



407 Whistleblower/Internal Investigations & How to Respond to the SEC

Meric Craig Bloch
Global Vice President
Adecco SA

Kerry A. Galvin
Senior Vice President and General Counsel
Lyondell Chemical Company

Kim Rivera
Vice President & Associate General Counsel – Compliance & International
The Clorox Company

Faculty Biographies

Merik Craig Bloch

Merik Craig Bloch is global vice president and investigative counsel in the office of business ethics and compliance of Adecco S.A., the world's leader in human resources and staffing services. Adecco maintains 6,600 locations in over 70 countries and territories. Mr. Bloch conducts internal investigations, manages the internal-investigations process throughout the company, and trains employees in key internal departments to conduct investigations. He also speaks frequently within Adecco and to compliance professionals on such topics as business ethics, investigative techniques, and lessons learned from earlier business investigations.

Mr. Bloch has extensive professional experience conducting and managing compliance business investigations and in business counseling. He has coordinated a number of his investigations with federal and state law-enforcement officers. Mr. Bloch also served as a consulting expert for the United States Secret Service in an organized-crime prosecution involving one of the largest Mafia families in the United States.

Mr. Bloch holds a B.A. and a J.D. from New York University. He is a Certified Fraud Examiner, as well as a reserve officer with the Livingston, New Jersey Police Department.

Kerry A. Galvin

Kerry A. Galvin is senior vice president and general counsel of Lyondell Chemical Company. In this capacity, she is responsible for coordinating and providing legal services for the Lyondell enterprise, which includes Lyondell and its affiliate, Equistar Chemicals, LP. Ms. Galvin manages the enterprise's legal department and serves as the chief legal advisor to the Lyondell board of directors. She also has responsibility for managing the government affairs function for the enterprise. Ms. Galvin serves on the Equistar partnership governance committee. Ms. Galvin has been responsible for legal services associated with a number of activities, including corporate finance and securities, corporate governance, and mergers and acquisitions. Prior to being elected to her present position, she served as associate general counsel, with responsibility for international legal affairs, and was based in Lyondell's European headquarters in Maidenhead, the United Kingdom.

Ms. Galvin began her career in private practice in Houston with the law firm of Mayor, Day, Caldwell and Keaton. She is a member of the conference board of chief legal advisors, ACC, ABA and Texas bar association.

Ms. Galvin graduated cum laude from Georgetown University with a B.S.F.S. and cum laude from the University of Michigan with a J.D. degree.

Kim Rivera

Vice President & Associate General Counsel – Compliance & International
The Clorox Company

“Internal Investigations: Practical Wisdom from the Front Lines”

The target audience will be those who manage the investigation / compliance process, rather than those who simply investigate claims of misconduct. We can always add a primer on investigations to the materials so we can bring everyone up to the same level for the discussions.

The presentation can break down into three parts:

- I. The internal dynamics of whistleblower investigations
 1. The management mindset
 - i. How managers think
 - ii. Workplace dynamics
 - iii. Employee cynicism about the compliance process
 2. Selling the function internally
 - i. Business goals of the investigation
 - ii. Management legal obligations
 - iii. Defining what the investigations process is supposed to accomplish: what investigations do and don't do
 3. The use of investigations as a form of business intelligence
 - i. When to inform management and how to enlist their help
 - ii. Separation from the disciplinary process
 - iii. Strategic use of the final report
 - iv. Counseling your business clients
 - v. The ethics bulletins and proactive marketing
- II. The operational dynamics of whistleblower investigations
 1. Integrating the investigation process with other internal stakeholders such as the legal department, the CFO, internal auditors and human resources.
 - i. Choosing the right investigators
 - ii. Skill-set limitations with other key internal departments
 2. Interviewing and investigative issues that are not usually anticipated or handled correctly
 - i. Defining the scope carefully; what are you exactly trying to do?
 - ii. Do you publicize why you are there?
 - iii. The right to investigate
 - iv. The investigator's obligations
 - v. The difference between an interview and an interrogation, and interview dynamics
 - vi. The best instructions to give to the witness
 3. Using technology tools to assist with investigations and case management.
 4. What can go wrong in the investigation process, and possible claims that can be made against the investigators.
 - vii. Problems during the interview
 - viii. Common investigator errors
 - ix. Obstruction of justice

- x. Retaliation concerns
- xi. Discrimination
- xii. Invasion of privacy
- xiii. Defamation
- xiv. False Imprisonment
- xv. Wrongful Discharge
- xvi. Professional responsibility issues for lawyers

- III. The external dynamics of whistleblower investigations
1. Contacting the SEC on your own initiative and in response to their inquiry
 2. Contacting law enforcement on your own initiative
 - i. Risks and realistic benefits
 - ii. Effects on ongoing internal investigations
 - iii. Conflicting resources and priorities
 3. Dealing with your outside auditors
 4. Reaching for outside expert help (investigators, forensic accountants, lawyers, etc.)
 5. Protecting the findings from disclosure
 - i. Steps to protecting confidentiality
 - ii. Practical considerations about legal privileges

Calling the Cops: Decide before You Dial

by Meric Craig Bloch

Meric Craig Bloch is Global Vice President and Investigative Counsel in the Office of Compliance & Business Ethics at Adecco S.A., the world's leader in human resources and staffing services. Mr. Bloch has extensive professional experience conducting and managing internal investigations and coordinating investigations with law enforcement. He is admitted to the Bars of New York, New Jersey and the District of Columbia. Mr. Bloch is a Certified Fraud Examiner. He is also a reserve police officer with the Livingston, New Jersey Police Department. He can be reached at meric.bloch@adecco.com.

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In the current business environment, companies usually turn to their compliance staff to investigate allegations of employee misconduct. The broad scope of internal codes of conduct and Sarbanes-Oxley obligations means that investigations today occur more often, cover a wider spectrum of circumstances, and likely detect more misconduct than in the past. Combine this with increased opportunities for criminal behavior due to increasingly complex business structures, dispersed operations, and technology advances, and the opportunities for crime by insiders are not likely to lessen in the future. The costs to companies of internal misconduct are significant: it is estimated that the typical business loses five percent of its revenue annually to workplace fraud alone.¹

Some of the internal investigations will find that the company was the victim of a crime. This will present management with three options: reporting the matter to the police² for possible prosecution, filing a civil lawsuit, and/or pursuing claims against third parties and their insurers.

If senior management wants to report the matter to the police for possible criminal action against the wrongdoers, they must be counseled carefully. The company must consider the benefits and risks of some important points.

Business Goals. The referral of the matter to the police should never be simply a knee-jerk reaction. The referral should further a business purpose. You must, therefore, identify the company's goal in referring the matter to the police. Does the company simply want the satisfaction of having reported it to the police, regardless of what happens after the report is made? (This can be useful if the company wants to publicize it internally as a deterrent to others.) Would simply the arrest of the wrongdoer be sufficient, regardless of whether he or she is convicted? Does the company want the wrongdoers punished or to send a public message to its marketplace? The company must make this decision at the outset because it affects the internal preparation of the referral and the amount of resources the company should expect to devote later on to its desired result.

The Company's Reputation. Although senior management may feel that they are vindicating the company's rights by contacting the police, it is nonetheless a public act. If the wrongdoing was enabled by some internal business failure, the company will be announcing that failure to its customers and competitors. The company may also be saying, although indirectly, that it has hired dishonest people. This may lead to questions by shareholders and the marketplace about the competence of management.

On the other hand, your company may view the referral as an act of institutional hygiene, and that it shows that the company is committed to the highest ethical standards. (It may also highlight the efficacy

¹ Assoc. of Certified Fraud Examiners, *2006 Report to the Nation* (2006).

² For convenience, "police" refers collectively to state, local and federal law enforcement authorities.

of your company's compliance program.) The referral shows that compliance-minded executives "walk the talk." The important point is to consider fully the varying perceptions the referral will have.

Contacting an Agency. Now that senior management has decided to report the matter to the police, which agency should you contact? Naturally, you want the best agency to handle your case. Remember, however, that your choice may be among a number of law enforcement agencies with jurisdiction. Federal criminal laws cover most of the common misconduct committed by company employees, including various types of fraud, interstate transport of stolen property, commercial bribery, intellectual property crimes, and racketeering. State criminal laws cover most of the same conduct. Therefore, a criminal act that can be prosecuted by federal authorities may also be prosecuted by state or local ones.

Take the time to choose the right one in light of the nature of the crime, its complexity, the dollar amounts involved, and the location of the incident. Although your senior management may feel comforted to know that a high-profile agency like the FBI or Secret Service has the case, a referral to local or state police, while less glamorous, might produce a faster and more meaningful result for your company.

However, do not shop your case around to a number of agencies. One of the first questions you will be asked when the report is taken is whether any other agency has been contacted. Whether for reasons of resources or turf, many agencies do not take a case that another agency is handling, even if that other agency only took some nominal steps. This is also why the decision to contact the police and the initial contact must be coordinated by senior management. A well-intentioned manager who called the police to make a report when he or she first suspected wrongdoing may prevent you from having any other agency -- especially a more appropriate agency -- take the case.

Timing. You must time your initial contact properly. Do not contact the police prematurely. The police cannot investigate every allegation, so wait until you have developed sufficient facts to explain -- and document -- what happened.

Remember, of course, that the investigation will only be one matter that competes for the resources of the police. Their world is a fluid one, and it is full of unexpected shifts in resources. Business-related investigations often give way to more urgent police matters. Police detectives and government agents are very busy, with many matters under investigation and prosecution. Unless the magnitude of the misconduct is such that it is deemed a priority, the investigation will proceed as resources allow, and that may mean waiting for an extended period of time.

