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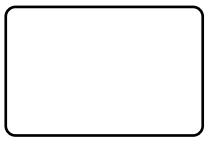

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Brigham Q Cannon, Erica Williams and Mark E Schneider
Kirkland & Ellis LLP

Goals of the internal investigation

Always begin with the end in mind. This chapter walks through the nuts and bolts of conducting an internal investigation in the United States, but there are many different ways to conduct an investigation. The company must decide, among many other things, how much to rely on internal resources like internal legal, audit, compliance or finance; should it retain external counsel; and how should it document the investigation? The classic lawyer answer to all these questions is that it depends on the facts. And though it is a frustrating answer, it happens to be true: there is no one-size fits all plan for conducting internal investigations. So our best advice is to take time at the beginning of any internal investigation and think comprehensively about where you need to be at the conclusion of the investigation. In short, what information do you need to know (or determine is not possible to know), and how can you best position the company when the investigation is concluded? Beginning with the end in mind provides a structure to making each decision in conducting an internal investigation.

Not all internal investigations will result in government investigations or litigation, but it is helpful to know how the US regulators – who see many such investigations and often are called upon to assess the adequacy of an internal investigation – describe an effective internal investigation. We reviewed public statements of Department of Justice (DOJ) and Securities and Exchange Commission (SEC) officials (several of which are quoted in the footnotes) to identify what they believe are the hallmarks of an effective internal investigation. They focus on the results: namely, did the investigation identify the individuals responsible for the wrongdoing.[1] This is of obvious importance to the government – there have been many public statements about the government's desire to prosecute individuals in addition to companies[2] – but it is also important to companies. If the company understands the scope of individual wrongdoing, it has necessarily conducted a thorough investigation. And, if it does not, it is difficult to implement remediation designed to avoid the same mistake in the future. Not surprisingly, the government has also emphasised remediation.[3] As a best practice, an internal investigation should focus on thoroughly assessing the veracity of allegations of wrongdoing, including reviewing all relevant documents and interviewing all employees who possess relevant information, whether located at home or abroad.[4]

In many, if not most cases, the company will have the best and most direct access to the facts through documentary evidence and witnesses. Designing an effective internal investigation will often put the company in the position of getting the first and clearest view into the relevant issues, and can sometimes allow it to make decisions (eg, in litigation) based on a better understanding of the strengths and weaknesses of the company's position. Further, if a company is approached by a US enforcement agency to explain an allegation of potential wrongdoing, the best response from the company is that it was already aware of the potential issue and has conducted a thorough investigation, including, if appropriate, effective remediation. Appropriately addressing allegations of wrongdoing (whether potential violations of law or company policy) is a hallmark of an effective compliance programme, and being able to show the government how that works in your company builds trust with the enforcement agency and sends a message that the company is serious about compliance.

The aspects of an internal investigation reviewed below are meant to identify and remind companies of the key issues as they navigate the many decision points of an internal investigation.

Structuring the investigation

There are initial decision-points that will shape any internal investigation. Of primary importance is identifying the client. Is the client the entire company, a subsidiary of the company, the board of directors or a committee of the board? Different clients have different needs and different mandates, goals and duties. For example, if a company's board of directors establishes a special committee to handle the investigation, and outside counsel is retained by the special committee, both the special committee and outside counsel need to be careful to preserve privilege. The company and the special committee may have a common interest that will protect privileged communications between the two, but it is not necessarily so.[5]

The company must also decide who will conduct the internal investigation. Many internal reviews can be handled in-house. When considering whether to hire outside counsel, companies typically consider the capability and availability of inside resources, the potential scope of legal liability or public embarrassment, and the need for independence.

