

By online survey: https://www.onlinesurveys.fca.org.uk/jfe/form/SV_3yLv8Yfj5gYfYmq

17th February 2025

Dear Sir / Madam

The Chartered Governance Institute is the professional body for governance and the qualifying and membership body for governance professionals across all sectors. Its purpose under Royal Charter is to lead effective governance and efficient administration of commerce, industry, and public affairs working with regulators and policymakers to champion high standards of governance and providing qualifications, training, and guidance. As a lifelong learning partner, the Institute helps governance professionals achieve their professional goals, providing recognition, community, and the voice of its membership.

One of nine divisions of the global Chartered Governance Institute, which was established 130 years ago, The Chartered Governance Institute UK & Ireland represents members working and studying in the UK and Ireland and many other countries and regions including the Caribbean, parts of Africa and the Middle East.

As the professional body that qualifies Chartered Secretaries and Chartered Governance Professionals, our members have a uniquely privileged role in companies' governance arrangements. They are therefore well placed to understand the issues raised by this consultation document. In preparing our response we have consulted, amongst others, with our members. However, the views expressed in this response are not necessarily those of any individual members, nor of the companies they represent.

Our views on the questions asked in your consultation paper are set out below, together with some general comments on the issues raised.

General comments

We support the FCA's proposed staged decision-making process for announcing investigations. This approach improves transparency and provides clarity to the market while protecting firms under investigation. By making announcements at key stages, the FCA demonstrates active oversight and maintains confidence in the integrity of the UK financial system.

We recognise the need to balance public interest with reputational risks to firms, and the staged approach achieves a fair compromise. To enhance the process, we recommend introducing clearer guidelines on the criteria for making public announcements at each stage. This will ensure consistency, reduce uncertainty, and prevent perceptions of bias. We also suggest providing more specific examples of public interest considerations to help firms understand the threshold for announcements. This will improve predictability and allow firms to assess their risks more accurately.

Additionally, we propose introducing an independent review mechanism to ensure announcements are made appropriately. This would prevent premature disclosures and reduce concerns about reputational harm. It will also ensure fairness and transparency throughout the process.

Consultation questions

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

We support the proposed staged decision-making process for announcing investigations. However, the process could be improved by creating clearer guidelines on the criteria for deciding when to make a public announcement at each stage. While the staged approach offers transparency, ensuring consistency in decision-making across cases will reduce uncertainty or perceived bias. More specific examples of what constitutes "public interest" at each stage would help firms understand the threshold for announcements. This would enhance predictability and enable firms to better assess the risks they face during investigations. Additionally, implementing a review or oversight mechanism will ensure announcements are made appropriately and mitigate concerns about premature exposure or reputational damage.

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?

The factors identified for assessing whether an announcement of an investigation would be in the public interest provide a clear framework. We have a few suggestions that we believe would enhance its clarity:

1. **Clarity and Transparency:** The approach to weighing the public interest is good. Including the impact on stakeholders, the financial system, and the firm under investigation allows for a balanced decision. However, providing more specific examples of how these factors are applied would help stakeholders understand the process better.
2. **Public Interest vs. Harm Reduction:** Balancing the need for transparency with the risk of harm is key. The factors mitigating against publication—such as market instability or loss of public confidence—are valid. However, more detail on how reputational damage to firms, particularly smaller or newer ones, will be assessed would offer greater clarity. In some cases, the reputational impact may outweigh the public interest in disclosure.
3. **Timing of Announcement:** The staged approach to announcing investigations is sensible. However, whilst accepting that this is akin to asking 'how long is a piece of string' it would be helpful to have an indication of how long a typical initial investigative phase usually lasts. Stakeholders would benefit from knowing when to expect announcements and how the timing is decided.



4. **Educational Benefit and Raising Awareness:** Publishing information to promote better compliance, especially in new regulatory areas or emerging risks, is good. However, the FCA should balance this against the risk of over-disclosure, particularly when investigations are still in early stages and more evidence is needed.
5. **Potential Conflicts with Ongoing Investigations:** There is a risk that publication may interfere with ongoing investigations. The FCA should clarify how it will assess whether publishing could disrupt investigations, especially in cases involving multiple agencies. It is also important to establish clear coordination across agencies to avoid jeopardising any investigation.
6. **Impact on Stakeholders:** It is important to recognise the impact on employees, directors, and third parties. The FCA should be careful to consider the unintended consequences of naming a firm too early, particularly when individuals not involved in wrongdoing could suffer reputational harm.

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?

We don't have comments. We agree with the proposed amendment to apply the policy to existing investigations only through reactive announcements, limited to cases already in the public domain. This approach avoids retrospective changes and ensures ongoing investigations follow the existing exceptional circumstances test.

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?

We support the proposal to give firms at least 10 business days to respond to proposed announcements, with exceptions for extreme cases. However, the 2-business-day notice for sharing the final text and reasons is a short timeframe. Extending this to 4 business days would provide firms with a more realistic period to prepare.

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?

We support the safeguards for deciding whether to announce. Executive Directors will make decisions after considering firms' representations, independent legal advice, and market sensitivity. Allowing firms to announce first in market-sensitive cases aligns with Market Abuse Regulation (MAR) obligations. The 10-day notice provides enough time to respond, but extending the 2-day notice to 4 days will give firms more time to act effectively.



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?

No.

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

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

No.

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

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

No.

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

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

No.

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?

We agree with the rationale for anonymising announcements but emphasise the need for strict and consistent enforcement of this approach. Without clear and rigorous application, there is a risk of the policy evolving into a mechanism for naming and shaming.

Stakeholders may question the transparency of the process, perceiving it as shielding firms without accountability. To maintain trust, the FCA must ensure decisions on anonymity adhere strictly to the outlined principles.

Ambiguity in thresholds could lead to inconsistencies, creating perceptions of unfair treatment. Establishing clear, enforceable criteria will mitigate this risk and strengthen confidence in the process.

Anonymity must also balance public interest with market clarity. Without strict adherence to the rationale, announcements could inadvertently trigger negative speculation or reduce the deterrent impact of enforcement actions.



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 support including impact as a factor in the framework. However, the FCA must apply safeguards to prevent disproportionate harm to firms. Clear and consistent public disclosures and closing announcements ensure the FCA meets enforcement goals while protecting firms from market disruption.

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 support the FCA's focus on maintaining a robust regulatory environment to uphold competitiveness. We agree that early public disclosure of investigations allows firms to review and adjust their conduct, reducing regulatory and financial risks. This can benefit smaller firms and create a more balanced competitive landscape. However, we recommend that the FCA ensures its approach does not unduly burden firms, particularly smaller ones. We also recognise the UK's approach to disclosure is unique, and we stress the importance of balancing transparency with the protection of market confidence. We encourage careful consideration of the potential impact of increased transparency on competitiveness.

Other comments

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

No

If you would like to discuss any of the above comments in further detail, please do feel free to contact me.

Yours faithfully,

Valentina Dotto

Policy Adviser

The Chartered Governance Institute UK & Ireland