Sympathy. You must make your company appear sympathetic. Police and prosecutors deal on a daily basis with violent crimes and other inhumanity. Those victims motivate the authorities. The authorities, in contrast, may view the crime you report as the result of poor business practices that created the opportunity for the problem rather than seeing the company as someone's victim. This is where the importance of emphasizing your compliance program comes in. An effective program shows that the company takes proactive measures to ensure that the company and its employees act ethically, and that the company has affirmatively prohibited the conduct in question. Your company may then be perceived as having been victimized despite its own efforts to protect itself.

Case Complexity. When you get the opportunity to present what your internal investigation found, don't let your case appear too complex. You must be able to summarize the case in one sentence. Otherwise, there is little realistic hope that it will be meaningfully investigated.

The police deal with serious crimes on a daily basis. It is relatively easy for them to assemble the evidence to prove, for example, the elements of a robbery. This is their world. The corporate world, with its policies, compliance processes, hierarchies and business units, is not that familiar to them.

Don't expect the police to embrace the complexity of your business operations as a chance for them to expand their knowledge. Most lack a business background, and they may not readily confess to you that they do not understand the machinations of how you do business. Consequently, authorities may focus on what is familiar to them and ignore your report.

You must be prepared to overcome their reluctance. One way to do this is by "gift-wrapping" the investigation. Marshal the known facts into an objective report. Organize copies of key documents. Document the chain of custody for them. Build a paper-trail or chronology of what you believe happened. Provide a list of witnesses. Offer an expert witness from your company, if necessary. Prepare charts, graphs, maps or other demonstrative aids. Be prepared to break down the incident into simple terms that a layman could follow. Also, be prepared to identify potential problems or factual gaps. The more complete and documented your package of information, the more likely it is to be prosecuted.

Present the case to the police personally, not over the telephone. This will demonstrate your company's commitment to the process.

Cooperation. Be prepared to cooperate fully. Although you may not always have the opportunity, depending on the agency, you should try to expand your role from that of a victim to being part of the investigative team.

Assign a single point of contact to facilitate all company-related inquiries and to ensure quick access to people, documents and information. Offer to be a company translator, guide and intermediary for the police. Get senior executives involved to show their commitment. Most importantly, remember that the police and prosecutors will approach the case in terms of probable cause and burdens of proof. Everything you do that helps them to address those factors lessens the chances that your case will not be prosecuted.

However, be prepared to surrender all control over the investigation after the referral. Police and prosecutors control their investigations. They may also insist that the company take no further action on its own to avoid compromising a possible criminal prosecution.

For some significant investigations, you should also recognize that the criminal investigation may interfere with the company's ability to carry on business. The police may need access to computer systems, personnel, and business records. Your initial internal investigation, however comprehensive, does not prevent the police from making their own inquiries, and they likely will anyway.

Prosecutor Resources. If the investigation is fruitful, the evidence will then be reported to the prosecutor. This is a crucial step in the process. Any police agency will take a report of possible criminal activity. The goal is the prosecution of the wrongdoers.

You must focus on what it takes to capture the prosecutor's interest in prosecuting the wrongdoers. This may not be easy. For example, due to demands of police, prosecutors fail to pursue 75 percent of bank check fraud cases. According to the U.S. Government Accountability Office, in large cities where a majority of resources are used to prosecute violent crime, the percentage rises to 90 percent.³

With limited resources, the prosecutor has broad discretion to decide not to prosecute, even if the company and the police believe the case is a compelling one. You should acknowledge this reality and help build a case that (i) would be attractive to a jury, (ii) present the company as a sympathetic victim, and (iii) has sufficient proof to justify a verdict beyond a reasonable doubt. Don't be afraid to use some

³ Assoc. of Certified Fraud Examiners, *2006 Fraud Examiners Manual*, p. 1.001 (2006).

salesmanship. If your case has some hook to catch the prosecutor's interest – dollar amount, organized-crime involvement, headline-grabbing facts – be sure to emphasize it.

You must remember that the government has different objectives than your company. They are focused on righting the wrongs against society, not the wrong done to your company. Your company's goal could be sidelined by plea bargains, cooperating testimony, and political factors. External factors, such as national-security demands on federal agencies, may also affect the results your company seeks. Finally, the prosecutor may make decisions about charging, settlement or strategy with which the company may not agree.

Be Realistic. You must be prepared to temper management expectations. Managers must be educated on the realistic outcome of the referral. Their likely vision of someone being led out in handcuffs – known as the “perp walk” – will rarely occur. The time needed for these prosecutions will not usually be as quick as management would like. Minor offenses may not be severely punished, and jail time may not be likely. Senior managers must understand that a referral may neither bring a prompt resolution of the matter nor will it necessarily bring prompt restitution. There is just no “magic bullet” to help a company that is victimized by crime.

In most cases, contacting the police should be used as a last resort when other options will not work. And it should never be considered as just another step in your company's incident-management process. The best approach is to solve your business problem first. The police can be contacted if the company then wants to prosecute. And if senior management fully supports the referral and appreciates its benefits and risks, your efforts may be worth it.

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The Compliance Investigation as an Embedded Business Function

by Meric Craig Bloch

Meric Craig Bloch is Global Vice President and Investigative Counsel in the Office of Compliance and Business Ethics at Adecco S.A., the world's leader in human resources and staffing services. Mr. Bloch has extensive professional experience conducting and managing compliance business investigations and in business counseling. He is admitted to the Bars of New York, New Jersey and the District of Columbia. Mr. Bloch is also a Certified Fraud Examiner. He can be reached at meric.bloch@adecco.com.

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When a company learns that there may have been some violation of law or company policy, an internal investigation is needed to determine precisely what happened. Corporate executives increasingly recognize that internal investigations uncover and help correct improper activities before they attract government, litigant or marketplace attention. Compliance officers today cite the improvement of their function's risk-assessment capabilities as a high priority.

No one seriously argues that corporate investigations are now a necessary part of the corporate landscape in a post-Sarbanes Oxley world. Most will also not argue with the relevance and utility of investigations. But the point for those who administer compliance programs is not to simply solicit agreement from corporate peers. Compliance officers need to know how to embed compliance investigations into their company's culture (and this applies even to those professionals in human resources and legal departments who freelance investigations). Compliance executives must assume new responsibilities in an existing corporate political world. Leaders of business units may voice support the compliance function because they want to be good corporate citizens, but corporate compliance departments are only effective when they are accepted and embedded into the business.

A cursory review of company websites and industry sources show an emphasis predominantly on employee ethics training and hotline-reporting schemes. This focuses only on the education and detection priorities of the compliance function. The missing component – the internal compliance investigation – completes the picture by resolving the incident and improving the business through its findings.

The challenge is to make the results of the investigative process a practical and personal piece of advice to business leaders. The investigation goal is to prevent damage to the company – by using investigation findings as a form of business intelligence -- rather than rebuilding it after the damage is done. Once the business leaders appreciate its practical and personal significance, the investigative process will succeed.

But internal business investigations can be a difficult business task. By definition, they involve accusations or insinuations of wrongdoing against company employees. Investigations can be divisive and disruptive to a company's workforce and business operations. They can be costly, time consuming, and they frequently distract business executives from focusing on their usual responsibilities. While an investigation of specific alleged misconduct may help resolve the initial problem, investigators may also uncover other potentially troubling situations that the company is not prepared to deal with immediately.

This work examines management techniques and processes to create and manage compliance investigations as an internal business function and to provide readers with a practical framework from which to implement an investigations process.

I. CORPORATE REALITIES AND INTERNAL INVESTIGATIONS

Compliance programs are not profit centers of a business. This is significant but not surprising. So there must be some rationale for funding these programs internally. If a company funds a compliance program simply out of fear of prosecution or because its competitors also have these programs, the future of the compliance group becomes precarious because the group's survival depends on factors outside its control. Similarly, if the program exists without concrete expectations and metrics to measure its business value, then the program is also at risk. Compliance officers must, if for no reason other than self-preservation, recognize their obligation to contribute to the equity value of the business – increasing the returns to its shareholding owners – and this must be a fundamental operating principle.

A. The Ethics Messages

Correcting the Misperceptions

Traditionally, ethics, the philosophical underpinnings of a compliance program, was the domain of academics and social critics. Consequently, much of the discussion of ethics focused on philosophical points of view, case studies, and critiques of social responsibility. The problem was that there was little practical information about putting ethical goals and ideas into action, especially in a business context. This has led to a misperception about the utility of an ethical approach to business.

The misperception is compounded by the perennial ethics scandals in politics, where “ethics” is seen as an easy technical and isolated act, rather than as a habit of proper conduct formed through repeated action. The use of the term only led to a consideration of abstract professional rules that bear no real connection to concepts of right or wrong. And the inevitable next scandal reinforced the perception of “ethics” as little more than posturing.

Within the area of business ethics, the lack of involvement of business managers has caused much confusion about the proper role of ethics in business. There are many ethical “gray areas” in business dealings. However, ethics was often presented – often by those who do not work within a company department with profit-and-loss responsibility -- as a kind of moral absolutism. The examples were often presented in a simplistic way, as if every real-life situation has a right and wrong answer (such as “should I lie, cheat or steal”). With its emphasis on “doing the right thing,” managers believe that compliance officers are simply asserting the obvious, and managers do not take the message seriously.

Many managers believe business ethics is irrelevant because too much business ethics discussion avoid the real-life complexities these managers face. They believe that business activity often demands that we select from alternatives that are neither wholly right nor wholly wrong.

The better message is that business ethics is about prioritizing moral values for the workplace and ensuring that business conduct is aligned with those values. Stated differently, ethics and compliance are simply forms of values management.

Myths about Ethics

Considering that they have not been engaged historically in the ethics process, business managers are often confused about the notion of ethics. Certain myths arise from narrow or simplistic views of ethical dilemmas.

- **Myth: Our employees are ethical so we don't need to pay attention to business ethics.** In fact, most of the ethical dilemmas faced by managers in the workplace are complex. People are quick to speak of the Golden Rule, honesty and courtesy. But when presented with complex ethical dilemmas, most people realize there is a wide "gray area" when trying to apply ethical principles.

