential witnesses to come forward. Gathering evidence in this way may also help with the pace of investigations and establishing sufficiency of evidence to meet legal thresholds of proof. We shared with the House of Lords Committee on Financial Services Regulation the example of a case where we had taken supervisory action in parallel with an SFO investigation, which they then announced, naming the firm in question.[3] Shortly after doing so, they

[1] Paragraph 12; https://committees.parliament.uk/publications/23164/documents/169426/default/

[2] One of the representatives of BSPS pensioners made the following comment on the proposals last week which highlights the delicate choice we have been consulting on. "It might hurt someone who is genuinely innocent but as with BSPS you had a lot of advisers saying to steel workers 'if you heard anything wrong the FCA would have told you'' "A lot of steelworkers contacted the FCA at the end of 2017, and asked 'Can you tell me whether or not the adviser was being investigated'. The FCA was not able to tell them and the steelworkers took their advisers' reassurance at face value. "Many steelworkers would have been saved a great deal of financial loss if the FCA had been clear with them in 2017."

https://www.ftadviser.com/regulation/2024/05/02/al-rush-fca-name-and-shame-proposals-a-blunt-instrument/

[3] See the Serious Fraud Office investigation into Raedex; https://www.sfo.gov.uk/2021/04/09/sfo-announces-investigation-into-the-raedex-consortium-group-of-companies/

proactively issued a structured questionnaire seeking evidence from investors that may have been impacted by the events concerned. Charging decisions have now been made and the matter is before the courts. Such cases can also, in some circumstances, be taken by the FCA. The FCA is responsible for 15 of the 43 actions in the Government's Economic Crime Plan.[4] We have made decisions to charge 39 people with financial crime (or related) offences over the last two years. We have trials listed for a range of offences including fraud, unlawful financial promotions and insider dealing in the criminal courts due between September 2024 and January 2026. We obtained 11 convictions in 2023/24 compared to 2 in 2022/23 when three trials were postponed because of difficulties in the criminal justice system.

vi) We need to do more to provide confidence to whistleblowers. The Committee has recommended in its Sexism in the City report that we do more to promote awareness of whistleblowing channels, particularly in relation to alleged non-financial misconduct at regulated firms. We have replied separately to that recommendation. A related issue is maintaining confidence in the whistleblowing function; we shared feedback from the published survey results into our whistleblowing function in our response to the Lords Committee. There is understandable frustration that we provide limited feedback to whistleblowers about what we are doing with the information they have provided, including whether we have opened an investigation or not.

vii) Anonymity may be inconsistent with the approach taken by partner agencies or regulators on the same or related cases.[5]

viii) We also may receive direct questions from parliamentary committees, including the Treasury Committee, such as the recent request in relation to Odey Asset Management and other similar requests over recent years.

ix) In other situations, an anonymised announcement may only have limited reassuring and/or deterrent impact, and so would not sufficiently serve the public interest. We recognise this is a point of debate and we would welcome the Committee's views on this.

We will always, unless inappropriate to do so, make clear that we have as yet found no misconduct or other failing. There will be situations where, for example, investigation follows intervention action which is already publicised.

Some respondents to our consultation have suggested an 'Enforcement Watch' publication which sets out an overview of enforcement activity. We think this could be of value in bringing together important themes from our work. We are carefully considering all alternative proposals and would want to understand how stakeholders think this provides the same impact as disclosure, in a factual and measured way, of individual investigations when doing so is in the public interest.

**2) The consultation states that "There can inevitably be some time between the misconduct and harm [the FCA] identify, and the announcement of its resulting**

[4] https://assets.publishing.service.gov.uk/media/642561b02fa8480013ec0f97/6.8300_HO_Economic_Crime_Plan_2_v6_Web.pdf

[5] For example, in 2021, the SFO announced an investigation relating to GFG and financing arrangements with Greensill Capital UK.[5] The FRC also announced in 2021 its investigation in relation to the audit of Greensill Capital (UK) Limited's financial statements.[5] In light of Parliament's close interest in the matter, the FCA confirmed its investigations by letter to the Treasury Committee but under our current policy would not ordinarily have announced the investigations we were undertaking.

