

FSA update – MSON 2021

26 March 2021

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FINANCIAL SERVICES AUTHORITY

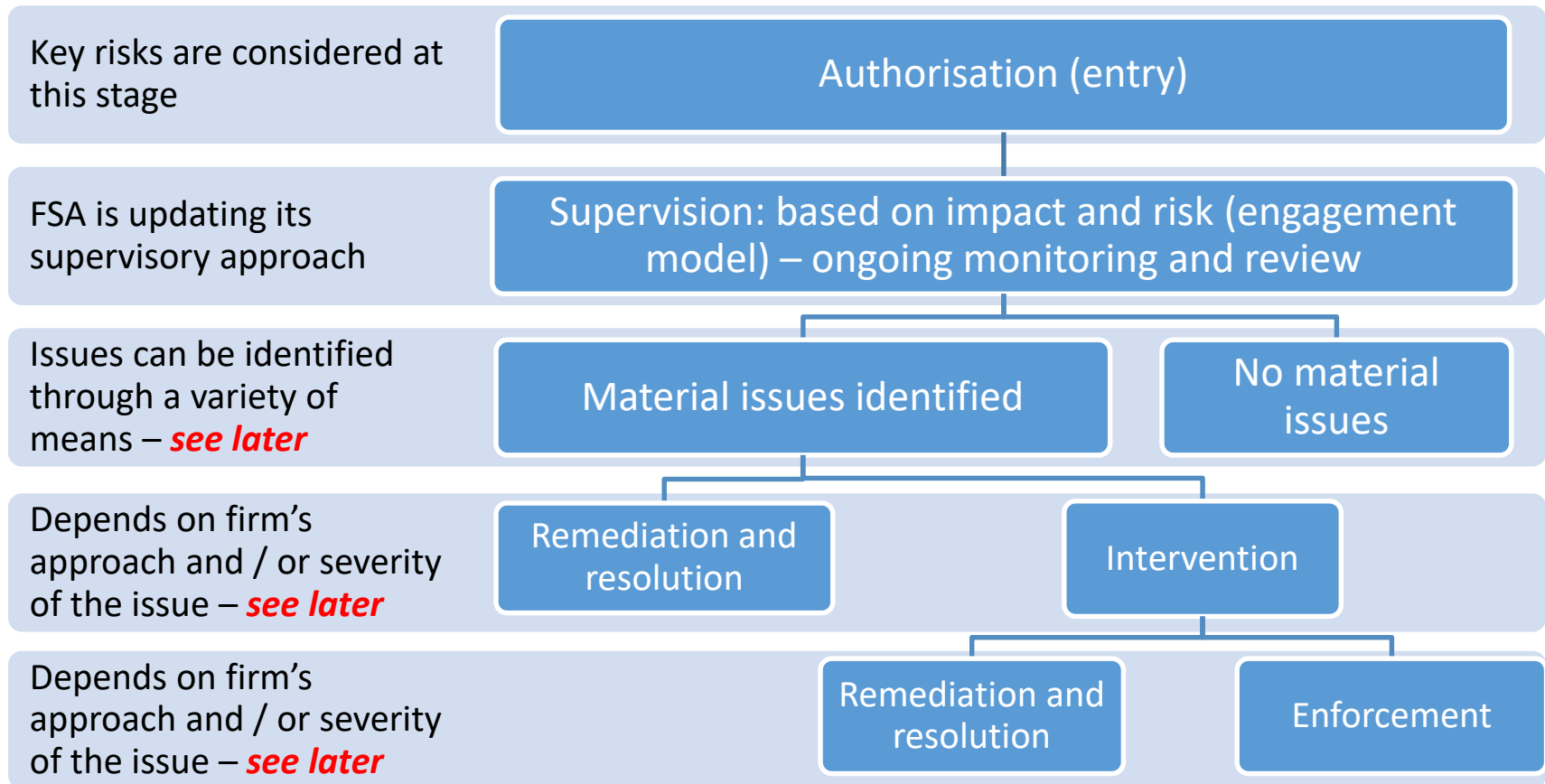
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Life cycle of a firm



