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White Collar and Regulatory Enforcement:
Emerging Trends and What to Expect in 2013

Anyone watching white collar and regulatory enforcement developments unfold during 2012 knows that the government's appetite for bringing huge cases against major companies, including massive fines, extensive remedial undertakings, and extended monitorships, has continued unabated. It is, admittedly, a gloomy picture, and most commentators (and law firms) have tended to outdo each other in stressing the storm clouds and challenges.

In this treacherous environment, making investments that may help to avoid criminal problems is a wise strategy. We have previously written about the many elements of an effective corporate compliance program, and such programs can materially reduce the risk of a severe and potentially crippling white collar criminal or regulatory enforcement proceeding. In our experience, however, the single most important element of such a program is a searching and well-informed survey, conducted periodically, aimed at identifying potential compliance risks. Nowadays, virtually every well-run corporation has training programs, a code of conduct, and a comprehensive set of compliance policies; the real distinguishing features of the best programs, in our view, are the capacity of a firm to (1) spot intelligently and quickly potential risks inherent in its business and then timely implement appropriate preventive measures before serious problems arise, and (2) respond promptly and appropriately if such a program detects potential wrongdoing.

Recognizing that the overall enforcement picture certainly is sobering, we have also asked ourselves whether there are any positive trends that can be identified. While it is not a long list, we do see three positives: (1) the federal government, in our experience, has largely made good on its pledge – first articulated by DOJ in August 2008, and followed by other agencies since then – to refrain from demanding broad waivers of attorney-client privilege as the price of being deemed cooperative; (2) the federal government also seems more conscious of the need to deliver concrete benefits to companies that accept the government's oft-repeated invitation to self-police, self-detect and self-report – as reflected, most recently, in the DOJ and SEC Resource Guide on the Foreign Corrupt Practices Act, in which the government offered a variety of examples of companies that were rewarded for self-reporting and exemplary cooperation (http://www.wlrk.com/docs/DOJ and SEC Issue Joint Resource Guide on the FCPA.pdf); and (3) the government's dramatic losses in a significant number of high-profile cases against individuals, particularly in cases arising out of the financial crisis, may – repeat, may – cause prosecutors and enforcement lawyers to think harder and longer in the future about whether such cases should be brought in the first place.

Having highlighted those positives, we must emphasize however that the stakes could not be higher for corporations facing criminal and/or regulatory enforcement investigations in the current environment. Corporations that resolved cases in 2012 were subjected to some of the largest financial penalties and forfeitures ever imposed. BP agreed to pay $4 billion in criminal fines and penalties for conduct relating to the Deepwater Horizon disaster, the single largest criminal resolution in U.S. history. HSBC announced that it would pay $1.9 billion to settle criminal and civil money laundering investigations. GlaxoSmithKline agreed to pay $3 billion to resolve criminal and civil investigations into off-label drug marketing and price and safety reporting practices. UBS was fined a total of $1.5 billion to resolve investigations by U.S., U.K. and Swiss prosecutors and regulators arising out of the manipulation of LIBOR rates. Only in a year with such exceedingly high numbers could the $453 million that Barclays agreed to pay to resolve its role in manipulating LIBOR rates seem relatively small. The financial impact of such government investigations also can be quite significant even before settlement. For example, based on publicly filed disclosures, many companies involved in long-running FCPA investigations covering multiple locations around the world have incurred legal fees totaling many tens of millions of dollars, and these totals are likely to continue to rise as many of these cases have yet to be resolved.

Below we review in greater detail some of the most important enforcement developments of 2012 and what we see as the key questions and emerging trends for 2013.

Whistleblower-Inspired Investigations

The SEC's whistleblower program continues to be a significant feature of the enforcement landscape. In the program's first full year of operation (through September 2012), the SEC received a total of 3,001 whistleblower reports. The single largest category of tips was "Corporate Disclosure and Financials," which accounted for 18.2% of all submissions. The SEC's investigative docket reflected this flood of tips, as the Division of Enforcement commenced a large number of inquiries focused on financial reporting by public companies.

A substantial number of whistleblowers are submitting reports to the SEC without first surfacing their concerns through their employers' internal compliance mechanisms. It remains essential for companies to take active steps to maintain a strong compliance culture and to communicate to their personnel that their concerns will be taken seriously and treated appropriately. These steps, along with careful handling of any issues reported, will maximize the chances of addressing problems internally, and solving them before they become serious. Companies should consider modifying their exit procedures, if necessary, to ask departing employees explicitly whether they were aware of any compliance concerns during their tenure. Responses to this question should be documented in personnel files. Issues identified in the exit process should be examined, and corrective action should follow, where warranted.

