

Enforcement and Markets Oversight and Supervision Divisions  
Financial Conduct Authority  
25, The North Colonnade  
Canary Wharf  
London  
E14 5HS

25 June 2018

Dear Sir/Madam,

**PRACTITIONER PANEL RESPONSE TO FCA APPROACHES TO SUPERVISION AND ENFORCEMENT**

The two consultations ask if the respective documents set out the FCA's approach to supervision and enforcement clearly, and whether there are other issues relating to its approach to supervision and enforcement that could benefit from further clarification. The Panel has some comments which relate to both consultations and is therefore replying to both in the same response.

*Supervision*

The recent Panel and FCA joint survey of regulated firms identified several areas which the industry considers important and in which the FCA could improve its performance. One of the suggested areas was to be more forward looking. The Panel has also raised the point that the FCA must make conscious efforts to regulate the industry as it will be in future, not as it has been in the past. We are encouraged by the upfront commitment by the FCA in the approach to supervision to take a forward-looking and strategic approach in its supervisory work. We have followed with interest the FCA's work on culture, and are working with it to identify areas where the regulator, as well as the industry, might benefit from innovation.

We are encouraged by the commitment by the FCA to place equality, diversity and inclusion at the heart of its activity. The Panel believes that diversity of all types within firms is important, as poor conduct and firm failures have often been as a result of a monoculture and therefore merit more prominence in the culture debate.

In terms of absolute numbers, the vast majority of firms are supervised by the FCA on a flexible portfolio basis and do not have individual supervisors. It is therefore extremely important that the FCA's proportionate and risk-based approach takes this into account. A broad range of sources of intelligence must be used to identify and prioritise potential harm relating to the actions of firms which are not directly supervised and to reduce the risk of such harm occurring.

We also believe it is important that FCA staff have the capabilities to interpret the drivers of culture in their conversations with firms to focus on the outcomes achieved rather than mechanical processes. Culture varies within firms of different sizes, and in particular there are different pressures on publicly listed versus privately owned and mutual organisations. The FCA could also benefit from studying the governance structures of firms outwith the financial services industry for evidence of good practice.

The reaction of senior management in firms when something goes wrong needs to be proportionate as it is a critical determinant for the next time. The FCA needs to be

careful that an unintended consequence of the Senior Managers and Certification Regime is not self-protection at all levels within firms, and that focusing on the five conduct rules rather than a tick-box approach will help to change culture in the right way.

### *Enforcement*

The Panel welcomes the FCA's operating model for enforcement, in particular the focus on suspected serious misconduct, earlier referral and more strategic planning to increase efficiency and the swift resolution of cases. We particularly support the commitment to identify serious misconduct quickly to more easily reduce its consequences.

In the past the Panel has noted that enforcement investigations can seem very open-ended and better visibility of timelines would be welcome, therefore we are pleased to see the commitment in the document to measure the timeliness of the FCA's investigations and actions.

### *General points*

The consultations ask if there are any areas which could benefit from further clarification. The FCA's articulation of its decision-making framework in the Mission document was welcomed by the Panel and we are pleased to see it being carried through to the approach to supervision (although not, we note, in the approach to enforcement). It would be helpful if there was a more explicit communication of the FCA's success metrics both for supervision and enforcement, and in particular in the case of enforcement, measurement of the benefits achieved by intervention.

Yours faithfully,

Anne Richards  
*Chair, FCA Practitioner Panel*