Finally, the origin of an internal investigation is a touchstone for scoping the review. An internal investigation can be triggered in many ways, including by an internal whistleblower, a news report, a government settlement or public disclosure by a competitor, or an inquiry from the government. No matter how it arises, though, the key initial question is: what is the actual allegation of wrongdoing or issue? Focusing on the actual allegation or issue both helps to ensure the company will have the information it needs at the conclusion of the review, and it helps guard against the temptation to conduct an overly broad review.[6]

Document preservation and collection

An initial step in conducting any investigation is to identify, obtain control over and implement measures designed to prevent the destruction or loss of relevant documents and information. Absent appropriate measures, investigators may lose the ability to accurately determine the facts. Where litigation is reasonably foreseeable, failure to preserve documents may subject the company to discovery sanctions for spoliation of evidence.[7] Further, where criminal investigation is possible, preserving evidence is critical to protect the company and its personnel against allegations of obstruction of

evidence. The government can, and does, bring criminal obstruction of justice charges against companies and individuals based on deletion of even just a relevant email or text message.[8]

The means to preserve documents may vary based on the scale and complexity of the investigation. Typically, counsel will issue a preservation notice to those persons who may have relevant information.[9] This notice will instruct employees to preserve and not destroy information related to the matter under investigation, and employees will be asked to confirm their receipt and agreement to comply with the notice. As the investigation proceeds, it may become necessary to modify the scope of the notice or to expand the number of persons to whom it is issued.[10] As part of the preservation measures, the company should consider whether it is necessary to modify its document retention policy to the extent it provides for relevant electronically stored information (ESI) to be automatically deleted or electronic back-up tapes to be recycled.

Depending on the investigation's scale and what documents are needed, it may also be necessary to conduct privileged collection interviews. Collection interviews are thorough interviews with document custodians to determine, based on their responsibilities, roles within the organisation, and document practices, what relevant paper documents and electronic records the custodian may have; and to identify, locate and collect the information. Collection interviews are also customary where the investigation is being conducted in parallel with a document request or subpoena from an enforcement agency. It can be helpful to conduct collection interviews while a third-party e-discovery vendor is on-site to collect forensically the identified electronic records and image any hard copy documents.

Document review

Once relevant documents are identified, the investigators must review and analyse the documents, which often includes critical evidence needed to create a factual understanding and chronology of events, and to prepare for witness interviews. Proper organisation of the documents is critical to ensure they are useful and retrievable for investigatory purposes and, if later necessary, to produce to enforcement authorities or in litigation. Often an e-discovery platform is helpful in organising and conducting the review.

In conducting large-volume document reviews, it may be possible for reasons of economy and speed for junior attorneys, contract attorneys or paralegals to conduct the first-line or initial review, though they should always act under the direction of more seasoned attorneys. The review may include classifying documents based on legal privilege status or particular issues. In addition, reviewers should mark key documents for review by the lead attorneys. In many cases, it is possible to narrow the initial universe of documents to review by applying keywords or data analytics techniques. (Again, think carefully about what questions you actually need to answer to guard against an overly expansive and expensive review.)

Counsel must also be sensitive to foreign data privacy rules and regulations. While US law imposes few restrictions on processing, reviewing and producing documents from company employees resident in the United States, many US investigations involve overseas custodians or business operations. In those instances, US counsel should consult with the company's data privacy officer and, as necessary, data privacy counsel before collecting or reviewing data.[11] Chinese law, for example, requires that documents undergo state secrets review before transfer from China. Many European Union member states also have significant restrictions on the processing and transfer of personal data, a term that can be broadly understood. These and similar restrictions might require document review to be conducted outside the United States.

Interviews of fact witnesses

Interviewing fact witnesses is nearly always an essential component of any investigation. Witness interviews conducted by counsel develop the facts by filling gaps in knowledge that cannot be understood through documents. In addition, a properly documented interview memorialises the witness's recollection, which can be disclosed as necessary, or later be used to impeach or challenge the witness should the witness's account change. The sequencing and timing of witness interviews must be decided strategically after careful consideration. In the best case, relevant documents are reviewed prior to interviews; however, urgency may dictate that initial interviews be conducted before documents are fully reviewed or exhibits assembled. Privilege, commercial considerations and related issues may be significant when considering interviews of former employees or third-party witnesses.