Remediation & resolution can overlap with intervention & / or enforcement



Assessment and engagement: overview

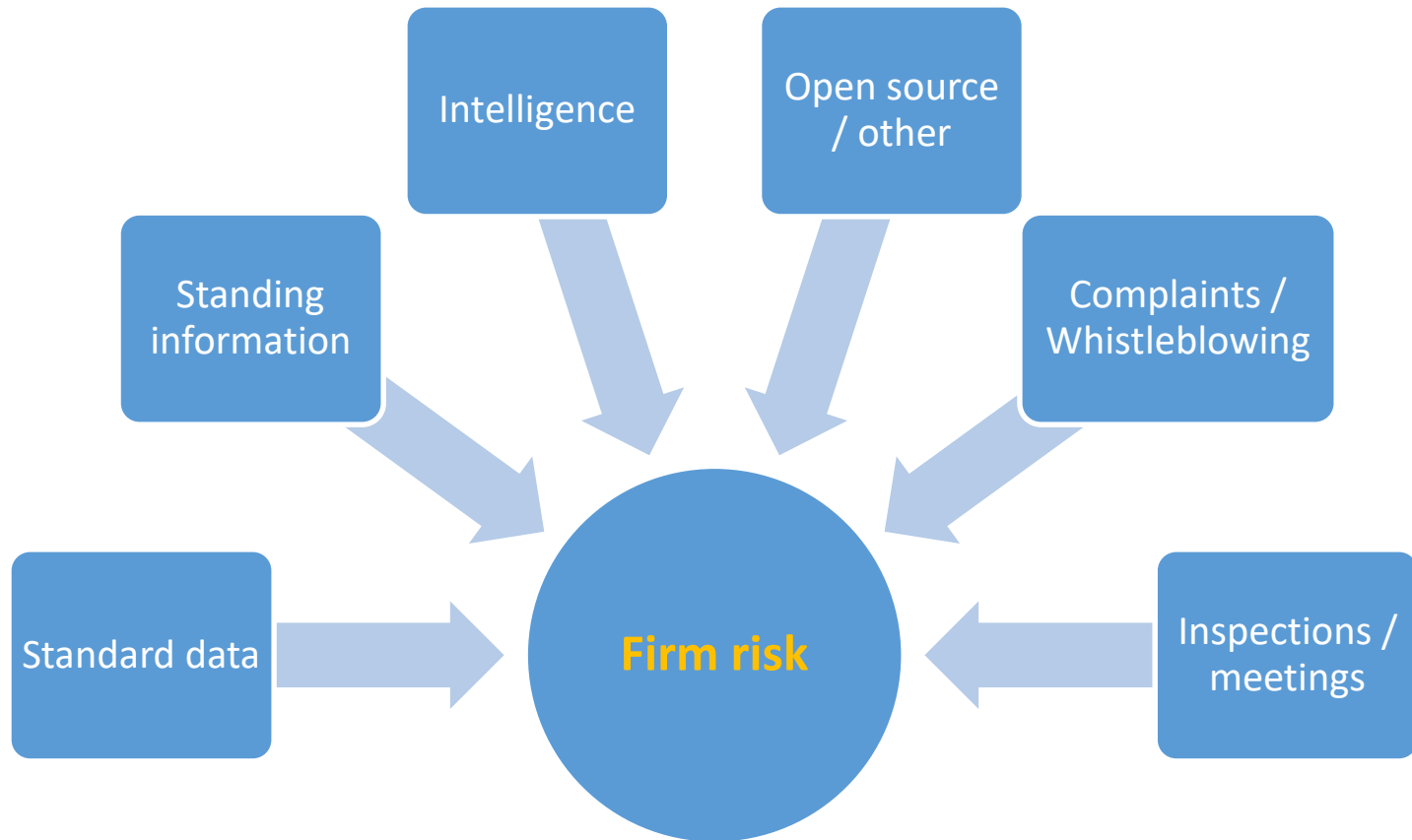
- **Assessment** of a firm is based around **RISK** and **IMPACT**
- To assess **Risk**, the common approach is to consider **Inherent Risk** (the risks a firm runs before mitigation) and the quality of **Governance, Management and Controls**.



