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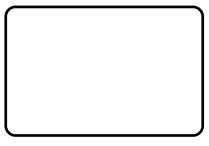

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Preface

Global Investigations Review is the leading source of news and market intelligence for the international investigations community, providing all the insight needed by corporate counsel, private practitioners, government enforcers and academics. Our dedicated team of journalists produces original news content every day, focusing on internal and government-led investigations, and tackling issues ranging from due process to data protection. No other service covers this range of content in such depth, and with such an international perspective. The unique content ensures a unique readership.

Complementing our journalists' content, *The Investigations Review of the Americas* – **GIR**'s first special report – offers a different perspective, rooted in the practical, front-line experience that all our authors share. Contributors were selected because of their knowledge of this complex area: here, the expertise that helps their clients manage the risks in cross-border investigations every day is made available for the broader community, enabling practitioners to better understand and handle the most important issues.

Putting these practical issues at the centre, *The Investigations Review of the Americas* has a unique substantive focus, looking at 'investigations' as a skillset in its own right. Chapters cover real-life questions such as handling internal investigations, establishing effective corporate compliance, white-collar defence, managing relationships with government enforcers, and whistle-blowers and self-reporting. Because this is such a diverse and rapidly changing field, there is of course enormous scope for expanding the reach of future editions, both by broadening the jurisdictional coverage and deepening the substantive content. Readers are invited to contact **GIR** with suggestions for new topics they'd like to see, or to recommend potential authors: we welcome all feedback.

Global Investigations Review also exists to promote dialogue and interaction among investigations specialists. We strongly encourage readers and co-authors of *The Investigations Review of the Americas* to connect and share comments – that's why we've included full contact details of every contributor.

We hope you find *The Investigations Review of the Americas* informative and useful - thank you for reading.

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United States: handling internal investigations

Stephen A Jonas, Daniel F Schubert and David Zetlin-Jones
Wilmer Cutler Pickering Hale and Dorr LLP

Allegations of corporate malfeasance may arise in myriad ways: whistle-blowers, current or former employees, internal or external auditors, shareholders, the media, regulatory or law enforcement agencies, and/or the plaintiff's bar. When allegations of serious misconduct come to a company's attention, corporate fiduciary obligations often require a vigilant and prompt reaction from the company, including in some instances its senior management or directors.

Internal investigations are a vital and valuable means to understand and, as appropriate, respond to such allegations, and to protect the company's interest in the face of them. A thorough investigation will position the company to assess the accuracy of allegations of misconduct, remediate any identified malfeasance and guard against its recurrence, and prepare the company to respond effectively to subsequent (or pending) regulatory investigations and parallel civil litigation premised on those allegations.

This article provides a brief primer on how to conduct an effective internal investigation. It outlines common steps designed to assure an internal investigation succeeds in the marshalling of facts underlying the allegations, and addresses important issues to consider when engaged in an internal investigation, including and especially (i) assuring the investigation is structured to maximise its credibility; (ii) preserving the confidence and protections of applicable privileges over documents created and conclusions reached during the investigation; and (iii) whether to disclose voluntarily the investigative findings to third parties, including the government.

Initial steps

Companies should structure investigations carefully and thoroughly at their outset. This includes focus on selecting who will oversee the investigation and who will conduct it, and determining the substantive and practical scope of the investigation. Numerous factors go into these determinations and should be assessed carefully upfront.

First, the company should determine who will oversee the investigation. In most circumstances, it is appropriate for management to conduct and/or oversee the investigation. However, for unusually significant matters (such as matters involving the conduct of senior management or in-house counsel), it may be appropriate for a committee of the board of directors to conduct or oversee the investigation (for example, the audit committee or a special committee).[1] Whether supervised by management or a board committee, the company should consider whether to hire outside counsel to conduct the investigation.

The individual or committee overseeing the investigation and investigating counsel should, at an early stage, establish the scope of the investigation, focusing on the issues and time period to be addressed. Counsel will then typically create an initial work plan within the agreed-upon scope. This initial work plan should detail the documents to be gathered, the means by which those documents will be collected and reviewed, the identity and the order of witnesses to be interviewed, and a timeline for completion of each of these steps. Counsel should also consider whether, and to what extent, they may need to engage external substantive experts (for example, forensic accountants) to assist the investigation, and, if so, should structure their engagement of these experts to assure that their work enjoys applicable attorney–client privilege and/or work product protections.[2]

There is no 'one-size-fits-all' work plan for an internal investigation. The scope of an investigation and the steps needed to complete it will necessarily depend upon balancing of the need for thoroughness against the need for an efficient, cost-effective and focused investigation. The severity and pervasiveness of the alleged misconduct (or lack thereof) must also be taken into account. Likewise, external time constraints will frequently dictate an investigation's scope; for example, an investigation's completion is frequently required in advance of a financial reporting period to provide information to the company's auditors and to enable a company to make an informed disclosure decision.

