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After Fraud:
Responding to Allegations of Impropriety

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Sponsored by Ernst & Young

Presented by:

- **Lynda Schwartz** – Ms. Schwartz is a CPA with more than 20 years of experience in accounting, forensic investigation, business valuation, and auditing. Her practice focuses on forensic investigation and expert witness testimony related to financial and economic damages. She is a contributing author of the recently published AICPA *Guide to Investigating Business Fraud*. She is a partner in Ernst & Young's Boston office.
- **Thomas J. Dougherty** – Mr. Dougherty is a partner and head of Skadden Arps' Litigation office. He focuses on the representation and defense of companies, their officers, directors, underwriters and auditors. His experience includes litigating in defense of corporate actions and disclosures, proxy contests, hostile takeovers, and numerous class action and derivative cases. The author of *The Directors' Handbook*, Mr. Dougherty received his J.D. from Harvard University.
- **Kerry Schalders** - Ms. Schalders serves as the webcasts chair of the ACC Litigation Committee. A Corporate Attorney for media publisher R.H. Donnelley, Ms. Schalders' practice focuses on litigation management and commercial transactions, as well as counseling internal clients on internet-related law. Ms. Schalders received her J.D. from Georgetown University Law Center.

Agenda

1. Responding to and investigating allegations of fraud
2. Mitigation and recovery
3. Top lessons for in-house counsel
4. Q&A

First, a poll question for the audience:

Have you a role in investigating fraud allegations or setting anti-fraud controls for your company?

- (a) Yes, I participate in setting anti-fraud controls, managing regulatory compliance, and/or fraud investigations.
- (b) Not actively, but I would participate if concerns arose.
- (c) No, I am just interested in the topic.

Response and Investigation: Triaging the Allegations

Various types of fraud may arise, including:

- Asset misappropriation and employee fraud
- Corruption, bribery and FCPA issues
- Financial reporting and disclosure matters
- Regulatory compliance and related obligations

Response and Investigation: Triaging the Allegations

- Challenges in surfacing allegations and filtering to the right people
- Triaging the allegations and determining the right response
- Imperatives:
 - Responding to threats to the business, its employees or others
 - Consideration of any immediate reporting obligations
- Lessons learned from prior investigations
- Global considerations in assessing and responding to fraud risks

Response and Investigation: Case example for discussion

Case Inc. is headquartered in Boston with subs in New York, China, Russia, and France.

An sales executive in New York complained during a performance review that co-workers had been inflating their sales figures and commissions by falsifying order documents and booking fake sales.

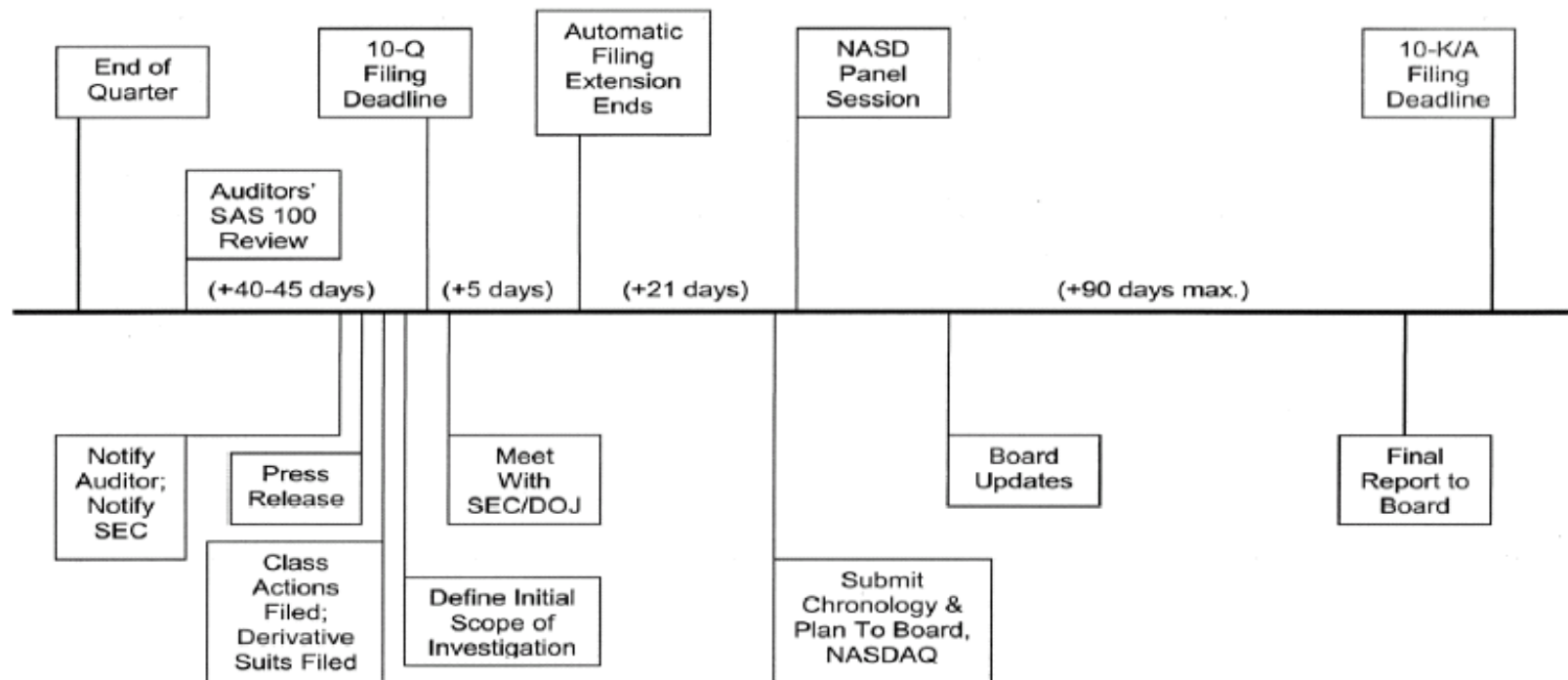
The supervisor did not initially believe the sales executive, but discussed the matter with his friend in internal audit. He looked at some documents and reported the matter to the ethics officer. The company anticipates filing its next quarterly reports in 30 days.

