



REGULATORY INVESTIGATIONS CHECKLIST

INITIAL CONSIDERATIONS

Who should know?

Consideration should be given to who should and shouldn't know that an issue has arisen and is being investigated. Internally you should consider whether the following people should be involved: Senior Management, HR, In-house Counsel, IT and the line manager of the individual(s) involved. Externally you should consider whether the FSA, SOCA, the relevant exchange, your clients and your insurers need to know at this stage.

As far as possible, information about the investigation should be kept to a need-to-know basis to ensure that nobody is tipped off and any sensitive information is appropriately controlled.

How is the investigation to be conducted?

There must be a clear reporting line for the investigation. Consideration as to who is going to it is important. If it is going to be conducted in-house should it be lead by legal, compliance, internal audit or Senior Management? If it is going to be conducted externally there are a number of advisors you could turn to: lawyers, auditors, forensic accountants and the FSA. Consideration should be given as to the importance of establishing legal privilege.

Information

Immediate steps should be taken to preserve existing information that may be useful to the investigation. Accordingly, it is likely you will need to involve your IT team.

Consider the position of the suspect employee

Should you immediately suspend the suspect employee, monitor or interview them?

The timing of any action is important. If you act too early you may tip off the employee (or any accomplice) and valuable information may be lost or contaminated. If you act too late then further suspect activity may take place and the FSA may question why action was not taken earlier. Removing employees from the trading floor should be done with care as it is likely to be a very public and sensitive issue.

INVESTIGATION

What investigations will take place?

If it is appropriate to interview the employee concerned you should establish what the purpose of the interview is and what information you hope to glean from it. It may be appropriate to seek employment law advice from both the employee's point of view (e.g. whether he should have a legal representative present) and from the business's point of view to ensure it is conducted correctly. In addition, the business's internal disciplinary procedure should be followed.

Internal review

An initial review should be conducted and the FSA will expect that a review demonstrates that:

- the project team is sufficiently skilled to carry out the investigation;
- senior management were actively involved in the review;
- the investigation is full in terms of time, scope, areas of the business and individuals involved;
- ongoing business will not be affected as a result of the investigation; and
- sufficient stop gap measures have been introduced in order that similar problems can not occur during the interim period, whilst the more detailed systems and controls review is being carried out.

DEALING WITH/NOTIFYING THIRD PARTIES

The regulator

Depending on the nature of the suspect activity you may be subject to self-reporting obligations to the FSA. You should take into account the concerns of compulsory cooperation, voluntary cooperation and also potential self-incrimination and confidentiality issues.

If you do contact the regulator it is important that the problem has been thoroughly identified, analysed and investigated. Notification must happen as soon as is possible, but only once you are sure of the facts.

Others

You will probably have an obligation of full and frank disclosure to your insurer in respect of circumstances that may give rise to a claim. They will probably require information similar to that provided to the FSA.

A well thought out media response may be required.

Clients may need to be advised of the situation as you may have breached your terms of engagement.