

# How to Receive Allegations of Compliance Violations and Conduct Investigations

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# SECTION 1

## Overview

# OVERVIEW

## **Post-Enron**

- **Public and Political Pressure (Congressional Hearings)**
- **Sarbanes-Oxley**
- **Corporate Fraud Task Force/Thompson Memo (et. al.)**

## **The Financial Crisis**

- **Public and Political Pressure (Again)**
- **SIGTARP**
- **Enhanced FBI/SEC Resources**
- **State Attorneys General**

## SECTION 2

# Structure & Process

# STRUCTURE & PROCESS

## Structure

Who investigates allegations?

- Compliance
- Legal
- HR
  - If HR, line HR or separate group?

# STRUCTURE & PROCESS

## Process

Include timeline and process for communication to complainant in policy/process

- Example – 2 weeks from receipt of call to get initial response to caller/complainant
- Standard language
- Thanking the complainant
- Confidentiality

# STRUCTURE & PROCESS

## Process

### File Management & Technology

- Database with vendor
- Internal database

## SECTION 3

# Escalation Process

# ESCALATION PROCESS

## Formalized process described in a policy or procedure

For example:

- › Allegations involving Senior Leadership are sent to Chairman of Audit Committee
- › Allegations involving CCO are sent to General Counsel

## SECTION 4

# Internal Investigations Outside v. Inside Counsel

# INTERNAL INVESTIGATIONS (Outside Counsel)

## Disadvantages:

- Expensive
- Potentially Disruptive

## Advantages:

- Privileged
- Credible and Independent Fact-Finding
  - Better Received by Government

# INTERNAL INVESTIGATIONS (Inside Counsel)

## Disadvantages:

- Enhanced Scrutiny by Government
- Missteps Perceived as Obstruction

## Advantages:

- Familiarity with Company
- Less Expensive

# INTERNAL INVESTIGATIONS (Outside or Inside Counsel)

## Move Fast:

- Proactive (promptly after allegation)
- Reactive (keep government informed)

## Thorough:

- Critical Information to Management
- Develop Possible Defenses
- Uncover and Correct Weaknesses

## SECTION 5

# Privilege (and other) Considerations

# PRIVILEGE (and other) CONSIDERATIONS

- Document Preservation (Holds, IT, Destruction Policy)
- Obstruction of Justice/Witness Tampering
- Upjohn Warnings
- Corrective Actions
  - Treat Junior and Senior People Alike
  - Training
  - Discipline and Terminations
- Privilege and Waiver

## SECTION 6

# Disclosure to the Government

# DISCLOSURE TO THE GOVERNMENT

- Disclosure Requirements
  - Federal Acquisition Regulations and DoD
  - FDA, OIG, etc.
- Presentation to the Government
  - Credit for Voluntary Disclosure
    - DOJ
    - SEC/USSC

## SECTION 7

# Discussion

# CONTACT INFORMATION

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