

**The Internal Investigations Map:
Walking companies through the process**

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FCPAmericas regularly writes about internal corruption investigations. It offered lessons on [conducting cost-effective internal investigations](#). It proposed [ten rules for effective internal investigation interviews](#). Building upon this advice, James McGrath provided [additional thoughts](#) on conducting interviews on the Internal Investigations Blog.

In celebration of [Compliance Week's 2012 Annual Conference](#), to be held in Washington, DC on June 4-6, in this article we feature the helpful flowchart entitled, "[How Should We Conduct Investigations?](#)" developed by Compliance Week in conjunction with Ernst & Young and the Open Compliance and Ethics Group (OCEG).

The [map](#) walks companies through the basic steps of an investigation and provides detailed considerations at each phase. It breaks an investigation down into five stages: capturing potentially inappropriate activity, filtering to help management focus on what matters most, planning and assigning allegations to the appropriate tier of review based on the seriousness of the allegation, investigating the matter, and then resolving it.

Companies should review the chart in detail and make sure their current processes capture similar elements. In my experience conducting internal investigations, three areas in particular stick out:

1. Gauging the Seriousness of an Allegation: The investigations map does a good job at showing that much of the work in conducting investigations occurs before the actual investigation has even started. The map shows the importance of a triage system to determine which issues are specific, credible, and important enough to be escalated.

This stage is critical. It can also be one of the most difficult. What does a company do when there is simply not enough information available to gauge the seriousness of an allegation – when there is smoke but not yet fire? This question is paramount in the era of the FCPA whistleblower provisions. A company simply cannot ignore a tip. If it does, there is a good chance that the whistleblower will go to the government with the information, or maybe already has. Companies must respond quickly.

But what can they do short of incurring significant costs and disruptions from a lawyer-intensive, resource-intensive investigation? Companies with adequate internal capacity can use internal resources. If such resources do not exist, or if the allegations are serious enough or involve senior management, companies will need to hire independent reviewers. With the emergence of robust

FCPA enforcement, there has developed a select group of experts in the field with the know-how and language skills to do targeted, efficient, rapid response reviews efficiently. As Patrick Kelkar, a partner and FCPA practice leader at the [James Mintz Group](#) explains, “companies are learning that there are viable, cost-effective alternatives to full-blown investigations when such a level of inquiry is not yet needed.”

2. Use of Seasoned Professionals. The investigations map shows that, when the issue is serious enough, companies should make sure it is handled by a team that is competent and independent. Investigations need to be done right. This requires using professionals with real experience. The results could reveal whether or not the company or its employees have committed criminal or civil violations. Such violations, if not handled properly, can lead to multimillion dollar fines and jail time for executives. A company’s Board, Audit Committee, and/or executives will rely on the findings when making decisions on issues like remedial action and voluntary disclosure. The findings might ultimately be submitted to enforcement officials who will, as an initial matter, assess whether the investigation was thorough, unbiased, and precise. Conversely, a faulty investigation can result in a waste of time and resources. It can undermine compliance efforts; it might send a message that the company is not taking compliance seriously. Companies should be leery of cutting corners.

3. Addressing the System, Not Just the Wrongdoer. It is all too common for companies to think that, if they have terminated the wrongdoer, they have solved the problem. The investigations map shows that remedial efforts should also focus on the controls systems that might have failed. This is particularly the case under the FCPA where issuers are subject to the statute’s books and records and internal controls provisions. If a control did not exist where it should have, or if it was not effective, this issue must be reviewed and remediated.

[Paul Liebman](#), an OCEG Fellow and longtime in-house compliance attorney now in private practice, adds: “Because it so important that your investigation process work well under pressure, you would optimally like to test it in advance of a crisis in order to play out how you will respond to critical issues and ensure best practice decision-making. That’s not always possible so you have to take advantage of the learnings from real events by finding and fixing the process pitfalls and weaknesses to ensure continuous improvement towards efficient and effective investigations in the future.”

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