**interventions and sanctions. Public concern about whether we are taking appropriate steps can develop in this gap."**

**In your letter to the House of Lords Committee you wrote that "investigations closed in 23/24 took an average of 43 months from our decision to open an enforcement investigation to closure". How much focus and resource is the FCA putting into speeding up investigations and enforcement to fix the root cause of this harm?**

**a. Do you agree that opening an investigation into a firm, and not concluding on that investigation until almost four years later, creates an unacceptably long period of uncertainty for companies which are being investigated?**

**b. In your letter to the Lords you wrote "We are committed to reducing the timelines of our investigations. […] And we will improve our triage across our authorisations, supervision and enforcement teams to make sure that we are deploying all the tools available to us to resolve harm, enabling us to do fewer investigations at a faster pace. We expect to see fewer cases resulting in no further action as well as timely and impactful enforcement outcomes. We are already seeing the results of our sharper focus, opening fewer cases in 2023/24 than we have done in the preceding years."**

**How is reducing the number of investigations you carry out consistent with the ambition within your consultation paper to "strongly support our operational objectives, in particular securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system?"**

We agree that the average time to close cases is too long. Since being appointed last year, we have taken steps to improve the FCA's operational performance.

Over the past financial year, we have reduced our operations portfolio by around 15% (from 220 to 185 operations and 591 to 500 subjects of investigation). This is a conscious choice as we look to open enforcement investigations into serious misconduct if an investigation will drive impactful deterrence and is the right regulatory response considering all our available tools.

We opened 10 fewer operations (with 37 fewer subject cases opened) in 2023/24 compared to the previous year – a reduction of around a third (36%) in number of subjects. Reducing the portfolio size will enable us to investigate faster. We are taking a hard-headed approach to opening cases which are likely to end with no further action and are making decisions to take no further action more quickly than in the past. Recognising the concern over the reduction in investigations, we expect to achieve as many (if not more) and more impactful outcomes. In addition, we will continue to increase the number of interventions and preventions by acting earlier before a case becomes an enforcement operation (recent data on prevention is provided below).

Our ability to move faster through investigations is impacted by the volume of digital data that we must collect, process and review to conduct fair, thorough and forensic investigations and to comply with legal obligations relating to disclosure we must schedule and describe all relevant material. Our evidence management system currently holds 61Tb of data, we anticipate it will increase to 72Tb by February 2025.[6]

[6] A single terabyte stores roughly the equivalent of: 1,300 physical filing cabinets of paper, or 500 hours of HD video, or 130,000 digital photos. A basic mainstream phone now holds data equivalent to 90m of bookshelves

For a contested criminal trial, it is not unusual to have 10 people, including barristers, in the disclosure team working full-time for many months or even years to comply with statutory disclosure obligations to review material and schedule relevant material. We have invested in technology to upgrade our evidence management system and introduced new automated processes to help tackle this dataset (a new process of including document descriptions on disclosure schedules without manual input reduced the timeframe for describing documents on one case from a 2+ year estimate to 4 months) but it remains an ongoing and increasing challenge.

Other factors which contribute to time to closure are not necessarily in the FCA's control:

- As of 31 March 2024, around one third of our 185 operations are in the post-investigation stage (going through our Regulatory Decisions Committee or litigation) and we do not entirely control that timeline. Specifically, around 50 firms involved in 25 operations are in litigation with remaining litigation involving individuals. We have a broad portfolio focused on our current three strategic commitments, looking into a wide range of misconduct.[7] Post-investigation stages demand continued investigative resource to prepare for trial or support litigation, with investigators working to comply with judicial orders, address queries raised by the subjects and ultimately prepare to give evidence. For example, Mohammed Zina (former analyst at Goldman Sachs) was convicted in February 2024 for insider dealing and fraud. This was a relatively straightforward story of insider dealing in six stocks but required witness statements from 51 people based in the UK and abroad, the calling of 14 witnesses to give live evidence, including via video link from the US and two experts, plus a review of over 40k documents and liaison with foreign regulators. We conducted a 12-week trial with an in-house prosecution lawyer and team of 8 investigators at court or supporting from the office each day.