The SEC Staff's approach to investigating whistleblower tips has varied considerably. In many cases, the Staff recognizes that company counsel can assist them in obtaining relevant information more quickly and effectively than is possible through an investigation conducted by the Staff. But, in other whistleblower cases, the Staff has eschewed this approach and launched wide-ranging investigations featuring sweeping requests for documents and testimony.

The SEC made its first cash award to a Dodd-Frank whistleblower in August 2012. The SEC awarded the maximum 30% bounty, which in that case amounted to approximately $50,000. The SEC released limited information about the case, but it appears not to have arisen in the public-company context: "The award recipient . . . submitted a tip concerning the fraud and then provided documents and other significant information that allowed the Commission's investigation to move at an accelerated pace and ultimately *led to the filing of an emergency ac-*

tion in federal court to prevent the defendants from ensnaring additional victims and further dissipating investor funds." While this first SEC bounty payment was modest, 2012 also saw news of outsized bounty payments in other white collar settings, including $104 million awarded to the whistleblower in the UBS case involving undeclared overseas accounts held by U.S. taxpayers, and widespread press reports regarding likely whistleblower awards in the hundreds of millions of dollars following from the settlement by GlaxoSmithKline of charges relating to off-label marketing practices.

The flow of whistleblower-inspired reports is bound to continue in 2013 and may accelerate as a result of the awards publicized in 2012. Moreover, encouraged by the SEC's whistleblower program rules, plaintiffs' lawyers now play a significant role in assisting claimants in presenting their allegations to the SEC. Many members of this segment of the bar are engaged in substantial efforts to identify potential whistleblowers and encourage them to submit reports to the SEC.

The Government's Track Record in 2012 and Implications for 2013

One striking feature of the government's enforcement efforts in 2012 is that, with the exception of insider trading cases, which are separately discussed below, a significant number of high-profile cases against *individuals* did not fare as well as the government's cases against large corporations and financial institutions. Thus, for example, while the SEC successfully negotiated a Consent Order with Citigroup resolving securities fraud claims relating to the marketing, prior to the financial crisis, of certain collateralized debt obligation ("CDO") products, a jury exonerated the only individual against whom the SEC brought a case. *SEC* v. *Stoker*, Lit. Rel. No. 22541 (Nov. 21, 2012). Likewise, while the SEC had entered into a Consent Order with J.P. Morgan Securities LLC resolving claims regarding the marketing of a different CDO product, the SEC took the extraordinary step in November of moving to dismiss with prejudice the one case the Commission had brought against an individual arising from that inquiry, effectively admitting that the evidence did not support the charges. *SEC* v. *Steffelin,* Civ. Action No. 11-04204 (Nov. 16, 2012). Similarly, although the SEC succeeded in establishing securities fraud liability against Reserve Primary Fund, in connection with the collapse of that money-market fund during the financial crisis in the fall of 2008, the Commission lost its case against the Fund's founder and CEO in a jury trial in November. And, earlier this year, a jury in Washington acquitted two executives of charges they had violated the FCPA in a high-profile "sting" operation conducted by the FBI in which agents had posed as representatives of an African defense ministry. The acquittal followed on the heels of the dismissal by a federal district court judge in Texas of FCPA charges against a former executive of a Swiss manufacturing company. *United States* v. *O'Shea*, 09-CR-629 (S.D. Tex. Feb. 9, 2012).

This record suggests that the often overheated rhetoric of pundits and some members of Congress chastising the SEC and DOJ for not bringing more cases against individuals should be tempered with some caution and circumspection. The government, in our experience, investigates matters intensively and thoroughly, and files charges when it believes it can prove them. Even then, as the cases summarized above suggest, the government sometimes brings cases when the evidence is too thin. These recent setbacks present the opportunity for the government to review carefully its own decision-making and to analyze whether, with the benefit of hindsight, those cases should not have been brought in the first place.

