

Considerations for Counsel and Board Members Conducting Internal Investigations

UT Government Enforcement Institute 2021

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Holland & Knight

Schlumberger

Vinson & Elkins

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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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First appeared as part of the conference materials for the
7th Annual Government Enforcement Institute session

"Staffing and Scoping Internal Investigations: Choosing Outside Counsel and Other Key
Decisions at the Outset of an Internal Investigation"