



California Corporate & Securities Law

Should Your Company Auto-Critique?

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The last ten years might be called the decade of self criticism. In 2001, the Securities and Exchange Commission dangled a formal carrot of leniency for firms that “promptly, completely, and effectively disclosed the existence of the misconduct to the public [and] to regulators”. *The Seaboard Report*. The carrot is there but what are the chances that a company actually gets it?

Should Companies Listen To Circe?

There can be no doubt that cooperation benefits the SEC, but are companies better off if they stop their ears to the SEC’s siren song of cooperation? Recently, I came across a paper by Assistant Professor [Rebecca Files](#) at the University of Texas at Dallas that tackles this question.

The Answer May Be A Pig’s Breakfast

Professor Files’ study focuses primarily on accounting restatements. She concludes that company-initiated internal investigations “significantly increase the likelihood of an SEC enforcement action.” While that conclusion might militate against initiating an internal investigation, she also found that such investigations “decrease firm-level penalties associated with a sanction.” For companies trying to weigh the costs of an expensive investigation, the answer seems to be a bit of a pig’s breakfast.

Following The News

I also found interesting Professor File’s conclusion that “firms using headline press release disclosure are sanctioned more often than firms disclosing the restatement in the text of a press release.” This suggests that prominence of disclosure may be as important as the content.

Cooperation And The Department of Corporations

The Department of Corporations has adopted a regulation, 10 CCR § 250.70, that lists factors that the Commissioner may consider in determining the amount of administrative penalties. Cooperation is one of the listed factors.

You can download Professor File’s complete article [here](#).

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