These reversals might also serve as a reminder that comprehensive resolutions with companies – in the form of Deferred Prosecution Agreements, Non-Prosecution Agreements, civil resolutions, and/or SEC consents – should not be seen as somehow a poor "second best" alternative to cases against individuals. The truth is that these kinds of corporate investigations are complex, with individual culpability and intent often very difficult to establish. Thus, a remedial resolution against a company may well achieve all that the government can reasonably expect to accomplish under the circumstances, and all that the evidence would support. Moreover, the massive fines, extensive remedial undertakings, long-running monitorships, and accompanying harm to reputation that are typical of the current generation of deferred prosecution agreements and consent decrees are hardly "slaps on the wrist." They can instead, if diligently implemented, bring about real change within a company, offer substantial restitution to victims of bad practices, and also effectively signal to the rest of an industry the steps that other companies should be taking to bring their practices into line with legal requirements and government expectations.

Insider Trading

While, as noted, the government suffered setbacks in its efforts to prosecute individuals in a number of areas, 2012 was another year in which the government continued to rack up win after win in insider trading enforcement matters.

Probably the most noteworthy insider trading conviction in 2012 was against Rajat Gupta. As his defense lawyer argued with some force, there was "no real, hard, direct evidence" of guilt. The government's case was primarily circumstantial, as Gupta's transmission of material nonpublic information was largely inferred from the quick timing between Gupta's receipt of information at Goldman Sachs and Proctor & Gamble board meetings, his phone calls to Raj Rajaratnam, and Rajaratnam's (highly profitable) trades immediately following the calls from Gupta. The fact of a tip could be inferred even if there was no wiretap, witness, or document directly speaking to the content of the conversation.

Perhaps the most significant lesson of this case, from a compliance perspective, is that, notwithstanding the presumption of innocence and the right not to testify, coincidences in the insider trading realm often do demand explanation. A jury, and certainly the SEC, faced with trading shortly following the fact of a communication (and preceding a corporate announcement) may assume the worst, absent a credible explanation for the coincidence. The compliance risks here, especially for Wall Street firms, are inherently great given that it is the (legitimate) business of Wall Street to research potential securities investments, which generally includes communicating with a variety of information sources, and to use the information gathered from such sources – provided that the information gathered from any particular source is not inside information.

As 2013 begins, the government remains focused on abuses by expert networks and other paid purveyors of information to hedge funds and other investors. The motive of a tipper to tip in these cases is obvious, as is the personal benefit to the tipper: money. Even in the absence of direct "evidence" as to the content of the communication between tipper and tippee, firms should consider whether they are adequately monitoring for suspicious "coincidences." In particular, firms should, if they have not already done so, consider examining the timing of paid expert consultations in relation to firm trading and corporate announcements. Such after-the-fact reviews, conducted on a regular basis, may help detect and deter misconduct.

More generally, media reports in 2012 criticized securities trading by corporate executives pursuant to Rule 10b5-1 plans, and insider trading inquiries by the DOJ and SEC were initiated. Given the media pressure and enforcement climate, trading by senior managers pursuant to 10b5-1 plans and otherwise is likely to continue to attract scrutiny. While properly designed and implemented 10b5-1 plans should continue to provide safe harbor protection, companies would be well-served to evaluate whether their existing programs aimed at preventing insider trading should be enhanced to ensure that they provide effective protection in the event of a regulatory inquiry.

There also remains the question whether, in light of current developments, the SEC might seek to make changes in the existing Rule 10b5-1 regime. In the interim, attention in advance to issues of compliance with existing law – including ensuring that trading plans are adopted when there is no inside information (and that there is proper documentation of that) – can help to protect companies and their senior managers and directors.

Foreign Corrupt Practices Act/Anti-Corruption Enforcement

While FCPA enforcement statistics for 2012 were down for the second year in a row from the peak level seen in 2010 – both in terms of the number of enforcement actions as well as total financial penalties – 2012 still saw a dozen corporate actions resulting in financial penalties in excess of $250 million, and several actions brought against individuals. And if the statistics left any doubt, in promoting their Joint Resource Guide to the FCPA ("FCPA Resource Guide") in November, the DOJ and SEC underscored that FCPA enforcement continues to be a top priority that they will pursue by bringing cases against culpable companies and individuals, as well as by promoting adoption and rigorous enforcement of analogous anti-corruption laws in countries around the world. Coupled with the fact that there appear to be upward of 100 open FCPA/anti-corruption investigations in the U.S. alone, we expect 2013 to be another year of significant FCPA/anti-corruption enforcement activity and developments.

