

Financial services briefing

A new tactic in FSA market abuse investigations

As part of its increased focus on the detection, prevention and prosecution of cases of market abuse the FSA appears to be using a new investigatory tool: “cold-calling” traders and investors it suspects.

FSA “no notice” approach to market abuse investigations

A member of the FSA’s wholesale enforcement division has recently confirmed that the regulator is using a new investigatory tactic in relation to suspected cases of market abuse. In certain cases, where it has formed a suspicion, the FSA has telephoned traders and investors without prior notice, conducting interviews “under caution” – the same caution given by police officers when interviewing suspects – with the aim of establishing the facts relating to, and the reasons for, the particular trade. According to press reports, this tactic has been used in 15 cases in recent months. The FSA has said that it assesses on a case-by-case basis whether such “cold-calling” is an appropriate step.

Action to be considered

Although regulated firms and approved persons must be open and co-operative with the FSA it may be prejudicial to the interests of your staff – and your firm – if traders are “bounced” into an interview with the FSA at the start of what may become a criminal investigation, without first speaking to the compliance or legal department. You should ensure that all relevant members of staff are aware that they may receive such cold calls from the FSA and that, if so, they should politely decline to be interviewed there and then over the telephone. We consider that it would be reasonable for the person concerned to ask to speak first to his or her compliance or legal department and to request that the interview be held shortly afterwards with the compliance officer or lawyer present.

If you would like further advice on this issue, please contact Margaret Chamberlain or Jane Tuckley in the Financial Services and Markets Department or Stephen Paget-Brown in the Litigation Department.

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“We will continue to use all the evidence gathering techniques currently available to us to pursue the right cases... there is much we can do to enable us to be more efficient and effective in the way we identify potential instances of insider dealing and, in particular, using what may be seen as more aggressive investigative techniques...”

The FSA's approach to insider dealing -
Speech by Margaret Cole, FSA Director of
Enforcement, FSA (4 October 2007)

As expected, the FSA is flexing its investigatory and enforcement muscles in its fight against market abuse.