

Investigations



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Contents

- How to undertake a compliance investigation
- The importance of confidentiality
- The importance of impartiality
- What to do if the regulator comes calling
- Case study (if we have time)

The Golden Rules of Investigations

- 1) Don't assume it is an investigation! It could just be an issue or an alert
- 2) Do not prejudge
- 3) Think – and think both systematically and systemically
- 4) Protect information and retain confidentiality
- 5) Discuss (where you can)
- 6) Escalate
- 7) Seek expert advice
- 8) Retain essential skills
- 9) Consider link with whistleblowing
- 10) If it turns into an investigation: planning

Alerts v Investigations

- An alert tells that you that something might be amiss
- An investigation means that you are taking an alert seriously and are applying some formality of approach
- An investigation is a thorough search for facts, especially those that are hidden or need to be sorted out in a complex situation. The goal of an investigation is usually to determine how or why something happened. Investigations are usually formal and official.
www.dictionary.com

What are the Questions?

- What have you found out?
- Have you got all of the facts?
- What are the immediate issues and risks? Does it pose regulatory or reputational risks?
- Does it need to be escalated or do you need further information?
- To whom should it be escalated?
- Could it be systemic? E.G., if something has occurred on one desk, could it be prevalent on other desks and in similar products in other regions?
- Whom should you involve?
- Beware communications!
- Do you need to report your suspicion?

When Does an Investigation Start?

- Only once you have escalated the alert
- Once the alert is deemed worthy of a more formal approach...
- ... where it represents regulatory, reputational or conduct risk
- At the instruction of senior management or the regulator

How Important is Confidentiality?

- It is potentially crucial
- Consider the effect on the firm
- Consider the effect on individuals

- Keep it all very close
- Consider NDAs for external parties
- Consider information walls, even within Compliance
- Code names, locked cabinets, etc.

Who Should Conduct an Investigation?

The importance of impartiality

The investigator should ideally possess all the following:

- An ability to investigate objectively without bias
- No stake in the outcome. The investigator should not have a personal relationship with the involved parties. The outcome should not directly affect the investigator's position within the organisation
- Skills that include prior investigative knowledge and working knowledge of the relevant laws and regulations
- Strong interpersonal skills to build a rapport with the parties involved and to be perceived as neutral and fair
- Attention to detail
- The right skills and temperament to conduct interviews

Who Should Conduct an Investigation?

Your choices in practice:

- HR
- Compliance
- Internal Audit
- Specialist internal or external investigators
- Former trader/salesperson
- External counsel
- “Skilled Person”
- Senior management

When an Investigation Starts, What Should You Do?

Planning:

- an outline of the issue
- resources and timeline required
- development of an interview list
- sources for information and evidence
- interview questions targeted to elicit crucial information
- a process for retention of documentation
- Communication: senior management, regulators, others?

Key Questions

- What is an alert?
- Where do alerts come from?
- What are the questions that we should ask?
- If a regulator asks about a transaction, what should we look at?
- How far should you look?
- When does a review/alert stop and an investigation start?
- Who should conduct an investigation?
- When an investigation starts, what should you do?
- What should your thought processes and actions be during an investigation?
- How important is confidentiality?
- **Should we be careful about what we're saying?**
- What happens if we missed it?

Should We Be Careful What We are Saying?

“I can’t believe what he did. He should be fired for that”

Compliance Manager in an e-mail to a Compliance colleague

FCA on Investigations by Firms

- Speech by Jamie Symington, Director in Enforcement, 2015:
- <https://www.fca.org.uk/news/speeches/internal-investigations-firms>
- Self-reporting: “earliest opportunity”
- Do not prejudice FCA investigations
- Regulators do not just accept firms’ investigations
- But: FCA encourages firms to investigate proactively when there are concerns to ensure accountability and remediation
- FCA gives credit to firms which assist in unravelling misconduct
- Efficiency and speed of outcome
- The benefits – efficiency and speed of outcome
- Fully transparent and expedient cooperation with the FCA

FCA on Investigations by Firms

- Speech by Jamie Symington, Director in Enforcement, 2015:
- Independence
- Are senior management invested in the outcome?
- Early engagement with the FCA
- Discuss scope with the FCA
- Disclosure of privileged material – balance needed, no “gaming”
- Proper management of conflicts of interest
- Informing the FCA of progress
- Need for transparency
- FCA are mindful of their need for confidentiality

What to do if Your Firm is Investigated

From me!