- **Myth: Business ethics is superfluous -- it only asserts the obvious: "do good!"** Many people feel that codes of ethics, or lists of ethical values to which the organization aspire, are rather superfluous because they represent values to which everyone should naturally aspire.
- **Myth: Business ethics is a matter of the good guys preaching to the bad guys.** Good people can take bad actions, particularly when stressed or confused. Managing ethics in the workplace includes colleagues working together to help each other remain ethical and to work through confusing and stressful ethical dilemmas.
- **Myth: Ethics can't be managed.** Actually, ethics is always "managed" -- but, too often, indirectly. Strategic priorities (profit maximization, expanding marketshare, cutting costs, etc.) can strongly influence ethics. Laws, regulations and rules directly influence behaviors to be more ethical.
- **Myth: Our company is not in trouble with the law, so we're ethical.** One can often be unethical, yet operate within the limits of the law, such as withholding information from superiors, fudge on budgets, constantly complain about others, etc. However, breaking the law often starts with unethical behavior that has gone unnoticed.
- **Myth: Managing ethics in the workplace has little practical relevance.** Managing ethics in the workplace involves identifying and prioritizing values to guide behaviors in the organization, and establishing associated policies and procedures to ensure those behaviors are conducted appropriately.

Compliance officers must be prepared to rebut these myths if their programs are going to be effective.

B. The Management Mindset

Once perceptions are adjusted, compliance officers must then market the value of the investigative function in particular. Business leaders should be considered the “customers” of the investigation's outcome. Therefore, it pays to know how these executives generally view business issues. Business people generally like to be in control. For example, a regular business practice is to define a goal, formulate a strategy, and execute a plan. By controlling the outcome as much as possible, managers ensure the most profitable result. This is what they are paid to do. Not surprisingly, the profit motive can be valued more heavily than the good- citizenship role of the corporation.

This mindset influences a company's perception of the investigation process. Managers will want to know what commitment must be made to complete an investigation. But until the facts are known, required commitments can only be estimated. Senior business managers may want the ability to conduct compliance investigations with their own resources or within their own business units because the managers believe they can control the outcome. This challenge does not prevent a proper investigation. Compliance officers may successfully leverage that mindset by developing the investigations process to provide a reasonable assurance to these managers that the outcomes will serve the business interests of the company and its shareholders.

Threats to Employee Loyalty

Compliance officers must acknowledge that managers may be reluctant to embrace the investigative process because they may believe it jeopardizes employee loyalty. Loyalty is critical to worker productivity, efficient operations and good customer service. Loyalty is also a function of the extent to which employees trust their employer and believe that the employer is truly interested in their well-being. Employees are unlikely to remain committed to an employer they do not trust. While most employees would not suggest that fellow employees who committed some misconduct should be protected from discipline, the efforts of a third party – in this case, the compliance group – may be seen a threat to the loyalty bond. Compliance officers must keep this in mind.

C. **Selling the Value of Business Investigations to Management**

Some managers believe that investigations are neither profitable nor expeditious. Business people know that the profitable use of time is the key to their success, and the investigation may seem more expensive than simply writing off the loss, firing the offending employee and going back to the business of selling goods and services.

The perception is reinforced by the fact that, in the past, compliance-related investigations were not tied to the operation of the business. The goals were usually to identify wrongdoers and then calculate the harm they caused. Compliance programs were often disconnected from what the company culture considered the true business of the company, and they were perceived as just another layer of bureaucratic oversight. As a result, the process was viewed simply as added cost to the business. Compliance officers must overcome these gaps in understanding if the investigation process is to work. There are some valuable concepts for compliance officers to use for persuading management.

Risk Management

Risk is simply the possibility that damage could be inflicted. Investigations are basic components of a company's efforts to identify systematically the risks to the business and to ensure that appropriate processes commensurate with the risks are implemented. An identified risk is a managed risk.

In risk-management terms, investigations identify existing sources of revenue loss and preventing further losses. Investigations shield the company from liability or reduce it. The company may become aware of problems or practices which could expose the company to criminal liability, civil lawsuits or sanctions. Identifying and repairing these problems before a possible outside investigation begins can give the company the opportunity to take remedial measures, comply with relevant laws or regulatory standards, or eliminate other problems that were previously unknown to management. Finally, aggregate compliance-investigation data can be presented to show risk trends of certain employee behaviors, troubled management, or business regions.

Investigations also avoid costs. They connect compliance with financial and operational policies and procedures. Timely and meaningful findings avoid damage to reputation and investor confidence. They protect the stock price. They avoid the personal liability of directors and officers. They avoid civil litigation and criminal penalties. On a practical level, a thorough investigation may even help the dispute-resolution process of company claims.

In its most effective way, business leaders partner with compliance officers to identify and prioritize the business risks. This gives the business leaders a stake in the compliance process and maximize the value of investigations to the business.

Good Corporate Citizenship

Practical business considerations generally encourage companies to be perceived publicly as good corporate citizens. Corporations generally want to be recognized in the relevant community as a contributor to shared values through the creation of jobs, income to the community and the payment of taxes. To the extent that the corporation can build a constituency beyond the shareholders, the greater the likelihood that company executives will see the benefits of an effective compliance-investigation function.

Projecting a Strong Public Image

Attention to ethics is also strong public relations. The fact that an organization regularly gives attention to its ethics portrays a strong positive to the public. People see those organizations as valuing people more than profit, as striving to operate with the utmost of integrity and honor. Aligning behavior with values is critical to effective marketing and public relations programs. Also, a company can use its compliance program to recruit the best and brightest employees and to burnish its reputation. A

compliance program allows sales representatives to go beyond mere platitudes in describing a company's dependability and ethical standards.

Enforcing an Ethical Culture

Companies that have strong track records of ethical, responsible behavior generally stand to gain the most from compliance investigations. Investigations as part of a properly implemented program foster an ethical corporate culture company-wide, preserving the company's reputation. When the results of investigations lead to improved employee relations, enhanced productivity and positive morale, compliance officers add to the company's equity.

Compliance programs increase ethical awareness, and additional measures taken for the sake of prevention and control lead to a better rate of discovery. Skeptics of compliance programs, however, often criticize ethical goals as being no more than a corporate version of the same lessons our mothers taught us. However, an ethical culture improves the business. It takes what may seem like an amoral world of profit and loss and creates a common set of expectations and understandings. A company's code of employee conduct is an example of this. Over time, appropriate conduct will shift the burdens of shame and embarrassment from those who speak out against improper conduct to those who simply stand by and do nothing when they allow improper behavior to continue.

The investigations process complements the self-regulating aspects of an ethical culture. First, the potential of business ethics is not fully exploited when ethical guidelines only take abstract values into account. Abstract concepts like responsibility, integrity, compliance, fairness and respect, when left in the abstract, are not generally effective. When investigations reinforce the guidelines by applying the guidelines to specific acts of corporate conduct, the effectiveness of business ethics is increased. As a result, investigations communicate values and reinforce concrete limits on business conduct.

Stakeholder Expectations

Investigations which identify compliance and ethics-related misconduct serve a company's broader interests by helping the company meet the expectations of the business' internal and external stakeholders. A stakeholder could be the company's employees, shareholders, government agencies or outside groups. A business that incorporates ethical principles into its operations will likely fare better in the market. If an ethical lapse then occurs in the future, the risk of adverse publicity will be less as the public may see it as an aberration in the company's otherwise clean image.

Quality Control

Properly conducted investigations are another form of business intelligence. Information gleaned from an investigation improves business operations. When done well, investigations offer senior management each of the following:

- Company values, ethics and expected behaviors are communicated to employees through the conduct of the investigation and the application of a code of conduct.
- Key business risks are identified and assessed.
- Information can be reported to management, the board and stakeholders in an accurate, timely and reliable way.
- The company's true culture can be measured, as well as the need for additional training or better management supervision.

Workforce Changes

Younger employees are among the least likely to report misconduct and are among the most likely to feel that management and their coworkers will view them negatively if they do report. Younger managers (under 30) are considered more likely to feel more pressure to compromise ethical standards as other

employees. Cheating among both college and high school students is on the rise, as is the attitude that cheating is acceptable behavior.

Companies that require ethics training and investigate allegations of misconduct generally experience an increased reporting of misconduct by employees, higher perceptions that employees are held accountable on ethics violations, and lower pressures on employees to compromise company standards of business conduct.

Cultivating Teamwork and Productivity

Ethics programs align employee behaviors with those top priority ethical values preferred by leaders of the organization. Usually, an organization finds surprising disparity between its preferred values and the values actually reflected by behaviors in the workplace. Ongoing attention and dialogue regarding values in the workplace builds openness, integrity and community -- critical ingredients of strong teams in the workplace. Employees feel strong alignment between their values and those of the organization. They react with strong motivation and performance.

Associated Values with Other Company Programs

Ethics programs identify preferred values and ensure that organizational behaviors are aligned with those values. This overall effort is very useful for several other programs in the workplace that require behaviors to be aligned with values, including quality management, strategic planning and diversity management. Total Quality Management includes high priority on certain operating values, e.g., trust among stakeholders, performance, reliability, measurement, and feedback. Ethics management programs are also useful in managing diversity. Diversity is much more than the color of people's skin -- it's acknowledging different values and perspectives. Diversity programs require recognizing and applying diverse values and perspectives -- these activities are the basis of a successful ethics program.

Ethics Program Pay for Themselves

Companies with a code of conduct and an active investigations function generate more value-added than companies without these features. Every dollar allocated to a company's compliance budget has been found to decrease damages, settlements, and fines by \$1.37 on average. (Presby, p.19)

D. Management Legal Obligations

The company's decision to investigate misconduct or ethical lapses is not just a voluntary business decision. Certain legal principles apply to influence that decision.

