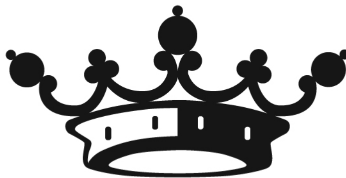
I N S I D E   T H E   M I N D S

Best Practices for Corporate Governance and Compliance

Leading Lawyers on Implementing Compliance Programs, Working with In-House Counsel, and Responding to Ongoing Concerns



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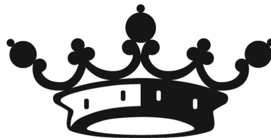

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Introduction: Our Governance Practice

Our firm represents a national and international client base of corporations, officers, and directors in the full spectrum of corporate governance matters. Typical engagements may range from counseling clients on governance decisions, compliance programs, and Sarbanes-Oxley issues, to defending civil litigation, regulatory enforcement actions, and criminal prosecutions. A significant part of our practice involves conducting internal investigations designed to gather the facts that will enable directors or officers to make informed decisions and remediate corporate governance and internal control deficiencies. Internal investigations require us to coordinate with many different state, federal, and foreign regulatory agencies, each of which presents its own unique set of corporate governance challenges.

Prior to the enactment of the Sarbanes-Oxley Act of 2002, Pub.L. 107-204, 116 Stat. 745 (2002), most of our internal investigations were conducted on behalf of corporate clients of the law firm. Since Sarbanes-Oxley, a majority of our major internal investigations have been independent investigations conducted under the supervision of a board of directors, or an independent committee of the board of directors, usually the audit committee or a special litigation committee. We have found that using an interdisciplinary investigation team that includes litigation, governance, and regulatory expertise enables us to rapidly gather the relevant information and to counsel directors and officers toward prompt resolution of compliance problems.

A major component of our approach to corporate governance is to counsel management and boards to avoid compliance and governance problems in the first place. We encourage them to take as proactive approach as possible, but once a precipitating event occurs, we collaborate with their investigative team to resolve issues such as legal violations, failures to follow control procedures, and ethical violations. We also interact with management about everyday governance and compliance problems that occur in the operation of a corporation, such as employment discrimination and other workplace questions. We use a practical, solutions-oriented approach to these problems. Our process is to determine what the best answer is or set of options for the client, and then help an officer or board committee build consensus among the different constituencies that are

involved in corporate governance, so that we can get everyone moving together toward a solution. Management, the board and its committees, outside auditors and general counsel all have the same objectives, but they have different viewpoints and constraints on what they can do. For example, making a difficult disclosure may involve significant judgment calls. We help our clients get everyone on board for a satisfactory solution.

In our practice, we also focus on our client's compliance program and conduct compliance audits for them.

The Public/Political/Enforcement Environment

Companies can develop serious regulatory and legal problems when they have breakdowns in internal controls. The pain of non-compliance and recent high profile compliance failures have caused companies to budget more money to proactively address those types of problems. For example, the stock option backdating phenomenon was so widespread that almost every company had to do some level of self-examination to determine whether they had a problem. Nearly every company that believed it had a problem conducted some level of internal investigation. In almost every instance, the backdating implicated senior management and sometimes directors, so all of the high profile cases included internal investigations conducted by independent outside counsel under the supervision of either the audit committee or special litigation committee.

Corporate compliance priorities must follow governmental and regulatory enforcement priorities, investor concerns, and litigation trends. A great deal of civil litigation was filed because of the backdating scandals, which also served to focus corporate America's attention on that problem. The federal government's recent emphasis on enforcement of the Foreign Corrupt Practice Act (FCPA) naturally has caused us to encourage clients to increase compliance efforts in that area. Compliance is taking more of an international flavor; the high profile antitrust cases in the last four to five years have involved international cartels. This trend has been reinforced by enforcement initiatives in other countries directed at bribery and public corruption.

All of these factors drive companies to conduct compliance audits. Typically, the final factor that pushes them to do an audit is when they see

another company in their industry get into trouble, for example on an FCPA or antitrust issue. When those issues arise, they tend to be industry problems and managers rightly perceive a risk that if their company is in the same industry, it could have the same compliance problems. Another driver is a higher level of public expectation for compliance and public scrutiny of failures. Directors are keenly aware of public expectations, and the media and politicians banter about issues such as corporate corruption and corporate scandals. What were once considered problems for companies and their investors are now considered public issues related to whether corporations are corrupt or law-abiding. The public gets angry when a company fails but the managers escape punishment, or worse, receive lucrative termination packages. Directors and management are concerned about corporate reputation and feel a heightened sense of stewardship.