- Once litigation is concluded, investigators and lawyers continue to work to enforce court orders to recover proceeds of crime or, in civil cases, to distribute compensation. A case is not deemed closed in our statistics while those processes remain ongoing and they can take multiple years, particularly where subjects do not comply with confiscation or other Court orders and we have to take follow-up action.

- For example, in the case of Capital Alternatives Ltd, the FCA successfully argued at a High Court trial in 2017 that the firm had been operating a series of Collective Investment Schemes without FCA authorisation. In 2018, the FCA obtained Restitution Orders against the defendants for £16.9m. While a substantial sum of money has been recovered and distributed to investors following the enforcement of these Restitution Orders, work continues to recover further assets from one defendant in particular. This process has been delayed due to these assets being held overseas.[8] In a separate case, an illegal money lender we prosecuted in 2018 was sent to prison in February 2024 for nearly 8 years for refusing to pay his confiscation order. Mr Gopee had unsuccessfully challenged this confiscation order and associated orders on over 30 occasions.[9] As the matter remains unresolved these cases stay open on our system.

[7] The length of our cases can also be impacted by delays in the justice system; for example, in one recent regulatory case we issued a Decision Notice in May 2023 and the matter will not be heard in the Upper Tribunal until March 2025 and in a criminal case, where we made a charging decision also in May 2023 the trial will not be heard until January 2026. https://www.fca.org.uk/news/press-releases/three-individuals-face-charges-unauthorised-sale-and-rent-back-schemes

[8] https://www.fca.org.uk/news/press-releases/fca-wins-case-against-capital-alternatives-limited-and-others

[9] https://www.fca.org.uk/news/press-releases/illegal-money-lender-imprisoned-failing-pay-confiscation-order

- We handle a number of complex law enforcement cases. Half of our ongoing operations involve potentially serious criminal offences. Whilst we want to reduce the time taken to closure, we do not wish to deter investigation teams from taking on very complex cases (for example into cross border serious organised financial crime or market manipulation) which are extremely challenging, resource intensive and may take years to conclude.

- The level of cooperation of subjects of investigation varies considerably. Some offer a very high level of cooperation and we look positively on this. Others will seek to challenge or obfuscate, including through legal means, at multiple steps of an investigation (scope of inquiry, requests for information, timetable) with what, at times, can appear to be an objective to delay progress.

While we want to bring down the time it takes to complete a case, and our aim of a more focused, streamlined portfolio of cases will help achieve that, we should stress that there are no shortcuts to a thorough and fair investigation.

**Use of non-enforcement regulatory tools**

We understand the concern about a lower number of investigations. However, we judge that given the progress of our transformation programme in recent years and the sharp increase in our work on prevention, we can more confidently make prioritisation choices.

We have largely eliminated authorisations backlogs, while supporting those that meet our standards into regulated markets more quickly and providing additional support for new market entrants.[10] Overall, 97.8% of authorisation determinations are within the statutory deadline. The median determination time for Senior Manager applications is 38 calendar days (5 weeks) and the median determination time for new firm authorisations is 114 calendar days (3.7 months).[11] We also offer firms pre-application meetings with our case officers, giving them dedicated support and guidance through the application process. And last year we launched our pre-application support service (PASS),[12] targeted at overseas wholesale firms wishing to expand into the UK.

We are exercising greater scrutiny when determining applications to keep non-compliant actors out of the regulatory system. Now, 1 in 4 firms are refused authorisation compared to 1 in 14 in 2020/21.[13] That has been particularly important with respect to new responsibilities, such as anti-money laundering registration for crypto firms.[14] Applications which do not meet our standards are withdrawn in increasing numbers.