In conducting an interview of company employees, counsel must identify themselves and their role as counsel for the company. The essential aspects of the so-called *Upjohn* warning[12] or *Corporate Miranda* include advising the employee witness that: (i) counsel represents the company and does not represent the witness; (ii) the interview is privileged and should be kept confidential; and (iii) the company owns and may elect to waive the privilege. Failure to properly admonish the witness can lead to the disqualification of counsel if the witness later claims to have believed that the attorney represented the witness or that the company would keep the interview confidential. Skilled counsel can generally provide the requisite *Upjohn* warning while maintaining a productive relationship with the witness. DOJ policy requires that a company seeking cooperation credit must disclose all facts relating to wrongdoing by individual employees, and it is not uncommon that facts gleaned during interviews are disclosed to enforcement authorities.[13]

Effective use of experts in internal investigations

Experts can often provide valuable assistance to the legal team conducting an internal corporate investigation. Retaining an expert early in an investigation can assist counsel in developing the investigative work plan, the investigative strategy, the potential facts and the strategic objectives. Targeted experts can lead to more streamlined and effective document collection and review and more targeted witness interviews.

Cases involving potential financial reporting, books and records, internal controls or compliance violations often benefit from the expertise of a forensic accountant. Economists are also frequently hired to assist with complex corporate investigations because they can assist in determining the financial impact of the company's activities. Depending on the nature of the issues involved in the investigation, counsel may also consider retaining subject matter experts with knowledge about particular industries, technologies or fields of study.

Before retaining an expert, counsel should consider how they intend to use the expert and whether they want to shield the expert's opinions and work product from production. Answering these questions will guide the structure of the expert engagement.

There are two types of expert witnesses – consulting experts and testifying experts. Consulting experts are typically hired by counsel to assist behind the scenes with an investigation or subsequent

litigation, not to provide testimony during discovery or trial. Except in unusual circumstances, if a consulting expert is retained by counsel, the client is not required to disclose the existence of consulting expert, the substance of counsel's communications with the expert or the expert's opinions.[14] Because communications with consulting experts are ordinarily protected from disclosure, counsel often use consulting experts to have candid communications about facts, investigative theories and strategies without fear that the communications may later end up in the hands of the opposition.

In contrast, counsel are required to disclose the identity, qualifications and opinions of experts who may be called to testify in pretrial discovery or at trial; the facts or data considered by the expert; and a list of other cases in which the expert testified during the previous four years.[15] Communications between a party's counsel and a potential testifying expert may also be subject to disclosure if they (i) 'relate to compensation for the expert's study or testimony,' (ii) reveal facts or data that counsel provided to the expert and that the expert considered in forming their opinions, or (iii) they reveal assumptions counsel provided to the expert that the expert relied on in forming their opinions.[16]

Documenting the results of an investigation

Before drafting a written report summarising the results of a corporate internal investigation, counsel should consider and carefully review with the client the pros and cons of committing the results to writing.

In a written report, counsel can document the investigative steps, key facts uncovered during the investigation, findings, conclusions and recommendations for remediation. Not only can the report serve as evidence of the actions the company took to examine the matter, but it can also serve as a record that the company can use in subsequent litigation and government investigations. The DOJ and SEC have stated that they will consider whether a company has conducted and produced the results of an internal investigation when deciding whether to give the company cooperation credit.[17]

Written reports also have potential drawbacks. When an investigation uncovers improper conduct, a written report serves as a clear record of that conduct. Committing a report to writing increases the risk of disclosure to the government, legislative bodies, or to litigants in private suits.[18] If disclosed, statements in a written report may be used as 'admissions' by the company in subsequent litigation.[19] To mitigate these risks, if a written report is prepared, counsel should be careful to mark a written report privileged and confidential, limit the report's distribution, and avoid including unnecessary information or conclusions in the report.

