FCA BACKPEDALS: "NAME AND SHAME" AND DIVERSITY AND INCLUSION REQUIREMENTS AXED, AND NON-FINANCIAL MISCONDUCT RULES DELAYED

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UK Policy and Regulatory Alert

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The United Kingdom's Financial Conduct Authority (FCA) has announced significant changes to its regulatory approach, including dropping the obligation to “name and shame” firms under investigation, dropping the proposed “Diversity and Inclusion” (D&I) requirements, and delaying the promised reforms addressing non-financial conduct in financial services.

“NAME AND SHAME” DISMISSED

The FCA had proposed to publicly disclose investigations into firms at an early stage to adhere to the “public interest” and increase consumer confidence in their function as the United Kingdom's public watchdog.

However, following significant criticism from the financial industry and Parliament, largely concerning premature disclosure causing irreversible damage to firms even if they were later cleared of any wrongdoing, the FCA has deserted the idea. However, it should be noted that whilst the FCA decided to abandon its controversial proposal to name the subjects of its investigations, there remains the potential that the FCA will rely on the pre-existing “exceptional circumstances” test when seeking to make its investigations public.

The parameters of what would amount to “exceptional circumstances” remains unclear. This provision should only be used in “limited cases” when the FCA believes there is a serious risk to consumers or market integrity.

The FCA will proceed with the rest of the proposal to publish information concerning investigations in the following circumstances:

1. Reactively confirm investigations that are officially announced by others, such as market announcements, disclosures made by the firms themselves, or announcements by a partner regulator;
2. Publicly notify the unlawful activities of unregulated firms and regulated firms operating outside the regulatory perimeter to protect consumers or further the investigation; and
3. Anonymously Publish issues under investigation using a regular bulletin such as Enforcement Watch.

Despite aiming to balance public accountability with the risk of unfairly harming firms and individuals under investigation, the lack of transparency in the parameters of the “exceptional circumstances” test, especially with

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the FCA having desired to publicly "name and shame," causes understandable concern for many within the financial industry.

D&I DROPPED

In September 2023, the FCA, alongside the Prudential Regulatory Authority, aimed to improve D&I in the financial services industry by requiring firms to collect and report diversity data and set targets to incorporate and grow their D&I to ensure a more inclusive workplace. These requirements would, according to the FCA at the time of its proposal, improve outcomes for both consumers and the market.

However, in light of the criticism from the industry arguing that the imposition of D&I requirements from a regulator could cause too much of a burden on creating another "tick-box" exercise and that instead it should be a voluntary requirement, this proposal has been retracted by the FCA.

The FCA has dropped the formal D&I requirements and has fallen back to its original position: encouraging financial institutions to improve diversity on the terms they see fit on a voluntary basis.

DELAYS IN NON-FINANCIAL MISCONDUCT POLICIES

Having scrapped both plans to address transparency through the "name and shame" proposal as well as having dropped the initiative to implement stronger D&I requirements, the FCA has also decided to delay its work on non-financial misconduct. Non-financial misconduct involves issues such as sexual harassment, bullying, and other workplace misconduct in the financial services industry.

This comes in response to an inquiry launched by the Treasury Select Committee named "Sexism in the City," which found a "shocking" prevalence of sexual harassment and bullying in the financial services industry. In the three years covered by the survey, bullying and harassment made up 26% of cases, discrimination made up 23%, and 41% was categorized as other, indicating the difficulty in categorizing areas and issues of personal misconduct. Only 43% of cases had disciplinary or "other" actions taken. The committee said both the government and financial regulators have an important role to play in driving this change.

Despite the survey and recent high-profile cases, the FCA has delayed the publishing of new rules on nonfinancial misconduct until June 2025.

Despite this delay, the FCA has reaffirmed that tackling nonfinancial misconduct remains a priority, particularly under the conduct standards found within the Senior Managers and Certification Regime.

WHAT DOES THIS MEAN FOR FINANCIAL FIRMS?

It seems the FCA is attempting to balance the need for transparency and accountability with industry concerns.

In balancing these concerns, the following position is agreed:

4. Investigations into firms will not be automatically disclosed, unless they fall within the "exceptional circumstances" test.
5. D&I will remain a voluntary initiative, rather than a regulatory requirement.
6. Non-financial misconduct rules are coming, however, with delay.

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If you have any questions on the FCA's position on any of the three beforementioned points or want further advice on how to adhere to the upcoming policy on nonfinancial misconduct, please do not hesitate to contact the authors listed above.

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