The Duty to Investigate

A company's management and board of directors have a fiduciary duty to act in good faith with the care of an ordinarily prudent person. These general standards require directors, officers and other fiduciaries to use the same reasonable care in conducting the affairs of a company that they would in their own affairs, and always to put the interests of the company ahead of their personal interests. Accordingly, a duty to investigate may arise under normal fiduciary duties. In the context of a public corporation's financial reporting process, directors also have a duty under the federal securities laws to oversee and investigate when information comes to their attention indicating that the corporation's management may have engaged in fraud, or that the corporation's prior public statements may be inaccurate.

Legal and regulatory duties to disclose misconduct outweigh a company's desire to ignore an employee or managerial offense. Management may find that the best way to fulfill these legal duties and requirements is to investigate known or suspected misconduct. By failing to investigate, a company may not be complying with the law.

This may seem like an obvious point: why wouldn't an employer want to investigate possible misconduct? Wouldn't an employee want to conduct an investigation so that it could remedy the problem, stop its losses and prevent future problems? The truth is that an investigation can have adverse consequences. When a company admits publicly that it is a victim of employee misconduct, it may harm

the company's image. The admission can expose the company to civil or criminal liability. It can affect the stock price. The investigation may unintentionally provide its competitors and adversaries with previously unknown information that can be used against the company.

Vicarious Liability for Employee Misconduct

Under some circumstances, a compliance investigation helps a company avoid criminal or civil liability for an employee's misconduct. An employer is generally liable for any misconduct committed by an employee within the course and scope of his employment. "Within the course and scope" basically means that the employee performed acts of the kind he was authorized to perform and that his acts were intended, at least in part, to benefit the company. The fact that particular conduct was wrongful does not necessarily mean it was outside the course and scope of employment. Consequently, a company may be held liable for the illegal acts of its employees.

However, if an employer has clearly established policies and standards that prohibit employees from engaging in the particular kinds of conduct, and if an employer shows that it regularly enforces those policies and standards, a court may conclude that the employee's conduct was not within the course and scope of employment, and the company would then not be liable. Enforcement of policies and standards requires, among other things, that management thoroughly investigate alleged violations whenever they occur and that they enforce the policies through appropriate discipline to wrongdoers.

Sarbanes-Oxley

The Sarbanes-Oxley Act of 2002 changed the laws of corporate governance in the United States. The law and other recent developments reflect an acceleration of the trend towards requiring corporations to adopt effective compliance programs and initiate internal investigations to deal with allegations of misconduct. The law creates new criminal penalties and increases the scope and severity of old ones. For example, Section 406 of the Act requires disclosure of whether the public company has adopted a code of ethics for senior financial officers, and if not, why not. Section 404 requires that a public company's annual reports include a discussion of the existence and effectiveness of internal control structures.

Sarbanes-Oxley imposes a number of measures designed to enhance corporate honesty and accountability. Some of its provisions require audit committees to establish procedures (such as a hotline) for receiving and dealing with complaints and anonymous employee tips regarding irregularities in the company's accounting methods, compliance controls, or auditing matters.

Sarbanes-Oxley requires a company to investigate whistleblower complaints quickly and competently. Otherwise, this might be considered a lack of "compliance controls" under Sections 302 and 404 of the Act. If the company rejects any whistleblower claims, the company must be prepared to explain a competent basis for its assessment and rejection of the claim.

Sarbanes-Oxley also makes it illegal to retaliate against whistleblowers. Companies must therefore ensure that reporting employees remain protected. Any employee who reasonably believes he was retaliated against because he reasonably believed that fraud was occurring has a civil cause of action against the company. The law also makes it a federal crime to retaliate against a whistleblower who has assisted law enforcement.

Management, with good reason, usually pays close attention to the application of Sarbanes-Oxley rules to its financial documents, financial reporting documents and public statements. Any irregularities or discrepancies that are reported publicly will receive severe treatment by the market. Auditors must also assess a company's compliance financial controls. The reality is that the compliance investigator does precisely the same thing: evaluate and assess the company's business operations to minimize risk and ensure appropriate business conduct. (By making these linkages, compliance officers can leverage the impact of Sarbanes Oxley and benefit from the attention management pays to its requirements.)

Possible Federal Prosecution

There will be times when misconduct could not be or was not detected by an internal investigation. In some cases, the company may find itself exposed to criminal liability. The United States Department of Justice has issued a set of guidelines which gives a significant incentive to embed the investigations function in compliance programs in its memorandum on the "Principles of Federal Prosecution of Business Organizations." This memorandum is named after its author Deputy Attorney General Larry Thompson, and it is known generally as the "Thompson Memorandum." The Department of Justice placed new emphasis on the role that a company's cooperation would play in the prosecutors decision to bring charges or to negotiate a plea agreement.

The Thompson Memorandum specifies nine factors for federal prosecutors to consider. Three of these factors relate to an effective corporate compliance program:

4. the corporation's timely and voluntary disclosure of wrongdoing and its willingness to cooperate in the investigation of its agents, including, if necessary, the waiver of corporate attorney-client and work product protection;
5. the existence and adequacy of the corporation's compliance program;
6. the corporation's remedial actions, including any efforts to implement an effective corporate compliance program or to improve an existing one, to replace responsible management, to discipline or terminate wrongdoers, to pay restitution, and to cooperate with the relevant government agencies. . . .

The Thompson Memorandum explains that "the critical factors in evaluating any program are whether the program is adequately designed for maximum effectiveness in preventing and detecting wrongdoing by employees and whether corporate management is enforcing the program or is tacitly encouraging or pressuring employees to engage in misconduct to achieve business objectives." The ultimate goal is to "determine whether a corporation's compliance program is merely a 'paper program' or whether it was designed and implemented in an effective manner."

The mere existence of a compliance program will not relieve a corporation of criminal liability. To the contrary, the Thompson Memorandum warns that criminal conduct "in the face of a compliance program may suggest that corporate management is not adequately enforcing its program." Properly conducted investigations, as part of a well-designed and effective compliance program, may meaningfully reduce the risks of a corporate prosecution by federal officials.

Organizational Sentencing Guidelines

The United States Sentencing Commission's Guidelines for the Sentencing of Organizations have become increasingly strict, thereby raising a company's exposure. The Guidelines seek to combat white-collar crime by imposing mandatory sentences, harsh fines, imprisonment, restitution and public disclosures through imprisonment. The Guidelines were designed to work in tandem with the provisions applicable to individuals to cover the broad range of offenses with which federal prosecutors can charge corporate defendants.

Even where company liability cannot be avoided, it may be mitigated by efforts that include effective compliance investigation of the misconduct that caused the liability. Under the original Guidelines, federal courts use a prescribed formula to determine fines for organizations that have committed (or are vicariously liable for) felonies. Fines under the Guidelines are based on two factors: the seriousness of the offense and the company's level of culpability. The seriousness of the offense determines the base fine. The company's culpability is a measure of the actions taken by the organization which either mitigated or aggravated the situation.

Four aggravating factors that increase the culpability score and, therefore, could increase the penalty imposed are: (i) the company's involvement in or toleration of the criminal activity; (ii) the company's prior history of wrongdoing; (iii) whether an existing court order was violated; and (iv) whether there was obstruction of justice.

In 2004, the Guidelines were amended to make the criteria more rigorous with the intention of making boards of directors and executives more accountable for the oversight and implementation of a compliance program. Requirements were added that requires a company to promote a culture of compliance within the corporation. The amended Guidelines provide two mitigating factors that reduce this culpability score and, therefore, could decrease the penalty imposed. These two factors are (i) the existence of an effective compliance and ethics program; and (ii) the company's efforts to self-report, cooperate with authorities, and accept responsibility.

An "effective program to prevent and detect violations of law" means a compliance program that has been reasonably designed, implemented and enforced so that it generally will be effective in preventing and detecting criminal conduct. The seven components that a company must show include:

- Standards, including a Code of Conduct.
- An active role played by the company's board, senior management and ethics officer.
- Due diligence in hiring and promoting law-abiding personnel.
- Training and other forms of communications.
- Audits and evaluations of the program, and a hotline.
- Discipline for violations.
- Remedial actions when a violation is discovered.

Failure to prevent or detect the offense, by itself, does not mean that the program was not effective. An effective program to prevent and detect violations of law is one in which the organization exercised due diligence in seeking to prevent and detect the criminal conduct.

Accordingly, if a company accepts complaints through a hotline but takes no further action to investigate or remedy the situation reported, this can result in liability to the company. Not acting on the call puts the company at risk under the Guidelines. Offering an anonymous reporting mechanism but not acting on calls to it would eventually lead a judge to question the effectiveness of the company's compliance program.

As a general matter, the Guidelines' description of an effective ethics and compliance program has become an industry benchmark for assessing corporate compliance practices.

E. Structuring the Compliance Investigative Function

Once management authorizes the creation of an internal compliance investigation function, the next question is how to construct that function. The investigative function should be tailored to the company's needs, depending on the company's history, industry, and key business risks. Regardless of its precise contours, there are certain considerations common to the compliance investigation function.

Independence

The function cannot even appear to be influenced by management. The independence of the investigation process is crucial to ensuring that the results are a fair determination of the facts learned. The company should consider placing the responsibility in an independent corporate department that is not part of a business unit within the company. Interference, whether regarding timing, methods, which witnesses to contact, which documents deserve heightened scrutiny or ultimate determinations reached will destroy the credibility of the investigation process. It will likely increase the risk of liability to the company.

Consistency

Responses to allegations must be consistent and predictable. For the compliance investigation function to be effective, employees must believe that a response to misconduct will be handled the same regardless of the subject's management level.

Navigating the Political Winds

An internal investigation usually takes place within a matrix of competing interests. Inside the company, the board of directors, the audit committee, management, employees and shareholders can have different goals and perceptions of their interest. Players may not always place the company's interests above their own. Outside the company, competitors, the press, the company's auditors, the market, and the government may all have different motives and concerns.