In lieu of a complete written report of the investigation, counsel may choose to draft a limited written report or provide company officials with an oral report. Limited written reports typically contain a discussion of the investigative steps and a high-level summary of the facts and issues investigated. Oral reports allow counsel to provide a detailed account of the investigative process and results while minimising disclosure risks. Counsel may also choose to take a hybrid approach by drafting a limited written report supplemented by a verbal reporting of sensitive facts, findings and conclusions.

Whatever means of documentation chosen, it is important to recognise that using the results of the internal investigation (discussed below) often does not happen until years after the conduct, and sometimes years after the internal investigation is complete. Employees turn over and memories fade. Without some record of the investigation, its scope and, importantly, the remediation, the company will lose the full value of an effective internal investigation if important details are lost to the passage of time or retirement.

Using the internal investigation

Internal investigations allow companies to identify problems and implement remediation recommendations. Counsel should inform the company if they uncover ongoing legal violations, misconduct or compliance deficiencies during the course of an investigation so the company can implement corrective action.

At the conclusion of an investigation, counsel should carefully review the findings, legal conclusions and recommendations with the company to determine the appropriate next steps. In some instances, a company may be legally required to report certain findings to the public or a third party regulator. Public companies, for example, are obligated to report material information to investors that may require disclosure of information uncovered during an internal investigation.[20] Environmental, health and safety regulations and permits often require self-reporting to the government.[21]

Even when disclosure is not legally required, a company may choose to voluntarily disclose the results of an internal investigation. Voluntary disclosure provides the company with an opportunity to control the timing and the messaging around the release of the information, which may assist in mitigating reputational risk. Some law enforcement and regulatory agencies, including the DOJ and the SEC, have policies to encourage self-disclosure by awarding extra cooperation credit for entities that voluntarily self-report.[22] On the other hand, voluntary disclosure can lead to unwanted enforcement attention.

Voluntary disclosure runs the risk of waiving the attorney-client privilege or work product protection of the investigative record.[23] Counsel should take steps to attempt to preserve the privilege, including obtaining a signed confidentiality agreement from the government that makes clear that the company intends to preserve all privileges and that the government is precluded from unilaterally disclosing the contents of the report to third parties.[24] Other techniques, including attorney proffers and 'hypothetical' discussions, are available as well to minimise privilege waiver risks while disclosing information, if the decision is made that disclosure serves the company's interest.

Conclusion

Through careful consideration of the goal of the investigation, and then planning and execution, internal investigations can help mitigate legal risk, reputational harm, business interruption and expense. Achieving these goals requires close collaboration between counsel and client to maximise benefits and avoid negative consequences.

Notes

1 See generally Sally Q Yates, Deputy Attorney Gen., U.S. Dep't of Justice, Individual Accountability for Corporate Wrongdoing 3–4 (9 September 2015), available at www.justice.gov/dag/file/769036/download (commonly referred to as the Yates Memorandum); see also Sally Q Yates, Deputy Attorney Gen., Remarks at New York Univ. School of Law Announcing New Policy on Individual Liability in Matters of Corporate Wrongdoing (15 September 2015), www.justice.gov/opa/ speech/ deputy-attorney-general-sally-quillian-yates-delivers-remarks-new-york-university-school ('[I]f a company wants any credit for cooperation, any credit at all, it must identify all individuals involved in the wrongdoing,

regardless of their position, status or seniority in the company and provide all relevant facts about their misconduct. It's all or nothing. No more picking and choosing what gets disclosed. No more partial credit for cooperation that doesn't include information about individuals.')