- Supervisory tools can then be deployed to address the higher residual risks, and the focus may differ depending on a firm's impact rating. **These supervisory tools may include intervention measures.**



Assessment: information sources



Engagement

- Generally, higher impact or higher risk = more engagement
- Engagement is **targeted** and not strictly formulaic – need to be flexible
- Engagement model includes:-
 - Inspections: targeted programme
 - Thematic work (this may include an inspection element)
 - Periodic meetings: can be focused on specific topics, or with specific functions (e.g. compliance, internal audit, independent directors)
- Inspection process has been reviewed and is now being piloted, key changes include:-
 - More time for desk based review of material (pre inspection)
 - Consistent presentation of reports across all sectors
 - Focus on observations and conclusions only (not setting actions)
 - Firm must put in place an appropriate action plan



Intervention / remediation: why is this happening?

- Firm self identifies and reports material issues
- Most sectors should be mature and understand the requirements
- Material deficiencies observed despite cycles of inspections
- Too many instances where remediation of historic issues has not been effective, hasn't stuck or obvious that lessons not learned
- Some pockets of cultural / governance issues remain
 - Tone from top and / or adequacy of oversight
- Business model / risk not supported by suitable or adequate resources

We must have appropriate tools, and credible deterrents, to use, where needed



Intervention / remediation: triggers

- Inspection work
 - Uses other sources of information to drive focus
- Intelligence
 - Tip offs / other regulators / open source
 - Whistleblowing
 - May itself lead to an inspection
- Self reporting by firms
 - Encouraged (open and transparent)
 - Root cause?
 - Materiality



Intervention / remediation: approach

Identify

- Firm (self reporting) or FSA?
- Extent (including timescales) and impact of deficiencies
- Causes of deficiencies

Remediate

- Viable plan / steps being put in place by the firm; suitable resources
- Ongoing monitoring and reporting – including assurance (internal / external)
- Ownership by the board to resolution
- May in itself require board change

Intervene

- Depends on firm's approach to remediation (above), its business model and viability of remediation
- May include putting in place restrictions
- May include the use of third party professionals (further investigation, control)
- May result in referral for enforcement



Intervention / remediation: toolkit

- Discussion and agreement (do not use formal powers)
- Directions, for example:
 - to do something (to address a problem); or
 - refrain from continuing to do something (to stop the problem getting worse)
- Appoint a third party to prepare a report, or advise, on the affairs of a firm, for example:
 - To review past matters and current state of play
 - To act as a “signatory” for specific business (“no objection process”)
 - To review a firm’s remediation and provide third party assurance – ***effectiveness of changes***
- Use directions and appointments in ***combination***
- Can use public statements
- ***The above are supervisory powers, not enforcement***
- ***Remediation Panel considers approach adopted – participants from across supervision & enforcement for more serious matters***



Intervention / remediation: outcomes

1. Firm moves back into “compliance”; intervention tools removed
2. Firm needs more time for change; intervention tools varied / adapted (phased) – firm eventually moves back into “compliance”
3. May still lead to enforcement investigation (firm or individuals) or public statements
4. Firm cannot remediate successfully – other action pursued, likely to include enforcement



Key observations / learnings

- Governance
 - Tone from the top
 - Lack of board oversight
 - Conflicts management
 - Willingness to address issues flagged internally
 - Independent challenge / health checks
 - Willingness to change and learn from third parties
- Risk appetite / business model
 - Adequacy of resources
 - De-risking (AML/CFT)
 - The role of compliance



Whistleblowing

- Firm requirements
 - Frameworks required for **all** regulated entities; clearly communicated to staff
 - Encourage the reporting of improper or unlawful behaviour
 - Internal reporting structure; staff to raise concerns directly with the Authority if they feel not being adequately addressed internally
 - Adequately and appropriately protect the whistle-blower from any negative repercussions arising from reporting in good faith, including confidentiality
 - Ensure that matters are considered objectively, and appropriate action taken



Whistleblowing

- To the Authority
 - Ideally after raising directly with employer, and remain unsatisfied at end of process
 - FAQ on whistleblowing on FSA website
 - We will treat the communication sensitively and do our best to protect identity
 - Very important intelligence
 - Internal process to consider **all** reporting / disclosures; we will use the information to shape our work in a discrete manner
 - Can't inform whistle-blower what action taken; restricted information
 - The protection is under employment law; protected disclosure matter for employment tribunal