Issuance of the long-awaited FCPA Resource Guide was perhaps the most significant U.S. development in 2012 and represents the most comprehensive effort to date by the DOJ and SEC to provide "transparency" as to why and how they pursue FCPA/anti-corruption enforcement. As we have previously written, the FCPA Resource Guide broke little new legal or policy ground and essentially rejected calls from some in the business community and Congress to "reform" certain aspects of FCPA that were viewed as supporting an overly aggressive enforcement approach by the DOJ and SEC. While reaffirming the broad approach that the DOJ and SEC take to the FCPA's scope and jurisdictional reach, the FCPA Resource Guide focuses on explaining, including through the use of case examples and hypotheticals, the factors that influence the DOJ/SEC approach to important factual and legal issues, as well as their exercise of prosecutorial discretion, in the FCPA context.

Perhaps the most welcome aspect of the FCPA Resource Guide is the assurance (which had been foreshadowed in two earlier 2012 cases) that the DOJ/SEC will provide appropriate credit to corporate cooperation and compliance efforts, and the most concise explanation to date of the DOJ/SEC view of the elements of an effective FCPA compliance program. In one of the 2012 cases, the DOJ and SEC took the unusual step of announcing that they had both declined to charge Morgan Stanley in an FCPA matter in which a former managing director in the firm's China-based real estate investment business was charged with criminal and civil FCPA-related violations. The case arose from a scheme that included efforts by the former managing director to evade Morgan Stanley's compliance systems in order to transfer finder's fees and an interest in a real estate investment to himself and an official of a Chinese state-owned enterprise who had influence over the success of Morgan Stanley's real estate business. The DOJ/SEC specifically cited Morgan Stanley's longstanding, comprehensive FCPA compliance program, its frequent training efforts, its voluntary reporting of the matter and its extensive cooperation with the government investigations.

A critical issue for 2013 and beyond will be whether this and other cases where the government declined to bring charges based on cooperation and compliance efforts represent isolated examples driven by unique facts – *e.g.*, the fact that the Morgan Stanley employee was acting to obtain a direct personal benefit – or reflect a new trend that companies should not face FCPA liability because of the isolated conduct of "rogue" employees acting in clear violation of corporate compliance policies that were rigorously promoted and enforced.

Most corporate FCPA matters resolved in 2012 included self-remediation and self-reporting. However, in mid-December, Judge Richard Leon of the U.S. District Court for the District of Columbia refused to approve the SEC's proposed $10 million FCPA books and records settlement with IBM arising out of questionable payments in South Korea and China, absent the imposition of enhanced annual reporting requirements beyond those agreed upon in the proposed settlement, or a showing of why such requirements would be too burdensome. This is the first time a District Court has raised substantial questions about SEC settlement practices in the FCPA context. How the matter is ultimately resolved, and whether it represents a fact specific situation (in 2000, IBM settled a similar, albeit unrelated, SEC books and records matter involving questionable payments by its Argentine subsidiary) or will more generally impact FCPA resolutions with the SEC, remains to be seen.

In the international arena, the U.K. Bribery Act came into effect on July 1, 2011. Since that time, U.K. authorities have not brought a major corporate case under the Act, although they have been active in bringing anti-corruption cases under other statutory and regulatory provisions. For example, in July, the Serious Fraud Office announced resolution of a £1.9 million civil recovery proceeding against Oxford Publishing Ltd., a wholly-owned subsidiary of Oxford University Press, arising out of allegedly improper payments by the company's subsidiaries doing business in Tanzania and Kenya to help win government contracts during 2007-2010.

In March, the U.K. Financial Services Authority published the findings of its review of the anti-corruption compliance controls at investment banks. The review, which included eight global investment banks as well as several smaller firms engaged in similar business activities, generally concluded that "the investment banking sector has been too slow and reactive in managing bribery and corruption risk . . . and most firms had historically failed to ensure adequate systems and controls to identify, manage and control the bribery and corruption risks to which they were exposed." Among the detailed results, the FSA found that (i) most firms had not adequately addressed applicable anti-bribery and corruption rules, (ii) nearly half of the firms had not conducted an adequate anti-corruption risk assessment, and (iii) information provided to senior management was insufficient to allow effective oversight of anti-corruption compliance. Along with the SEC's ongoing review of private equity firms' dealings with sovereign wealth funds, the FSA report serves as a strong reminder that financial firms doing business internationally also face anti-corruption risks and would be well served by carefully assessing those risks and ensuring that they have implemented effective anti-corruption compliance systems.

