

BRACEWELL

**Responding to Investigations:
Considerations for General Counsels &
Compliance Officers**

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Introductions



*"These new regulations will fundamentally change
the way we get around them."*

Overview

- I. Compliance personnel are frequently called upon by companies to respond to, address and remediate sensitive and complex investigations.
- II. The presentation will outline the keys to successfully handling internal and regulatory enforcement matters and highlight pitfalls and risks that often arise during these investigations.
- III. In addition, we will outline specific steps General Counsels and Compliance Officers should consider during “blue sky” days to ensure their departments are adequately prepared for substantive inquiries.

Hypothetical Case Study

- During a routine meeting with Internal Audit to conduct a final review of earnings just prior to the release of very strong quarterly financial results, a career mid-level Controller identifies a series of journal entries in an internal account that cannot be properly reconciled or explained.
- The numbers were labeled “pre-paid expenses,” which had the effect of increasing earnings and profits, while reducing overall expenditures. The total expense items have now grown to a “material” amount because the entries have been made in every quarter over the last three years.
- A quick records search shows that the expenses were entered by Operations and were tied to goods and services specifically for the gas business.
- Four years ago, after a series of Grade 2 and a few Grade 1 leaks, the Commission entered an Order that required the company to upgrade its gas lines and equipment – expenses that were deemed not recoverable in future rate cases.

Hypothetical Case Study (Cont'd.)

- Multiple emails and attempts by the mid-level Controller to speak with the Head of Operations and the Chief Financial Officer about the “expenses” over the last three weeks have gone completely unanswered.
- It has also been discovered that Procurement has almost no purchasing records related to the relevant gas equipment.

Its 3:20 PM on a Friday Afternoon:

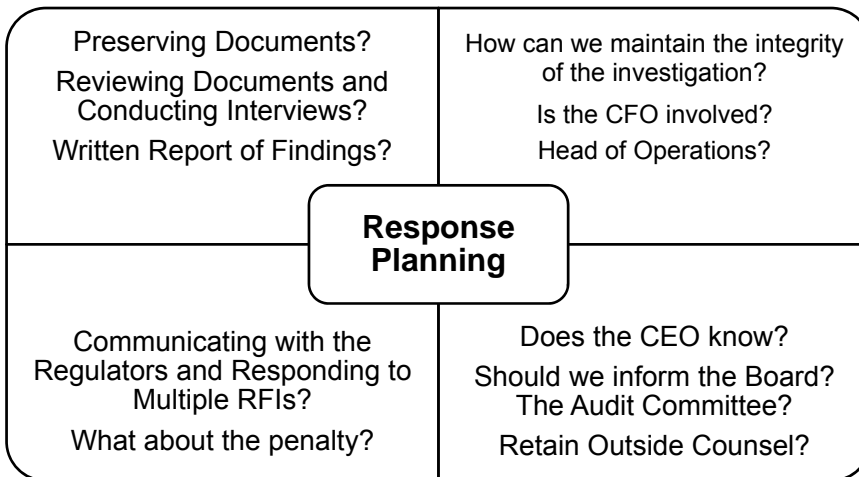
- Internal Audit sends you this information via email with specific facts in a 7 page, single spaced memorandum.
- That same afternoon, the General Counsel forwards you a subpoena from the local US Attorney’s Office requesting accounting information and emails for all employees in the gas business for the last 10 years.
- Also, the Commission just called Operations to schedule a Compliance Audit related to the 4 year old Order.

Responding to Investigations:

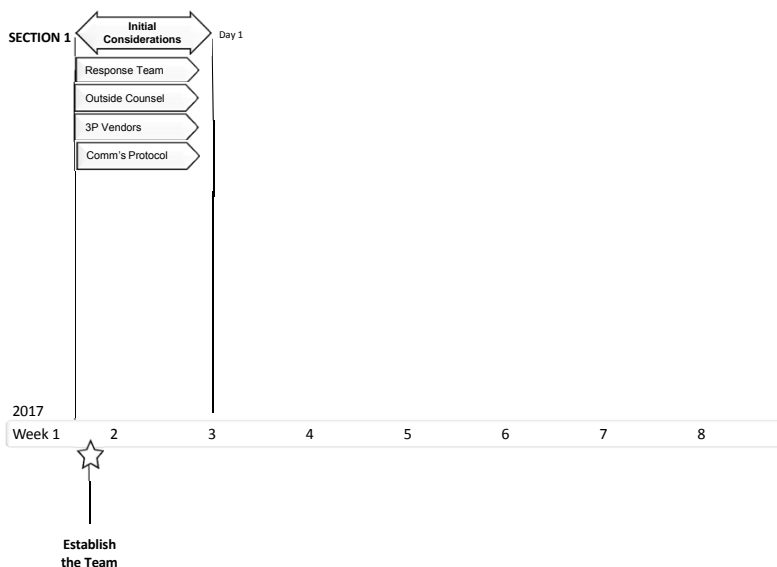


Responding to Investigations (Cont'd.)

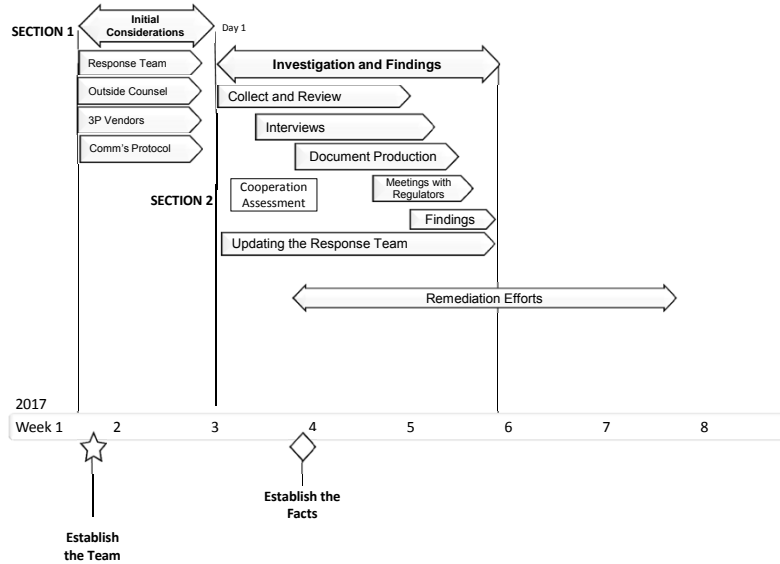
What steps should you take to respond?