The government is also paying more attention to compliance problems, which makes it more likely to prosecute. This is driven, in part, by these public expectations and political pressure. It is impossible to understate the impact of Enron's effect on the public's desire for corporations to comply with regulations and laws. Stockholder activism among traditional investors, hedge funds, and "change agents" is putting pressure on management and directors to be aware of how their actions could affect stockholder interest in changing management, seeking a sale of the company, losing confidence in management, or selling the stock.

Historically, management's big concern was their own liability as officers and directors, their desire to do the right thing, and a general belief in compliance with the law. After the government passed Sarbanes-Oxley, and subsequent implementing legislation, employees are getting lectures each year about what their duties are; tools are available to employees to report misconduct; audit committees are required to supervise whistleblower hotlines; the government advertises its own whistleblower hotlines; and in-house and outside attorneys are required to report violations "up the ladder" to the highest levels of management. In this environment, employees are attuned to their obligations to report legal and ethical violations.

As a result, today many internal investigations are started by a whistleblower complaint. In fact, it is becoming increasingly popular for complaints or

allegations to be made on the Internet message boards. Directors must process these complaints, which have the effect of heightening their focus on compliance and prevention.

Oftentimes, whistleblowers go public and cause the company great pain and embarrassment. Many audit committees and independent directors have been frustrated by people going public with allegations rather than taking them to the board or senior management. The first questions boards ask counsel are, "Why did this whistleblower go outside of the company?" and "We had a procedure—why didn't they use it?" Of course, going public raises issues regarding the credibility and motivation of the whistleblower. In some cases the person is not credible, but a company still has to be introspective and ask whether it has set the right tone, if company personnel feel like there will be a response by management if there is a report within the company, and if they are confident that there will not be retribution. This places more pressure on boards to actively develop compliance programs, especially if they want regulators to give them credit for having those programs.

Economic Pressure Hurts Compliance

Economic pressures invariably lead to problems in corporate America. Company management is under intense pressure to produce results. When the economy is unfavorable, an uptick in cartels, price-fixing, and manipulation of public filings occur to make results look better. When an "ends justify the means" mentality prevails, it is often because management is responsible for many people's jobs. They are not all bad people driven by personal greed, as the media would have us believe. Many are driven by a sense of responsibility and pressure from outside and within the company. When an individual is responsible for making the company run well and be profitable so that people put bread on the table, it influences behavior. This does not justify improper behavior, but it is a driver managers must be aware of.

Another driver is increased competition. Companies compete domestically and globally and try to manage a host of pressures—competition from other companies, changes in valuations of currencies, and availability of raw materials among others. Management is expected to perform in the face of those pressures. But compliance programs cost money and consume resources. If a

company wants an effective program, it must focus people and time on the task. Proactive activities are expensive, and when the programs are working, few problems occur, so the programs may appear to be unnecessary. Even people who are well intentioned face pressure to control expenses or allocate company resources toward initiatives that make, not cost, money. So programs can end up underfunded or ignored just when they are needed most.

Amnesty and Leniency Programs

The government has spent a lot of time and money to send a message to corporate America about compliance and the obligations of officers and directors. The government provides an incentive for managers to implement effective compliance programs. If a company is caught in a violation, the government will give sentencing credit and leniency from prosecution to companies that self-police. The credit varies from agency to agency and is based on the facts. For example, if a company discovers that they have violated the antitrust laws and they self-police, self-report to the Department of Justice Antitrust Division, and proactively cooperate with the government by turning over internal investigation results, the company can get amnesty from criminal prosecution for itself and key senior management people. Most agencies do not have an amnesty program, but most do have a leniency program. If the company finds misconduct, self-reports, investigates, cooperates with the government by providing the results of the investigation, and takes remedial action, then the company may escape an enforcement action by the agency. For example, the Securities and Exchange Commission may give credit to the company, but still pursue individuals. (The Securities and Exchange Commission typically does not absolve the individuals of wrongdoing based on the company's cooperation.) Environmental enforcement agencies may give credit to a company in terms of decreased penalties. So there is a lot to be gained by having an effective compliance program.