Appointed representatives and their principal firms have historically been a significant source of complaints, for example to the FOS. We have stepped up our activities to ensure appropriate standards. The number of appointed representatives has fallen from 43,000 in 2021 to approximately 34,000 today and, while complaints remain higher than other parts of the sector, the level of complaints to firms has decreased.

[10] In April 2022 the FCA made a public commitment to increase the number of firms supervised within its Early and High Growth Oversight function to 300 firms (phase 2) which we achieved in March 2023.

[11] https://www.fca.org.uk/data/fca-authorisations-operating-service-metrics-2023-24-q3

[12] https://www.fca.org.uk/firms/authorisation/uk-wholesale-markets-support

[13] https://www.fca.org.uk/news/statements/update-fca-authorisations-operating-service-metrics

[14] Para 2.22; https://assets.publishing.service.gov.uk/media/6630f2b4120ab0e20c4b9bdb/Final_annual_supervision_report_2022-23.pdf

We have stepped up interventions relating to problematic financial promotions. We tackle online fraud faster, scanning around 100,000 websites created daily to identify potential scams. Last year 10,008 potentially misleading financial promotions were amended or withdrawn following our intervention, compared to 573 two years ago. We issued 2285 alerts about unauthorised firms and individuals last year, 21% more than 2022.

With the Treasury Committee's support, we worked with Google and other big tech/social media firms on changes in their policies so that paid for financial promotions can only be undertaken by firms on the FCA Register. Since these changes in September 2021, we have seen a near 100% drop in fraudulent paid for financial promotions on Google.[15] Data showing the number of interventions we've made in relation to financial promotions can be found in Annex B.

We have strengthened supervisory processes and collect data differently, supporting firms with reporting requirements, pushing compliance to 96% by March 2023 and piloting changes to reduce burden.[16]With a new baseline financial resilience regulatory return from January 2024, we expect to better identify firms with low levels of financial resilience and take preventative steps to reduce harm to consumers and markets from potential failure.

We have increased use of Section 166 inquiries, 77% more in 2023/24 over the previous year, and other supervisory interventions (see Annex B).

These changes help explain why we have been able to reduce incoming enforcement cases, and why only 11 out of over 40,000 regulated firms (less than 0.03%) faced new enforcement investigations in 2023/24.

**3. In your letter to the Lords Committee you explain that the US Securities and Exchange Commission, the French Autorite des Marches Financiers and the Swiss Financial Market Supervisory Authority all maintain privacy over their investigations. Can you therefore set out in more detail why you believe publicising enforcement investigations at the outset will improve the international competitiveness of the UK, and how it will make the UK a more desirable place for financial firms to do business, and list on the UK's stock market?**

Only a tiny minority of regulated businesses find themselves facing enforcement investigations and that is typically after a significant opportunity to remedy issues that have been identified. The overwhelming majority of firms located in the UK will seek to proactively comply with our rules.

And our proposals will not impose additional burdens on firms looking to list in the UK. They will already be subject to our disclosure rules, and – in most cases – will already be required to disclose when they are under investigation.

However, we also recognise that our proposed approach is different from some other regulators. While some jurisdictions have public interest tests similar to the one we are proposing, notably Singapore and Australia, others, such as FINMA, the SEC and the AMF have a different approach.

The SEC, AMF and FINMA all have different objectives to the FCA. None have a competition objective or as wide ranging a consumer protection objective as the FCA. None share our criminal prosecution powers to take action for investors in relation to fraud. And so the

[15] We have also continued our ScamSmart campaigns. Over 2 million people have visited the ScamSmart website since launch in 2014, and more than 45,000 have seen warnings about specific, unauthorised firms.
[16] This compares to 93% in 2023, and 91% in 2022.

driving factors behind our proposals – and the environment we operate in – are not identical.

And when it comes to listed firms, existing disclosure requirements in the US and other major markets such as Switzerland and France are broadly the same as the UK. Indeed, you will see that a number of our investigations into unlisted firms have already ended up being disclosed in the US in SEC filings (see cases 3-7 in the Annex) as the US have stringent disclosure practices, in some cases going further than we currently do in the UK. We therefore consider when it comes to comparisons for listed companies, our proposals do not fundamentally change the comparative status quo.

