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Responding to Investigations: Considerations for General Counsels & Compliance Officers

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Introductions



Overview

- Compliance personnel are frequently called upon by companies to respond to, address and remediate sensitive and complex investigations.
- II. The presentation will outline the keys to successfully handling internal and regulatory enforcement matters and highlight pitfalls and risks that often arise during these investigations.
- III. In addition, we will outline specific steps General Counsels and Compliance Officers should consider during "blue sky" days to ensure their departments are adequately prepared for substantive inquiries.

Hypothetical Case Study

- During a routine meeting with Internal Audit to conduct a final review of earnings just prior to the release of very strong quarterly financial results, a career mid-level Controller identifies a series of journal entries in an internal account that cannot be properly reconciled or explained.
- The numbers were labeled "pre-paid expenses," which had the effect of increasing earnings and profits, while reducing overall expenditures. The total expense items have now grown to a "material" amount because the entries have been made in every quarter over the last three years.
- A quick records search shows that the expenses were entered by Operations and were tied to goods and services specifically for the gas business.
- Four years ago, after a series of Grade 2 and a few Grade 1 leaks, the Commission entered an Order that required the company to upgrade its gas lines and equipment – expenses that were deemed not recoverable in future rate cases.

Hypothetical Case Study (Cont'd.)

- Multiple emails and attempts by the mid-level Controller to speak with the Head of Operations and the Chief Financial Officer about the "expenses" over the last three weeks have gone completely unanswered.
- It has also been discovered that Procurement has almost no purchasing records related to the relevant gas equipment.

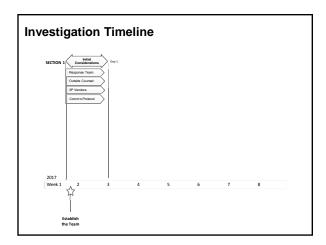
Its 3:20 PM on a Friday Afternoon:

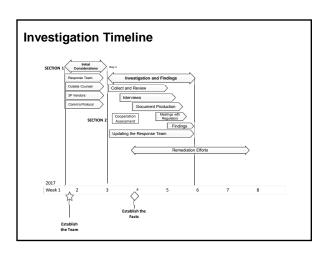
- Internal Audit sends you this information via email with specific facts in a 7 page, single spaced memorandum.
- That same afternoon, the General Counsel forwards you a subpoena from the local US Attorney's Office requesting accounting information and emails for all employees in the gas business for the last 10 years.
- Also, the Commission just called Operations to schedule a Compliance Audit related to the 4 year old Order.

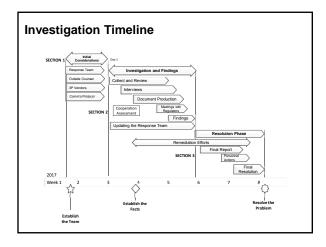
Responding to Investigations:

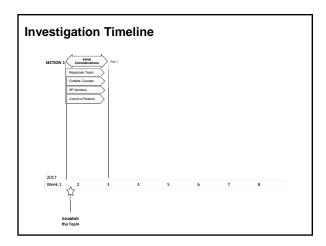


Responding to Investigations (Cont'd.) What steps should you take to respond? Preserving Documents? Reviewing Documents and Conducting Interviews? Written Report of Findings? Response Planning Communicating with the Regulators and Responding to Multiple RFIs? What about the penalty? Response Planning Does the CEO know? Should we inform the Board? The Audit Committee? Retain Outside Counsel?





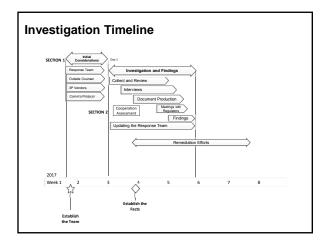




Responding to Investigations (Cont'd.)

Initial Considerations:

- · Partner with General Counsel and Create a Response Team
 - Create Reporting Group
- · Ensure all Constituents are Apprised of Response Plan
 - Board
 - · Audit Committee
 - Management
- · Engagement with Outside Counsel
 - Privilege Considerations
 - · Independent Evaluation
 - · Managing Discussions with Regulators
- · Engagement with Third Party Vendors
 - Document Preservation, Collection and Review
 - · Accounting and Financial Analyses



Responding to Investigations (Cont'd.) Document Preservation and Collection - Conduct Initial Interview(s) - Ascertain the Departments Involved - Identify Employees with Relevant Information - Content Specific - Distributed to All Relevant Employees - Receipt Confirmations - Engage the IT Department Immediately - Prevent Deletion and Spoliation - Extract Information to Store on Review Platform

Responding to Investigations (Cont'd.)

Conducting the Factual Interviews

- Assignment of Personnel to Conduct Task is Critical
- Notes and Memoranda / Privilege
- Corroborating the Information with Documentary Evidence
- · Conducting Multiple Interviews of the Same Individuals

The Document Review

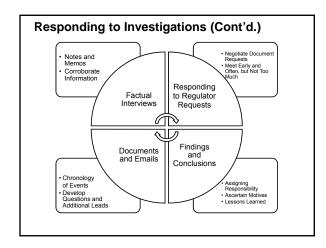
- · Piecing the Information Together
- · Creating a Chronology of Events

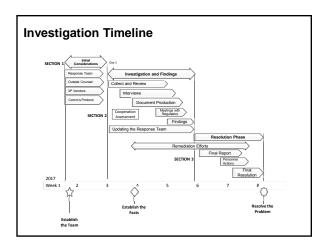
Responding to Regulators

- · Negotiating Document Requests
- · Meet Early and Often, But Not Too Much
- · Mitigation and Negotiating the Settlement

Findings and Conclusions

- · Report of Findings and Remediation
- Assess Violations





Responding to Investigations (Cont'd.)

The Remediation Plan

- Development of Remediation Plan Occurs Concurrently with the Investigation
- · Work with a "Clean Team" from the Business Side
- · Remediation Plan Approved by Board or Audit Committee
- · Public Relations
- · Cost Concerns

Hypothetical Case Study Remediation:

- ► Restatement of Historical Financials
- ► Review of Gas Installations
- ▶ Upgrade Where Necessary
- ▶ Address any Public Safety and Trust Concerns

"Blue Sky" Protocols

Important Tools and Considerations

- · Create pre-approved document preservation notices
- Ensure the IT department has the ability to seamlessly preserve and extract data from various sources, including cloud based storage, mobile devices and emails.
- Pre-identify vendors the company will use to lock in contracts and pricing.
- · Identify protocols for retaining outside counsel.
- Ensure public relations team is prepared for rapid response to inquiries and pro-active communications strategies.
- · Periodic Risk Assessments.

"Blue	Sky" P	rotocols (Co	Illustrativ For Discussion Purpos		
Complia	nce Das	shboards			
		Risk detail		Mitigatio	1
Compliance risk area	Risk level	Principal risks	Trend v. Prior qtr	Response/ initiative	Status
Cyber security	High	1 Cyber security Risk 1 2 Cyber security Risk 2 3 Cyber security Risk 3	e_		
Privacy	Medium	Privacy Risk 1 Privacy Risk 2 Privacy Risk 3	is will be populated as futur assessments are conducted		
FERC	Medium	1 FERC Rask 1 2 FERC Rask 2 3 FERC Rask 3	populate		
Environmental	Low	1 Environmental Risk 1 2 Environmental Risk 2 3 Environmental Risk 3	This will be populated as future as ses sments are conducted		
State Regulatory	Low	State Regulatory Risk 1 State Regulatory Risk 2 State Regulatory Risk 3	F		

Conclusion	on	
	QUESTIONS AND ANSWERS	