

Risk Management & Internal Investigations

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Risk Mgt and Investigations

- Investigations are an important element of compliance risk management
- Risk management is an important element of investigations



Investigations

A Critical Element of Compliance Risk Management



Compliance Risk Management

- Identify compliance risks
- Assess each compliance risk
 - Impact, likelihood, etc
- Evaluate existing internal controls over each risk
 - Preventive and detective controls
- Score/rank residual risk
- Design risk mitigation
- Monitor
- Investigate
- Update risk assessment



Applying Investigative Techniques

- Data Analytics
 - It's not just for investigations
 - Useful for assessing internal controls
 - Useful in assessing likelihood of occurrence of a risk
 - Useful in auditing and monitoring



Framework for Using Data Analytics

- Which data is affected, and how, in each stage of a compliance issue:
 1. Preventive control that should have prevented the act
 2. Perpetration/violation - the act itself
 3. Concealment – often separate step(s) from the act itself
 4. Detective control that should have detected the act
 5. Effects of the act (if any)



Applications of Data Analytics

- Assess degree to which internal controls are working as designed
 - Digital indicators of performance or nonperformance of key internal controls
- Assess likelihood of risk events
 - Volume of transactions
 - Number of different employees involved
 - Number of steps in a process
- Auditing and monitoring
 - Monitoring of preventive and detective controls
 - Monitoring for signs of noncompliance
 - Monitoring for signs of concealment
 - Monitoring for indicators of the effects of noncompliance



Investigation Results

- How completed investigations can enhance our compliance risk management function
 - Identifying new compliance risks
 - Identifying new methods or clarifying existing ones
 - Provides information useful in assessing likelihood of events
 - Assists in designing/enhancing preventive and detective controls



Risks ≠ Methods

- Common mistake – thinking of multiple methods of engaging an act as one single compliance risk
 - For example – calling it “FCPA Risk”
 - Numerous methods of violating FCPA
 - Not all of these methods are prevented or detected by the same internal controls
 - Investigations provide rich information on specific methods used (or attempted)



Updating Risk Assessments

Consider what drives compliance risk:

- Changes in systems
- Changes in strategy
- Changes in competition
- Changes in economic conditions
- Changes in people
- Changes in regulation
- Changes in enforcement
- What else ??



Risk Management

A Critical Element of Investigations



An Improperly Performed Investigation
Creates More Risk Than it Mitigates



What Could Possibly go Wrong?

1. Vague or improper scope of investigation
2. Unclear goals
3. Working beyond our limits
4. Improper supervision of others involved in investigation
5. Weak interviewing techniques
6. Lack of understanding of legal rights
7. Independence impairments
8. Poor project/case management
9. Inconsistent procedures (failure to follow written procedures)
10. Improper handling of evidence
11. Lack of a QC function
12. Good investigation –bad report
13. Unconscious bias



Scope Issues

- Establish clear scope
 - What time period
 - Which transactions/activities
 - Which employees or vendors
- Manage scope throughout investigation
 - New issues may arise
- Procedures for expanding scope of it is deemed necessary



Unclear Goals

- What are we trying to accomplish?
 - Remove a noncompliant employee or vendor and move on
 - Determine full extent of a problem
 - Recover damages
 - Criminal charges
 - Identify and mitigate internal control weaknesses
- Know what your goals are before you begin the investigation



Working Beyond Our Limits

- Limits can be
 - Time available for the investigation
 - Expertise
- Dangerous to stretch our limits
- Know when to bring in third parties



Failure to Supervise

- Critical when multiple people are involved in an investigation
- Common problem when third party assistance is used
- Review work of others



Weak Interviewing

- As crucial as digital and physical evidence is, you still need to talk with people in most investigations
- Understanding how to extract information from people is still the foundation for successful investigations
- Understand the different phases of an interview
- Understand how different types of questions are best used
- Understand how to respond to different cues that a person provides in an interview
- Plan your interviews for success



Understand Parties' Rights

- Subjects and witnesses have rights
- How you obtain information and records is important
- Privacy considerations pertaining to workplace searches, access to records, etc
- How to conduct interviews without creating legal issues
- Rights under union contracts, employment agreements, etc
- Whistleblower protection, but also protection of cooperating witnesses



Independence Issues

- Real and perceived
- Consider using third party assistance for investigations of senior management
- Perform independence checks on third parties used in investigations



Project/Case Management

- Most critical for larger cases, but even small cases benefit from the documentation that is created through proper case management
- Document key decisions made along the way
- Results of investigative steps
- Changes in scope, procedures, etc
- Who did what
- Resolution



Documented Procedures

- Consistently follow written policies and procedures for performing, documenting, concluding and reporting on investigations
 - From intake through completion
- Important in demonstrating a strong compliance program



Handling of Evidence

- Protection and organization of documents
- Proper forensic techniques for extraction and protection of digital evidence



Weak or No QC Function

- Independent review of work and the report is best
- If this is not possible (small investigation shop), consider using third party for this function
- Self review is the weakest



Poor Reporting

- The best investigation creates risk when it culminates in a poorly prepared report
- Key attributes:
 - Accurate
 - Complete (all results of work)
 - Facts and conclusions, not opinions
 - Include only necessary information
 - Strategic use of graphics to explain or illustrate key information



Unconscious Bias

- Understand effects of affinity bias on interviews
- Confirmation bias is the biggest enemy of investigations
- Other unconscious biases that affect investigations:
 - Groupthink
 - Bounded awareness
 - Priming
 - Anchoring
 - Incrementalism



Conclusions

- A lot can go wrong when conducting investigations
- Practice good risk management to avoid the common pitfalls of investigations



QUESTIONS ??

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