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Client Note: Advising Individuals Navigating Government Inquiries and Regulatory Investigations

A major focus of our practice is based on our extensive experience in investigations and the representation of individual employees facing government and regulatory inquiries, or internal investigations. This write-up provides an overview of important steps and considerations when an individual becomes involved with such an inquiry or investigation.

If we may provide additional insights or answers to questions, you are welcome to reach out to either of us:

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Initiating an Investigation: Government and self-regulatory investigations frequently involve individual employees receiving requests to produce documents, requests to appear for an interview or deposition, or requests to provide files and materials located on phones and electronic devices. These requests may come in the form of demands made in a subpoena or they may be in the form of voluntary requests. However an inquiry or request may arrive, questions related to the scope of what is being requested and the timeline for and compulsory nature of a response are expected and not at all uncommon. It is also not always initially clear whether the recipient is being contacted as a witness, a target, a subject, or some other category - and each carries distinctive implications in the context of the investigation and the approach to a response. As critical first steps, when faced with such requests, it is advisable to (1) take measures to preserve and not permit the deletion of any possibly responsive or related materials, and (2) in many instances, consider seeking advice from counsel that has committed to represent you individually (versus your employer, or some other interested party).

Understand the Landscape: Government inquiries and regulatory investigations can be complex and multifaceted. It is important to understand the nature and scope of the inquiry and the potential implications it may have for your professional and personal life. Consulting with counsel who are experienced with such matters can assist you in gaining an understanding of the landscape and preparing a response that is in your best interest.

Aim for Early Intervention: In many instances, steps taken during the initial response period to such inquiries can have a significant impact on the outcome. Engaging counsel who can proactively engage with the investigating authorities during the early stages of an investigation often facilitates an informed and targeted approach to building toward a more favorable outcome.

Maintain Open Communication with Your Counsel: Transparent and open communication is a cornerstone of a successful attorney-client relationship. It is important to explore with your counsel the scope, nature, and limitations of the attorney-client privilege or other privileges



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which may protect the confidentiality of your communications. It is also important to engage with counsel who provides regular updates on developments at every stage of the process and ensures that you have a clear understanding of the legal strategies being employed. Regular updates and open dialogue empower you to make informed decisions. You should also explore with your counsel any limitations you need to consider with regard to communications with those who are not covered by any privilege protecting confidentiality.

Preserve Responsive and Possibly Related Materials: Responding to a government or internal investigation also involves document and electronic file preservation requirements. Failures to comply with these requirements can have very serious unfavorable consequences for individuals, as well as their employers. For example, unfavorable inferences may be drawn about one's conduct when one has deleted certain materials or failed to prevent their deletion. In some instances criminal charges may also be considered by governmental authorities.

It is important to confer with counsel to understand what these requirements entail and how to best comply with them. You need to understand the extent to which you will have to prevent the deletion of a variety of electronic materials that exist on phones, tablets, computers and other electronic file storage locations, including files such as text messages, email, electronic documents, chats, recorded phone messages, and other relevant communications. A variety of paper documents, including notebooks, also need to be retained. It is challenging for someone who is not experienced with these types of investigations to understand the scope and extent of these preservation requirements and the importance of complying with them without advice from experienced counsel.

Work Proactively to Understand the Nature of the Investigation and Prepare a Response: Collecting and evaluating the relevant evidence can play a pivotal role in shaping the outcome of an inquiry. Whether it involves collecting exculpatory materials to counter potential allegations or understanding how to best respond to materials that seem to support potential allegations, you will need to work with counsel to build a robust evidentiary foundation.

Still, many times one is faced with a government inquiry that on its face may not include any allegations of improper conduct. Experienced counsel can help explore the implications of the inquiry and develop an understanding of where it seems to be heading, and they can also liaise on a preliminary basis with the sender of the request to obtain more context and to negotiate a response scope and timeline. Experienced counsel can also assist by conferring with relevant experts and counsel for your employer and other individuals to strengthen your understanding of how to best respond to the inquiry.

Miller Strategic Partners LLP can call upon its decades long experience with responding to government and self-regulatory investigations and internal investigations, and we can assist individuals with navigating through the above noted steps and considerations. We can also assist with the following:



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- **Managing Effective Communication with Investigating Authorities:** It is important to proactively engage with investigating authorities and effectively respond to their inquiries. We have experience in preparing and making submissions to investigating authorities aimed at addressing their concerns and presenting our client's facts and perspective in a professional and advocacy oriented manner.
- **Negotiation and Resolution:** While our primary goal is to vigorously defend a client's best interests and avoid enforcement or other adversarial proceedings, if called for, we are also experienced with engaging in negotiations to explore potential resolutions. This may involve seeking leniency, reduced penalties, cooperation and remediation credit, or alternative dispositions that align with an individual's best interests. A strategic negotiation can often lead to more favorable outcomes.
- **Protecting Your Reputation:** Recognizing the potential impact of inquiries on a person's professional and personal reputation, we have experience implementing strategies to mitigate reputational damage. This includes advising about and carefully managing media interactions and consulting with experienced communications professionals, where appropriate.
- **Cost-Effective Legal Representation:** Legal representation often involves significant cost considerations. We seek to provide cost-effective legal services without compromising the quality of representation. Clear fee structures and transparent billing practices provide for a predictable understanding of the financial aspects of retaining us as counsel. We also have experience understanding and navigating questions such as "will my employer pay for legal services?" and/or "will any insurance pay for legal costs?", both for individuals and companies.
- **Consultation:** We offer the ability to have an initial consultation to discuss initial questions.



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About us:

Miller Strategic Partners LLP is a law firm headquartered in New York City. We advise traditional and emerging financial markets companies, trading firms, and individuals and executives. We specialize in responding to governmental and regulatory inquiries, internal investigations, commercial disputes, and trading and markets regulatory advice.

MSP is a law firm member of the Futures Industry Association.

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