

Internal Investigations



Experience, reputation, and integrity—these are the qualities that matter most to a board or committee hiring a law firm to investigate potential wrongdoing within the company. For over 140 years, the nation’s largest private and public institutions have hired King & Spalding to conduct internal investigations and advise their boards on the appropriate responses. There is no playbook for internal investigations and no one-size-fits-all strategy for these sensitive matters. Companies and their boards need the guidance of counsel with experience forged over decades to apply sober and sophisticated judgment on the myriad of issues that arise in internal investigations.

Law360 ranks King & Spalding in the “Top 10 Mightiest Securities and White Collar Practices.”

King & Spalding has been recognized repeatedly by *Director & Boards* magazine as one of the nation’s top law firms for boardroom advice. Our team, which includes former federal prosecutors, SEC enforcement officials, and Department of Justice officials, has been recognized recently with the following accolades:

- In September 2016, *Global Investigations Review* named King & Spalding to its “GIR 30,” an annual list of the world’s top 30 firms for investigations matters. This follows *Law360*’s having recently ranked King & Spalding in the “Top 10 Mightiest Securities and White Collar Practices.”
- In March 2016, BTI Consulting Group’s annual Brand Elite report listed King & Spalding among the top 12 U.S. law firms that general counsel rely on as their go-to outside counsel.
- In August 2016, *Global Investigation Review* listed King & Spalding among its top Washington, D.C., firms for Foreign Corrupt Practices Act matters. This follows the 2013 national awards from *Main Justice* for our industry-leading FCPA practice: “Excellence in the Life Sciences” and “Distinguished Client Service.”



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Lawyers in King & Spalding's Special Matters and Securities Litigation Groups have conducted hundreds of internal investigations for companies, their boards, and their committees. Our experience includes the following:

- Represented the special committees of the boards of multiple public oil and gas companies to investigate allegations of accounting fraud, FCPA violations, and disclosure of oil and gas reserves
- Advised a board committee of three national banks on shareholder demand letters alleging claims relating to the 2008 financial crisis
- Advised the special committee of a major medical device manufacturer in a global FCPA investigation
- Represented the Audit Committee of a public company in an internal investigation into more than twenty separate allegations of misconduct relating to disclosure issues, accounting fraud and whistleblower retaliation
- Conducted investigations for committees of several public companies concerning allegations of insider trading
- Conducted investigations for board committees on a wide range of issues including accounting fraud, sexual harassment, bribery, money laundering, antitrust issues, product defects, and FCPA

Federal and state regulators and Delaware courts have long imposed a duty on officers and directors to investigate alleged wrongdoing that is brought to the company's attention by internal or external sources. This duty has recently been crystalized by the U.S. Department of Justice in the so-called Yates Memorandum, which explains the Department's policy for providing cooperation credit to institutions that investigate and self-report criminal misconduct. Companies that receive credible information that suggests corporate wrongdoing need the guidance of counsel with experience in the critical issues that arise in internal investigations, including:

Scope of The Investigation. Following widespread criticism of Enron's internal investigation, too many law firms conduct investigations that are too big, too expensive, and too lengthy. The purpose of an investigation is to uncover the material facts, which does not mean that every stone must be turned. Moreover, an investigation that takes too long can be counterproductive to obtaining cooperation credit.

Maximizing Cooperation Credit. Whether it is the factors outlined in the Yates Memorandum or the SEC's Seaboard Report, King & Spalding understands the issues that regulators will consider in providing cooperation credit.

Managing Disclosures. The decision of when, what, and to whom a company should disclose information concerning the investigation can be the most critical choice the company makes. This not only impacts the company's shareholders, customers, and employees, it also impacts the attorney-client and work-product privileges. Of course, compliance with securities laws governing disclosures is paramount, and we have the experience, skill, and judgment needed to advise companies on the timing, method, and content of disclosures.

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