Often one of the most important things compliance officers can do is convince upper management – and the board of directors if necessary – of the importance of understanding and solving the problem. This can be the key to obtaining adequate resources and authority for the investigation and to obtain proper credit to the company for dealing with the problem.

The Investigations Coordinator

Traditionally, compliance investigations were conducted by members of the legal or human resources department. In recent years, there has been a trend toward more objectivity in the management of this process and to embed the function in the operations of business. There are some clear advantages for the use of an independent compliance investigations manager – likely an attorney – to oversee the compliance investigation process.

The Investigations Coordinator portrays an element of process fairness. The coordinator is not part of a business unit which may be involved in misconduct, has no stake in the outcome and has no preconceived notions of guilt or innocence of the parties. The Investigations Coordinator is not tainted by knowledge of any past history of the subject or accuser. The coordinator can look at the evidence with a fresh eye, and will most likely notice things that the parties close to the matter will not see. (Human resources personnel are typically viewed as aligned with management, and management itself often finds itself in an untenable position. In-house attorneys are often viewed as looking to protect the company's legal interests at all costs, rather than search out the facts that show what really happened.)

An Investigations Coordinator specializes in investigations and is likely to have significantly more experience than either the in-house attorneys or the human resources managers. These other professionals often, however experienced in their own disciplines, handle investigations as only one part of their other responsibilities. The investigations they conduct are also likely to suffer from their competing time priorities. A full-time Investigations Coordinator also shows that the company does not have a "part-time" approach to compliance.

A good Investigations Coordinator also understands the nature of litigation. The coordinator should understand the role of evidence, discovery and the other issues related to litigation. As an employee, the Investigations Coordinator understands the workplace and business operations better than an outside counsel who might be retained to perform the same inquiries. The coordinator also understands the company's culture and the internal company politics that may expedite, or impede, corrective action. The effective Investigations Coordinator uses his or her knowledge of the workplace to draw out the facts of the case. The coordinator will be better known to company management and its employees. This may result in more effective persuasion of company management that action is necessary and better cooperation in requests for information and interviews.

The Investigations Coordinator has more than just a procedural role. The coordinator must have the skills to translate the value of the investigation process and findings into forms of risk management and business counseling. The coordinator needs to have nontraditional compliance competencies such as business partnership, industry knowledge, communications skills and teaching. Business expertise and financial skills enhance the coordinator's value even further.

Because investigating possible compliance failures may involve questioning someone's judgment and putting a stop to activities that may be both popular and lucrative, the Investigations Coordinator needs sufficient tact and clout to carry out the function. Similarly, because company policies will be investigated, the coordinator should have experience both in the company generally and as a manager to be credible to those who may be investigated.

The appointment of an Investigations Coordinator is also a statement that the company is serious about the investigation process as a permanent part of its operations. It also reinforces the goal of integrating investigations into the management of the business. The presence of a professional, business-based investigator makes everyone aware of the importance of the investigation and the emphasis the company places on compliance.

Some will claim that the appointment of a compliance investigator undermines the goal of encouraging corporate colleagues to work together amicably by threatening the cohesion that binds them. This view is correct only if an investigation is conducted poorly. A properly conducted investigation – which includes an appreciation for the corporate political forces at work – reassures management that the investigated deficiencies or errors are viewed in a realistic, marketplace context. The fact that the Investigations Coordinator must continue to work with these people, cultivate them as allies and customers of the investigative process, and encourage them to refer future matters to the compliance group actually makes it more likely that the Investigations Coordinator will be able to navigate internal operating forces successfully.

The Investigation Coordinator has overall responsibility for the investigations process. The competent Investigation Coordinator has specific duties:

- Making an initial determination of whether and, if so, how to conduct the investigation.
- Ensuring that sufficient resources are devoted to each investigation.
- Determining who should investigate a particular report.
- Ensuring that the investigation is conducted in a timely manner and according to established protocol.
- Training investigators or arrange for their training by third-parties.
- Maintaining collaborative relationships with Human Resources, Legal and financial departments within the company.
- Obtaining assistance from subject matter experts outside the compliance group when that assistance is needed to conduct an investigation properly.
- Advising management whether there have been previous instances or allegations of the same nature about the specific matter under investigations.
- Being prepared to conduct personally any investigation that warrants high-level involvement.
- Recommending to management possible remedial steps to take as a result of the investigation.

The Investigation Coordinator establishes guidelines in advance to avoid allegations that the company proceeded on an inconsistent or capricious basis and will minimize the time and effort spent addressing procedural issues when the need for an investigation becomes apparent. The guidelines should cover when an investigation will be conducted and how the investigation will proceed. The guidelines may also cover who determines the need for an investigation and who will oversee it. Specific guidelines also ensure the integrity and confidentiality of an investigation.

Focusing on Key Risk Areas

The compliance group does not investigate every possible issue the company faces. Compliance investigations generally are limited to specific areas, and investigators are not usually general fact-finders

for the business. The compliance investigation process must also respect the boundaries of its sister departments.

Every business faces certain key risks. Generally, the common risk areas include the following categories:

- Accounting Irregularities
- Antitrust and other Competitive Issues
- Conflicts of Interest
- Confidential Information
- Employment Practices
- Fraud
- Insider Trading and Information
- Internal Business Operations
- Internal Workplace Conduct
- International Trade Controls
- Kickbacks and Bribery
- Misuse of Internal Company Systems
- Money Laundering
- Political Activities
- Records Retention
- Regulatory Noncompliance
- Retaliation against Whistleblowers
- Substance Abuse

Compliance officers, however, should not limit their investigations to these functional areas. Any issue that could be considered an ethics or compliance violation, even outside the scope of the company's code of conduct, becomes the obligation of the compliance group to resolve. These would include issues with any of these characteristics:

- Deliberate or reckless attempts to circumvent normal business procedures or controls.
- Violations of Sarbanes-Oxley or any other law or regulation concerning corporate governance and oversight.
- Systemic or pervasive concerted action directed toward a group of people.
- Any involvement by a corporate officer or a member of the board of directors.
- Potential material financial impact to a business unit or the company.
- Likely potential harm to the company's reputation or a risk of adverse publicity.
- Likely potential for a significant lawsuit against the company.

If a matter would be more appropriately handled by another department, such as human resources or the legal department, the compliance officers will redirect the matter accordingly. Even if the compliance group does not conduct the investigation itself, the investigation must still be monitored. This is to ensure that consistent standards are used to determine whether a violation has occurred. It also allows the compliance officers to report comprehensively all relevant incidents which arise within the company.

Another reason for centralized monitoring of all such investigations is to maintain consistent and appropriate discipline. This is required by the Federal Sentencing Guidelines. Compliance officers must remain involved to mediate any difference of opinions regarding the investigation and the substantiation of the allegations.

II. BASIC CONCEPTS OF COMPLIANCE INVESTIGATIONS

Once the investigation function has been structured within the company, the next step is to develop operating principles to protect the interests of shareholders and the company's business goals.

A. Purposes of the Compliance Investigation

The investigations process has its own objectives. An understanding of these purposes helps embed the process in the company.

Determining the Facts

The context in which a compliance investigation is conducted must be to answer a question as to what happened. The investigative process determines the facts, establishes the facts which are sufficient to cause a reasonable person to recognize that the facts are or are not what they are reported to be.

Establishing Accountability

An investigation establishes accountability as to how an event happened and what mitigating circumstances may exist that affected the outcome of the event. The investigation does not critique management style, unless specific management actions contributed to the circumstances which permitted the event being investigated to occur.

Maximizing the Decision Process

Investigators are in the business of information gathering. Information developed from an investigation maximizes options for those managers who must decide on the solution. The only way management decision-makers can be offered the maximum number of options is if the investigation is done right.

The Opportunity to Respond

The investigations process allows the subject of the investigation, once identified, the opportunity to respond to the accusations. Even if the investigation would appear to be complete, it is not over until the subject is given the opportunity to offer other facts in his or her defense. The credibility of the investigative process requires that the subject will be offered an opportunity to respond.

Separating from the Disciplinary Process

The investigative process must be kept separate from the disciplinary process. The compliance investigation focuses on the independent gathering of information and not on the process of evaluating the information as it relates to the guilt or innocence of the individual. The investigator must gather facts that would lead a reasonable person to conclude that the investigator did not act under specific instruction to gather only evidence that meets predetermined conclusions of those who would make the disciplinary decisions. The ability to show that none of the individuals involved in fact gathering had a vested interest in the outcome of the matter, except as it related to the fairness of the process, is essential.

Confidentiality

The process must treat the information being collected as confidential. Only those having a need to know the information should be granted access. Dissemination of the findings beyond those individuals needing the information for the performance of their job responsibilities is inappropriate.

Crisis Management

Periodically, compliance personnel will be instructed to conduct an investigation as part of the company's handling of an ethics-related crisis. The investigations process must be able to function in a crisis atmosphere. The crisis could be a government inquiry, a lawsuit, the public disclosure of some image-damaging incident or the company's disclosure of some financial-related issue. The investigation

then becomes part of the crisis vortex in the company, and the investigation risks being overtaken by crisis-related urgencies.