Government Expectations about Compliance Programs

The best source of the government's expectations relative to a compliance program is the United States Criminal Sentencing Guidelines. The guidelines come into play if the company has a criminal matter brought by the federal government and is attempting to get a reduced sentence. The

company will be granted a reduced sentence if it has an effective compliance program that meets government expectations:

1. Clear standards and procedures
2. Specific oversight by high level management
3. Effective communications to all employees that the program exists and of the company's expectations for compliance
4. Taking reasonable steps to achieve compliance
5. Have an enforcement policy that is run consistently

The 2004 Sentencing Guidelines set out additional requirements for directors:

1. Directors must be knowledgeable about the ethics and compliance policy program
2. The board has to give access to individuals who have complaints or know of policy violations
3. Board members must take compliance training
4. The board must do an annual review of the effectiveness of the company's compliance program

The government has been clear about its expectation that directors will be involved in this process.

Differences in Implementation

Notwithstanding the government's clear directions, implementation is across the board, as one would expect. We discuss and assess the effectiveness of the program with our clients at the initial meeting. Companies that have been through a lot of compliance work or regulatory issues tend to be very sophisticated, while companies that have not had an issue since Sarbanes-Oxley was enacted tend to need more information about how things work in the new regulatory America. Larger companies tend to have the resources to develop compliance programs; smaller companies are thinly staffed and usually have smaller legal departments that are overworked. Despite their good intentions, it is very difficult for smaller companies to allocate resources to compliance programs. They will typically

have a written program, but not the record keeping that supports their compliance efforts, or the ability to sustain ambitious training programs.

Large companies have compliance officers who focus on that topic. Smaller companies typically add the responsibility to an individual's goal sheet—often the chief financial officer who has precious little time with her or his other responsibilities. Companies that want to stay out of trouble avoid gray areas. With less than a full-time, dedicated employee who has the resources to apply to a compliance program, keeping things "black and white" is a difficult undertaking.

The Role of Independent Investigations in Corporate Governance and Compliance

An effective compliance program should be surfacing problems. However, sometimes problems first surface via an enforcement action. In either case, the company should consider whether an internal investigation of some sort is needed.

Section 301 of Sarbanes-Oxley, "Public Company Audit Committees," highlighted congressional expectations regarding the role the independent directors should take in investigating corporate governance issues that affect financial reporting. Each audit committee, comprised of independent directors, must establish procedures "for the receipt, retention, and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters" and must establish procedures for "confidential, anonymous submission" of employee "concerns regarding questionable accounting or auditing matters."

Section 301 also provides that "each audit committee shall have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties."

Congress then made sure that management would keep the audit committee informed by requiring quarterly certifications by the principal executive officer and principal financial officer that "significant deficiencies in the design or operations of internal controls" and "any fraud, whether or not material, that involves management" have been reported to the audit committee (Section 302).

Outside auditors and regulatory enforcement agencies increasingly expect, and sometimes insist, that allegations of misconduct involving senior management be investigated by the audit committee (or some other committee of independent directors) and that counsel assisting the investigative effort likewise must be independent. Independent investigation is also required in the event of shareholder derivative litigation.

This significant trend, putting independent directors at the forefront of corporate governance, presents a number of growing challenges for the audit committee, or other committee of independent directors. Not every challenge has a ready solution, but planning for these challenges and responding properly should they arise can minimize their disruptive effects.

Key Corporate Governance Challenges for Independent Directors

Challenge One: Prevention

The first objective of corporate governance is to prevent misconduct. The key to prevention is an effective compliance policy and program. Although case law addressing director's legal liabilities does not impose a general duty of prevention on independent directors, their duty of oversight requires that they obtain information and respond to known problems. Guidance from the U.S. Sentencing Commission in the 2004 Sentencing Guidelines suggests that directors should be knowledgeable about corporate ethics and compliance programs, should be accessible to employees who have compliance concerns, should attend compliance training, and should annually evaluate the effectiveness of the company's compliance program.

Challenge Two: Controlled Response

The second challenge is to have a structure and a "tone at the top" that allows for, and encourages, a controlled response to issues. Sarbanes-Oxley provides the audit committee with the means to receive early notice of internal control or management fraud issues. It is usually in the company's best interest to address issues internally and in a timely manner.

If the company has an effective compliance program, there is widespread confidence in senior management and the board, and employees perceive

that their concerns will receive genuine consideration, systems like the audit committee hotline work and serious issues can be addressed without adverse publicity or government involvement. Unfortunately, allegations about management misconduct often come to the board's attention after an enforcement agency starts an investigation or a whistleblower complaint is publicly disclosed.

