

# 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."*

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### 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.

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### 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.

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### 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.

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### Responding to Investigations:



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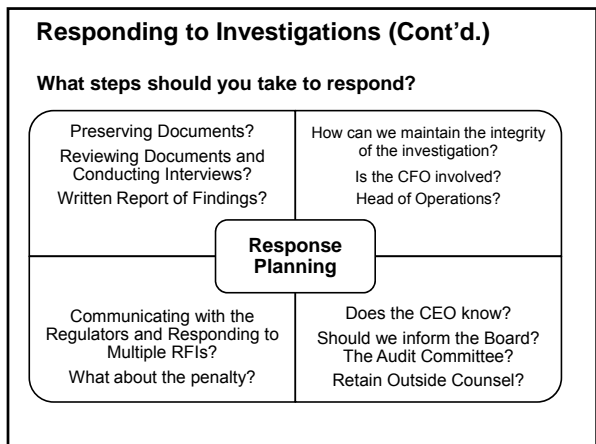
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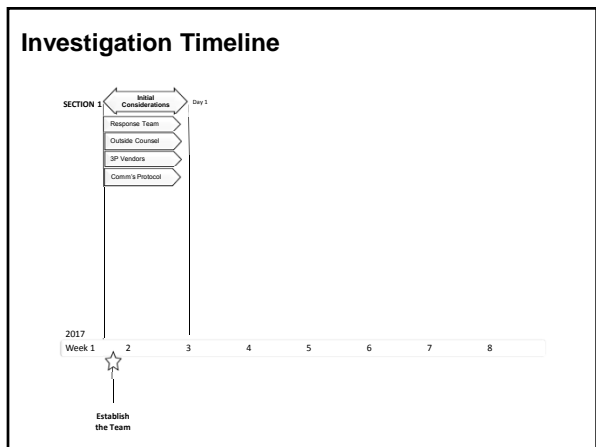
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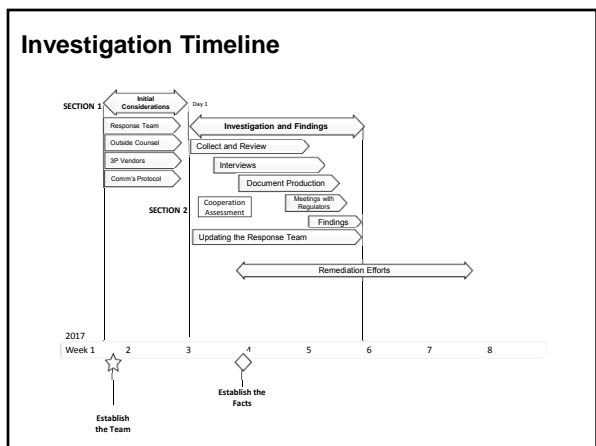
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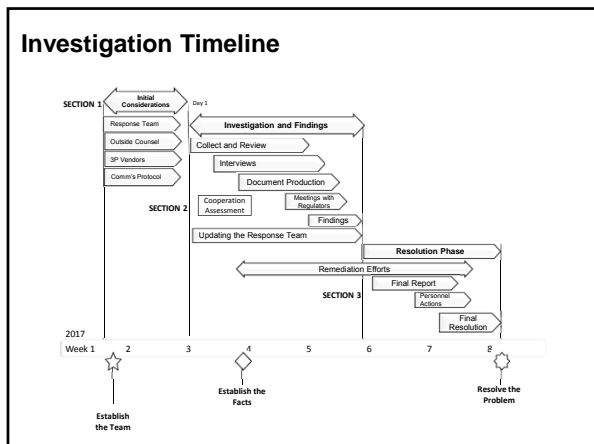
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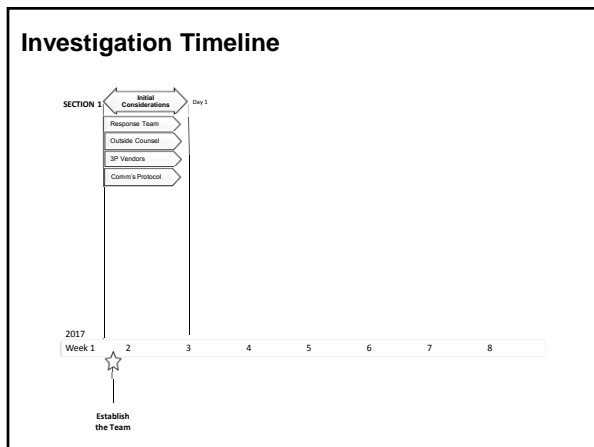
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- ### Responding to Investigations (Cont'd.)
- Initial Considerations:**
- **Partner with General Counsel and Create a Response Team**
    - Create Reporting Group
  - **Ensure all Constituents are Apprised of Response Plan**
    - Board
    - Audit 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

