



## Practical and Ethical Issues in Internal and Government Investigations

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### Topic Areas

- **Benefits of a Properly-Conducted Investigation**
- **Conducting Internal Investigations - Scope, Securing Documents and Identifying Relevant Data and Employee Interviews**
- **Special Considerations Associated with Cross-Border Investigations**
- **Steps Forward when the Internal Investigation is Complete**
- **Ethical Behavior During an SEC or DOJ Investigation**
  - Multiple Representations
  - Joint Defense Agreements

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## Benefits of a Properly-Conducted Investigation

- Opportunity to remove or sanction wrongdoers
- Demonstrate commitment to compliance and code of conduct
- Management review of existing corporate policies for effectiveness
- Credit from the government for cooperation for corporations with good compliance programs and the disclosure of issues
- Future credibility from active program of internal investigations
- Early and accurate assessment of exposure and potential avoidance of formal legal proceedings and expenses
- Protection for the Board and/or senior management
- Fulfills duty to investigate report of possible material securities law violation (SOX)

## Internal Investigations - Scoping the Review

- Once a company determines an investigation is warranted, steps should be taken to scope the work to be performed.
- Who Should Conduct the Investigation
- Who Should Direct the Investigation
- What is the role of Outside Auditors

## Defining the Scope of the Investigation

- Initially based upon:
  - Whistleblower or hotline report
  - Audit Report
  - SEC Sweep
- Initial focus: specific conduct at issue
- Draft a work plan and identify tasks with specific people
- Scope may need to expand as investigation progresses and more information about possible conduct is developed
- Follow the evidence wherever it leads

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## Who Should Conduct the Investigation?

- **What are the options:**
  - Internal Audit or other Business Team
  - Audit Committee
  - Legal Function or Compliance Department
  - Regular outside counsel
  - Independent outside counsel
- **Considerations:**
  - Scope and seriousness of allegations and potential conduct.
  - Who in the company is potentially involved, and how high up does the conduct go?
  - Should self-reporting be considered?
  - What's the potential exposure?
  - How much specialized expertise is needed?

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## Title search: Practical and Ethical Issues in Internal and Government Investigations

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[2016 Government Enforcement eConference](#)

First appeared as part of the conference materials for the  
3<sup>rd</sup> Annual Government Enforcement Institute session  
"In-House Counsel's Effective Management of Investigations"