The first step in structuring a response to any management misconduct allegation is to determine who has authority to act. Depending on the nature of the allegation, the audit committee charter and/or the corporate bylaws may or may not clearly delineate responsibilities and authorities. If a government agency is actively involved, it may not be clear how privilege and disclosure issues should be handled. In the absence of clear written guidance, appropriate board resolutions may be required to make it clear what investigative responsibility the independent director committee has been delegated and what authority that committee has with regard to disclosure of confidential corporate information outside the company.

An important part of having a controlled response includes protecting the company's public reputation. The public generally understands when a company discloses that allegations against senior management are being addressed by an "independent board investigation." The message is usually interpreted to mean that no substantive public disclosures about the subject matter will be made until the investigation has been completed.

Challenge Three: Decision to Commence an Independent Investigation

The third challenge is deciding when it is in the company's best interest to send a matter to an independent or audit committee investigation. Corporate clients receive many allegations that do not have merit, or they can be resolved by management and/or regular outside counsel. If the situation warrants an independent audit committee investigation, it means bringing in another law firm that, by definition, has no prior business dealings with the company. The independent law firm will not know much about the company's people or their business. Starting from scratch can be a very expensive proposition. As difficult and costly as the decision can be, the current regulatory climate often demands an independent investigation.

If there is any credible allegation of fraud by senior management, more and more often the board is going to opt for independent investigation.

Section 302 of Sarbanes-Oxley requires the chief executive officer and the chief financial officers to certify in their quarterly filings that any management fraud has been reported to the outside auditors and the audit committee. Once fraud is reported to the outside auditors, they need to be satisfied that the allegations were thoroughly investigated, and did not result in any material changes to the financials. Materiality involves both quantitative and qualitative factors. Before the auditors sign off on the company's financials, they will want to know that all credible allegations have been properly addressed and that anybody who was an active participant in any fraud is in no way part of the internal control process. Depending on the nature of the allegations, the outside auditors may have a strong preference that any factual investigation be supervised by the independent directors.

The decisions who should investigate may depend on whether there is already a government investigation. In many instances, the government will put a hold on their investigation if the board can provide assurance that it just learned of the potential violations, has retained independent counsel to investigate, and intends to cooperate fully by providing investigative results to the agency. Sometimes the government will stand down for company counsel to look at an issue but increasingly they want an independent investigation. During the hundreds of recent stock option backdating investigations, almost every company opted for independent investigation. The SEC and other government agencies got used to dealing with independent counsel because they got quality work product, the investigation was objective, facts were fully developed, and the ultimate work product that was shared saved the government tremendous time and expense.

Another important consideration is whether a civil shareholder derivative lawsuit has already been filed, or is likely to be filed. A derivative lawsuit brings the independent directors to the forefront and the case can be dismissed if the plaintiff did not make demand on the independent directors to cure the problem. Even if they do make such a demand, the independent directors may conduct an investigation and come to the

decision that the lawsuit is not in the best interest of the company and it can be dismissed on that basis.

Another consideration is whether the company will need to make regulatory disclosures. Depending on the nature of the allegation, there may not be a realistic option of handling the matter internally. For example, an environmental issue may result in an immediate environmental reporting problem. The company may have to correct its past environmental reports on a timely basis. There may be a lot of pressure to self-report any environmental problems.

If the alleged misconduct involves criminal antitrust issues and there is no government investigation yet, there may be strong motivation to self-report and take advantage of the antitrust amnesty program. Even if a company does not have a specific disclosure requirement to an agency, and does not qualify for a specific amnesty or leniency program, it may be in the company's best interest to self-report in the hope that the company will receive discretionary leniency when the regulators negotiate a resolution.

Not every compliance problem requires an internal investigation. There are many common operational compliance problems that do not necessarily involve wrongdoing by senior management, and that are competently and well handled by senior management of the company with oversight and reporting to the audit committee. These situations do not necessarily require the audit committee to be involved, nor do they necessarily require involvement of attorneys. If a senior manager is embezzling money, for example, internal auditors and/or outside counsel can handle the situation for the company and there is no need for an independent investigation. Likewise, a large percentage of the whistleblower complaints received by audit committees have no merit to them and can be easily dismissed.

Challenge Four: Efficient Investigation Management

Deciding how to manage an investigation is difficult because it has to be thorough, especially if regulators are involved, but there are always financial, time, and resource constraints that have to be factored into the equation. How much is enough is a very difficult question to answer. For that reason, counsel may recommend that the investigation be broken down into stages.