Managed properly, the investigation can assist the company in its traditional function as well as give some structure to the company's handling of the crisis. In his bestselling book "Winning," Jack Welch offers five assumptions for senior management to keep in mind when a crisis happens. Each one can also be applied to the compliance investigations process when it is part of crisis management:

- **"Assumption 1: The problem is worse than it appears."** Investigators usually do not restrict the scope of their inquiries to the known facts or the perceived misconduct. Frequently, as an investigation proceeds, the scope will widen or narrow depending on the facts developed. In a crisis, company personnel may try to downplay perceived bad facts or not be forthcoming with investigators. Therefore, when planning an investigation during a crisis, compliance personnel must assume, at least as a working hypothesis, that the problem is worse than it appears.
- **"Assumption 2: There are no secrets in the world, and everyone will eventually find out everything."** Seasoned investigators conduct investigations with the assumption that any part of the investigation may be disclosed publicly. Although it is a sound strategy to investigate in a way that preserves legal privileges against disclosure to the greatest extent possible, this strategy cannot be relied on blindly. Limits to confidentiality must also be remembered when conducting witness interviews. Investigators must ask questions that are more probing than they might ordinarily ask because the existence of the crisis may encourage witnesses to say as little as they can. And even if the compliance officers try to maintain as much confidentiality as possible, the company may, in the end, decide to preserve its own credibility by disclosing as much information as possible.
- **"Assumption 3: The investigator and your organization's handling of the crisis will be portrayed in the worst possible light."** The time for using the best investigative resources available is when a crisis occurs. The investigation must be conducted as professionally and thoroughly as possible. Even so, some will likely accuse the investigators of "white-washing" the matter under investigation. Others will complain that the company is being too aggressive in the investigation and is on a "witch hunt."
- **"Assumption 4: There will be changes in processes and people. Almost no crisis ends without blood on the floor."** If the investigation focuses on determining the true facts concerning the affected business processes and people, the compliance officers provide genuine value to the company. In a crisis, accurate facts may be hard to determine, especially under time and management pressures. Senior management may be looking to dismiss those they believe are responsible in order to repair the company's public image. The investigation provides these decision-makers with objective facts about what precisely happened and how it occurred.
- **"Assumption 5: The organization will survive, ultimately stronger for what happened."** The crisis and the facts determined from the investigation can provide a number of lessons to the company, if the company has the courage to confront what happened. There can be no lessons learned unless the investigation was conducted properly.

(Welch, pp. 153-161.)

B. Timing of the Investigation

Investigations vary in complexity and the length of time to complete them. However, all investigations must be conducted promptly. A timely investigation gives the company more time to develop appropriate responses or defenses. If an investigation is not timely, the company may not qualify for credit for full cooperation under the Sentencing Guidelines.

Timeliness is part of a professional investigation. It important for other reasons as well:

- Innocent people should be cleared as soon as possible.
- Corrective action is generally more effective when taken closer to the triggering event.
- Ongoing misconduct must be stopped as quickly as possible.
- The investigation will assist in any legal action that may arise in connection with underlying matters.
- Promptness may be a mitigating factor in almost every level of government enforcement, and delay or indifference can be seen as an aggravating factor.

The timeliness of a particular investigation is, of course, unique to that investigation. The Investigations Coordinator will generally set the timetable that gives a reasonable amount of time to conduct the investigation.

C. Selecting the Compliance Investigation Team

Choosing the wrong people to conduct an investigation guarantees an unsatisfactory outcome. The right investigator, however, depends on the particular facts of the case. One should never assume that the same person can proficiently conduct each type of investigation. The investigator must understand the business, have credibility with the business leaders, and be seen as impartial with no vested interest in the outcome of the investigation.

The challenge in assembling the investigation team is the need to develop in the team an investigative mentality. A proper investigative team shares each of these characteristics:

Proper Mindset

Doubt is one of the primary attributes of any investigator. The investigators must be appropriately skeptical. They should not assume that management or employees are honest and telling the whole truth until the facts are gathered and the inquiries are complete. They must have sufficient imagination to develop sufficient theories against which to compare factual evidence as it develops. They must persevere until the anomalies are resolved and the fact pattern is thoroughly understood. Finally, they must have patience to find the smallest detail that less-experienced people may overlook but that can provide that vital clue or inconsistency. Investigators discover the truth as a result of their ability to inquire and learn from that inquiry.

Professionalism

The essence of professionalism is that the investigators conduct the investigation with integrity, fairness and diligence. How the investigation is conducted reflects the professionalism of the company. Often the integrity of an investigation is judged by the reputation of the investigators. The investigator must be sufficiently senior to communicate and/or implement investigation plans. The investigator must also be able to maintain the confidentiality of sensitive information.

Similarly, the investigators must be fair and even-handed. If the employees believe that the investigations process applies to lower-level workers but somehow exempts the executives, the process will not survive.

Independence

Both investigators and decision makers should protect the company and those who work for it. The investigators must be free from actual or apparent bias or conflict of interest. Consideration must be given to whether an in-house investigator's judgment may be affected or criticized by previous biases or

political considerations, whether real or not. For example, an in-house investigator should not investigate the conduct of his or her superiors. Also, in-house investigators who witnessed the underlying conduct should not participate in the internal investigation.

Independence means that everyone gets a fair chance, and that all investigation subjects are investigated in the same manner, with the same professional, impartial, objective treatment.

Competence

The quality of an investigation also depends on the competence of the investigators. The ability to investigate and interview effectively is an acquired skill. Investigators must have the experience and the expertise to conduct a credible investigation. Investigators must understand how to interview witnesses, manage documents and other records, and to maintain any applicable privileges to the extent possible. Investigators should also be fully informed about company policies, procedures and company history. Investigators must know the management controls and strategies employed by the relevant business unit. Investigators must be able to contribute to the discussion of risks to the business, highlighting potential likelihood or severity of risk areas.

The investigative team must also be mindful of the various legal and business implications of the investigation and the techniques used to gather evidence relevant to the allegations. Structuring an interview to obtain the most information possible, either through careful questioning or through exploiting the weaknesses in a witness' story requires substantial preparation and analysis of all available evidence. The company must consider whether the circumstances of the interview and the backgrounds of the witnesses in selecting the interviewer.

Objectivity

Throughout our lives, we develop our own set of values. These values influence the way we live and the decisions we make. These values are subjective. They are shaped in part by gender, by education, by race, by intellectual capacity, and by personal experience. But these have nothing to do with the reported conduct in an investigation which must be viewed objectively. All information must be reviewed and analyzed using the same standards, and the findings in an investigation should be based on the facts, not an opinion filtered through the investigator's personal value system. A good investigator always understands and factors in his or her own natural biases.

The investigators must avoid even the appearance of bias or conflict of interest. This depends to some degree on the seriousness of the matter. Even when the company has its own compliance investigators, some matters may be so sensitive, and the scope so broad, that outside counsel become the appropriate choice to conduct the investigation. The Investigation Coordinator must also determine whether the nature of the allegations or the identities of any potential wrongdoers might prevent an investigator from conducting a thorough investigation.

D. Investigation Team Members

The Investigations Coordinator, or the person performing that substantive role, determines the appropriate investigator for a specific investigation. If necessary, the coordinator should work in conjunction with internal audit, human resources or risk management if an investigation requires such collaboration. The coordinator also retains private investigators, outside counsel, and certified fraud examiners as needed. Staffing the investigation requires a consideration of the advantages and risks of appointing certain personnel as investigators.

Lawyers as Investigators

Lawyers are generally considered to be best-suited to investigate because investigations typically involve interviews with company personnel (some of whom may be hostile), the analysis of complex facts, and a final determination as to whether there have been any civil or criminal investigations. Most lawyers are adept and experienced at examining witnesses, sifting through facts, and ranking both in order of their importance. Certainly, experienced attorneys are able to determine the necessary obligations of the

corporation in each particular circumstance, and counsel will make recommendations concerning what actions to take as a result of the investigation.

However, lawyers do not always make the best compliance investigators. Although they are skilled in gathering evidence and preparing a case, their expertise is generally limited to some area of the law. These are not the only talents needed. Lawyers also do not usually have the skills needed to advise the company on whether and how to continue to conduct its business operations differently in the future. Lawyers are also predisposed towards assessing risk rather than proposing a business-focused resolution. It would be unlikely that they could serve in the other roles as a business counselor, trouble shooter and operations improver

There are also certain risks with using lawyers as investigators. An attorney who is directly involved in interviewing witnesses or gathering evidence may be a fact witness in a later suit, and thus may be disqualified from acting as the employer's attorney.

If the attorney is involved in interviewing witnesses or directly gathering evidence, there may be a need to disclose the attorney's notes or have the attorney testify about his or her role in the investigation. In this situation, the attorney's advice to the company may not be legally privileged from disclosure, and opposing counsel may be able to force disclosure of all communications between the attorney and client regarding the subject of the investigation.

There may be a preference to have investigations conducted by in-house counsel. The counsel's familiarity with the company, its policies, personnel and compliance politics is an advantage to the corporation. Investigations conducted by in-house counsel may be less costly and more efficient than one conducted by outside counsel. Employees may also be more willing to talk openly with in-house counsel than an outsider.

However, there exists the risk of perceived bias because the in-house counsel is seen as a management representative, especially if a member of senior management or human resources is the subject. As company employees, they may appear less credible and independent. Credibility is essential to gain the confidence of investors and regulators when there is a suspicion of wrongdoing. There is an increased risk that in-house counsel may possess information that could make him or her a fact witness.

Outside counsel will sometimes be retained for the investigation to provide a quick response and to fill the need for additional resources. These lawyers can also help where the existing compliance staff and the company's internal lawyers do not have the subject-matter skills needed for the investigation. Whenever it is important to demonstrate that the fact finding was done by objective parties, it may be wiser to choose outside counsel.

Auditors and Accountants

If the investigation requires reviewing financial records and an understanding of business processes, the use of auditors and accountants seems obvious. Auditors can be used to review documentary evidence, evaluate tips or complaints, schedule losses, and provide assistance in technical areas of the company's operations. Auditors are the ones who frequently detect the financial anomalies. They can also identify fraud indicators.

Accountants, however, generally have limited fraud-investigation experience. Auditors and their accounting counterparts also may not be able to complete an investigation that requires more than straightforward "number crunching." If the scope of the investigation includes a larger perspective on the operative facts -- especially if witnesses must be interviewed -- these professionals are better used in collaboration with other investigators.

