


Financial Conduct Authority enforcement to go public – a step too far?

28 March 2024  Tim Johnson

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The Financial Conduct Authority (FCA)

currently publishes little information about investigations it has opened before taking action or which do not lead to action. However, it has now proposed amending its investigation publicity policy. The proposals seek to change the way in which the FCA publishes its enforcement investigations to increase transparency of its enforcement work and the resulting deterrent effect.

The FCA says:

“enforcement action is not simply about individual instances of punishment. Its greatest impact is as deterrence, and in educating the whole market on what we expect, and where others have fallen short.”

And

“We are conscious in our proposals of the significance that any investigation can have. That is why any decision to announce an investigation into a firm will be taken case-by-case, with careful consideration of whether it is in the public interest to do so. And, given the specific legal considerations regarding information about individuals, we will not generally announce when we’ve opened an investigation into a named individual.”

The FCA has said that it will state clearly that announcing an investigation does not mean that it has decided that there has been misconduct or breaches of its requirements and that it will be transparent when it closes cases with no outcome. Nevertheless, we anticipate that many firms will be concerned about the reputational impacts of an investigation being announced, even if no breaches or misconduct are found. This is especially true as there is a time gap between an investigation starting and a finding. The FCA has said that it wants to speed up investigations, so that important signals are sent to the markets faster. However, the inevitable time between an announcement and a finding could cause damage to innocent firms.

The FCA says that:

“Even when our investigations lead to no public regulatory or other outcomes, we consider that firms we regulate would benefit from a greater understanding of the types of suspected misconduct and other failings we consider should be investigated.”

However, this could input an element of blame on firms just for being investigated when no breaches or misconduct is found. The announcement of an investigation could also have significant financial impacts and cause business to be placed elsewhere.

The FCA is also simplifying its Enforcement Guide.

The consultation closes for comments on 16 April 2024. More information [can be found here](#).

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