

Art of Scoping the Investigation

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Conduct a preliminary risk assessment which considers, among other things:

- **Source of allegation (e.g., regulatory inquiry, grand jury subpoena, lawsuit, Section 10A notice from auditor, whistleblower complaint)**
- **Nature of alleged misconduct (e.g., accounting irregularity, bribe, Title VII)**
- **Collateral consequences (e.g., reputational harm)**
- **Company's history**
- **Hot topics (e.g., data security, FCPA)**
- **Duty to disclose (voluntary disclosure)**

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Develop a preliminary Investigation Plan:

- Identify who will lead inquiry (e.g., Compliance, outside counsel, audit)
- Identify source of authority at Issue (Code of Conduct, GAAP, statutory)
- Identify sources of information/evidence
- Determine necessary steps to preserve data
- Determine chronology of inquiry
- Assess need to engage internal or external subject matter experts

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Seaboard Report: When finished, can you answer the following questions:

- **Did misconduct arise due to management pressures or a tone of lawlessness**
- **Were appropriate procedures in place, and if so, why they failed to prevent misconduct**
- **Did senior personnel know of or participate in misconduct**
- **Was misconduct systemic or isolated**
- **Timing and duration of misconduct**
- **Harm inflicted upon others (including consumers, the government, and investors)**
- **How soon after discovery did company implement an effective response**
- **Were wrongdoers adequately disciplined**
- **Whether disclosure of the misconduct is required by contract, law or regulation**

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Assess Risk of Recurrence

- **Confidence level misconduct will not recur, including whether company adopted better controls**
- **Beyond employment action, what remedial measures should be implemented**
- **Test effectiveness of remedial controls**

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- Take your time
- Need for speed
- Beware of scope creep
- Be nimble in your approach
- Be careful about sticking to the scripted investigation plan
- Trust but verify (make sure area at issue is audited in the future)
- Be mindful of the past but move forward to a more compliant future
- Use knowledge gained to promote compliance throughout the organization