

## Oversight of special investigations

Major allegations and significant suspected frauds trigger board-led investigations. Costly, complex, and time consuming, these investigations often involve financial, accounting, internal control, or disclosure aspects. Where stakeholders expect boards to resolve such matters with integrity, audit committee chairs often lead these special investigations to restore stakeholder confidence.

During the second quarter of 2023, Tapestry Networks convened audit committee chairs of nearly 100 large US public companies to discuss oversight of special investigations. Several prominent attorneys and forensic accountants joined the discussions to provide their expertise and perspectives.<sup>1</sup> *For a full list of meeting participants and attending special investigation subject matter experts, see Appendix 1 (page 11).*

This *ViewPoints* summarizes important considerations for audit committee chairs that were discussed during these sessions, organized around the following three stages of investigation:<sup>2</sup>

- **The preliminary inquiry** (page 1)
- **Overseeing the investigation** (page 4)
- **Concluding the investigation** (page 8)

*For reflection questions for audit committees, see Appendix 2 (page 16).*

### The preliminary inquiry

When a company is faced with a significant allegation, it must decide whether the board should lead the investigation and how the investigation should be conducted.

#### Decide whether and when to launch a board-led investigation

Members and guests outlined key considerations and thresholds to determine when to trigger the board's direct involvement in an investigation:

- **Set expectations with management on when and how to escalate issues.** Maintaining open communication with management keeps the board informed in real time about emerging issues. Jessica Magee, partner and co-chair of Holland & Knight's Securities Enforcement Defense Team, urged members to *"know thyself. Ask management what the plan is: Who receives, escalates, and addresses complaints? How is that process*



*accomplished? And when is the board notified?” A member opined that trust between the audit chair and management is key to open communication and cautioned, “Management can build walls because they’re concerned the board or audit chair would elevate an issue too quickly.” Members expressed a desire to be informed about issues as soon as they are identified, although one pointed out, “If we don’t communicate that expectation, management may not escalate until later.”*

- **Establish which matters require board involvement.** Set parameters to prompt board leadership in an investigation. Ms. Magee emphasized, *“The best thing to do is to have a plan for how, when, and whether you’ll investigate. Look to your own charters—the audit committee will have free reign to exercise independence where necessary.”* Amanda Massucci, EY Americas’ Forensic & Integrity Services transaction forensics leader and West Region leader, agreed that *“having a policy where escalation is laid out helps clarify those parameters,”* while Ed O’Callaghan, partner at WilmerHale, further expanded on the idea by suggesting a cross-functional team that evaluates the issues. Richard Thomas, EY Americas’ Forensic & Integrity Services law firm alliance leader, explained, *“Escalation protocols should have diversity of thought as it is important for a trigger event to be assessed from both a legal and compliance perspective as well as a finance and accounting perspective. For example, while certain allegations may not warrant an investigation from a legal or compliance perspective, they may have significant accounting ramifications, and vice versa.”*
- **Consider all audiences with the end in mind.** *“What you do on day one could impact credibility and the ability for stakeholders to rely on the investigation,”* said Jeff Ferguson, a partner in EY’s Forensic & Integrity Services practice. He also cautioned against excessive preliminary enquiry when validating the need for a board-level investigation to avoid compromising the formal investigation. Ms. Magee asked members to posit whether *“outsiders judging the investigation will think the company graded its own papers. The answer should always be ‘no.’”* Mr. Ferguson added, *“It’s a disastrous outcome if we can’t rely on the investigation’s findings. Ask yourself what you’re doing now to help regulators, auditors, and other constituents to rely on those findings.”*

## Determine who from the board should lead the investigation

Companies should consider objectivity, independence, and expertise when determining board-level investigation leadership. While there is no one-size-fits-all approach, some leadership options include the following:

- **The audit committee** is well suited to oversee investigations related to financial irregularities, accounting, or internal-control issues. David Woodcock, partner and co-chair of Gibson Dunn’s Securities Enforcement Practice Group, shared examples of areas where



an audit committee would be suited to lead an investigation:

- Financial reporting misconduct
- Systemic or recurring compliance issues
- Noncompliance with regulatory standards around compliance risks
- Potential criminal exposure
- Cyber breaches
- Integrity, #MeToo movement related matters, or racial insensitivity claims against senior management
- Other senior-management misconduct
- Derivative-action lawsuits