By defining the specific objectives for each phase, completing them, and then reassessing progress, the company can control its financial and resource costs. For example, if the company does business in fifty countries and there are allegations of foreign corrupt practice issues in Country A, few companies would do fifty internal investigations to ensure the problem is not systemic. The big challenge for the audit committee, or independent directors, is to control spending but do enough that the board, the auditors, and the regulators have confidence in the results.

Electronic data review causes significant challenges because it can quickly become a bottomless pit. If you look at the major corporate governance issues that have emerged in the last several years, the most important avenue for finding key documents is electronic data. Most of the highly publicized corporate fraud prosecutions relied extensively on e-mail. Collecting and reviewing the relevant electronic data can be a very expensive proposition. If an independent investigation utilizes a reasonable, but non-exhaustive, search methodology, regulators and auditors may request additional information but are less prone to suspect that the process was manipulated.

Challenge Five: Relations with Management

Relationships with senior management, general counsel, and outside counsel can be complicated in the context of an investigation. As the independent directors become more active in the process—especially if it involves wrongdoing on the part of very senior management—new issues emerge such as indemnification, separate counsel for officers, interim remedial measures to prevent harm to the company, and suspension of duties of some officers. As a result, conflict can develop between management and the independent board.

Information flow can be an issue. Even if counsel is independent and represents the audit committee, the goal at the outset is to share information on an interim basis with management so that they know what the process is, what procedures are being used, and who at the company is being interviewed. Counsel may not share the substantive results of the investigation on an interim basis unless there is an ongoing issue that needs to be addressed immediately.

Relations between management and the independent directors can become particularly strained if the regulators do not stand down their investigation. This can occur if they believe that there was document destruction or any tampering with evidence by anyone in the company; they think there are individuals in the company who are causing current harm to the company and to the shareholders; or the government believes that delay may lead to statute of limitations issues.

When there is a parallel government investigation, the company has to have someone defend them. When the company's regular law firm is defending an action based on facts developed by the independent investigators, there can be relationship problems. In an independent factual investigation, independent counsel gathers relevant facts. The facts are subject to interpretation and may or may not clearly establish individual culpability. The government's view of the facts and individual culpability may be completely different from the company's.

Independent investigations can be a big distraction for management. Investigators typically do not share all the information they are finding, which causes management to wonder where the investigation is going, what investigators are finding, and what the implications are for the company and its people. For example, if the investigation could lead to a restatement of financial information, that could have enormous implications for the company and the market. Hence, management will be very concerned about what conclusions the audit committee may be making. There are no easy solutions, but communicating as much as possible, and trying to bring the investigation to a swift and productive conclusion serve everyone's best interest. It is very important for the independent investigators to appreciate the fact that management still has to run the company. Investigators should strive to manage the investigation in a way that minimizes impact on operations.

Sixth Challenge: Managing Relationships with Outside Auditors

Managing relationships with outside auditors can be very difficult, especially if there are problems with past financials or anticipated difficulty with upcoming reporting. Securities and Exchange Commission rules require that financials get published on time. The auditors are going to want

information from the investigation so that they can satisfy their responsibilities in assessing qualitative and quantitative materiality as well as their responsibilities under Section 10(A). The independent directors may expect management's assurance that issues have been resolved and remedial internal controls have been put in place. Typically, the chief financial officer is trying to get the numbers correct while working in parallel with the investigation.

Information flow is always an issue. Auditors sometime demand interim reports which investigators may not be able to provide. At the end of the investigation, auditors may want a definitive factual conclusion, but the investigators may or may not be able to provide it. There can be tension between auditor expectations and what the investigators can deliver to enable the auditors to reach their desired comfort level regarding financial reporting. The stakes can be high. In a recent situation reported in local newspapers, a company started an investigation and the outside auditors lost confidence in the process. They told the audit committee that they should replace the CEO or they were going to have to resign as auditors. Instead, management replaced the outside auditors. Approximately ninety days later when the investigation was complete, the board replaced the CEO. The potential consequences to the company for managing this issue this way, and the adverse impact on the relationship between the company and the audit committee is very serious. Section 10(A) of the Securities Act of 1934 requires that the independent auditor assess the effectiveness of the company's response to allegations of illegal acts. This can cause the auditors to express a lack of confidence in what management is communicating, followed by the auditor's withdrawal. If the auditors have concluded that an illegal act has occurred and that management is not properly responding, Section 10(A) requires that the auditors notify the Securities and Exchange Commission, or resign and report their conclusions to the Securities and Exchange Commission. Maintaining this relationship, keeping the auditors on board, and dealing with them properly is a high-stakes problem. Other tensions arise when the current auditors are the same auditors that were in place when the incorrect financial reporting occurred. If this is the case, questions can be raised about why they did not catch the problem in the first place. The investigators may need to determine whether anyone in management affirmatively mislead the auditors. To make that assessment, the independent director investigation may need documents from the

auditors. Negotiating the scope of the document production can be problematic because auditors are very reluctant to produce notes and work papers.

