

FSA THEMED VISITS

Background

Having launched its Arrow II process most small business will find that the assessment process will have no impact on their relationship with the FSA.

In its introduction the FSA itself has indicated that 95% of firms will be classed as “small” and therefore:

- There will be no assessment under Arrow II;
- Contact with these firms will be handled by the FSA contact centre – there will be no dedicated “relationship manager”; and
- Firms will be contacted on an exceptions basis* with case teams being allocated to a firm on a case by case basis (dependant on available skills at the time of the visit and the issues in question).

** The FSA can be alerted to exceptions in a variety of manners. For example this may be through either regular reports sent to the FSA, complaints against the firm or even through the firms response to specific questionnaire that it may be/have been sent.*

Exceptions to the rule

As with all rules there is one exception. In order to manage the risks in the market place the FSA regularly conducts analysis on individual issues. These are called Theme Visits and are FSA regulated firm wide and industry wide.

In its 2006/7 budget the FSA declared that they would “continue to increase our (the FSA) emphasis on taking a thematic approach to the identification and mitigation of key risks.” They explained that “Thematic work involves examining a particular issue or set of issues across a range of firms; it is a key supervisory tool, allowing us (the FSA) to respond quickly to emerging risks.”

In effect, this means that all firms, not just higher risk firms may receive a theme visit. Firms are selected from a visit by the FSA in order to allow them to gain a good understanding of the theme across all sectors of FSA’s remit.



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Therefore selection is likely to be part targeted; part judgemental; and part random sampling, the extent of which will be dependant on the nature and type of risk being reviewed.

Although themed visits are not intended to be formal investigations, they can lead to the FSA taking further action based upon their findings. Ultimately this could include enforcement action. As the visits are not conducted by relationship management staff they can also be more hostile in tone, being more business like and purposeful than regular visits by a firm's supervisor. The team supporting a theme will in all likelihood include relevant experts in the field and consequently this may include the FSA Enforcement Division representatives.

Therefore, whilst firms should not respond in an overly formal or legalistic manner, they do need to take care about the way in which they respond to them and remember that the FSA principles require the firm to be open and honest. We set out below ten top tips for dealing with a themed visit.

We are happy to provide assistance if you are concerned about an upcoming FSA themed visit. For more information on our service or for further information regarding this article contact:

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Top Ten Tips for dealing with a Themed Visit

1. Find out the exact scope of the area that the FSA is investigating and check for any previously publicised concerns the FSA has;
2. Form a core team to deal with the visit and draw up a list of key employees to whom the FSA are likely to want to talk and prepare them for the visit;
3. Remember that those conducting the visit are unlikely to be your normal supervisors and will therefore be unlikely to have knowledge of the processes at your firm;
4. Take care regarding the disclosure of privileged documents to the visitors or the creation of documents likely to be unhelpful in future civil or regulatory proceedings;
5. Keep records of what documents have been copied by the visitors;
6. Be present when the visitors interview employees but remember that notes of the interviews are very unlikely to be protected by legal professional privilege;
7. Ensure that interviewees do not answer questions when they are purely guessing at the answers. Uninformed speculation helps neither the FSA nor the firm and can lead to unnecessary time being incurred in sorting out any confusion which arises;
8. Remember that you may not be able to answer all questions at the visit but can always follow up with a letter;
9. Ask for a debrief both so as to obtain feedback and understand what areas may be of concern to the FSA and so as to clarify any misunderstandings; and
10. Remember that the FSA may visit not only the firm itself, but also its advisers, clients, counterparties and companies to which it has outsourced any of its functions.