An investigative work plan should take these considerations into account, while retaining the flexibility to permit investigators to adopt and react appropriately as their inquiry evolves and additional facts are discovered. Counsel conducting the investigation should have a direct reporting line to the individual or entity that engaged it, present that person or entity with its work plan, and provide regular updates on the investigation's status as it progresses.

Gathering and reviewing documents

Documents – particularly e-mail and electronic information – frequently provide the only contemporaneous memorialisation of the conduct being investigated and contain the most important and substantive information obtained in an investigation. Documents often tell the story and provide the chronology of what transpired, and will serve to refresh witnesses' recollections of past events. Retaining, collecting, and reviewing relevant documents and evaluating their significance or meaning is a critical step in any internal investigation. To that end, investigators should assess the broad range of evidence that could potentially be relevant, including both electronic and hard copy data. Counsel conducting the investigation should immediately coordinate with company personnel or representatives to identify the custodians or employees likely to possess relevant documents, the types of documents generated by the company, and the manner in which documents are stored.[3] Rapid identification of individuals in possession of relevant documents is critical to timely distribution of notice to those employees to maintain the integrity of the documents pending the investigation.

Retention

Once the universe of individuals potentially in possession of relevant materials is determined, the company's legal department, in coordination with external counsel, should prepare and distribute a written document retention memorandum instructing those employees not to destroy or discard specified categories of documents related

to the investigation's subject. The memorandum should describe these categories broadly, disclosing as much information as necessary to assure preservation of relevant materials while not revealing more regarding the allegations prompting the investigation than the recipient needs to know. It may be necessary and advisable for counsel to conduct document collection interviews with individual employees to determine their document retention and storage practices (eg, whether they hold data on home computers) and to collect relevant, hard copy documents from employees directly.[4]

In addition to assuring that individual employees retain relevant documents in their possession, investigators should also coordinate with the company's legal department and informational technology personnel to assure the preservation of electronic documents stored on company servers or elsewhere. In today's environment, most documents are stored electronically and are usually retrieved directly from the company's central or e-mail servers, rather than from individual employees or custodians. It is critical to maintain the integrity of these documents. Companies may have to suspend data recycling programmes to ensure that relevant e-mails and electronic documents are not being deleted in the ordinary course. Additionally, because it may be necessary in certain circumstances to restore back-up tapes to recover and retrieve e-mail or electronic data that has been already deleted, the company may need to remove those tapes from ordinary recycling programmes.[5] Counsel should also consider whether information may potentially be stored on smart phones or other mobile electronic storage devices.

Collection

Once the universe of potentially relevant documents is identified and their retention is assured, counsel should collect the documents for review. The shift to electronic platforms in recent years has greatly enlarged the universe of data stored at companies. In many instances, the universe of documents is voluminous and contains large amounts of irrelevant material, the review of which would be wasteful and inefficient. In such circumstances, investigators should consider creating a set of search terms and date restrictions to target documents likely to be relevant to the investigation, and limiting their collection efforts to only those documents that 'hit' on the identified search terms or fall within the specified date parameters.[6] Alternatively, counsel might consider employing so-called predictive coding, an increasingly-used technology that attempts to use computer technology to identify the more important documents among a large data set.

Additionally, companies conducting internal investigations are often multinational corporations with operations in jurisdictions or countries subject to data privacy laws. Counsel conducting investigations in these circumstances should be sure to review applicable data privacy and other local-law restrictions in each impacted jurisdiction to ensure that collection and review efforts are compliant.

Review

Once documents are collected, the investigative team should review documents to organise them according to particular criteria. Review databases typically permit for electronic 'coding' of documents to facilitate this process.[7] While the criteria used will vary necessarily according to the particular facts, circumstances and nature of the investigation, the review, at minimum, should identify and segregate documents that are privileged and those that are particularly noteworthy. Typically, document reviewers will also identify and code documents according to more discrete substantive issues identified as relating to the investigation. Additionally, documents will usually be identified as relating to a particular individual (or individuals) and used to facilitate that person's subsequent interview.