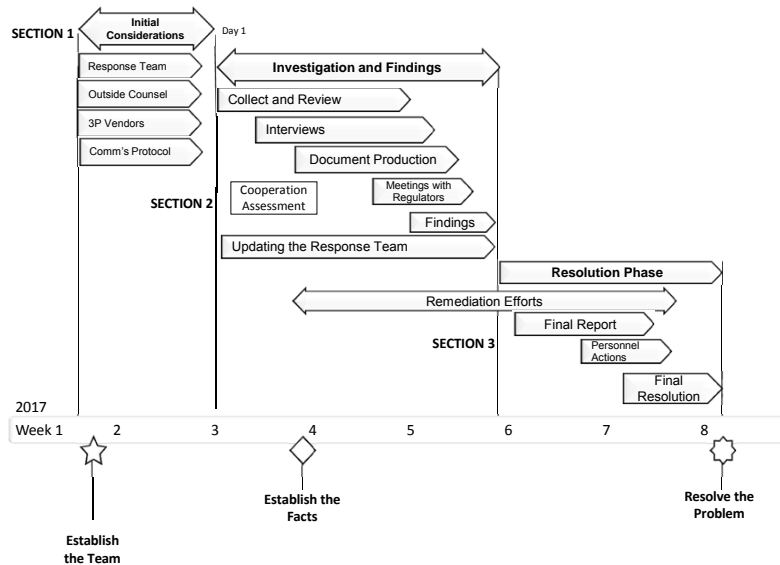
Investigation Timeline



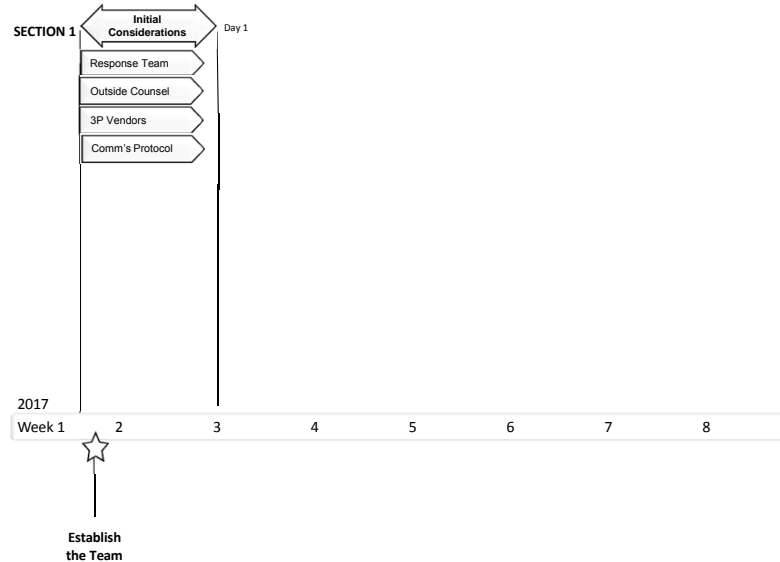
Investigation Timeline



Investigation Timeline



Investigation Timeline

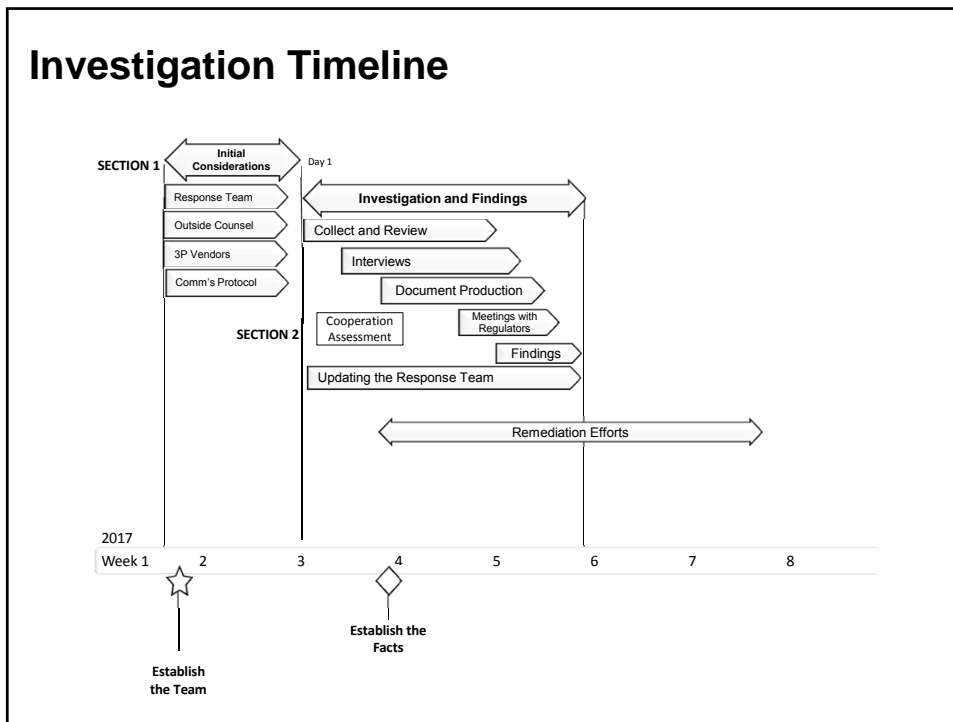


Responding to Investigations (Cont'd.)

