

# Considerations for Counsel and Board Members Conducting Internal Investigations

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Holland & Knight

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## When Do You Need an Internal Investigation?

### **The Decision to Begin an Internal Investigation**

- What triggers the inquiry? Examples include:
  - A whistleblower (an entire presentation in itself)
  - An internal report/finding
  - A regulatory inquiry
  - The auditors notice something awry
  - Allegations in a lawsuit
  - Compliance hotline call
- Depending on the allegations, the decision to begin an internal investigation can involve several people
  - General counsel, trusted outside counsel, audit committee chair, compliance department, executive management, and others

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# When Do You Need an Internal Investigation?

## **The Decision to Begin an Internal Investigation**

- Usually, it starts at the GC's or the Chief Compliance Officer's office. Things to consider include:
  - Do the allegations involve the company's financial statements?
  - Will the company's regulators expect the company to take action?
  - Do the allegations involve senior management?
  - Are there criminal implications? Do any statutes require you to take action?
  - Does the company need independent analysis?

# Internal Investigations – Initial Steps

## **First Order of Business -- Document Preservation (*cont'd*)**

- Role of outside counsel and E-discovery vendors
  - Assist with data collection
  - Help develop search protocols
  - Vet data collection and search plans in advance
  - Overall project costs
- Role of company personnel – It depends
  - What is the nature/potential seriousness of the matter at issue?
  - Who is overseeing the inquiry?
  - What resources does the company have available?

## Internal Investigations – Initial Steps

### **Hire Outsiders, Do It Myself or Hybrid?**

- Consider the nature of the issue
  - Accounting fraud
  - Improper payments
  - Worker disagreements/wrongful termination
- Consider the people involved
  - Rank-and-file employee or supervisor?
  - Senior executive or director?

## Internal Investigations – Initial Steps

### **Hire Outsiders, Do it Myself or Hybrid? (cont'd)**

- Consider potential materiality
  - Dollars
  - Reputation
  - Personnel
- Will your regulators be interested? (And how will you interact with those regulators)?
- How important is privilege?
  - Is in-house privilege available for all impacted jurisdictions given the trend of multi-national cooperation among regulators?

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## Title search: Considerations for Counsel and Board Members Conducting Internal Investigations

Also available as part of the eCourse

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First appeared as part of the conference materials for the  
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"Staffing and Scoping Internal Investigations: Choosing Outside Counsel and Other Key  
Decisions at the Outset of an Internal Investigation"