Counsel will also often use the results of the review to prepare a full chronology of events, with links to the documents on which each entry is based (or citation to the internal number assigned to the particular document). This chronology should be supplemented regularly as additional documents are identified. This working chronology is often essential to counsel's efforts to synthesise facts and dates and to understand the timing and relationship of key events and persons.

Witness interviews

Witness interviews are often the other principal source of information gathering in any internal investigation. Ideally, interviews should begin after relevant documents have been reviewed and organised and investigating counsel have an understanding of the issues or events relevant to the interviewee. If time permits, counsel should prepare an outline of subjects and questions for each witness prior to the interview with reference to documents they intend to cover with the witness. Use of documents in witness interviews facilitates the investigative process by enabling witnesses to clarify the language used in a document and its context; it may also refresh a witness's recollection about subjects he or she can no longer recall.

Investigators should also give due consideration to the ordering of witness interviews to achieve the investigations priorities and to prevent duplication (if possible). Typically, counsel will arrange interviews sequentially to move up the organisational hierarchy; such a structure enables investigators to develop facts surrounding relevant issues or events before interviewing senior management and executives to determine whether they knew or were implicated in them. However, time pressures or the nature of the investigation may dictate a different sequence.

When beginning an interview, counsel should ordinarily administer what is commonly known as an '*Upjohn* warning', informing the witness that (i) the counsel is conducting an investigation on behalf of the company for the purpose of rendering legal advice to the company; (ii) the counsel represents the company and not the employee; (iii) the conversation is protected by the attorney–client privilege and is intended to be kept confidential, but that privilege belongs to the company, not the employee;[8] and (iv) the company, not the employee, can decide in its sole discretion whether to waive the privilege and disclose to third parties the information provided by the employee.[9] The provision of an *Upjohn* warning establishes the foundation for a subsequent assertion of the attorney–client privilege by the company, and prevents employees from developing a reasonable belief that they are represented personally by company counsel, which might inhibit the company from fully using the information obtained during the interview.

Counsel should generally take notes during the interview. Most often, investigators will have at least two people in the interview – one to take the lead in questioning the witness, and the other designated to take notes. Though notes should be detailed, they should not purport or attempt to transcribe the conversation verbatim. Shortly after the interview, while it is fresh in the counsel's mind, all interviews should generally be memorialised. Information obtained during the interviews should also be added to the investigation chronology.

To maximise the likelihood that interview memoranda will be subject to the attorney–client privilege and work product doctrines, they should be labelled 'privileged and confidential,' document that *Upjohn* warnings were administered, and state plainly upfront that they reflect counsel's impressions of the interview and are not

intended to function as a verbatim recitation of what was said.[10] Generally, counsel should not provide a copy of the memorandum to the witness (or the witness's counsel).

Remediation

If information gathered during the internal investigation reveals that misconduct (such as a violation of law or company policy) has in fact occurred, investigating counsel and the overseeing entity or individual should recommend remedial action to redress it. The recommended course of corrective action will necessarily depend on the circumstances, including any weaknesses in company compliance policies and practices and the nature of any violation detected. It may include enhanced compliance efforts, financial restatement, and/or employee discipline or termination, depending on the type of conduct at issue. In all events, the measures recommended should be sufficient to assure the cessation of the identified misconduct and the prevention of its recurrence.

Preparing a report of the investigation

Once an investigation is complete, investigators should consider the manner in which to present their ultimate findings to the client and any third party. Generally, counsel must assess whether to document its findings in a written report, or whether it is preferable to report findings orally. This decision will depend on the nature of the investigation and consideration of various factors.

A written report carries with it the risk of subsequent discovery in litigation or regulatory investigations, and documented misconduct may be used against the company in those matters. Discovery of the written report may, but will not necessarily, also jeopardise the privileged nature of the work product underlying or supporting the report. Additionally, the preparation of a written report may be a time-consuming and expensive process.