Initial Considerations:

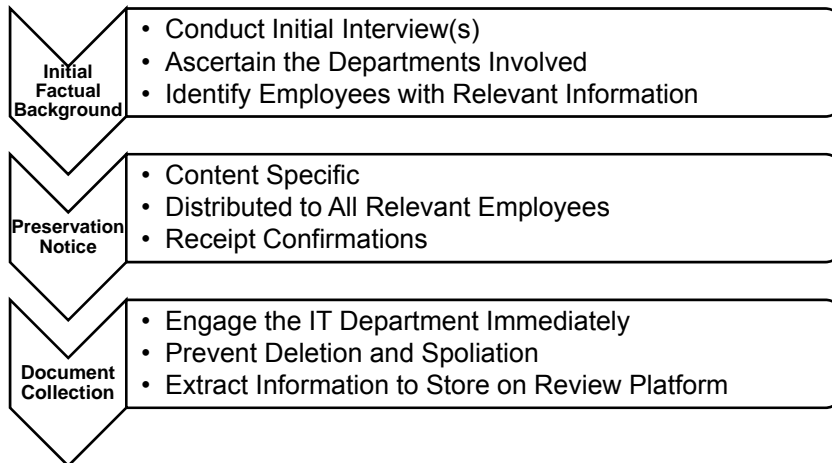
- **Partner with General Counsel and Create a Response Team**
 - Create Reporting Group
- **Ensure all Constituents are Apprised of Response Plan**
 - Board
 - Audit Committee
 - Management
- **Engagement with Outside Counsel**
 - Privilege Considerations
 - Independent Evaluation
 - Managing Discussions with Regulators
- **Engagement with Third Party Vendors**
 - Document Preservation, Collection and Review
 - Accounting and Financial Analyses

Investigation Timeline



Responding to Investigations (Cont'd.)

Document Preservation and Collection



Responding to Investigations (Cont'd.)

Conducting the Factual Interviews

- Assignment of Personnel to Conduct Task is Critical
- Notes and Memoranda / Privilege
- Corroborating the Information with Documentary Evidence
- Conducting Multiple Interviews of the Same Individuals

The Document Review

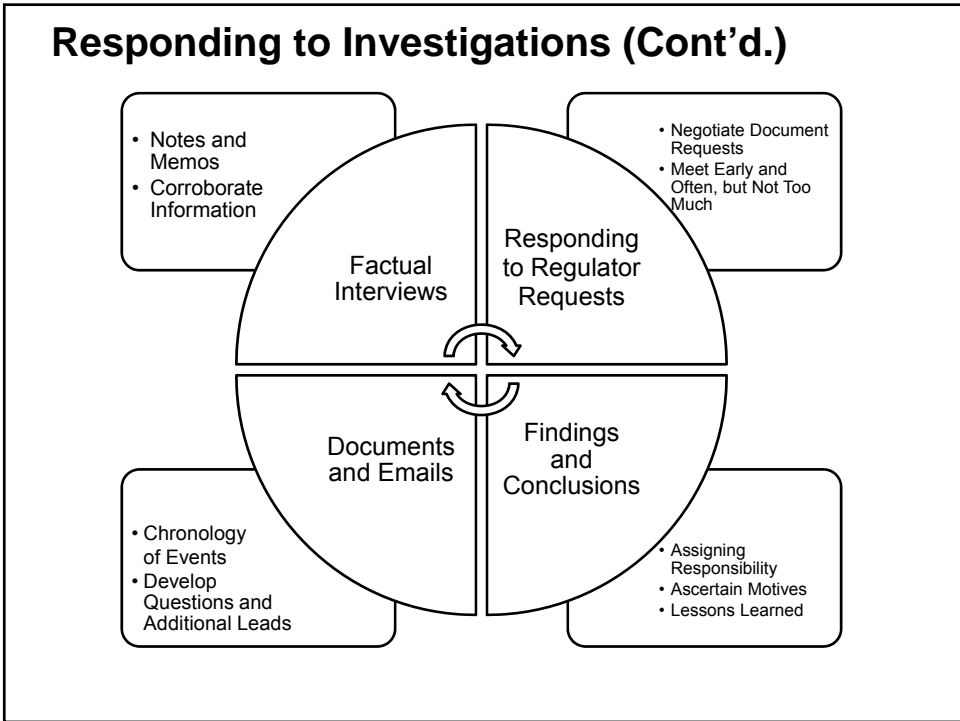
- Piecing the Information Together
- Creating a Chronology of Events

