IIMI Independent Investment Management Initiative

Independent Investment Management Initiative
21-27 Lamb's Conduit St,
London
WC1N 3GS
enquiries@theiimi.org

Independent Investment Management Initiative - Response to FCA Consultation Paper CP 24/2 – *'Our Enforcement Guide and publicising enforcement investigations–a new approach'*

IIMI welcomes the opportunity to respond to the FCA's Consultation Paper CP 24/2, Part 2. However, we do not believe that the FCA has demonstrated a sufficient need to introduce these proposals. The case for change has not been sufficiently made. Alternative approaches, which would be less harmful to smaller businesses and better align with the FCA's competition objectives, have not been sufficiently explored before advancing these proposals.

As a representative body for small boutique investment managers, we recognise the importance of maintaining market integrity and ensuring investor protection. However, we have significant concerns about the proportionality of the proposed measures, particularly regarding the principle of "innocent until proven guilty" and the cost implications for smaller firms.

If, despite these concerns, the FCA proceeds with these proposals without further review, we set out below our recommendations to mitigate their negative impact.

Presumption of Innocence and Regulatory Fairness

One of the fundamental principles underpinning both UK law and regulatory enforcement is that individuals and firms should be presumed innocent until proven guilty. Some of the proposals in CP 24/2, Part 2, appear to shift the burden of proof onto firms in a way that could result in premature and unjust consequences before a fair and transparent process has been completed. This is of particular concern for smaller firms, which may lack the legal and compliance resources of larger institutions to challenge potentially disproportionate actions effectively.

Regulatory enforcement should be based on clear evidence of wrongdoing rather than assumptions that may lead to unnecessary reputational and operational damage. We urge the FCA to ensure that any new measures uphold due process and provide adequate safeguards against pre-emptive enforcement that could unfairly penalise firms without sufficient justification.

Disproportionate Cost Burden on Smaller Firms

The proposed changes will likely introduce additional compliance and operational costs, which will disproportionately impact smaller investment managers. Unlike larger institutions with extensive compliance teams and financial resources, boutique firms often operate with lean structures, focusing on delivering value to investors while maintaining robust regulatory compliance.

Increasing compliance costs without a proportionate risk-based justification could stifle competition and innovation in the sector, reducing the diversity of investment opportunities available to investors. Regulatory changes should consider the differing scales of market participants and ensure that compliance obligations are proportionate to a firm's size and risk profile.

We strongly urge the FCA to conduct a thorough cost-benefit analysis and consider introducing proportionate exemptions or scaled requirements for smaller firms to prevent unnecessary financial strain.

Market Confidence and Public Interest Test

We note that the FCA's public interest test, particularly in relation to market confidence, appears to be unfairly weighted towards larger firms that, by their nature, have greater market impact. This creates a disproportionate regulatory burden on smaller firms, as enforcement actions against them may be deemed less likely to disrupt market confidence and thus more readily pursued. This imbalance risks exacerbating competitive disadvantages for smaller firms, which do not benefit from the same level of focus in the FCA's proportionality assessment as larger institutions.

Any test which makes it more likely that investigations into smaller firms are published earlier than investigations into larger firms is fundamentally incompatible with the FCA's competitiveness objective. Regulatory requirements should not be structured in a way that creates an uneven playing field, particularly when smaller firms are already at a disadvantage in terms of compliance resources.

We urge the FCA to ensure that the public interest test applies fairly across all firms, regardless of size, and to introduce safeguards to prevent smaller firms from bearing a disproportionate share of enforcement actions. Furthermore, we strongly recommend that all decisions regarding the publication of enforcement investigations be made independently of the FCA executive. We propose the establishment of a dedicated panel where smaller firms hold the majority voting power. The terms of reference for this panel should explicitly require the scrutiny of the impact of publication, the application of the public interest test, and proportionality considerations to ensure a fair and balanced approach that does not unduly disadvantage smaller firms.

Additionally, we urge the FCA to shift the burden of publication so that enforcement investigations are only published where it is demonstrably in the interests of market stability and the public. The default position should be non-publication unless the FCA can provide clear evidence that disclosure serves a greater market and public interest. This will prevent unnecessary harm to firms where there is no clear justification for publication and ensure a balanced, fair approach to transparency.

Interim Measures for Unregulated Firms

We understand that one of the factors driving the FCA's proposal is that a large proportion of its investigations are performed in relation to unregulated firms. In such cases, there may be circumstances where interim measures are needed to protect the public from harm while an investigation is completed. However, burdening other firms with unnecessary publication requirements is not the appropriate solution to this issue. If the FCA's primary concern is the regulation of unregulated firms, it should examine its current legislative powers to identify where these are insufficient to deliver protection

from harm and seek to have these addressed in a direct manner, rather than imposing broad and disproportionate transparency measures on all firms.

Such interim measures—potentially including the public disclosure of an investigation—should be subject to a court hearing (held in private where appropriate) rather than being imposed at the FCA's sole discretion. This is particularly critical because premature disclosure could easily drive a firm out of business. While there may be justification for a looser test when imposing interim measures against unregulated firms, the FCA's current proposal is an inadequate way to address this concern and could result in severe unintended consequences.

Conclusion

We do not believe that the case for these proposals has been sufficiently demonstrated, and we note that alternative measures, which would be less harmful to smaller firms and better aligned with the FCA's competition objectives, have not been sufficiently explored. Before proceeding, the FCA should reconsider whether these measures are necessary and evaluate alternative approaches that do not create disproportionate burdens on smaller firms.

If the FCA decides to move forward without further review, we urge that the recommendations outlined in this response be incorporated to mitigate the negative impact on smaller businesses. We welcome the opportunity to work with the FCA to develop practical solutions that balance regulatory objectives with the need for a fair and proportionate regulatory framework.

We appreciate the opportunity to provide this feedback and look forward to continued dialogue on this important matter.