2 See Sally Q Yates, Deputy Attorney Gen., Remarks at the New York City Bar Ass'n White Collar Crime Conference (10 May 2016), available at www.justice.gov/ opa/speech/deputy-attorney-general-sally-q-yates-delivers-remarks-new-york-city-bar-association ('Companies were still expecting to get cooperation credit, even though they hadn't really advanced the ball at all in determining who did what. And sometimes, companies still got credit for cooperation even though they hadn't provided what is most valuable to us – the facts about individuals. So, we decided to make that information a threshold factor. While the requirement to provide all facts about individuals isn't new, what has changed is the consequence of not doing it.'); Leslie R Caldwell, Assistant Attorney Gen., Remarks at New York Univ. Law School's Program on Corporate Compliance and Enforcement (17 April 2015), available at www.justice.gov/opa/speech/assistant-attorney-general-leslie-r-caldwell-delivers-remarks-new-york-university-law (Caldwell NYU) ('Perhaps most critically, we expect cooperating companies to identify culpable individuals – including senior executives if they were involved – and provide the facts about their wrongdoing.')

3 See, eg, Andrew Weissmann, Chief, Fraud Section of the Criminal Div. of the U.S. Dep't of Justice, The Fraud Section's Foreign Corrupt Practices Act Enforcement Plan and Guidance 7–8 (5 April 2016), available at www.justice.gov/criminal-fraud/file/838416/download.

4 See Caldwell NYU, supra note 2 ('[W]e expect companies to conduct appropriately tailored investigations designed to root out misconduct, identify wrongdoers and provide all available facts. To the extent a company decides to conduct a broader survey of its operations, that decision, and any attendant delay and cost, are the result of the company's choices, not the department's requirement.')

5 See generally Matthew D LaBrie, The Common Interest Privilege, Am. Bar Ass'n Section of Litig., Trial Evidence (30 September 2014), https://apps.americanbar.org/litigation/committees/trialevidence/articles/fall2014-0914-common-interest-privilege.html ('[T]he recognition and scope of a common interest privilege vary greatly from jurisdiction to jurisdiction. Recognition of the privilege ranges from a broad privilege in Massachusetts, to nonexistent in Illinois, to a case-by-case determination in California.')

6 See Caldwell NYU, supra note 2 ('Although we expect internal investigations to be thorough, we do not expect companies to aimlessly boil the ocean. Indeed, there have been some instances in which companies have, in our view, conducted overly broad and needlessly costly investigations, in some cases delaying our ability to resolve matters in a timely fashion.')

7 See, eg, *United States v Kernell*, 667 F.3d 746, 753 (6th Cir. 2012) (holding the criminal obstruction statute 'does not allow a defendant to escape liability for shredding documents with intent to obstruct a foreseeable investigation of a matter within the jurisdiction of a federal agency just because the investigation has not yet commenced') (quoting *United States v Yielding*, 657 F.3d 688, 711 (3d Cir. 2011)).

8 See, eg, Indictment, *United States v Mix*, 12-CR-171 (E.D. La. 2 May 2012), ECF No. 7 (charging former BP engineer Kurt Mix with felony obstruction of justice for deleting text messages related to the Macondo Oil Spill of 2010); but see *United States v Katakis*, 800 F.3d 1017 (9th Cir. 2015) (affirming district court's post-verdict judgment of acquittal for email-deletion-based obstruction of justice charge because defendant did not 'double delete' emails still available in his email client's deleted items folder).

9 See *Clear-View Tech., Inc. v Rasnick*, 2015 WL 2251005, at *2 (N.D. Cal. 13 May 2015) (holding preservation duty triggered by receipt of 'written document preservation and litigation hold notice'); see also *Osberg v Foot Locker*, No. 07-CV-1358 (S.D.N.Y. 25 July 2014) (failure to issue litigation hold for emails, based on mistaken assumption that all emails were saved forever, constituted sanctionable negligence).

