

We thank you for your time spent taking this survey.
Your response has been recorded.

Consultation Paper 2024/2, Part 2 - Greater transparency of our enforcement investigations November 2024

Please provide your views on our Consultation Paper using this questionnaire.

We make all responses to formal consultation available for public inspection unless you request otherwise. This includes views provided using this online form, whether or not you have already responded to [Consultation Paper 24/2](#). Let us know below if you do not want your response(s) to be made public in this manner. Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

We also publicly list the names of respondents, which is a matter separate from the content of a response. However, we will only publish the name of a respondent where that respondent has consented to the publication of their name. Please therefore state below whether you provide such consent.

In what capacity are you responding?

- As an individual
- As a representative of an authorised firm
- As a representative of a professional firm
- Other**

Trade Association

Your details:

Company/organisation	European Venues and Intermediaries A
Name	Mr Alexander McDonald
Position	CEO
Address	Warnford Court, 29 Throgmorton Street
Postcode	EC2N 2AT
Telephone	02079474901
Email	amcdonald@evia.org.uk

Consent to response being made available to the public:

- I consent to my response being made available to the public**
 I do not consent to my response being made available to the public

Consent to being publicly named as a respondent:

- I consent to being publicly named as a respondent**
 I do not consent to being publicly named as a respondent and wish that information to be kept confidential

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.

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

We do not consider that the proposed staged decision-making process to announce investigations will comprise a substantive mitigation. As remains the case with our concerns around the residual Regulatory Decisions Committee ["RDC"], the FCA appears to allot itself the powers of judge and jury in matters concerning the Public Interest Test, and in this, together with the absolute opacity to these competencies, it fails to address the concerns widely expressed in the industry and parliamentary responses to CP 24/2. In general, the comments made in April 2024 to the prior consultation [EVIA Response to FCA Consultation Paper CP 24_2; Proposals for Enforcement Disclosures; 30 April 2024*] remain unaddressed by the proposed changes in CP 24/2. We also broadly concur with the House of Lords Financial Services Regulation Committee 1st Report of Session 2024–25 [HL Paper 76; "Naming and shaming: how not to regulate"***]. That is, to make minor and procedural changes to a flawed concept does little to change the outcome. In order to achieve the transparency and business outcomes sought, the FCA should have placed a firm time limit guillotine of 24 months on all investigations, which would enable the relevant publications to be made at this point. Specifically, we noted that the average period of an enforcement investigation in the wholesale brokers sector was in the order of 70 months. Recently we witnessed a further example, that of the FCA Decision Notice against Arian Financial LLP which again came 120 months after the start of the "Relevant Period" from 29 January 2015 to 29 September 2015. A ten-year lookback is normal for FCA investigations, but one we set out in our response to have little relevance to firms and no public benefits in standard setting, nor indeed in adhering to the globally accepted principles of good regulation. Our second recommendation was that FCA Enforcement publications should only be taken forward where UK retail consumers were directly involved has also not been taken forward in CP 24/2, an issue which draws out the House of Lords' criticisms and moreover, illustrates the more fundamental assertion that the FCA remit should be segregated between retail and wholesale business regulation. Overall we would emphasise the comments in the summary to the House of Lords' report that, "The consultation largely excluded any consideration of the potential impact on firms, explicitly ruling out the impact on investigation subjects from the new public interest framework, which the FCA had stated it would use to help determine whether or not to announce its investigations." * found at https://wmbaleba-my.sharepoint.com/:b:/g/personal/amcdonald_evia_org_uk/EeFGQRQyUKFDjSfydpH5qXQB2FoJL6bQIigBV8SEAo1wtA?e=z6AAy6 ** found at <https://publications.parliament.uk/pa/ld5901/ldselect/ldfsrc/76/76.pdf>

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The revised public interest assessment (see paras 4.1 – 4.10).

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

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

Whilst the factors are clearly more expansive than initially set out in CP 24/2, they do not mitigate the concerns raised. Rather, any response that simply seeks to lengthen the FCA handbook and further complicate and elaborate its processes likely fails the core principles of good regulation which are to keep it short and simple. English Common Law will do the rest. We would consider the current and hitherto approach to be a simpler and more effective.

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Yes

Applying our proposals to our existing investigations (see para 4.12).

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

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

Clearly, the restriction to new investigations is a welcome adjustment, but not a substantive one.

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Yes

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.

4. Do you have any comments on these proposals?

Clearly, the extension of a response period from 1 to 10 days in most cases is a welcome adjustment, but not a substantive one given that the case would not be proven.

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Yes

Safeguards (see para 4.17 – 4.19).

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

5. Do you have any comments on these proposals?

Whilst the proposed notice period of 10 days would provide an opportunity for a firm to raise a challenge to the FCA, it is not long enough for a formal legal challenge to be assembled and applied, and it remains unclear from the CP 24/2 Part II whether and how the FCA would react and respond to this. For instance, we note that any formal legal challenge is an expensive and distracting undertaking for a firm, especially smaller firms, so this mitigation is not particularly appealing to any but the largest firms. The FCA also note that 2 days also construes "ample time" for a legal challenge to be mounted. We wonder how this could be the case.

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Yes

Case Studies

We welcome feedback on these case studies, including on whether the public interest would be served in naming these firms while under investigation when we have indicated we might do so.

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

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

None.

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Yes

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

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

We note that the size and resources of Citigroup Global Markets Limited do not fairly represent the resources of the non-banking sector solo regulated by the FCA and as such forms an inappropriate example. We also note that the case study selected considers a 2-year period from the opening of the enforcement investigation to the decision notice. Again this does not fairly represent the timelines we observe across the wholesale brokers sector as solo regulated by the FCA which on average is three times longer and often substantially more.

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Yes

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

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

None.

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Yes

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

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

None.

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Yes

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

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

In our response to CP 24/2 last year we fully endorsed the concept to publish an 'Enforcement Watch' publication. In terms of the timing that could be applied to the examples given, we consider that in these and any other case that this should turn on the sufficiency of information which may be gathered and published to allay any further harms from occurring. There would not appear to be any minimum or limit to the timeframe. We see no issues in periodically revising and updating any edition of 'Enforcement Watch.' We would add that in our opinion, the Arian Financial LLP would have been a good example of such a use case given the mapping to the line-by-line JMLSG practice standards that eventually came out in the thematic note, but ten years too late.

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Yes

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.

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

We would only note that the FCA impact assessment tends to be limited to the share price of public firms whereas, as set out in paras 6.13-6.15 it ought to be focused on the business activities and costs to the solo regulated cohort in general. This includes, inter alia, the cost of capital and the availability of liquidity on one hand, but also the capability to attract and retain customers and staff on the other.

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Yes

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.

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

We noted in our response to CP 24/2 last year that the FCA was proposing to be unique in its approach to naming and shaming, and this point has been set out in detail across the correspondence, evidence and reports of the House of Lords Financial Services Regulation Committee as referenced in paragraph 6.28. Simply put, until the FCA approach is adopted by the global standard setters, particularly IOSCO and the FSB, and then instigated across their G20 membership, we have no idea how the FCA can consider this change could fit into the UK competitiveness agenda in general and the FCA regards in particular.

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Yes

Other comments

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

None.

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Yes

You have now reached the end of the survey. If you want to check or edit any of your answers, please use the back button to return. To submit the survey, please press the SUBMIT button.

You will be able to download a response summary when you have submitted.