- A. Verify the identity of those investigating
- B. Warn senior management as soon as possible
- C. Get the right people involved
- D. Keep a record of documents provided/taken
- E. Include your Corporate Communications/PR team

From the Dubai FSA!

- 1) Co-operate, co-operate, co-operate
- 2) Be frank and fulsome
- 3) Engage (good) outside counsel
- 4) After consulting with us, do a thorough internal investigation and take appropriate internal disciplinary action
- 5) Be objective and try not to get locked into a defensive posture or wedded to a favourable version of events
- 6) Be open to settlement

Case Study Turn 1

- You are a Compliance Manager for XYZ Ltd. You manage a team which is involved in reviewing KYC files, transaction monitoring for potential ML and sanctions breaches and monitoring for potential market abuse.
- One of your team members wants to discuss Harry Enterprises Limited. HEL is incorporated in the UK, but its precise ownership is unclear. Its business activities, however, are very clear. HEL is involved in import and export and has a shipping division which transports goods all over the Middle East, East Africa, Eastern Europe and Asia.
- The Client Executive has asked the main HEL contact about the ownership of HEL. He states that HEL is 100% owned by Bobby Enterprises, a company incorporated in Estonia.
- **Is there any further information that you need?**

Case Study Turn 2

- The UK rep of HEL is initially reluctant to provide information to the Client Executive, as he states that Bobby Enterprises has relationships with HSBC, Standard Chartered and Danske Bank.
- “What more due diligence does a company need?”
- When the Client Executive says that XYZ will refuse to do business with HEL if no further information is forthcoming, he states that Bobby Enterprises is owned 100% by Bobby Vince, a UK national born in Belarus. Mr Vince has been a UK resident for twenty years, received an investment visa from the UK in 2008 and became a UK citizen in 2018. Mr Vince has received convertible loans from three hedge funds in the Cayman Islands, each representing 25.1% of the BEL share capital. The loans are convertible to equity at the request of Mr Vince.
- Your media search suggests that there were allegations of extortion and money laundering against Mr Vince in Belarus and the Soviet Union in the early 1990s. You conduct EDD and discover that these were unproven and there was no conviction attached to them.
- **Do you have any questions? Do you feel there is a need for escalation and to whom?**

Case Study Turn 3

- Harry Enterprises Ltd is up and running as a XYZ customer. The CE has recently been told by the UK rep that HEL has started to transport goods to Nigeria. These goods include semi-conductors.
- The RM has been told that HEL has a very good customer based in Nigeria purchasing semi-conductors for export to Chad.
- **Do you have any questions?**



Case Study Turn 4

- Due to the continuing noise around HEL, you decide to conduct a financial crime deep dive into the company and its activities. Through the CE, you discover that Mr Bobby Vince has exercised his conversion rights with two of the three hedge funds. He now owns 49.8% of the holding company's capital. It appears that he is currently in discussions with the third hedge fund.
- You ask for a map of HEL's shipping routes for the past six months and you notice that there have been a number of trips from South Africa and Zimbabwe to China. When you ask for copies of the bills of lading, you are told that BEL has had a fire in its offices and that certain records have been destroyed.
- **What other information do you need?**
- **Do you have any questions?**

Proliferation Finance

- *“the act of providing funds or financial services which are used, in whole or in part, for the manufacture, acquisition, possession, development, export, trans-shipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials (including both technologies and dual-use goods used for non-legitimate purposes), in contravention of national laws or, where applicable, international obligations”*
- FATF's Working Group on Terrorist Financing and Money Laundering

Proliferation Finance

Red Flags may include:

- Any country named in the documentation that is itself subject to relevant sanctions, is an embargoed destination or has strong links to terrorist activities or organised crime.
- Customers who are on national lists relating to high risk entities.
- A military or research body connected with a higher risk jurisdiction.
- A customer is involved with the supply, purchase or sale of Dual Use Goods.
- Financing of sensitive industries in a high risk jurisdiction.
- Delivery of high volumes of dual use, proliferation sensitive or military goods, especially to a high-risk country.

Questions and Summary of Key Learning Points

- Think, Discuss (where you can), Escalate
- Escalate if you have questions or concerns

Thank you for attending

Any Questions?

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