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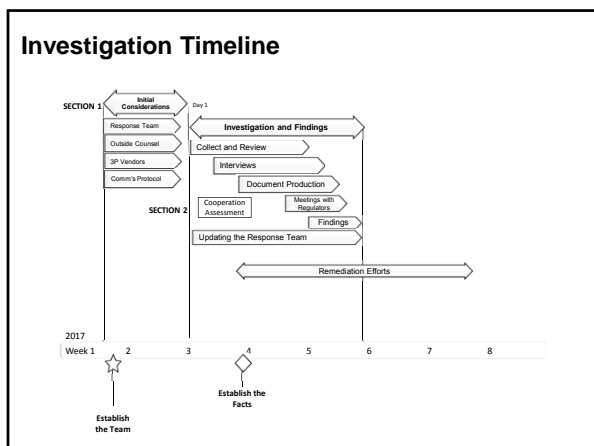
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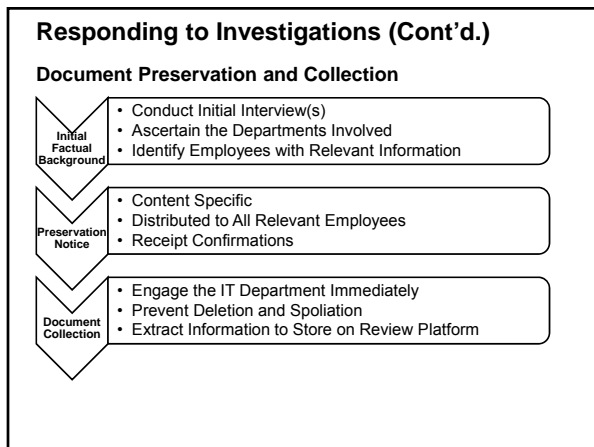
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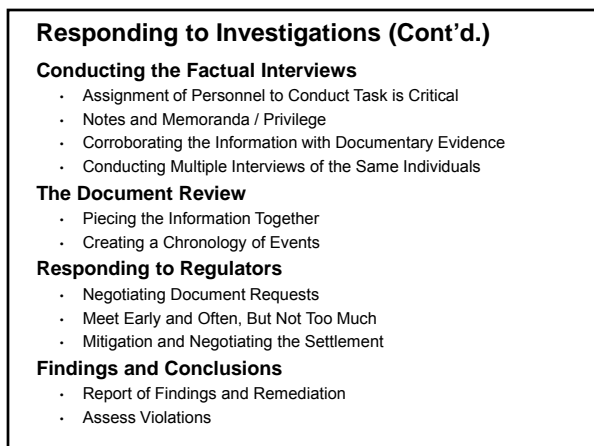
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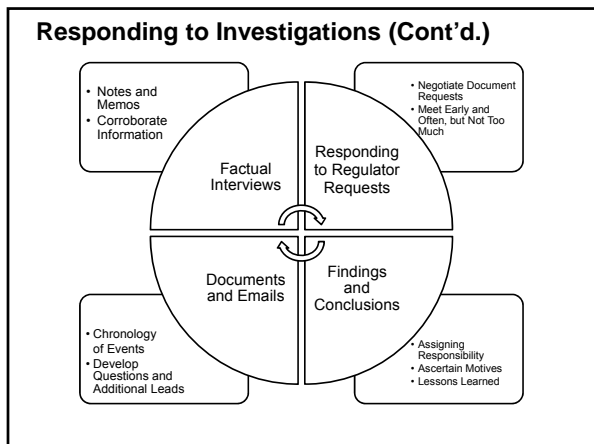
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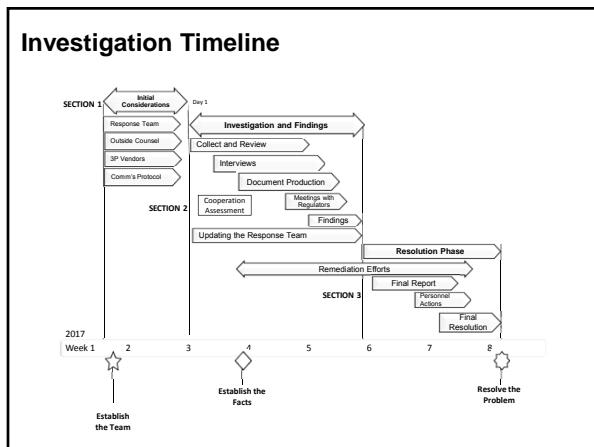
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### Responding to Investigations (Cont'd.)

#### 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

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**“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.

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**“Blue Sky” Protocols (Cont'd.)**

*Illustrative - For Discussion Purposes*

**Compliance Dashboards**

Compliance risk area	Risk level	Risk detail		Mitigation	
		Principal risks	Trend v. Prior qtr	Response/initiative	Status
Cyber security	High	1. Cyber security Risk 1			
		2. Cyber security Risk 2			
		3. Cyber security Risk 3			
Privacy	Medium	1. Privacy Risk 1			
		2. Privacy Risk 2			
		3. Privacy Risk 3			
FERC	Medium	1. FERC Risk 1			
		2. FERC Risk 2			
		3. FERC Risk 3			
Environmental	Low	1. Environmental Risk 1			
		2. Environmental Risk 2			
		3. Environmental Risk 3			
State Regulatory	Low	1. State Regulatory Risk 1			
		2. State Regulatory Risk 2			
		3. State Regulatory Risk 3			

This will be populated as future assessments are conducted

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**Conclusion**

**QUESTIONS AND ANSWERS**

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