Reducing the findings to writing in a report also carries several advantages. Written reports often contain a more precise analysis of the underlying facts, particularly where the issues addressed in the investigation are complicated. A written report may also serve to provide support for the investigation's thoroughness and demonstrate the fulfilment of any applicable fiduciary obligations. A written report documenting the investigation and its findings may also be necessary to obtain cooperation credit from the government where such credit is sought.[11]

Whether delivered orally or in writing, counsel should consider addressing in any report, at a minimum: (i) the circumstance or event that triggered the investigation; (ii) the measures taken to investigate the matter (eg, the issues and time periods investigated, the scope of the documents collected, the manner in which they were reviewed, and the identities of witnesses interviewed); (iii) the investigation's findings; and (iv) recommendations for remediation. Counsel should also prominently disclose in the report (whether delivered in writing or orally) that the report was prepared for the purpose of providing legal advice and is intended to be privileged and confidential, which will enhance the likelihood of protection from future discovery in litigation. Toward that end, counsel should also consider taking steps to limit and tightly control the report's distribution.[12]

Despite measures taken to preserve privilege, counsel drafting an investigation report should recognise the risk that the report may nonetheless be subject to subsequent discovery, and tailor the report accordingly.[13] Specifically, counsel should avoid unnecessary commentary, speculation, or ancillary or unnecessary legal conclusions. The report should hew closely to the facts developed and the conduct at issue, and should present a full, fair and complete summary of the evidence, including a description of any mitigating or exculpatory facts.

Disclosure of investigative findings to third parties

Investigating counsel should also give substantial consideration to managing disclosure, if any, to third parties. Public reporting of an investigation or its findings may be mandatory in certain circumstances, and investigators should review closely whether (and to whom) disclosure may be required. As an example, disclosure obligations applicable to a publicly registered company may require public disclosure of wrongdoing at senior levels.[14] The release of an investigation and its remedial recommendations may be a practical necessity in circumstances where the company matter triggering the investigation is already public and causing reputational damage. Reporting obligations and auditing standards may also require that a company share information with its independent auditors if the misconduct at issue relates to financial statements or otherwise involves an illegal act.[15]

Companies should approach such disclosure carefully to minimise the risk of waiving the attorney–client privilege or any applicable work product protections.[16] For example, before sharing investigative material with auditors, counsel should attempt to memorialise that materials are intended to be kept in confidence.

Beyond compulsory disclosure obligations, companies may elect voluntarily to share investigative findings, or the fact that an investigation is being conducted, with the government. A company's voluntary provision of investigative findings to governmental law enforcement or regulatory agencies can accrue cooperation credit, which may result in mitigation of penalties or deferral of prosecution the criminal context.[17]

Sharing this otherwise privileged information, however, will likely implicate or effect a waiver of the protections of attorney–client privilege and work product doctrine and subject the documents to potential discovery in parallel or related civil litigation.[18] Given the likelihood of waiver, counsel and the company should consider carefully the impact that discovery of the investigative materials may have on any parallel proceedings before providing them to the government. If the company does elect to share its investigative findings with a law enforcement or regulatory agency, it should take steps to limit the potential collateral ramifications of any consequential waiver. These may include, among other things, (i) entering into an explicit confidentiality agreement with the agency before production of the information; (ii) stating clearly in correspondence the company's intent to preserve applicable privileges to the maximum extent possible; and (iii) negotiating (if possible) for the production of only a limited set of investigative materials.

Notes

1 In some cases, there may be potentially different or conflicting interests within the company (for example involving the independent directors) which require careful consideration as to who controls the investigation.

2 Documentation of the structure of the engagement will assist the company in asserting privileges over communications with these experts in subsequent adversarial proceedings. See *United States v Kovel*, 296 F.2d 918, 922 (2d Cir. 1961) (attorney–client privilege may extend to client communications with an accountant where that accountant was retained by an attorney to assist in rendering legal advice to the client); where counsel seek and obtains outside consulting services, the attorney–

client privilege has been extended to such third parties 'employed to assist a lawyer in the rendition of legal services.' *Abdallah v Coca-Cola Co*, 2000 WL 33249254, at *3 (N.D. Ga. 25 January 2000) (collecting cases).

3 It is often difficult at the start of the investigation to determine who at the company is likely to possess potentially relevant documents. Companies developing a list of employees likely to be, or even or potentially, in possession responsive documents should typically err on the side of over-inclusion.

4 Such interviews should be documented shortly after their completion. Additionally, counsel should maintain detailed intake records identifying the source and location of each file collected in this manner.

5 This process is frequently both time-consuming and costly, and the burdensomeness of it should be weighed against the particular circumstances giving rise to the investigation.

