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Chapter 1

White Collar Crime with Your Company as the Victim: Conducting a Fraud Investigation

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Synopsis

§ 1.01. Introduction: Holy Crap! Now What?

These days, corporations are far more likely to be victimized by criminals using a laptop computer than by robbers carrying a gun. Corporate fraud has become a common topic in public discourse and a prominent target for government regulators; thankfully, it's not something happening in your company. Of course, you have always recognized the importance of having a checks-and-balance system in place to protect against such activity because such problems affect every facet of your business: consumers, employees, shareholders, management, and even unrelated individuals and companies feel the effect through financial and global markets as we have all been made acutely aware of in recent years. But your company is different and comfortably above such shenanigans . . . or so you thought.

Not anymore. You recently discovered that money appears to be missing; assets are gone; you received a letter from an investigating authority notifying you that your company is being investigated for fraudulent activity. How has this happened? What do you do? How do you make sure you protect yourself in the event that the worse case scenario has actually unfolded without your knowledge?

This chapter will provide a general overview of the types of fraudulent activities companies face and provide guidance in conducting an internal investigation of your company, including identifying steps that should be taken to determine what activity has taken place, where and from whom information should be obtained and protected, and how to manage cooperating with investigating authorities while minimizing your company's exposure. Privilege issues and reporting requirements will be given needed attention. Finally, this chapter will suggest ways in which an antifraud program can be fashioned or improved so that similar problems will not recur or, if they do, they will be detected and corrected sooner rather than later.

§ 1.02. What Happened and What Do I Do?

The three basic types of corporate fraud are misappropriation of assets, corruption, and fraudulent financial statements. Misappropriation of assets is the most numerous corporate crime, and includes theft of cash, inventory, equipment and other fixed assets. Misappropriation of assets also includes theft of accounts receivable, payroll, and travel and entertainment reimbursements. Corruption includes any scheme in which a person uses influence to obtain an unauthorized benefit contrary to that person's duty to his or her employer. This is commonly called bribery. However, as discussed below, a business practice does not have to be covert or counter-cultural to be considered corruption: common business practices abroad may be considered corruption under United States law, even though "everybody's doing it" as a routine part of business. Finally, fraudulent financial schemes typically entail manipulation of statistical or financial records that mislead another in order to create new financial opportunities or continue existing financial relationships.

In assessing the legal implications of corporate fraud, it is important to note its significant impact on the business market generally and the need to address these issues as matters of corporate responsibility. The Association of Certified Fraud Examiners (ACFE) issues a report every two years titled "Report to the Nations On Occupational Fraud and Abuse."[1] The ACFE's 2010 Global Fraud Study examined 1,843 cases of occupational fraud from around the world between January 2008 and December 2009.[2] The report discovered that the median length of time a fraud continued before being detected was 18 months. Amazingly, survey participants estimated that fraud

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1 http://www.acfe.com/rttn/2010-rttn.asp.

2 ACFE's *Report to the Nations on Occupational Fraud and Abuse: 2010 Global Fraud Study*, http://www.acfe.com/rttn/rttn-2010.pdf.