



Tips from *The Hitchhiker's Guide to the Galaxy* for Responding to a Regulatory Exam

By: Ryan P. Smith¹

Your day was going great. You helped a client with a particularly complex situation. Another client submitted the paperwork to transfer accounts to your firm. (You did not have to deal with a bulldozer trying to demolish your home.) Then you received a message from a “@sec.gov” or “@finra.org” email address, which asked you to access a portal for additional information. Or you received a letter from your state regulator. You learn that your regulator has opened an examination of your firm and seeks a comprehensive list of documents and information in two weeks.

Now what?

Strangely enough, and while I am sure this was unintended, and it is certainly not part of the BBC radio broadcasts or film adaptations, the late Douglas Adams offered a number of tips for handling regulatory exams in *The Hitchhiker's Guide to the Galaxy*. I expand on those tips below and offer a number of "do's" and "don'ts" for responding to a regulatory examination.

Don't panic.²

DON'T: Panic.

DO: Recognize that regulators . . . well, regulate.

It is natural for your pulse to quicken, as after all, regulators generally do not contact registrants simply to check in. However, examinations are common. To paraphrase Hyman Roth in *The Godfather Part II*, this is the business we chose.³ Try to determine if your regulator has launched a "routine" or "cycle" examination, meaning that the regulator has appeared in the normal course of business, or a "cause", meaning that the regulator is responding to a customer complaint or some other event. This may help you read the room.

So once you do know what the question actually is, you'll know what the answer means.⁴

DON'T: Speculate about what the regulator seeks.

DO: Understand the regulator's requests.

Your regulator does not understand your business like you do. Moreover, the regulator can make mistakes just like anyone else. As such, you may find yourself staring at requests that do not make sense or do not apply to your business. If so, a quick meeting with your regulator could help clarify or eliminate certain requests. It is also an effective way to start establishing your bona fides with your regulator.

I don't know what I'm looking for . . . [b]ecause . . . because I think it might be because if I knew I wouldn't be able to look for them.⁵

DON'T: Rush to meet a production deadline.

DO: Plan your response.

It is natural to want to produce responsive information as quickly as possible. You want to show the regulators that you run an organized, compliant business. You also have your clients to serve. However, as a former regulator -- and who conducted or supervised numerous investigations -- and can assure you that you do not get any bonus points for submitting your response early. Take time to survey your firm's documents and records, consider how these might meet the pending requests and plan how you will execute your response. Begin today by organizing your records in a clear, concise manner. Nothing is worse than trying to cull through various network drives, or worse, archived e-mails to find the artifacts that you know exist and are responsive to your regulator's request.

Also plan *when* you can execute your response. Regulators are notorious for imposing very demanding deadlines that sometimes strain credulity. If you cannot meet your regulator's timeline, then under most circumstances it is perfectly acceptable to seek a rolling production in which you provide the readily available documents and information by date sought and other documents and information at a later time.⁶ Be sure to include time for a quality check on the information you submit. Once produced, the information is no longer under your control. Also allow time to prepare a cover letter and any needed narratives. More on the cover letter is below.

Why should I want to make anything up? Life's bad enough as it is without wanting to invent any more of it.⁷

DON'T: Create artifacts to respond to a request because you thought that is what the request required.

DO: Consider producing narratives.

Sometimes regulators seek information that simply does not exist in a document that you currently possess. This is not the time to prepare that document for production as it may be misunderstood as a record maintained in the normal course of business. Instead, consider responding to your regulator's request with a narrative explanation in your cover letter. Again, see below.

So long and thanks for all the fish.⁸

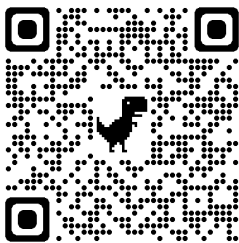
DON'T: Simply dump the responsive documents on your regulator.

DO: Provide your regulator with a concise, organized response.

Following up on an earlier point, the speed with which you respond to your regulator does not demonstrate your compliance with the applicable regulatory standards. Your response does. Take the time needed to prepare a cover letter that, if possible, identifies which documents respond to which requests. The cover letter also lets you provide context for certain documents, and as noted above, explain why you do not have certain documents that the regulators requested. Such information might reduce – or, as happened in one exam that I handed, eliminate – the regulator’s need to issue follow-up requests.

Of course, *The Hitchhiker's Guide to the Galaxy* is supposed to be fun. As noted in its foreword, Adams “left sentences that will make you laugh with delight as they rewire the back of your head.” And, of course, there is nothing fun about a regulatory exam. That said, humor often contain kernels of truth or wisdom. While I am sure that Adams would be appalled that his work was analyzed in this context, his kernels in *The Hitchhiker's Guide to the Galaxy* are helpful principles for responding to regulatory exams.

Don’t panic and please contact me at www.ryanpsmith.com or 571.317.0605 if you have any questions or seek assistance with a regulatory matter involving the SEC, FINRA or a state regulatory agency.



Because you want to spend more time serving your clients, not your regulators.

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² See, e.g., *The Hitchhiker's Guide to the Galaxy*, Del Rey Edition for Kindle, at page 20. Fans of the book will recognize “Don’t Panic” as the famous legend emblazoned on the front of the guide.

For those of you seeking quick doses of Adams’ insight, see also <https://www.audible.com/blog/quotes-hitchhikers-guide-to-the-galaxy>; <https://www.goodreads.com/work/quotes/3078186-the-hitchhiker-s-guide-to-the-galaxy>; and <https://bookriot.com/for-towel-day-the-42-best-lines-from-douglas-adams-hitchhikers-guide-to-the-galaxy-series/> (last visited March 26, 2024).

³ See <https://www.imdb.com/title/tt0071562/characters/nm0833448> (last visited March 26, 2024).

⁴ *Hitchhiker's Guide* at 121. In this passage, the supercomputer Deep Thought explains how it came to its legendary answer of “42”.

⁵ *Hitchhiker's Guide* at 97.

⁶ Adams was also quoted as saying “I love deadlines. I love the whooshing sound they make as they go by.” (See Neil Gaiman’s Foreword “What Was He Like, Douglas Adams.”) I do not recommend that you take this advice. Meet the deadline in some fashion.

⁷ *Hitchhiker's Guide* at 248. Marvin the Paranoid Android never seemed to miss an opportunity to offer his outlook on life.

⁸ *Hitchhiker's Guide* at 105.