Responding to Regulators

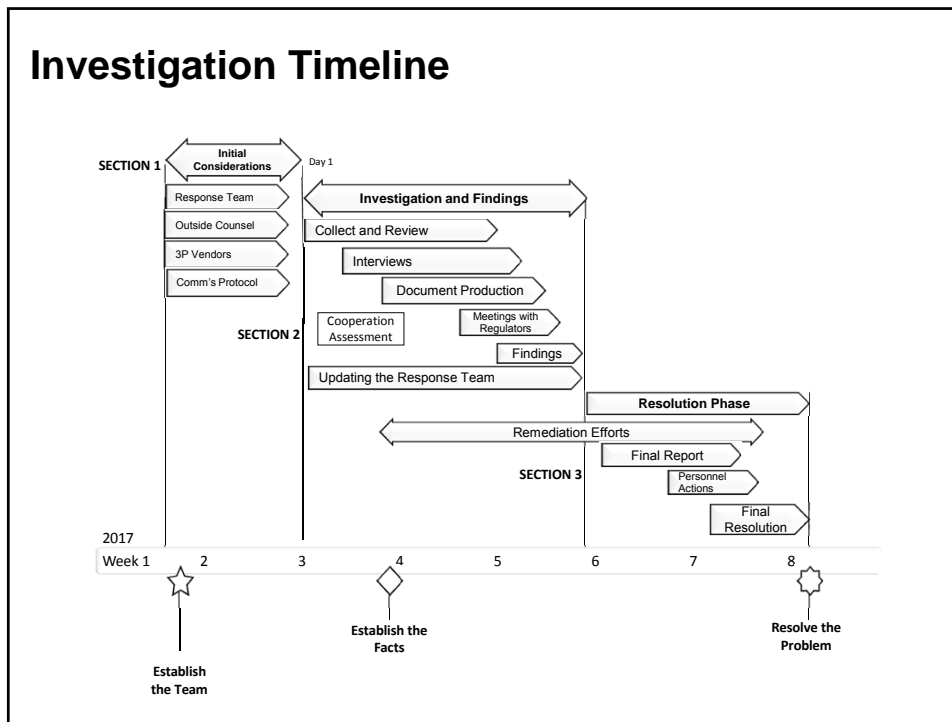
- Negotiating Document Requests
- Meet Early and Often, But Not Too Much
- Mitigation and Negotiating the Settlement

Findings and Conclusions

- Report of Findings and Remediation
- Assess Violations



Investigation Timeline



Responding to Investigations (Cont'd.)

The Remediation Plan

- Development of Remediation Plan Occurs Concurrently with the Investigation
- Work with a "Clean Team" from the Business Side
- Remediation Plan Approved by Board or Audit Committee
- Public Relations
- Cost Concerns

Hypothetical Case Study Remediation:

- ▶ Restatement of Historical Financials
- ▶ Review of Gas Installations
- ▶ Upgrade Where Necessary
- ▶ Address any Public Safety and Trust Concerns

“Blue Sky” Protocols

Important Tools and Considerations

- Create pre-approved document preservation notices
- Ensure the IT department has the ability to seamlessly preserve and extract data from various sources, including cloud based storage, mobile devices and emails.
- Pre-identify vendors the company will use to lock in contracts and pricing.
- Identify protocols for retaining outside counsel.
- Ensure public relations team is prepared for rapid response to inquiries and pro-active communications strategies.
- Periodic Risk Assessments.

“Blue Sky” Protocols (Cont’d.)

*Illustrative -
For Discussion Purposes*

Compliance Dashboards

Compliance risk area	Risk detail			Mitigation	
	Risk level	Principal risks	Trend v. Prior qtr	Response/initiative	Status
Cyber security	High	<ol style="list-style-type: none"> Cyber security Risk 1 Cyber security Risk 2 Cyber security Risk 3 			
Privacy	Medium	<ol style="list-style-type: none"> Privacy Risk 1 Privacy Risk 2 Privacy Risk 3 			
FERC	Medium	<ol style="list-style-type: none"> FERC Risk 1 FERC Risk 2 FERC Risk 3 			
Environmental	Low	<ol style="list-style-type: none"> Environmental Risk 1 Environmental Risk 2 Environmental Risk 3 			
State Regulatory	Low	<ol style="list-style-type: none"> State Regulatory Risk 1 State Regulatory Risk 2 State Regulatory Risk 3 			

This will be populated as future assessments are conducted

Conclusion

QUESTIONS AND ANSWERS