UK companies, whether listed or otherwise, consider, under UK accounting principles, whether they should either: (1) make provision in their public accounts in relation to the potential costs, including financial penalties, arising from regulatory and other investigations; or (2) at least disclose the possibility of such costs as contingent liabilities in those accounts.

There are a number of examples of unlisted firms taking this course in relation to FCA investigations and relevantly publicly naming the FCA. [17]

We believe that this point assists in providing comfort as to the risk that any investigation announcements might cause disproportionate harm to private firms. It may also be relevant to consideration of the SICGO, given that a number of such firms are UK subsidiaries of overseas parent firms.

We are confident about being a global first mover when necessary, based on evidence, taking account of the needs of UK markets and consumers. For example, in September 2022, we warned that we considered FTX may have been providing financial services or products in the UK without our authorisation.[18] We were the first among G7 regulators to warn in this way. We did so based on our statutory objectives. Subsequently FTX collapsed in November 2022 and there has been a criminal conviction recently in the US in relation to FTX concerning what is described as one of the largest financial frauds in US history.

Finally, strong cooperation between the FCA and global partners on enforcement is fundamental and that cooperation is key to competitiveness for UK regulated firms operating cross border. Our partners need to have confidence that we keep our markets clean and operating with high integrity to sustain the market access UK based players enjoy to markets and clients around the world. The IOSCO Multilateral Memorandum of Understanding on enforcement (MMoU) is the bedrock of cooperation among securities regulators and the FCA currently chairs the Monitoring Group and Monitoring Group Steering Committee, with responsibility for ensuring compliance and effective cooperation under the MMoU, as well as chairing a group mandated to improve compliance, driving more effective international cooperation. Given the UK's large global wholesale markets, the FCA is by far the largest recipient of requests for cooperation and we have been

[17] Examples of unlisted firms taking this course, focussing on UK subsidiaries of foreign firms, in relation to FCA investigations and relevantly publicly naming the FCA, are as follows:

- **Bank of New York Mellon (International) Limited**: See notes 27 and 34 on pages 41 and 46 of its 2014 accounts. Note that, while these accounts were finalised and filed at Companies House after we imposed our relevant financial penalty on the firm, it stated that it had made the relevant provision before we did so. It would therefore have disclosed as much in any event.
- **Charles Schwab UK Limited;** note 22 on page 25 of its 2019 accounts.
- **H2O AM LLP;** note 19 on page 36 of its 2020 accounts.
- **ADM Investor Services International Limited;** note 22 on page 40 of its 2022 accounts.
- **Equifax Limited;** note 19 on page 35 of its 2022 accounts.

[18] https://www.fca.org.uk/news/warnings/ftx#:~:text=We%20believe%20this%20firm%20may,and%20how%20to%20protect%20yourself.

recognised, for example by the US CFTC, for our work in supporting them on major enforcement cases.[19]

**4. What work is the FCA doing to improve the metrics, and the communication of any relevant metrics it uses to measure enforcement action?**

We focus on the outcomes of our work, improving operational effectiveness, and setting out metrics to measure progress. Our latest impact analysis, for instance, identified on average £0.5 billion in direct benefit to consumers and investors each year as a direct result of our enforcement work.[20]

In our annual report we set out how we have delivered against previously stated goals. The National Audit Office has used this reporting as an example of good practice. [21]

We publish over 100 metrics on our operations, including statistics relating to our enforcement investigations. These have been supplemented with 23 new metrics relating to our secondary competitiveness objective. Together, these provide world-leading transparency and accountability.[22] We are committed to continual refinement of our outcomes and metrics. As well as positive signs, for example in the length of time cases take to conclude, we expect that our proposals will result in measurable changes in outcome-related metrics.

