



Miller & Chevalier

Authorizing, Managing and Conducting Internal Investigations

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Identifying the Need for an Investigation

- Amount of exposure
 - Guidelines
 - Forfeiture
 - Multiple Enforcers
- Likelihood of discovery?
 - Reporting requirements
 - Inquiries
 - Arrests
 - Whistleblowers
 - Subpoenas
 - M&A



When is Outside Counsel Needed?

- Interacting with regulators, DOJ
- Interacting with counsel for employees
- Compliance function at issue
- C-suite at issue
- Multi-jurisdictional challenges
- Scope and exposure
- Expertise
- Privilege issues, particularly internationally



Scoping the Investigation

- Reporting and clearing issues with regulators
- Boiling the ocean?
- Going too small
 - Years
 - Similar transactions
 - Systemic issues



Preserving Privilege

- Directed by counsel
 - In-house counsel
 - Outside counsel
- Joint defense or common interest agreements
- In anticipation of litigation
 - **Privileged and confidential**
 - Reports
 - Interview memos
 - Multi-jurisdictional challenges



Preserving, Collecting, and Reviewing Documents

- Preserving documents/hold notices
- Subpoenas
- Collection: electronic data challenges, search challenges
 - Multi-jurisdictional issues and data privacy laws
- Review: Multi-tiered, quality checks, circulating information
- Artificial intelligence



Witness Interviews

- Upjohn warnings
- Getting information
- Confidentiality and privilege
- Accountability and potential competing considerations
- Individual responsibility and considerations



The Voluntary Disclosure Decision

- Do you know enough?
- Race to the regulator?
- Skeletons?
- Size of exposure and value of leniency
- Criminal v. civil



Interacting with U.S. Enforcers

- Relationship-building
- Advocacy
- Credibility
- Buy-in
- Defensibility

Identifying Root Cause

- What is the Focus of investigation?
- Have Useable Intel re: Investigatory Agency's investigative authority, mechanisms/processes, and investigative priorities
- Test your theory of root cause
- Identify Whether Multiple root causes

Remediation

- Critical, whether disclosure made or not
- Difficult, falls off to-do list
- Clearing with regulators
- Follow-up
- Second time

Presenting Findings To Regulators

- Decision whether to present
- Maintaining credibility
- Advocacy
- Oral or written
- Privilege waiver?
- Individuals
- Documents

Contact Information



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