Corporate Security

Depending on the company, security department investigators are often assigned the field work part of the investigation, including interviewing outside witnesses and obtaining public records and other

documents from third parties. The drawbacks are that they often have little experience in compliance investigations and may have a limited view of the issues. Considering their day-to-day role, they may also attract unnecessary attention to the investigation.

Human Resources Personnel

The human resources department should be consulted to ensure that the laws governing the rights of employees in the workplace are not violated. Human resources personnel can also be useful if the claims involve allegations of discrimination or retaliation. Their involvement will lessen the possibility of a wrongful discharge suit or other civil claim. Compliance officers, however, should remember that these personnel generally have limited expertise in the relevant legal areas. Also, their skills and abilities may be limited because of the nature of their regular duties.

E. Management Steps

No matter how good the investigator or the investigation, the ultimate objective of the investigation is to present information to management to enable them to make the necessary decisions for the benefit of the company and its shareholders. At the conclusion of the investigation, the findings must be placed in a written report sufficient to inform management of the relevant facts and at the same time set the groundwork for compliance business improvement, the commencement of civil litigation and/or a referral of the matter to law enforcement.

Compliance officers must remember their responsibilities as risk managers and business advisors. Communicating the results of the investigation as a form of business counseling provides a valuable opportunity to spotlight the value of the compliance process.

Reporting the Findings

Sometimes, business managers would rather not see anything in writing. This view should be unacceptable to management and certainly to compliance officers. There are a variety of methods available to the corporation through legal counsel to assure a limited distribution of an investigative report. The first time an investigative report is suppressed for the purpose of avoiding a proper review by management marks the beginning of the end of compliance investigative integrity for the company.

The investigator must provide answers to the “magic questions” of the investigation: who, what, where, when, why and how. The answers represent the investigative findings. The detail provided should be sufficient to explain compliance business processes to someone who is unfamiliar with the business. The investigator must remember that the managers who will read the report have limited time available. The investigator who can accurately tell the story in the fewest words stands a better chance of having the report reviewed.

As companies increasingly view their compliance officers as business counselors, reporting the findings is the best opportunity to show the investigation's value to the company. The compliance professional needs to have good communications abilities, problem-solving skills, knowledge of the business and client-partnership skills.

The Final Report

A written report creates a lasting record of the findings and allows management to consider its contents over time and review the report as needed. A written report is a persuasive way of communicating that misconduct did not occur or that corrective action has already been taken. The report also provides support for the company's ultimate decision in resolving the matter, and it shows that the company's investigative process was objective and neutral. Finally, the report constitutes the company's “stake in the ground;” the company has committed to these facts when making its decision regarding how to proceed.

There are many ways to organize a final investigation report. Written reports can be valuable aids for management to develop corrective procedures to avoid repetitions of questionable conduct. A written

report may also be a persuasive way of communicating to third parties that wrongful conduct did not occur or that corrective action has been taken internally. The report also forces us to reach firm conclusions and is an easy way to review the results of the investigation with senior management.

The form of the report depends on its intended use. The Final Report is not a chronology of the investigation. The report states whether the allegations of misconduct were substantiated, unsubstantiated, or whether the findings were inconclusive. If the report is substantiated, the Final Report will cite the policies violated and the harm the company suffered as a result.

The Final Report is limited to the scope of the investigation. The scope should be clearly specified in the report. The report, recommendations and findings should be limited by that scope as well. This will provide a clear understanding to anyone to whom the report is disclosed regarding the investigation's limitations.

A proper Final Report offers no recommendations regarding how an employee should be disciplined, whether the company should compensate someone, or similar possible post-investigation activity. Those steps are outside the scope of the investigation. If the investigator were to decide the resulting disciplinary action to be taken, a conflict of interest may be created that interferes with the investigator's ability to find the truth of what happened. The Final Report may, however, include recommendations for additional investigation and remedial changes.

The drafting of the Final Report, however, is not without risks. Compliance officers and investigators should be conditioned to think before writing. If the report will cover any sensitive areas, the drafter should consult the company's legal department. At least in the most sensitive areas, and in any preparation for litigation, the company may take steps to permit it to assert the attorney-client and other privileges.

Great care should be taken to protect the confidentiality of the final report. A written report means there is a greater risk of disclosure to people who should not read the report. Given the ubiquity of photocopiers, scanners and e-mail, it is easy to copy and circulate a report widely.

Action in Light of the Investigation

The final step in the investigation process is to implement corrective action. Compliance officers should ensure that management has met with the person who was the subject of the investigation as well as the employee who raised the issue.

Remedial action must be proper and prompt. Internal remedial steps could include revising corporate procedures or management structures, revising compliance procedures or oversight, as well as employee disciplinary action. External remedial steps could include disclosures in public filings and compensating injured third parties.

The Final Report will also facilitate everyone's attention and agreement regarding the substantiated problem. The discovered problem may trigger an audit to prevent future and more serious problems.

The Final Report also may have collateral value to the company. If the report is used in a private litigation, the findings can defend the company from certain claims. Because the report will contain specific findings of fact and the bases for the findings, the report can be used as a guide to resolve the dispute informally. These uses, however, must be balanced against the risks of waiving applicable legal privileges, identifying wrongdoers and the sources of information, and the possibility that the report may be circulated beyond the company's control.

F. Tracking and Metrics

Compliance officers must provide senior executives and/or the board of directors with an overview of investigations opened during a specified time period, usually a month or a calendar quarter. Background information tracked by the compliance group and reported generally includes:

- The date the investigation was opened.
- The date the investigation was closed.
- The name and location of the reporter, if known.
- The name of the individual responsible for the resolution of the complaint.
- The nature of the complaint (i.e. the issue type).
- A summary of the facts elicited by the investigation, including whether the allegations were substantiated.
- The disciplinary or remedial action taken, if necessary.

The measurement of quality and productivity is an essential component of managing investigations as an embedded business function. Compliance officers must find ways to measure the values of the investigative process in terms which have a relevance to those values which contribute to the company's profits. Few executives will fund an investigative process without strong proof that a contribution to the bottom line will result.

When compliance officers fail to measure their value to the business enterprise, they give management the opportunity to view the function as just one more expense of the business and not as a contributor to company value. Some may consider it easier and less expensive to avoid misconduct investigations and to simply terminate the employee or pay the employee a healthy severance to simply go away. Although it is an expensive decision for a company to proceed this way, without metrics there is no way to show the true costs of that decision. Measuring the investigative function and its ability to productively conduct investigations and offer decision-making support to management can be shown to make a productive contribution to company equity and long-term loyalty.

There are a variety of metrics to measure the investigative process, and the most relevant focus on the efficacy of the process. Compliance officers may wish to use any of these measurements:

- Number of incidents reported per 1000 employees.
- Percentage of employees disciplined for misconduct.
- Percentage of total compliance failures detected internally.
- Percentage of total compliance failures detected by hotline call.
- Percentage of total allegations that are substantiated.
- Percentage of contacts to the compliance and ethics office reporting an allegation.
- Percentage of contacts to the compliance and ethics office seeking advice.
- Summary (and corresponding percentage) of most frequent allegations.
- Investigation cycle time during a specific time period.

- Number of cases opened during a specific time period.
- Number of cases closed during a specific time period.
- Average cost to conduct an investigation during a specific time period
- Summary of substantiated cases (including root causes and recommendations) during a specific time period.

To overcome the misconceptions of managers as to the purpose of the compliance investigative function, compliance officers need to talk in terms these managers understand. Compliance officers must be able to communicate results that contribute to the company's profits and well-being. Compliance officers must continually look for ways to present meaningful data which reflects its achievements and essential role as an embedded business function within the operations of the company.

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Lyondell Internal News

Announcements for employees about the company and its people

Date: 05/22/2006

Audience: All Employees

Headline: 2005 Compliance and Ethics Investigations

With ethics and compliance issues still making headlines around the world, it's no wonder that companies today are more focused than ever before on reinforcing legal and ethical behavior on the job.

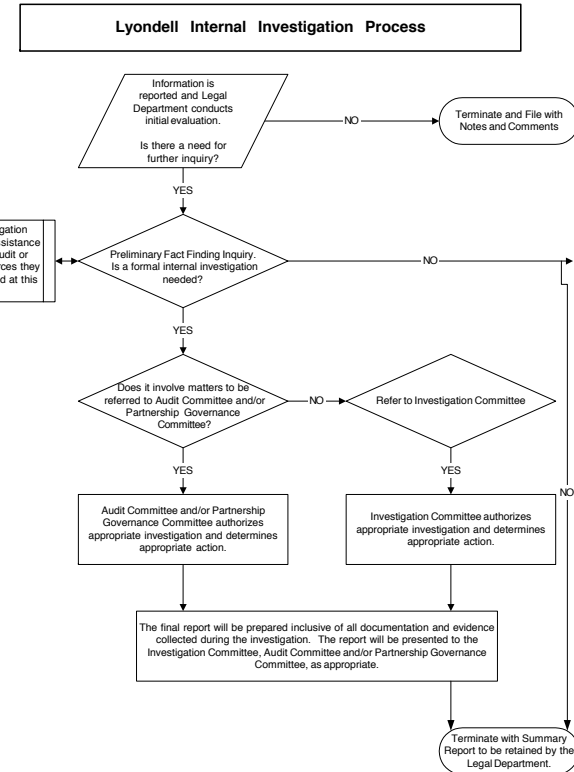
The choices Lyondell employees make every day can either support or damage our company's reputation and corporate culture. Some decisions are obvious and easy, while others may require more thought and evaluation. But what do you do if you find a co-worker or supervisor acting in a way that you believe violates Lyondell's Business Ethics and Conduct Policy?