For example, further to our public commitment on financial crime, we have made decisions to charge 39 individuals with criminal offences over the past two years. We have trials listed to prosecute individuals for a range of offences including conspiracy to defraud, money laundering and insider dealing in the criminal courts, into January 2026. We obtained 11 convictions in 2023/24 compared to 2 in 2022/23 when three trials were postponed because of difficulties in the criminal justice system. Despite seconding a number of our financial crime experts to advise on the UK's sanctions response to the war in Ukraine, between April 2022 and March 2023, we opened 613 financial crime supervision enquiries,[23] an improvement on 366 enquiries opened between April 2021 and March 2022. This includes work related to 231 desk-based reviews (DBRs) and 7 onsite visits conducted by dedicated financial crime specialists.[24] [25]

Our public commitment on financial crime set out performance metrics. One was to slow the growth in investment fraud victims, and their losses. We have seen a reduction in

[19] https://www.cftc.gov/PressRoom/PressReleases/8619-22

[20] Over the 3 years to end-March 2021 we have estimated benefits from a subset of new rules to be at least £20.7 billion. This is an annual average of at least £6.9 billion. Over the same period we have identified benefits due to our enforcement activities of nearly £1.4 billion, an annual average of nearly £0.5 billion; https://www.fca.org.uk/publication/corporate/positive-impact-2022.pdf

[21] See page 20: https://www.nao.org.uk/wp-content/uploads/2021/02/Good_practice_in_annual_reporting.pdf

[22] Page 13; https://www.thecityuk.com/media/jlxk0uct/advancing-international-competitiveness-and-economic-growth-how-do-financial-regulators-compare.pdf

[23] These related to AML/CFT, Sanctions & Bribery & Corruption.

[24] Section 4.5; https://www.fca.org.uk/data/fca-outcomes-metrics

[25] Of the remaining 375 cases, 95 related to Cryptoassets, and the rest were opened by wider supervisory teams outside the dedicated financial crime specialist teams who are also responsible for assessing the compliance of FCA-supervised firms with AML requirements alongside wider regulatory obligations and undertaking less complex AML/CTF work.

growth (4.3%, against a baseline of 28% growth) in reported victims in 2023-2023, and a reduction in reported losses of 40.8%.[26]

Firms, too, bear significant financial costs relating to fraud, economic crime and firm failures. We hear from firms that this a significant drain on the UK's competitiveness and growth. Strengthening our approach to tackling financial crime can also contribute to our secondary competitiveness and growth objective. We have highlighted some achievements above. And we also note the levy applied to firms to fund the Financial Services Compensation Scheme has stabilised, and on current forecasts, overall compensation is likely to continue to remain below the peak seen in previous years.[27]

We want the metrics we publish to show tangible outcomes from us using the right regulatory tool, or tools, to achieve results. In some instances, that may mean opening enforcement investigations, in others it may rely on other interventions – like a tougher authorisations gateway, variations of permissions, requirements or skilled persons reports – to bring about change.

**5. Under your proposals, how much preparatory work will be done on an investigation before a company is named?**

**a) Will the naming of an organisation require as much investigative work as is carried out by, for example, the police, before a formal decision to publicly charge a suspect?**

As cases 7-10 in Annex A indicate, there is typically extensive supervisory work with a firm before opening an enforcement investigation. This will typically have taken over a year with firms given time to remedy issues. This may include supervisory examinations, skilled person reports, voluntary requirements, agreed action plans. An enforcement investigation is opened when the misconduct is not being remedied satisfactorily or at an appropriate pace.

There will be cases where the seriousness of the situation warrants the immediate opening of an investigation e.g., a major multiday bank outage.

With respect to potential naming of a firm under investigation for investment fraud, we would expect to have done sufficient work to be satisfied that there is a serious risk to consumers such that it warrants a disclosure or a public request for evidence.

**6. Would these proposals be possible if the FCA was not able to rely on the legal immunity it is provided with under the Financial Services and Markets Act 2000?**

The FCA's statutory immunity was not relevant in the formulation of these proposals. An aggrieved party who considered the FCA would be acting unlawfully in a proposed public statement could apply for judicial review and seek an injunction to prevent publication.