Response and Investigation: Organization

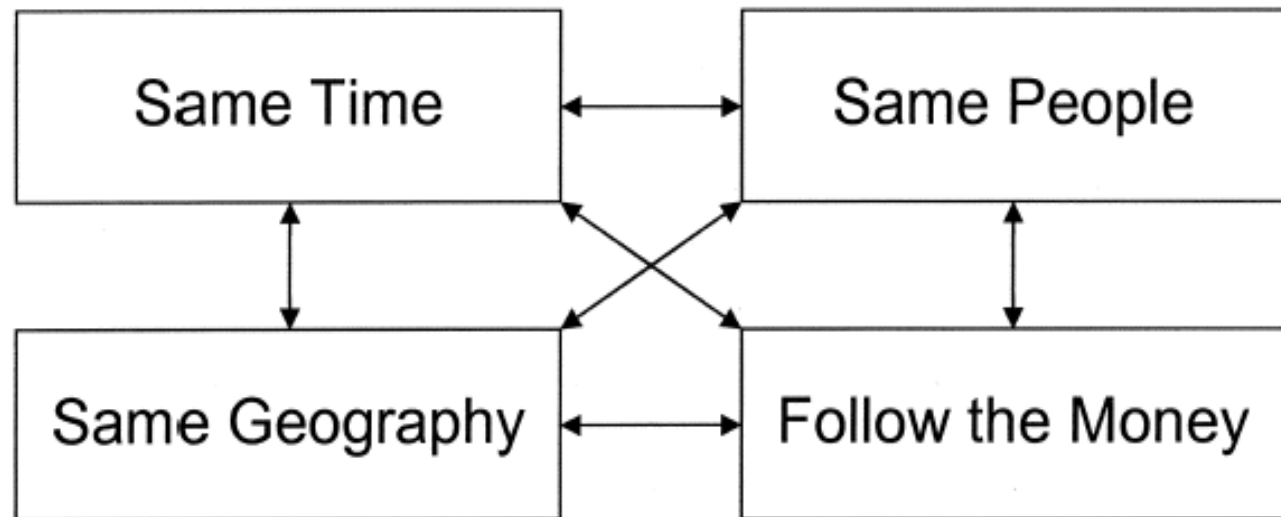
- Organizing an investigation, if needed
 - Who should sponsor the investigation
 - Who should conduct the investigation
 - Who reported the allegation / reliability of source
 - What is the scope
 - Strategies for controlling cost

Response and Investigation:

Compressed Time Frame



Response and Investigation: *Re-evaluating Scope*



Response and Investigation: Auditors and Regulators

- Anticipating the needs of the board, management, auditors, regulators and other stakeholders
- Addressing auditor concerns
- Dealing with regulatory and enforcement implications
 - Self-disclosure and proactive communication strategies
 - Responding to enforcement or regulatory action
 - Attorney-Client privilege implications
- Handling competing interests

Response and Investigation: Evidence

- Preserving and securing evidence, including electronic records
 - Requirements and considerations regarding what should be preserved
 - Preservation and analytical approaches to major groups of evidence
 - Strategies for controlling cost

Mitigation and Recovery: Company reputation

- Mitigating the impact on company reputation and brand
 - Risks of communications to the public, especially during an investigation
 - Appropriate approaches to communication
 - Market response

Mitigation and Recovery: Using the results

- Using the results of investigations as a basis for asset recovery
 - Asset tracing
 - Attaching personal assets of perpetrators
 - Determining potential causes of legal action
 - Insurance coverage

Mitigation and Recovery: Underlying Causes

- Addressing the underlying causes of the fraud
 - Remedial actions directly related to the incident
 - Changing internal controls and procedures specific to the fraud
 - Lack of management support for anti-fraud controls until after fraud allegations are made

Mitigation and Recovery: An Ounce of Prevention

Staying out of trouble

- Knowing your company-specific risk profile
- Creating and updating anti-fraud controls and processes focused on your highest and most significant risks
- Focusing on key elements of regulatory compliance

Recap:

DO:

1. Use a 12(b)(6) approach
2. Ensure independence and credibility
3. Work in parallel
4. Focus on transactional facts
5. Anticipate and meet the needs of stakeholders
6. Take necessary personnel and remedial actions
7. Restate financial statements and disclose

DON'T:

1. Discount the message or fail to respond
2. Limit scope or independence
3. Work serially
4. Overreach on fault
5. Lose sight of collateral impacts and timelines
6. Fail to learn from mistakes and identified root causes
7. Write-off and bury the problem

A final poll question for the audience:

Do you think your company currently has sufficient anti-fraud controls?

- Yes
- No
- Unsure

Q&A

Please submit your questions to the panel electronically using the webcast link.

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