"Dialog with your supervisor is always the best place to start, however you can also contact Human Resources or the Legal Department," says Susan Tanner, senior manager of Compliance. "If you aren't comfortable with any of those options, you can call the Compliance Hotline." The Compliance Hotline is available 24 hours a day and is answered by an independent third-party communications specialist who can provide an interpreter, as needed. Calls are not recorded or traced, and each one is assigned a special coded number for the caller to reference in follow-up calls. For more information, please see the Taking Action section of the Business Ethics and Conduct Policy.

In 2005, X number of internal investigations were launched as a result of U.S. and international employee reports, with workplace conduct, theft and safety issues topping the lists of concerns. The majority of reports were submitted via the Compliance Hotline or through direct contact with Human Resources.

Of the reported violations, X reports were found to be unsubstantiated, X resulted in violators being reprimanded or provided with additional guidance or training, X resulted in termination of the violator's employment, X have been turned over to local law enforcement agencies, and X is pending disposition. All internal investigations are conducted in accordance with the Internal Investigations Procedure and any applicable local laws and regulations.

"A 2005 National Business Ethics Survey® found that the two top reasons employees don't report misconduct are that they don't believe corrective action would be taken and they fear retaliation," said Tanner. "At Lyondell, we do hold our employees accountable for their behavior, and we provide several ways to voice your concerns. We expect employees to conduct themselves in a manner consistent with the Basic Elements and the Business Ethics and Conduct Policy. Plus, we don't tolerate any threats or acts of retaliation or retribution. That's a violation of our policy and - in many instances - the law." Our Basic Elements state that we will conduct our business in an ethical and environmentally responsible manner, comply with the law and provide a safe and satisfying work environment. We are committed to upholding those values and protecting the reputation that we have all worked so hard to build. To learn more, please read the Business Ethics and Conduct Policy, and visit the Ethics and Compliance site on ION.



Lyondell Internal Investigation Procedure
(Revised May 3, 2006)

I. ADOPTION AND STATEMENT OF PRINCIPLES

This Internal Investigation Procedure has been established by and adopted by the Audit Committee of Lyondell Chemical Company's Board of Directors for Lyondell Chemical Company and its subsidiaries, including Equistar Chemicals, LP and Millennium Chemicals Inc. It is the responsibility of Lyondell's Audit Committee to oversee this Internal Investigation Procedure.

We are committed to conducting business ethically and in compliance with all applicable laws. As a result, we strongly encourage **any person** that becomes aware of an action, situation or circumstance that appears to be inappropriate, illegal or inconsistent with our values or that potentially threatens any person or any assets associated with us to report the information for further investigation as provided in this Internal Investigation Procedure. Reported information may include possible criminal activities or policy violations, violations of governmental laws, rules or regulations or any other ethical concerns.

II. COMPLIANCE AND PERIODIC REVIEW

Lyondell's Audit Committee has designated the Investigations Committee to monitor compliance with this Internal Investigation Procedure. The Investigations Committee is composed of the Senior Vice President and General Counsel, the Vice President of Human Resources and the Vice President and Controller.

The Investigations Committee will report to Lyondell's Audit Committee periodically on the results of the monitoring. The Investigations Committee will promptly report to the Chairman of Lyondell's Audit Committee any breach of this Internal Investigation Procedure that comes to the attention of the Investigations Committee. The Investigations Committee also will review and reassess this Internal Investigation Procedure periodically with the Lyondell Audit Committee. In addition, the Investigations Committee will periodically provide to the Lyondell Audit Committee summaries of all investigations that are not specifically referred to the Lyondell Audit Committee pursuant to Section IV(C) below and will review the resolution of those investigations with the Lyondell Audit Committee.

III. COMMUNICATION OF INFORMATION

- A. Non-Retaliation. Open, honest and responsible communication is fundamental to a successful investigation process. To be effective, communication must be handled with the utmost responsibility and respect. We will not tolerate any threats or acts of retaliation or retribution for using any of the communication channels to report information or for participating in an investigation. In addition, attempts to harm or slander another through false accusations, malicious rumors or other irresponsible action will not be tolerated and may result in disciplinary action.
- B. Communication Channels. Information should be reported by contacting a supervisor, a member of management or a member of the Legal or Human Resources Department. In addition, matters can be reported through the Compliance Hotline as provided in the "Taking Action" section of the Business Ethics and Conduct policy. All communications, whether received in person or by mail, telephone, facsimile or e-mail will be handled pursuant to the procedures set forth in this Internal Investigation Procedure. For more information relating to communication channels, please see the "Taking Action" section of the [Business Ethics & Conduct Policy](#).

We have established the Compliance Hotline as a simple, risk-free way for employees and others to report information to us. The Compliance Hotline is available 24 hours a day and is answered by an independent third-party communications specialist who can provide an interpreter, as needed. Calls to the Compliance Hotline are not recorded or traced, and are assigned a special coded number for the caller to reference in follow-up calls. For more information regarding the Compliance Hotline, including the specific Compliance Hotline telephone numbers to call from the U.S. and a list of other countries, please see the [Compliance Hotline Questions and Answers](#).

- C. Treatment of Information. Regardless of the communication channel used to report information, all information will be acted upon promptly and fairly pursuant to this Internal Investigation Procedure. To the maximum extent possible under applicable law under the circumstances, the identity of anyone about or against whom allegations are made will be kept confidential. Similarly, all reasonable steps will be taken to keep confidential the identity of anyone reporting information for investigation.

IV. PROCEDURES

- A. Initial Evaluation. All information reported will be subject to an initial evaluation by the Legal Department to determine the seriousness of the information and to determine the appropriate party to conduct any

necessary investigation relating to the information reported. If the information initially is reported through the Compliance Hotline, the independent third-party communications specialist will document the reported information and generate a written report that will be forwarded confidentially to the Senior Vice President and General Counsel and the Associate General Counsel-Litigation for an initial evaluation to determine if further inquiry is needed. In addition, to ensure compliance with differing regulatory requirements, when information reported through the Compliance Hotline relates to an individual residing in the European Union, the individuals that are the subject of the report will be advised as soon as possible of (1) the facts he/she is accused of, (2) the individuals or departments within the company which may receive the report and (3) his/her rights of access and rectification. Information reported through any other communication channel will be forwarded confidentially in a written report to the Senior Vice President and General Counsel and the Associate General Counsel-Litigation for an initial evaluation to determine if further inquiry is needed.

- B. Preliminary Fact Finding Inquiry. After the Legal Department receives the reported information and determines that further inquiry is needed, investigative personnel in the Legal Department will conduct a preliminary fact finding inquiry to determine the basic facts relevant to the information reported. If necessary or appropriate, and to the extent permitted under applicable regulatory requirements, the Internal Audit and Human Resources Departments also will be involved in the preliminary fact finding inquiry.

If, at any time during the investigation process, it is determined that the information reported relates to an issue described under Section IV(C) below, the Legal Department promptly will refer the information to Lyondell's Audit Committee in a written report and the information will be investigated as provided in Section IV(C) below.

If, after the preliminary fact finding inquiry, the Senior Vice President and General Counsel and the Associate General Counsel-Litigation determine that the issue requires further inquiry, as provided in Section IV(D) below, the information will be referred to the Investigations Committee in a written report summarizing the preliminary fact finding inquiry and the information will be investigated.

If, after the preliminary fact finding inquiry, the Senior Vice President and General Counsel and the Associate General Counsel-Litigation determine that the issue can be resolved without any further inquiry, a written report summarizing the preliminary fact finding inquiry and the resolution of the issue will be prepared by the Legal Department. See Section IV(E) below.

- C. Lyondell's Audit Committee. If, at any time during the investigation process, it is determined that the information is within any one of the categories listed below, the Legal Department promptly will refer the information to Lyondell's Audit Committee in a written report:
- complaints or concerns regarding accounting, internal accounting controls or auditing matters, or questionable accounting or auditing matters, or
 - any fraud, whether or not material, that involves management or other employees who have a significant role in internal controls.

The list of the individuals who have a significant role in internal controls is maintained by the Internal Controls Department and will be periodically updated and reviewed with Lyondell's Audit Committee.

In addition to the categories specifically referenced in this Section IV(C), the Legal Department may refer any other matters to Lyondell's Audit Committee, as deemed appropriate or as requested by the Lyondell Audit Committee.

Once information is referred to the Lyondell Audit Committee, the Lyondell Audit Committee will review the information and authorize an appropriate investigation into the facts relating to the information. The Lyondell Audit Committee may refer the information to appropriate management personnel or other internal resources for investigation or may retain outside advisors to conduct an investigation. The fees and expenses of any outside advisors will be paid by the entity to which the investigation relates. After the conclusion of an investigation, a written report summarizing the investigation will be delivered to the Lyondell Audit Committee by the investigating party and the Lyondell Audit Committee will determine the appropriate action to be taken with respect to the information reported. See Section IV (E) below.

- D. Investigations Committee. Any information requiring further investigation that is not referred to the Lyondell Audit Committee pursuant to Section IV(C) above will be referred to the Investigations Committee. The Investigations Committee will review the information and authorize an appropriate investigation into the facts relating to the information. The Investigations Committee may refer the information to appropriate management personnel or other internal resources for investigation or may retain outside advisors to conduct an investigation. The fees and expenses of any outside advisors will be paid by the entity to which the investigation relates. After the conclusion of an investigation, a written report summarizing the investigation will be delivered to the Investigations Committee by the investigating party and the Investigations Committee will determine the appropriate action to be taken with respect to the information reported.

- E. Completion of Investigation. After the completion of any investigation pursuant to this Internal Investigation Procedure, a written report summarizing the investigation and resolution of the issue will be prepared. The resolution of the issue will be communicated to the individual who reported the information and to the subject of the report (if residing in the European Union) either directly or, when applicable, through the independent third-party communication specialist at the Compliance Hotline for communication to the individual via the special coded number provided by the Compliance Hotline.

- F. Records. The Legal Department will retain in a secure location the written records regarding all information reported and all investigations conducted after the conclusion of the investigation in accordance with the Company's Records Retention Policy.

