

FCA Consults on Second Phase of Enforcement Investigation Proposals

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Following the UK Financial Conduct Authority (**FCA**)’s February 2024 consultation on changes to its Enforcement Guide and publicising enforcement investigations (CP 24/2) (**First Consultation**), the FCA has issued a further consultation on its proposals in November 2024 (CP 24/2, part 2) (**Second Consultation**). The Second Consultation sets out changes to the FCA’s initial proposals in response to feedback from the First Consultation.

Background

The First Consultation outlined the FCA’s proposed changes to how it publicises its enforcement investigations. The FCA aims to increase transparency about its enforcement work and its deterrent effect, and to disseminate best practice. The FCA also proposed wider changes to its Enforcement Guide to reduce duplication and make information about its processes more accessible.

Many stakeholders considered the proposals set out in the First Consultation to be somewhat controversial, sparking a high volume of comments and concerns. Chapter 2 of the Second Consultation summarises the common issues raised in responses to the First Consultation.

Since the First Consultation closed to responses on 30 April 2024, the FCA has been extensively engaging with stakeholders and responding to requests for information from parliamentary committees. In an oral evidence session before the House of Lords Financial Services Regulation Committee, Nikhil Rathi, FCA Chief Executive, and Ashley Alder, FCA Chair, noted the FCA recognised the strength of feedback and would be seeking further consultation on “*fundamentally*

reshaped” proposals.

Second Consultation

In response to feedback, the FCA recently launched the Second Consultation setting out revised proposals in an attempt to address the concerns raised and provide clarity on the proposals.

In particular, the Second Consultation made a number of key changes to the original proposals:

1. **Negative Impact Considerations.** The FCA proposes to consider the negative impact (such as reputational risks) of a firm when considering the public interest test of whether the firm shall be named and announcement of the investigation.
2. **Public Confidence Considerations.** The FCA will have regard to any serious disruption to the public confidence of the UK financial system in relation to public interest considerations of investigation or enforcement announcements.
3. **Staged Consideration.** The FCA will provide its public interest consideration at each stage of the announcement process, including whether there should be any announcement at all, when the announcement should be made and details in the announcement.
4. **Greater Notice to Firms.** The firm under investigation will have ten days’ notice ahead of any public announcements and an additional two days’ notice if the FCA proceeds with any announcement, which is a significant increase compared to the one day’s notice to firms under the First Consultation.
5. **Proposal Timelines.** The FCA also confirmed that once the proposals are in effect, it will not make any proactive announcements in relation to ongoing investigations at the time, but may provide confirmation of ongoing investigations upon enquiries where the public interest test is satisfied.

Next Steps

The Second Consultation closes on 17 February 2025. The FCA Board expects to take a decision on the revised proposals in Q1 2025.

The First Consultation, Second Consultation and transcript of oral evidence session are available [here](#), [here](#) and [here](#), respectively.

Larry Wong contributed to this article.

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