

Insights

## 6 TECHNOLOGICAL SOLUTIONS TO TOUGH CHALLENGES; IDENTIFYING AND MANAGING REGULATORY AND LITIGATION RISK

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### SUMMARY

When it comes to complex trading investigations, there is no magic bullet. Our experience acting for both institutions and individuals when conducting investigations in this area and in dealing with criminal charges has revealed recurring themes to keep front of mind.

Investigations involving financial trades can be some of the most challenging that we come across. Trading activity is frequently the subject of internal investigations, civil enforcement actions and criminal investigations. Here are six key points to keep in mind, borne out of our experience acting for both institutions and individuals.

1. **Make no assumptions.** It is critically important that any internal or external investigation does not take for granted the completeness or accuracy of material provided by regulators or other third parties. It is common for incomplete data to be provided and for inconsistencies and errors to occur when regulators or third parties are selecting trading data to use in an investigation.
2. **Communications are key.** In the context of internal investigations it can be difficult to know where to begin looking at the data. In these situations, a good starting point will often be a careful review of the communications. This can lead to a train of enquiry that helps the investigation to focus on a narrower subset of trading data.
3. **Review and re-review.** Invariably communications reviewed in the early stages need to be looked at again in order to spot their true relevance. Conversations that at first blush seem innocent or irrelevant can come to be highly relevant, once you understand the particular patterns of behaviour that the traders have been engaged in and the language that they are using.
4. **Stay disciplined.** Time spent at the start of the investigations developing a rich coding system that enables people to access what they need quickly will pay off over the longer term when

many different stakeholders and experts from various disciplines need to have fast access to the trader communications being identified as relevant.

5. **Keep on top of your regulatory notification obligations.** In the context of internal investigations of potential trader misconduct, firms need constantly to be mindful of their regulatory notification obligations and to keep under review any requirement to notify a regulator triggered as a result of information identified in the investigation.
6. **Pay attention to your insurance coverage.** Directors & Officers insurance policies often have exclusions or clawback provisions that bite where criminal or dishonest conduct is established.

Each investigation inevitably throws up new issues based on its own specific facts. What is common to all of them is that they have profound implications for institutions and potentially devastating consequences for individuals. Keeping these six points front and centre will stand you in good stead.

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Mukul Chawla QC, Oran Gelb, Polly James and Anthony Williams wrote about this in our Emerging Themes in Financial Regulation 2021 publication.

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