

Dame Meg Hillier MP  
Treasury Select Committee  
House of Commons  
London  
SW1A 0AA

27 November 2024

Our Ref: 241104A

Dear Dame Meg,

**RE: Greater transparency of enforcement investigations: CP24/2 Part II**

I am writing to you in view of the Treasury Select Committee's previous scrutiny of consultation paper (CP) 24/2, entitled 'Our Enforcement Guide and publicising enforcement investigations - a new approach'. The committee raised the consultation in our final accountability hearing of the previous parliament.

I want to start by acknowledging that we did not meet our own commitment to predictability in relation to this consultation, which meant that we were not able to have as constructive a discussion about the proposals as hoped for. To meet some of the concerns this has raised, we have therefore continued with extensive engagement with the industry and interested stakeholders well beyond the consultation deadline. We have held, for example, over 40 meetings since March – and have been carefully considering all the feedback we have gratefully received.

Tomorrow we will begin a second phase of consultation. This includes setting out areas where we think we should adapt our proposals based on the feedback received and greater clarity through data and case studies on how the proposals would work in practice. By opening this second phase, we hope to continue the discussion before deciding on the proposals in the first three months of next year.

I have included a copy of the document we plan to publish – I would be grateful if you could keep this confidential until the embargo lifts at 11am tomorrow.

I hope the document will allow full scrutiny on how our position has developed in response to feedback. I look forward to discussing this work with the Committee at the accountability hearing next month.

**Our approach to regulation**

It may be helpful to put our proposals on enforcement into their wider context. Over the last few years, we have been steadily strengthening our gateway for authorisation, to prevent firms which could cause harm from entering the market, and supervising higher risk firms more assertively. We are now focusing on how we take a more holistic

approach across the organisation about the right FCA tool we should use to tackle harm. The right tool will only occasionally be to open an enforcement investigation. Indeed, we expect very few of our regulated firms to find themselves subject to an enforcement investigation; each year we typically open investigations into between 10 - 12 regulated firms, out of around 40,000. And for most of these, enforcement action will only come after an extensive period of supervisory engagement.

We are increasing the **focus** of our enforcement investigations. We have raised the bar for opening an investigation and strengthened our pre-investigation triage processes, considering whether:

- an investigation is most likely to drive impactful deterrence across industry; and
- we can use other tools to stop and reduce harm, rather than opening an enforcement investigation.

We are also increasing the **pace**. Investigations we closed in 2023/24 took an average of 42 months to complete. Many of our more recently opened operations will take far less time and, in some cases, less than half that time.

Recent examples include:

- Successfully prosecuting an individual for running a network of illegal crypto ATMs following a 15-month investigation.
- Taking action against CB Payments – part of the Coinbase Group – within 16 months of opening an investigation.
- We fined Starling Bank £29m for financial crime failings after a 14-month investigation.
- We fined Volkswagen Finance £5m over failures in their treatment of customers in financial difficulty, with redress of £22m, after a 13-month investigation.

Alongside this increased focus and pace we proposed a measured increase in **transparency** about our investigations. Currently, we only announce we have opened investigations in 'exceptional circumstances'. This means we rarely say anything about our investigations until they are concluded and a penalty for serious misconduct is imposed. This has not always served the public interest.

We have listened carefully to the feedback and the concerns raised about these proposals. In response, we are providing greater clarity on the proposals, as well as more data and case studies detailing how we could make announcement decisions.

We are also proposing 4 significant changes to our initial proposals:

1. We are now proposing that the impact of an announcement on the relevant firm would form part of our public interest test and be central to our consideration of whether to announce and name it.
2. We are now suggesting giving firms 10 business days' notice of an announcement, with a further 2 days' notice if, following this, we decide to go ahead and announce. This is instead of the originally proposed 1 day to provide firms more time to make representations. This would give firms time to consider

whether they wish to announce themselves or make further representations in an appropriate format.

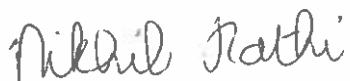
3. The potential for an announcement to seriously disrupt public confidence in the financial system or the market has also been included as a new factor in the public interest test.
4. We have clarified we won't make proactive announcements of investigations which began before any changes to the policy come into effect. (Although we may reactively confirm investigations which are already in the public domain, where this is in the public interest).

In addition, we will also be considering whether and how to take forward suggestions put forward by respondents which might also help us achieve the key aims of the proposals, namely transparency, education and deterrence. This includes thematically publishing concerns we have about what we are seeing in the market. It could have particular benefits where, under our proposals, it might be appropriate to disclose an investigation but not name the firm involved.

We have not taken any final decisions yet on whether or how to implement these proposals. That will only come following further engagement with Parliament, industry, consumer groups and others impacted by these proposals.

We look forward to discussing the CP 24/2, the additional consultation, and next steps with you on 10 December.

Yours sincerely



**Nikhil Rathi**  
**Chief Executive**