6 Investigators should give careful consideration to developing the list of search terms to assure that it is not so limited as to exclude important data, but not so broad as to pull in substantial amounts of irrelevant documents.

7 Review databases will generally also permit reviewers to sort documents by date, custodian and/or search terms.

8 Frequently, former employees will also have knowledge about the facts and circumstances subject to counsel's investigation. Corporate counsel's communications with former employees may not enjoy the protections of the attorney–client privilege in certain jurisdictions. See *Barrett Indus Trucks Inc v Old Republic Ins Co*, 129 F.R.D. 515 (N.D. Ill. 1990). Counsel considering interviewing former employees as part of an internal investigation should consult the law of the relevant jurisdiction.

9 The warning stems from the US Supreme Court's decision in *Upjohn v United States*, 449 U.S. 383 (1981), which held that the attorney–client privilege applies to communications between company counsel and all company employees. On the facts before it, the Supreme Court emphasised with approval that the interviewed employees were notified of the nature of the investigation and that interviewing counsel represented the company's interests, and not the individual employees'.

10 These disclaimers will maximise the likelihood that the memoranda will be covered by the attorney work product doctrine. See, eg, *Baker v General Motors Corp*, 209 F.3d 1051 (8th Cir. 2000) ('Notes and memoranda of an attorney, or an attorney's agent, from a witness interview are opinion work product entitled to almost absolute immunity'); see also *United States v. Ruehle*, 583 F.3d 600 (9th Cir. 2009) (stressing importance of documenting the administration of *Upjohn* warnings).

11 See, eg, Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions, SEC Rel. No. 44969 (23 October 2001) (the Seaboard Report) (in evaluating whether and to what extent to credit cooperation, the SEC will consider whether the company 'provide[d] sufficient documentation reflecting its response to the situation' and whether it 'produce[d] a thorough and probing written report detailing the findings of its review').

12 Before providing a report to a company's board, investigating counsel and/or the oversight committee should evaluate any privilege waiver implications, particularly where certain directors are directly involved in the conduct subject to the investigation, or otherwise have a personal stake in the investigation's outcome, as opposed to an interest merely as a fiduciaries of the company.

13 As described below, the company may also elect voluntarily to share the report with the government, which may trigger a waiver.

14 See, eg, SEC Regulation S-K (17 CFR section 229 et seq.).

15 See, eg, Sarbanes Oxley Section 302(a)(5)(B) (15 U.S.C. section

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Wilmer Cutler Pickering Hale and Dorr LLP represents companies in government investigations, conducts internal corporate investigations, and handles all aspects of related litigation on behalf of clients around the globe in areas including criminal defence, securities, accounting issues, antitrust, government contracting, health care, and cybersecurity. The firm has broad experience conducting wide-ranging and complex internal investigations, including those in highly public matters for the boards of directors and management of some of the largest, most recognised companies in the world. The strength of the WilmerHale's investigations and criminal litigation and securities litigation and enforcement practices draws from the collective experience of its lawyers, many of whom have served in high-level positions within the government, including Deputy Attorney General of the United States, United States Attorney, Director of the FBI, General Counsel of the FBI, and Director of the SEC's Division of Enforcement, as well as numerous former Assistant United States Attorneys and state prosecutors.

Fortune 500 companies, corporate executives and high-ranking public officials retain the firm's investigations attorneys for representation in federal and state criminal investigations; congressional and inspector-general investigations; criminal litigation, including trials and appeals; and related civil and administrative proceedings. The practice also regularly handles matters in federal and state courts throughout the United States, and has defended clients against allegations of health-care fraud, insider trading, securities, accounting and government contracts fraud; violations of the Foreign Corrupt Practices Act; criminal environmental violations; criminal antitrust violations; and money laundering. WilmerHale's experienced attorneys have the mix of regulatory expertise and litigation skills necessary to navigate interactions with the government in and out of the courtroom.

7241(a)(5)(B)) (requiring CEO and CFO to certify that they have disclosed to company auditors all fraud, whether or not material, involving management or other employees with a significant role in the company's internal controls). Auditors are required under generally accepted auditing standards to obtain written representations from management concerning, among other things, knowledge of fraud or suspected fraud. Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. section 78j-1) additionally requires that auditors have in place procedures designed to provide reasonable assurance of detecting illegal acts and/or related party transactions that would have a material effect on a company's financial statements.