**7. What consideration has the FCA given to whether these proposals could place the ongoing viability of a firm in jeopardy, particularly for non-listed firms, and whether prudential or financial stability concerns would outweigh a desire to publish an investigation?**

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[26] The other desired outcomes were:
1) A reduction in financial crime by lowering the incidence of money laundering through the firms we directly supervise and by improving the effectiveness of supervision by professional body supervisors.
2)Slow the growth in Authorised Push Payment fraud cases.
While there is no objective measure for money laundering we are hitting our key metrics.

[27] Page 5; https://www.fscs.org.uk/globalassets/industry-resources/publications/outlook/nov-23/fscs-outlook-november-2023.pdf

**a. Do such considerations raise a risk of a two-tier or unfair system, in which some firms are named and others remain anonymous in light of such considerations?**

We recognise that, already today, there is a differential system between listed companies (either in the UK or overseas) and those that are unlisted. Listed companies will often make disclosures about the existence of investigations; unlisted companies do not carry the same obligations.

Any proposed investigation announcement would almost certainly not be the first a firm has heard of an investigation, given that, in most circumstances, a firm will be aware that it has been referred to enforcement well before any announcement is made. That will allow those firms that are potentially to become investigation subjects to raise with us any concerns they have that might affect a decision on naming them.

We state in our proposed new investigation publicity policy that we "*will take into account all relevant facts and circumstances in deciding whether to publish an announcement of or update on an investigation and whether to include in the announcement or update the name of the subject of the investigation*".

Those facts and circumstances will include the potentially disproportionate impact, including on their viability, of naming a subject. We would similarly take account of any separate prudential and financial stability risks arising. We do not believe that that will be unfair to those firms in respect of which no such concerns arise given that they will suffer no disproportionate impact.

For example, Case 8 in Annex A relates to a dual regulated firm. In a public interest assessment, we would consult with the PRA under our Memorandum of Understanding and weigh very carefully their perspective on financial stability considerations. For example, we had considerable engagement with the PRA ahead of both the announcement of our criminal case against NatWest and the subsequent 2021 charging decision.

We hope this letter assists the Sub-Committee in the scrutiny of these proposals and we look forward to engaging further with the Sub-Committee.

Yours sincerely,

**Therese Chambers**
Joint Executive Director,
Enforcement and Market Oversight

**Steve Smart**
Joint Executive Director,
Enforcement and Market Oversight

**Annex A**

In 2023/24 we opened 11 investigations into regulated firms, 4 investigations into listed firms and 12 investigations into unregulated firms. Of the 11 investigations into regulated firms, the fact of our investigation has been made public in 6 cases, one by us (case 1) and five by the firms themselves (cases 2-6).[28]

With respect to case 7, the firm made public in a filing in an overseas securities market that the FCA may be investigating it, amongst investigations by a range of authorities in multiple jurisdictions on various regulatory matters. It obliquely referred to the matters under investigation, which otherwise remain confidential.

While we have not done a full public interest assessment, we consider that case 7 is the kind of case where we may determine that the public interest supports factual and measured disclosure at a high level of matters under investigation. Entities that are part of this group have several million UK customers and the enforcement investigation was opened after supervisory engagement with the firm for over three years. The group is subject to a range of public enforcement actions in other jurisdictions, a number of which it is contesting and some which it has settled.

Case 8 – This relates to a financial institution, regulated by the FCA and PRA. The matters under investigation by the FCA include failures of oversight and controls, including in relation to anti-money laundering and related financial sanction controls. The investigation was opened after extensive supervisory engagement with the firm over two years, and the investigation includes the firm's potential breaches of requirements the FCA placed on the firm during this time.

Case 9 – This relates to a wholesale market participant and potential failures in transaction reporting and market abuse monitoring. The investigation was opened after significant engagement with the firm for over two years and after the firm had commissioned a third party to review matters.

Case 10 – This is an ESG related case. The issues of concern had been a matter of supervisory focus with the firm for more than two years prior to the investigation being opened.

Under our proposals, Cases 8-10 would be subject to a public interest assessment. We have not undertaken such an assessment and do not consider that the public interest would always weigh in favour of disclosure in such cases.