Mr. Ferguson emphasized that audit committee purview should extend beyond financial statement issues, explaining, *“If there’s a question with respect to senior management integrity, auditors are chiefly interested. If, as auditors, we can’t trust management’s representations, that’s a huge issue for an audit.”*

- **A special committee of the board**, as Ms. Magee explained, is *“a bespoke group that passes conflict of interest vetting or board dynamics criteria scoped into an investigation. Sometimes, though it is rare, boards will even bring on new directors for special-committee purposes.”* By forming a special committee, the board can bring together members with relevant expertise, independent of any potential conflicts, to provide a focused and unbiased examination of the matter at hand. Mr. John Lausch, partner at Kirkland & Ellis, explained that this approach ensures a high level of objectivity and credibility throughout the investigative process while maintaining *“flexibility to put the best people in the right places”* to accomplish those important goals.
- **The full board** overseeing a special investigation may not always be the ideal approach. Guests opined that it’s unusual for the full board to lead an investigation: it isn’t ordinarily the board’s function, and it may look all-consuming to shareholders.

### Select the best legal counsel for the matter

Selecting the right counsel is paramount for a comprehensive and effective investigation. Sometimes in-house counsel or counsel with preexisting relationships with a company offer sufficient expertise and resources. Though, outside counsel ensures specialized expertise, independence, and credibility. Members and guests discussed this decision-making process:

- **Determine whether retaining outside counsel is appropriate.** Nick Hanna, partner and co-chair of Gibson Dunn’s White Collar Defense and Investigations Practice Group, explained that routine allegations from human resources or lower-level misconduct allegations usually do not require outside counsel. However, members should look to outside counsel, for example, if senior-level management is implicated, financial reporting misstatements are indicated, significant misconduct is alleged overseas, or a derivative demand is made by shareholders. One member outlined their company’s approach of using in-house counsel for an investigation and retaining outside counsel to consult with the audit committee on that investigation, an approach Ms. Magee commended for creatively



ensuring the investigation's independence and robustness. Mr. Woodcock noted that the external auditor can dictate the need for outside counsel: *"The auditor can be a strong influence on these decisions. It might save money and go more quickly with in-house counsel, but if the investigation reaches the end without satisfying key constituents, like auditors or regulators, that's an issue."* A member added that outside counsel is sought automatically for issues that have active regulator or media attention to ensure objectivity.

- **If so, ensure that outside counsel have appropriate experience and expertise.** Several guests emphasized the importance of retaining counsel with appropriate experience, and members agreed, specifically highlighting experience with regulators because *"in situations where a company decides to self-report, they have knowledge and relationships that benefit."* Several members also agreed it was important to retain outside counsel whom they could trust. One member recalled a situation where the board was unable to vet outside counsel because the firm had been retained before the investigation escalated to the board level; that investigation ran long, costs were exorbitant, and other law firms were required to resolve the investigation. Another member said that when they were skeptical of management's recommendations for counsel, they sought out counsel through their own networks. *"It was critical because the final recommendation was that management step down. The law firm had credibility with the rest of the board when the recommendation was made."* To add another layer of independence and prevent criticism regarding the selection of outside counsel, Ms. Massucci suggested that audit chairs approach their external auditors for referrals: *"It's another avenue of finding good referrals with separation."*

## Overseeing the investigation

Effective oversight of investigations involves managing the investigation's scope and establishing a collaborative relationship with stakeholders connected to the investigation.

### Partner with advisors to properly scope the investigation

Participants discussed good practices around managing the investigation's scope:

- **Plan and scope the investigation appropriately.** *"If someone asked me what the most overlooked step is in special investigations, I would say planning,"* noted Jonathan Feig, EY Americas' Forensic & Integrity Services Central Region leader. He added that developing a plan with counsel helps audit chairs gain comfort with the investigation's scope and estimated cost. Mr. Hanna agreed: *"A written work plan can hold the investigation accountable; without one, the investigation will take on a life of its own."* Guests said that an investigation plan should define its objectives and scope, and they emphasized the importance of identifying key individuals to interview and evidence to retain. Members noted the challenge of investigating allegations that are most likely false; for example, in one case, a CEO was accused of witchcraft alongside financial misconduct.