10 See generally The Sedona Conference, Commentary on Legal Holds: The Trigger & The Process, 11 Sedona Conf. J. 265, 270–71 (2010) ('Compliance with a legal hold should be regularly monitored [...] [E]vents may trigger a duty to preserve only when considered in the context of the entity's history and experience, or the particular facts of the case.')

11 See *In re Avocat "Christopher X"*, Cour de cassation [Cass.] [Supreme Court for Judicial Matters] Paris, crim., 12 December 2007, No. 07-83228 (prosecuting French attorney under France's Blocking Statute for contacting a witness to elicit information to be used in a case in the United States).

12 *Upjohn Co. v United States*, 449 U.S. 383, 394–95 (1981).

13 See Yates Memorandum, supra note 1, at 3–4 ('If a company seeking cooperation credit declines to learn of [facts relating to individual misconduct] or to provide the Department with complete factual information about individual wrongdoers, its cooperation will not be considered a mitigating factor pursuant to USAM 9-28.700 et seq.')

14 See Fed. R. Civ. P. 26(b)(4)(D)(ii)); see also, eg, *In re Chevron Corp.*, 633 F.3d 153, 164 n.17 (3d Cir. 2011) ('We agree with the District Court that the non-testifying expert privilege, see Fed. R. Civ. P. 26(b)(4), is not applicable here because, "[b]y providing consulting expert reports to a testifying expert, the privilege is lost."' (citation omitted).)

15 See Fed. R. Civ. P. 26(a)(2)(B).

16 See Fed. R. Civ. P. 26(b)(4)(C). While counsel are permitted to convert a consulting expert to a testifying expert, they should keep in mind that once the expert is converted, the disclosure rules for testifying experts will apply to all of the counsel's prior communications with the expert.

17 See U.S. Dep't of Justice, Frequently Asked Questions: Corporate Cooperation and the Individual Accountability Policy (30 November 2016), www.justice.gov/dag/individual-accountability/faq; Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions, Release No. 34-44969 (23 October 2001) (commonly referred to as the Seaboard Report).

18 Disclosure of the report to third parties, including the government, can waive the privileged nature of the subject matter contained in the report.

19 See Fed. R. Evid. 801(d)(2).

20 See Securities Exchange Act of 1934 Section 10(b), 12b-20, Pub. L. No. 73-291, 48 Stat. 881 (codified at 15 U.S.C. § 78j(b)); Exchange Act Rule 12b-20, 17 CFR 240.12b-20; Regulation S-K, 17 C.F.R. 229.303(a)(3)(ii).

21 U.S. Envtl. Prot. Agency, EPA's Audit Policy (9 December 2015), available at www.epa.gov/compliance/ epas-audit-policy; Occupational Safety & Health Admin, Small Business Handbook, OSHA 2209-02R (2005), available at www.osha.gov/Publications/smallbusiness/small-business.pdf.

22 See supra notes 17 and 21.

23 See, eg, *Westinghouse Elec. v Republic of the Philippines*, 951 F.2d 1414 (3d Cir. 1991) (holding disclosure to the SEC and DOJ, even though pursuant to a confidentiality agreement, constituted a waiver).

24 The Eighth Circuit has upheld the concept of selective waiver. See *Diversified Indus. v Meredith,* 572 F.2d 596 (8th Cir. 1978) (en banc) (holding a corporation may selectively waive the privilege to an agency such as the SEC without impliedly effecting a broader waiver). Other circuits to consider the issue have rejected the concept of selective waiver. See generally *In re Columbia/HCA Healthcare Billing Practices Litig.*, 293 F.3d 289, 302 (6th Cir. 2002) (characterising the Eighth Circuit's Diversified Industries holding as an 'uninhibited approach adopted out of wholecloth' and deciding to 'reject the concept of selective waiver, in any of its various forms'); see also *In re Pacific Pictures Corp.*, 679 F.3d 1121, 1129–30 (9th Cir. 2012); *In re Qwest Commc'ns Int'l*, 450 F.3d 1179, 1197 (10th Cir. 2006); *Burden-Meeks v Welch*, 319 F.3d 897, 899 (7th Cir. 2003); *United States v Mass. Inst. of Tech.*, 129 F.3d 681, 686 (1st Cir. 1997); *Genentech, Inc. v United States Int'l Trade Comm'n*, 122 F.3d 1409, 1416–18 (Fed. Cir. 1997); *In re Steinhardt Partners, L.P.*, 9 F.3d 230, 236 (2d Cir. 1993); *Westinghouse Elec. Corp.*, 951 F.2d at 1425; *In re Martin Marietta Corp.*, 856 F.2d 619, 623–24 (4th Cir. 1988); *Permian Corp. v United States*, 665 F.2d 1214, 1221 (D.C. Cir. 1981).