16 While there is good authority in the US supporting the notion that disclosure to an independent auditor does not waive the work product protection, there is not complete consensus on this point. *Compare Medinol Ltd v Boston Scientific Corp*, 214 F.R.D. 113, 115 (S.D.N.Y. 2004) and *US v Hatfield*, 2010 WL 183522, at *3 (E.D.N.Y. 8 January 2010) (each finding that disclosure to auditors waives work product protection) *with Merrill Lynch & Co v Allegheny Energy*, 229 F.R.D. 441 (S.D.N.Y. 2004) *and SEC v Roberts*, 254 F.R.D. 371, 382 (N.D. Cal. 2008) (finding that disclosure to auditors does not waive work product protection). And in all events, disclosure will result in a waiver of the attorney–client privilege.

17 See, eg, the Seaboard Report; Memorandum from Mark Filip, Deputy Attorney General, Principals of Federal Prosecution of Business Organizations (28 August 2008) (the 'Filip Memorandum'). The guidelines articulated by the Filip Memorandum are now part of the U.S. Attorney's Manual. See US Attorney's Manual section 9-28.000.

18 Courts have generally refused to recognise 'selective waiver' (ie, disclosing privileged material to a governmental party, but withholding it as to other parties) in the context of the attorney–client privilege. See, eg, *In re Pac Pictures Corp*, 679 F.3d 1121 (9th Cir. 2012) (collecting cases); but see *Diversified Indust v Meredith*, 572 F.2d 596 (8th Cir. 1978). Courts have been more (but far from uniformly) willing to endorse selective waiver in the context of the work product doctrine. See *In re Martin Marietta Corp*, 856 F.2d 619, 625-26 (4th Cir. 1988); but see *In re Columbia/HCA Healthcare Corp Billing Practices Litig*, 293 F.3d 289, 306 (6th Cir. 2002).

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Stephen A Jonas is chair of the WilmerHale's investigations and criminal litigation practice group. His practice focuses on representing corporations and individuals in investigations and criminal defence and grand jury matters. Mr Jonas' work includes the full range of representation of clients in this area from internal corporate investigations to representation in governmental agency and grand jury investigations to criminal trials and appeals. He also handles related government enforcement proceedings and civil litigation. Mr Jonas handles matters throughout the United States, as well as in Europe and Asia.

Mr Jonas has substantial experience in the areas of health-care fraud, securities fraud, economic espionage, immigration and environmental crimes. In addition, he has expertise in the unique issues of representing corporate and outside legal counsel in government investigations.

Mr Jonas joined Hale and Dorr in 1984. In 1988, Mr Jonas was appointed Deputy Attorney General and Chief of the Public Protection Bureau of the Massachusetts Attorney General's Office, which handled all of the Commonwealth's environmental, civil rights and consumer enforcement investigations and litigation, as well as its nuclear plant safety and asbestos property damage litigation. Mr Jonas rejoined the firm in 1991.

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Daniel F Schubert is a partner in WimerHale's securities and litigation departments, based in the firm's New York office. Mr Schubert concentrates his practice on government investigations and enforcement matters, with extensive experience representing investment banks, financial institutions, accounting firms, corporations and individuals in a broad range of matters. Mr Schubert has represented clients before the DoJ, SEC, CFTC, the PSI, PCAOB, the Federal Reserve Bank, and the OCC, among others.

Mr Schubert's recent matters include representing JPMorgan in connection with various law enforcement and regulatory investigations arising out of the so-called 'London Whale' trading losses. Mr Schubert has played a central role in all aspects of WilmerHale's representation of JPMorgan in this matter, including assisting JPMorgan in its response to the numerous governmental inquiries; advising JPMorgan in responding to the investigation by the US Senate Permanent Subcommittee on Investigations and related hearings; and assisting JPMorgan in connection with the issuance of its Management Task Force Report. More recently, Mr Schubert helped to negotiate settlements with the SEC, OCC, Federal Reserve, and the UK's Financial Conduct Authority.

Mr Schubert's other recent matters include representing a 'Big Four' accounting firm in connection with an ongoing SEC inquiry relating to certain auditor independence matters; a large hedge fund in connection with an SEC investigation relating to the 2008 financial crisis; a global financial institution in connection with the SEC's 'sons and daughters' FCPA sweep; and Morgan Stanley in connection with investigations by the DOJ and SEC into FCPA violations relating to Morgan Stanley's real estate investing business in China (including the DoJ's and SEC's landmark declinations in that matter).

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