*“What advice do you have for certain reports where you’re almost sure of the outcome?”* one member asked. Mr. Hanna advised, *“Treat it seriously, but properly scope the investigation. The issue is whether there’s credible information relevant to the company as opposed to looking at someone’s entire personal history. Make focused inquiries and, if you determine the report is not credible, keep a memo in the file reflecting that finding.”* Partnering with legal counsel from the outset ensures the plan promotes a robust, but appropriately tailored, investigative approach.

- **Redefine the scope as required.** As investigations evolve, new information may require adjustments to the original scope. Mr. Thomas suggested *“periodically stepping back to evaluate the approach as facts develop and as the investigation moves between phases to ensure that the overall investigation objectives are being met and to identify efficiencies in the methodology.”* He also advised having dialogue with company executives wedded to the investigation to validate the approach and to leverage insider corporate knowledge to identify potential efficiencies. Mr. Thomas acknowledged that new information can easily derail an investigation’s focus and advised, *“If new issues outside the initial remit of the investigative committee, run those back through escalation protocols to ensure that those are socialized and addressed appropriately, whether through a revision of the investigative committee’s remit or through another process.”* Mr. Ferguson’s number-one tip for controlling scope and cost is to stay involved: *“Investigations are iterative in nature. The audit chair should be involved in decisions on how to move forward as required.”* He added that the external auditor can offer helpful perspectives. *“We need a reasonable investigation; we won’t suggest you boil the ocean, for the sake of boiling the ocean.”*

## Ensure timely and appropriate communications

Participants shared practices around keeping key internal and external stakeholders informed and involved as needed:

- **Keep management appropriately informed, with clear expectations on involvement and visibility.** Management needs timely and appropriate information to maintain company operations, but any information shared must avoid compromising the investigation. *“The CEO may feel that they lose control—it can be difficult to maintain confidence in leadership,”* a member said. Another member agreed, adding, *“What management may not realize is a board-led investigation with limited visibility can serve to protect them.”* Members said it can even be difficult to wrest an investigation from well-meaning management. One explained, *“Competent and proud management want to be proactive. Giving an investigation to the audit committee is not without dialogue. Management want to do the right thing and think they can handle it.”* Another member asked how to manage healthy skepticism of management, especially when other board members do not carry the same skepticism. Mr. Woodcock replied, *“There is an intended tension between board and management roles. There needs to be trust, but your role is to ask hard questions of*



*management. If the board doesn't push to get the information it needs, the directors could become exposed to personal liability for not fulfilling their duties."*

- **Establish a regular cadence of communication with the board.** Regular meetings or reports to the full board ensure a consistent flow of information. Mr. Lausch recommended planning this cadence with counsel: *"If the board wants weekly readouts, for example, consider the level of risk—is it overkill or is it important to more regularly update the whole board on a situation where there is enterprise-level risk?"* Consistent and ongoing communication allows the board to make informed decisions and enhances confidence in the investigative process.
- **Communicate with the external auditor early and often.** The role of the external auditor extends beyond mere financial scrutiny—the auditor also provides an independent perspective. Indeed, several guests emphasized the importance of immediate disclosure and continuous updates to external auditors. Ms. Massucci explained that the external auditor needs to rely on the adequacy and thoroughness of the investigation; therefore, frequent dialogue with the auditor enables them to provide valuable, real-time feedback: *"Keep auditors a half-step behind. If they see something they have concern about, it can be the biggest holdup to getting a 10-Q or 10-K filed."* Mr. O'Callaghan agreed: *"Independence doesn't mean a lack of dialogue. Communication is critical."* In fact, Ms. Magee described a shadow investigation, where forensic accountants continually evaluate the investigation's reasonableness, as *"the sidecar of the investigation."* Mr. Ferguson explained that a shadow investigation allows the external auditor to confidently rely on the investigation and its findings: *"It's not my job to reach conclusions; legal counsel and audit chairs find facts and reach conclusions. Auditors are independent. We can provide feedback and suggestions, then the investigators decide."*
- **Communicate with shareholders at the right time.** Communicating publicly about an investigation needs to be balanced, both in timing and detail. One member recalled a time when general counsel insisted on disclosing a potential issue in the 10-K, even though a reasonable reaction would have been to wait and size the issue: *"It benefited us down the road. We didn't have damages from the regulators because of that disclosure."* Mr. O'Callaghan cautioned, *"Universally, legal counsel would be to disclose. The only issue is the level of detail because you don't want to misstate the information. You can disclose more detail later."*

### Protecting privilege without sacrificing necessary communications

Balancing communication with maintaining legal privilege requires strategy. Although various stakeholder updates are needed, privilege protects client-





lawyer communications and is essential to maintain should litigation arise.