Two other U.K. developments may have significant impact in 2013 and beyond in connection with anti-corruption matters. In October, the SFO replaced its prior prosecutorial guidance suggesting that there was a presumption that a civil, as opposed to a criminal, resolution would be pursued in cases where a company self-reported anti-bribery and corruption violations, and instead made clear that self-reporting would be one of many factors weighed in the SFO's exercise of prosecutorial discretion. Later in October, the Ministry of Justice announced that it would introduce legislation to provide for the possibility of corporate deferred prosecution agreements. Should the legislation ultimately pass, we expect that U.K. authorities – like their counterparts in the U.S. – will use corporate DPAs as an additional enforcement tool in connection with their anti-corruption enforcement efforts.

An increasing issue faced by companies confronting FCPA/anti-corruption issues is the potentially crippling cost of conducting an internal investigation in connection with a self-disclosure. Published reports that Wal-Mart's internal inquiry has cost some $100 million to date and that Avon's investigative-related costs are in the neighborhood of $280 million add significant fuel to this concern. Many FCPA investigations cover an ever expanding list of foreign jurisdictions in the name of trying to understand and present the full scope of potential issues as part of a company's efforts to cooperate with enforcement authorities. We believe that as part of DOJ/SEC efforts to reward self-disclosure and cooperation, enforcement authorities should continue to work with companies to find ways to reasonably contain the financial and other burdens of FCPA investigations while satisfying legitimate enforcement interests.

While the FCPA Resource Guide did not adopt an absolute compliance defense to corporate FCPA liability, we remain cautiously optimistic that the Guide and other FCPA-related developments in 2012 signal that the DOJ and SEC are truly committed to giving meaningful credit to corporate compliance efforts in the FCPA context. As a result, we continue to believe that companies doing business internationally are well served by making the investment in a robust FCPA/anti-corruption compliance program. When appropriately designed and effectively implemented, such a program presents a real opportunity to prevent questionable conduct before it occurs, to promptly identify and remediate such conduct when it does occur and to best position the company for dealing with enforcement authorities in cases where such conduct rises to the level of an FCPA or other anti-corruption-related violation.

LIBOR and Other Major Criminal Cases

Another set of significant developments in 2012 included the resolution of several long-running, large-scale investigations. These investigations had several characteristics in common: they were extended, complex inquiries, involving a high level of coordination among multiple agencies and multiple governments. And the resolutions required the payment of massive fines and penalties along with substantial undertakings and monitorships. While several major financial institutions settled significant matters, companies in other industries were also party to these mega-resolutions.

Settlements by four financial institutions – Barclays, Standard Chartered, HSBC, and UBS – were particularly noteworthy. The Barclays and UBS resolutions stemmed from the on-going investigation into manipulation of LIBOR and related rates. Barclays signed a non-prosecution agreement and was praised for its cooperation. Yet it paid a total of $453 million to resolve the matter with the U.S. Department of Justice, the CFTC and the U.K. FSA. And Barclays' CEO lost his job in the aftermath of the settlement. UBS's resolution required a Japanese subsidiary of UBS AG to enter a guilty plea to a felony wire fraud count. UBS AG itself signed a non-prosecution agreement and was fined a total of $1.5 billion in resolving investigations by DOJ, the CFTC, the FSA and Swiss banking regulators. There are many more financial institutions being scrutinized as part of the LIBOR investigations, so further large settlements are likely to be announced in 2013.

The Standard Chartered settlement is worth noting both because it resolved a long-standing investigation with a massive payment but also because of the inter-agency issues that were involved. Standard Chartered paid a total of $667 million to resolve an investigation relating to violations of Iranian and other sanctions. But that payment came in two parts, separated by several months. The first $340 million was paid in an August settlement with the New York State Department of Financial Services. In December, Standard Chartered signed a deferred prosecution agreement, requiring a payment of $327 million to resolve investigations by DOJ, the Manhattan DA's Office, the Federal Reserve Bank of New York and the Treasury Department. This resolution demonstrates the risk to institutions in dealing with multi-agency investigations and the difficulty in ensuring coordination.

HSBC also signed a deferred prosecution agreement to resolve an investigation involving allegations of money laundering and sanctions violations. The headline item for this settlement was the fine: HSBC was required to pay a total of $1.9 billion, the largest ever for a financial institution resolving a criminal investigation. But perhaps more important was the list of 26 compliance measures that HSBC committed to take during the life of the DPA. These measures may provide a roadmap for other institutions of the types of remedial steps that the government will perhaps expect institutions to take in light of the discovery of misconduct.

