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DECISION POINTS OF INTERNAL INVESTIGATIONS

Decisions concerning internal investigations begin with whether to conduct one and end with whether to write a report. Along the way, there are multiple decision points involving, among others, the choice of counsel, conduct of employee interviews, treatment of whistleblowers, and communications with public relations counsel and outside auditors. The authors discuss the strategic choices and their consequences for the company.

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An internal investigation¹ is a critical tool when evidence of misconduct within a company (or within a company's industry) arises. A properly run internal investigation is essential to root out wrongdoers from within the corporate ranks, defend the company from external allegations, and convince regulators and law enforcement personnel that the company is a good corporate citizen.

One difficulty inherent in running internal investigations is the fact that vital facts tend to become revealed over time as the investigation proceeds. Thus, conducting an effective investigation does not simply flow from the formulation of the right strategy at its inception, but rather from a series of decisions that must be made over time as new facts are discovered. In this article, we explore various decision crossroads that tend to arise as investigations proceed and new facts become revealed.²

¹ Sometimes euphemistically called an "internal review" or an "internal inquiry."

² Some of the issues discussed in this article are sufficiently complex that they could be the focus of an entire article on their

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WHEN SHOULD AN INVESTIGATION BE LAUNCHED?

The first question that naturally arises is whether an investigation should be launched at all. It is beyond question that an investigation should be conducted if there is credible evidence of misconduct at the company. Once such evidence is revealed, it is vital to proactively identify the existence and scope of any improper activities so that such conduct may be stopped and the company can be protected. Similarly, if regulatory or law enforcement agencies have commenced an investigation relating to the company, an internal investigation should be launched quickly to determine what happened and to prepare an effective response.

However, it does not always make sense to wait until such clear red flags arise before commencing an investigation. For example, if a particular type of

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own. Due to space limitations, this article does not address every issue that tends to arise in an internal investigation, nor does it attempt to provide an exhaustive discussion of any particular issue.

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