Challenge Seven: Managing Relationships with Markets

The independent directors may be responsible for managing relationships with other third parties, including lending institutions and exchanges. When companies delay their public filings, such as their Form 10Q, investor relations come into play. Independent directors get phone calls from major investors who want information about the investigation and the status of financial reporting. The failure to timely file financial statements may trigger default provisions in credit facilities and prompt investigation by the enforcement divisions of stock exchanges, perhaps even leading to delisting publicly traded securities.

Challenge Eight: Managing Relationships with Regulators

The relationship with regulators has become one of the aspects of an internal investigation that has gotten somewhat more manageable. Regulators and investigative counsel have worked together on so many investigations that everyone understands what is expected. Typically, the regulators are willing to stand down and, in return, expect interim progress reports updating the current timetable, and the progress of the investigation. There has been a lot of publicity about attorney/client privilege issues and compelling waiver of privilege as part of this process. The government recently stated that waiver of privilege would not be required in order for the company to receive credit for cooperation. Likewise, there was an issue in the recent KPMG case concerning whether the company can get credit for cooperation if they indemnify individuals that are under scrutiny by the government. The government recently stated that withholding indemnification is not a condition of cooperation.

Most agencies are reasonable in giving independent investigations broad leeway in the format of their final work product. Agencies typically do not demand a formal report, which is a very expensive item to generate. They will usually accept the presentation in some form of PowerPoint™ and will

want copies of the key documents. Regulators sometimes request interview memoranda.

Notwithstanding completion of the internal investigation, the agency may resume its own investigation. Even if the regulators give the board and the company full credit for cooperation, they may still pursue the enforcement matter against the individuals who are implicated in this misconduct. Unfortunately, if an enforcement action proceeds against individuals, the documents will have to come from the company, and company witnesses may have to testify, so the disruption will continue. Even if the independent investigation is very thorough, the investigator interviews all the appropriate witnesses, and all the necessary documents are gathered, the government has powers that are not available to private counsel, and hence, an incentive to continue the investigation. Private counsel cannot subpoena witnesses and examine them under oath, cannot subpoena documents, cannot freeze assets, and does not have the ability to get a search warrant. Witnesses may or may not tell investigators the same thing they tell the government when their testimony is subject to penalty under a perjury statute.

Challenge Nine: Assess Remedial Measures

Part of every independent investigation involves the recommendation of remedial measures that can prevent future problems. The challenge is to identify internal controls that have broken down, areas in which checks and balances were not in place, and which individuals were involved in the misconduct. Sometimes the outside auditors will request additional investigation, or particular remedial actions regarding financial reporting. Regulators often have strong opinions about remedial measures that should be implemented. Although they will give some deference to the decisions of independent directors, this is an area where negotiations can be difficult, and draconian measures, such as imposition of corporate monitors, are becoming more commonplace.

In some instances, someone at the very highest level of management knew about the misconduct (or should have known) but they are so vital to the business that the business itself could not function without him or her. The directors sometime have to make very difficult decisions. They cannot always assess, with precision, the culpability of the senior management

person. The independent directors have the protection of the business judgment rule regarding their own liability for decisions so long as they make informed judgments that they reasonably believe are in the best interest of the company. So a director's decision to impose limited sanctions on a manger can be defensible.

Challenge Ten: Closure

The last challenge is getting closure. At some point, the investigation has to stop so people can get back to work. The board has to decide what actions to take and move on. The government is not bound by the board's decision and can always continue to investigate. The goal of every independent investigation is always to achieve global closure in a reasonable and efficient manner, but that is not always achievable.

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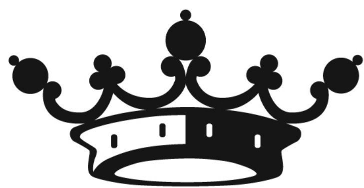

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