Making the Right Moves: 
Winning Strategies in Parallel Investigations

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Contents
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In today’s highly complex regulatory environment, responding to parallel investigations has become a game of three-dimensional chess.
Parallel Investigations/Proceedings

- Simultaneous civil and criminal discovery, administrative, or judicial proceedings arising out of a single set of facts
- Parallel proceedings themselves are nothing new
- So what is new?
  - The proliferation of federal agencies with overlapping responsibilities and oversight
  - The expanded use of joint task forces
  - An increase in the number, scope and liability of parallel proceedings across most federal agencies
  - An increase in insomnia and anxiety
Trends in Parallel Proceedings

• The Usual Suspects
  – Medical Device Manufacturers (FDA)
  – Agricultural and Energy (EPA, FERC)
  – Public Companies (SEC)
  – Health Care (HHS/OIG)

• Friends and Allies of Rome
  – Department of Justice
  – FBI
  – Civil Enforcement Divisions
  – Joint Tasks Forces
HHS/OIG Enforcement Statistics

- Number of New Criminal Cases Opened
- Number of Defendants Charged
- Number of New Criminal Investigations
- Number of New Civil Investigations

Yearly statistics from 2006 to 2010.
Methods of Notification
The Good, the Bad, the Ugly

• Internal investigations
• Rumor mill
• “Informal” letter request
• Authorized investigative demand
• Subpoena
• Search warrant
Considerations for Public Filings

- Method of notification matters
- When to disclose?
- What to disclose?
- How to disclose?
Media Concerns

- Step 1 – avoiding the perp walk
Media and Communications Concerns

• External Focus
  – Managing the message
  – Crisis Management and ERP Plans
  – Single point of contact

• Internal Focus
  – Who “needs to know”?
  – What needs to be known?
  – When do you make the communications?
  – Why and when to expand the scope?
Government Contact with Employees

- Legal Ethics and ABA Rule 4.2
  - What the government can and can’t do
  - What they will or may do
- Fifth Amendment and waiver issues
- Attorney-client privilege and work product protection and waiver
- Should I stay or should I go?
The Gambit of a Global Offer

• Is a global resolution in the best interest of the company?
  – What factors do you need to consider?
  – How do you make the determination?
  – Who is the decision maker?

• Impact of a global resolution
  – Collateral estoppel or res judicata?
  – Dependent on type of plea?
  – Should I stay or should I go (reprise)?
Questions?