As noted, these massive resolutions were not limited to financial services companies. BP pled guilty to 14 criminal counts as a result of the Deepwater Horizon oil spill. In addition to the fine, the company continues to have civil exposure under the Clean Water Act. And significantly, the government imposed debarment on the company as to all government contracts going forward until it is able to demonstrate its corporate integrity. In the largest health care fraud settlement in U.S. history, GlaxoSmithKline pled guilty and paid $3 billion to resolve criminal and civil liability arising from its unlawful off-label promotion practices, the failure to report certain safety data and false price reporting practices. The company also executed a five-year corporate integrity agreement, requiring major changes in the way its sales force does business, including changing compensation practices, and changes to its executive compensation program.

Also in 2012, the federal government continued aggressively to deploy the False Claims Act ("FCA") to recover for alleged harm to the federal fisc, reporting an all-time record of nearly

$5 billion in FCA recoveries. The most active area continued to be the health care and pharmaceutical industries. However, the government has also been aggressively pursuing FCA cases against banks and other financial institutions in the housing and mortgage markets; indeed, in the past year, housing and mortgage fraud cases accounted for FCA recoveries totaling an unprecedented $1.4 billion. One reason for this may be the government's recognition that much of the conduct contributing to the financial crisis was simply not criminal. Whistleblowers are continuing to play an increasingly significant part in assisting the government in these types of cases; in fiscal year 2012, $3.3 billion in recoveries resulted from whistleblower claims.

Electronic Discovery

In 2012, electronically stored information ("ESI") continued to occupy center stage in white collar criminal and regulatory enforcement investigations, and there is no sign that this trend will abate any time soon. Government agencies focused their attention on streamlining the e-discovery process, both through promulgation of new rules and guidelines, as well as through encouragement of the use of "predictive coding" technologies.

In March 2012, the Department of Justice Antitrust Division published a Model Second Request that included a provision for the use of advanced search methodologies, including predictive coding. In November 2012, the U.S. Federal Trade Commission's new rules for electronic discovery went into effect. These rules provide a clear definition of ESI, outline the manner and form of production, include a meet-and-confer requirement, prescribe the involvement of personnel knowledgeable about the client's information systems and ESI, and detail specific instructions on the preparation of privilege logs. These revisions have gone a long way towards updating the FTC's legal procedures to better reflect the realities of today's electronic information and discovery related thereto. Recently, the U.S. International Trade Commission proposed a set of revisions to its e-discovery rules. The trend of government agencies updating their rules to streamline the e-discovery process shows every sign of continuing. Expect other government agencies to follow suit in 2013.

Another important development in 2012 was the November 29 approval by the Senate Judiciary Committee of amended legislation to modernize the Electronic Communications Privacy Act ("ECPA") in light of technological advancements since the statute was enacted in 1986. The bill (H.R. 2471 substitute) would amend the ECPA to impose new restrictions on the government's ability to access individuals' email messages and other private data stored by third-party electronic communications providers. A key provision would require the government to obtain a search warrant any time it is seeking such communications. Another important change would be the elimination of the distinction – for the purposes of the warrant requirement – between emails in storage for 180 days or less, and emails in storage for more than 180 days. The revised ECPA language is backed by privacy groups and the technology industry, but the law enforcement community, and civil regulatory agencies including the SEC, have raised concerns that the proposal could impede critical investigations. Congress is expected to tackle the statute in the coming year.

Looking forward to 2013, it is more important than ever in the investigative context for companies to develop strategies for dealing with ESI in a defensible and cost-effective manner.

A thoughtful approach to information governance before an investigation or regulatory matter arises can pay significant dividends.

Transition at the SEC

Mary Schapiro has now stepped down as Chairman of the SEC, several senior officials have also departed or announced plans to do so, and the press has reported rumors of additional departures to come. There has been no indication of any dramatic shift in enforcement policy, and Acting Chairman Elisse Walter is an experienced regulator who can be expected to provide stability during a period of significant turnover in the agency's leadership. Until a new Chairman is appointed, the SEC will operate with four commissioners, which creates the possibility of a 2-2 deadlock on controversial regulatory proposals or enforcement recommendations. While such stalemates are unlikely with respect to most matters that come before the Commission, recommendations that cannot attract three votes will not be authorized.

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