

THE REVIEW OF  
**SECURITIES & COMMODITIES  
REGULATION**

AN ANALYSIS OF CURRENT LAWS AND REGULATIONS  
AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

Vol. 57 No. 12 June 19, 2024

## ISSUES IN INTERNAL INVESTIGATIONS

*In recent years, regulators have implemented a variety of initiatives to further incentivize timely self-reporting and cooperation. Increased regulatory emphasis on the speed with which companies detect and address misconduct highlights the importance of thorough and efficient internal investigations. This article discusses key considerations for companies and counsel before, during, and after an internal investigation.*

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Securities regulators’ emphasis on cooperation and prompt self-reporting has underscored the significance of timely and effective internal investigations.<sup>1</sup> Of course, not all such investigations have a regulatory or enforcement overlay. Internal investigations examine conduct with varying degrees of severity, culpability, and consequences, with potential violations of law an extreme example of inquiries that are more often concerned with potential deviations from company policy or other, prudential concerns. Nevertheless, the Biden administration’s efforts to incentivize voluntary reporting and cooperation offer an opportune moment to reflect on key considerations when beginning, conducting, and concluding an internal investigation.

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<sup>1</sup> See, e.g., Speech, DOJ, Deputy Attorney General Lisa Monaco Delivers Keynote Remarks at the American Bar Association’s 39th National Institute on White Collar Crime (Mar. 7, 2024), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-keynote-remarks-american-bar-associations>; Speech, SEC, Remarks at New York City Bar Association Compliance Institute (Oct. 24, 2023) <https://www.sec.gov/news/speech/grewal-remarks-nyc-bar-association-compliance-institute-102423>.

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## PREPARING FOR AN INTERNAL INVESTIGATION

The foundation for successful internal investigations can and should be laid well before matters requiring such inquiries arise. By giving advance consideration to factors that may inform an investigation’s scale, pace, and execution, legal and compliance teams can ensure that their approach is efficient, consistent, and well-calibrated to address specific investigations’ substance.

Although the precise nature of potential misconduct inevitably shapes the resulting investigation’s scope and procedures, it is important to approach all internal investigations with rigor and emphasis on the integrity of investigative process, as one never knows what facts may surface. Policies and approaches will vary by company — a public international conglomerate will likely have different needs than a small broker-dealer — but many of the underlying issues remain the same. Key considerations at the outset of any internal investigation include: the nature of the potential misconduct; who inside and outside the organization may be implicated by that misconduct; how the organization learned about the misconduct; whether the misconduct has already received media or other public attention; and whether a law or laws were potentially broken. An anonymous

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