Case 11 is a covert criminal investigation relating to potential investment fraud. There would be no disclosure by the FCA at the opening of the investigation as to do so would undermine the integrity of the investigation.

Turning to the investigations into 4 listed firms that we opened in 2023/24, three (Cases 12-14) were announced by the firms themselves in line with their disclosure obligations. The fourth (Case 15) was a largely technical investigation linked to another case that was opened and closed quickly and disclosure would not be warranted.

With respect to the investigations into 12 unregulated firms (Cases 16-27), these are all investigations into alleged unauthorised businesses. 1 of these cases is a criminal

[28] This number is higher than quoted in our response to Lord Forsyth dated 25 April 2024, following further research which identified disclosure of investigations into four further firms. https://ir.alti-global.com/static-files/f6b3935c-c6fe-4932-8f2c-ee1e086c36fa; https://www.fitchratings.com/research/structured-finance/fca-investigation-unlikely-to-have-rating-impact-on-vw-driver-uk-transactions-24-11-2023; https://www.fca.org.uk/news/statements/update-our-public-statement-london-metal-exchange

investigation, 10 of these cases are dual track criminal and civil investigations and 1 is a civil investigation only. In at least 6 of these cases, the FCA has warned publicly about potential unauthorised activity by parties now subject to investigation.

**Annex B**

**Additional data**

Between 2022/23 and 2023/24, we increased the number of **cancellations of firms' permissions** from 195 to 851. The number of final notices for firms failing to meet our **threshold conditions**, the minimum standards we expect, rose from 41 to 295 over the same period.

| Financial Year | Number of Cancellations (Threshold Conditions) | Number of Final Notices (Threshold Conditions) | Number of Prohibitions (including partial) |
|---|---|---|---|
| 2022/23 | 195 | 41 | 8 |
| 2023/24 | 851 | 295 | 6 |
| **Total** | **1046** | **336** | **14** |

The table below shows the number of **Section 166 (Skilled Person report)** reviews over the past three years - a 77% increase from 2022/23 to 2023/24.

| Financial Year 21/22 | 22/23 | 23/24 |
|---|---|---|
| 38 | 47 | 83 |

As shown below, during the course of 2023/24 the number of **voluntary outcomes** supported by Enforcement increased by nearly a quarter from the previous financial year:

| Voluntary Outcomes | | |
|---|---|---|
| | 22/23 | 23/24 |
| Voluntary Requirements / written undertakings | 82 | 100 |
| Variation of Permission (VVOP) | 0 | 1 |
| Direction under ML Regs (VDIR) | 0 | 1 |
| **Total** | **82** | **102** |

Where we consider it appropriate to do so we will exercise our formal powers to impose requirements on a firm's permissions (OIREQs), to vary a firm's permissions (OIVOPs), to vary a Senior Management Function holder's approval (OIVAPs) or to give directions under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (OIDIRs).

During 2023/24 Enforcement supported the issuing of the following Own Initiative Outcomes:

| Own Initiative Outcomes | | |
|---|---|---|
| | **22/23** | **23/24** |
| Own initiative requirements (OIREQ) | 17 | 17 |
| Own initiative variation of a firm's permission (OIVOP) | 4 | 5 |
| Own initiative directions under the Money Laundering Regulations 2017 (OIDIR) | 0 | 1 |
| Own initiative direction under section 137S of FSMA (s137S Direction) | 1 | 0 |
| Own initiative variation of a Senior Management Function holder's approval (OIVAP) | 0 | 2 |
| **Total** | **22** | **25** |

**Financial Promotions**

Below is a table showing intervention activity in relation to poor financial promotions compliance in authorised firms and unauthorised activity by firms and individuals:

| | 2021 | 2022 | 2023 |
|---|---|---|---|
| Authorised firms, promotions amended or withdrawn | 573 | 8,582 | 10,008 |
| Unauthorised firms and individuals, warnings issued | 1,410 | 1,882 | 2,285 |