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Brigham Cannon, partner in the Houston office of Kirkland & Ellis, concentrates his practice in the areas of white-collar criminal defence, internal investigations and False Claims Act litigation. He defends corporations and individuals in government investigations and other criminal and regulatory proceedings in connection with the Foreign Corrupt Practices Act, healthcare fraud and securities fraud.

Mr Cannon joined Kirkland after spending more than four years as a prosecutor with the Department of Justice in the Fraud Section of the Criminal Division. He joined the Department of Justice as a Trial Attorney through the Attorney General's Honors Program and led investigations and prosecutions into a wide variety of white-collar crimes, including bank, wire, mail, and securities fraud, money laundering as well as the FCPA.

Brigham has tried several cases in federal court, including against a defendant who stole more than US$120 million and another against the former CEO of a publicly traded company for securities fraud. He was also the lead prosecutor in the takedown of 26 defendants in nine states as part of an investigation into a multimillion-dollar fraud on an FCC programme.

He was identified in 2017 as one of the 'Next Generation' white-collar lawyers by *The Legal 500 United States*, was named to the 2014 *Global Investigations Review* '40 Under 40', and was awarded the Attorney General's Award for Distinguished Service in 2013, and the Assistant Attorney General's Exceptional Service Award in 2011.

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Kirkland & Ellis has one of the largest government, regulatory and internal investigations (GR&II) groups in the world with approximately 75 attorneys, who work on white-collar criminal defence and securities enforcement matters, including more than 30 who previously served as federal prosecutors, Justice Department (DOJ) officials or in the Securities and Exchange Commission (SEC).

Kirkland's GR&II group is best known for representing Fortune 500 companies and their officers and directors in their most sensitive matters, which typically are resolved confidentially but also have included some of the largest public representations in history.

Kirkland GR&II lawyers have represented corporations, their boards of directors, and individual corporate leaders in numerous significant investigations and prosecutions. These matters have variously included allegations of healthcare fraud, environmental crimes, privacy issues, securities fraud, export/import and OFAC, UK Bribery Act violations, FCPA violations, bank fraud, false claims (qui tam) and whistleblower retaliation violations, money laundering, criminal antitrust violations, financial and accounting fraud, and obstruction of justice.

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Ms Williams was previously a Special Assistant and Associate Counsel to President Barack Obama, where she advised the president and his senior advisers on legal and constitutional issues involving economic policy, financial regulation and reform, financial technology, trade, intellectual property and data protection and privacy. Before that, Ms Williams spent 11 years at the US Securities and Exchange Commission, serving as Deputy Chief of Staff under Chairs Mary Jo White, Elisse Walter and Mary Schapiro, and Enforcement Counsel to Chair Schapiro.

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Prior to joining Kirkland, Mr Schneider served for more than a decade as a federal prosecutor with the US Department of Justice, where he served in multiple leadership roles, both in Chicago and in Baghdad, Iraq. He is a graduate of Harvard Law School, where he was an editor of the *Harvard Law Review*, and Oxford University, as a British Marshall Scholar. He has taught at the University of Chicago and is an elected member of the American Law Institute.

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