



Practical and Ethical Issues in Internal and Government Investigations

UT - 3rd Annual Government Enforcement Institute
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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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"In-House Counsel's Effective Management of Investigations"