Guests offered some advice:

- **Develop a communication plan with counsel to maintain privilege.** Mr. Hanna shared a good practice for the audit committee: *“Have regular meetings, in-person or over the phone, with counsel present to maintain privilege.”*
- **Provide updates without going into detail.** *“The investigator and shadow audit team have the same mission but different needs and modes. Privilege rests at that intersection,”* explained Ms. Magee. Mr. O’Callaghan agreed that *“conversations need to be carefully structured to provide comfort to the auditor, while carefully considering the amount of detail provided to minimize the risk that regulators have an argument that you’ve waived privilege.”*
- **Share information and documents in a way that protects their status.** Mr. Lausch explained that from the perspective of the Department of Justice (DOJ) or other regulators: *“Once a slide deck or other privileged material goes to someone else outside the lawyer or client group, it is much more likely to be subject to subpoena and production in connection with investigations and litigation.”* However, Mr. Ferguson pointed out, *“There are ways to work around privilege to satisfy auditor needs. That’s where hiring experienced counsel matters.”*

## Prepare for interactions with regulators

Staying updated on regulator enforcement priorities and the consequences of self-reporting help ready a company for interactions with regulators. Guests outlined some good practices for audit chairs:

- **Stay updated on DOJ and Securities and Exchange Commission (SEC) enforcement priorities.** Mr. Lausch recommended looking to regulators’ recent guidance for direction.<sup>3</sup> Aligning compliance efforts accordingly can preempt regulatory issues that may arise. Guests also shared their thoughts on the related environment:
  - **Establish enforceable policies on ephemeral and third-party messaging applications.** Guests noted that regulators are focusing on how employees communicate and how those communications are retained. They recommended creating a consistent policy on the use of ephemeral and third-party messaging applications that the company will enforce. Mr. Feig noted that *“whatever the use and retention policy is, everyone should comply.”*
  - **Remember that shareholder demands can influence regulators.** With shareholder demands and related media coverage attracting regulator attention, Mr. O’Callaghan noted his worry about reputational harm issues exploding quickly: *“Demands come*



*from shareholders and get the regulator's attention quickly. The SEC can issue a subpoena if it reads something in the news."*

- **Be aware that regulators may increase use of monitors.** Mr. O'Callaghan observed an increase in monitorships appointed as part of resolutions with regulators in his practice, while Mr. Lausch noted that he has not yet seen a similar increase in monitorships. Though, Mr. Lausch cited recent memoranda from the DOJ stating that there is no presumption against a monitor. *"However," he said, "monitorships can be challenging for both sides. If you have an effective compliance program at the time of resolution, you have a good argument against a monitor."*
- **Follow law-enforcement direction if there is a cyber incident.** Mr. Hanna assuaged worries about not disclosing cyber incidents publicly if another law-enforcement agency, such as the Federal Bureau of Investigation, directs a company not to: *"You're generally safe complying with a law-enforcement directive. If you're cooperating with an investigation, that's solid ground."*
- **Assess whether and when to self-report.** Though self-reporting can lead to more lenient treatment from regulators, it can expose the company to penalties and public scrutiny. Mr. Hanna acknowledged, *"Deciding whether to self-report is one of the toughest questions to answer. Sometimes the best answer is to fix it, remediate, and move on. If you do disclose, to whom may make a difference."* Mr. Woodcock agreed that companies should think about the opportunity to forum shop among regulators as a benefit: *"It is helpful to have a known quantity on the regulator side because you want fairness and reasonableness when the company is trying to do the right thing by self-reporting."* He also offered another consideration: whistleblowing.<sup>4</sup> *"Might there be someone who will approach the SEC on their own? If so, you might get some benefit from going first."* A member suggested that a well-respected, well-connected chief compliance officer (CCO) can make all the difference: *"We received reduced damages and no appointed monitor because regulators knew and trusted this CCO. The relationships did matter."* Mr. Thomas and Mr. O'Callaghan concluded that early remediation matters just as much as early communication in self-reporting. *"It addresses the root cause and demonstrates a robust response,"* Mr. Thomas said.

## Concluding the investigation

Ending a special investigation involves more than just finalizing a report—it requires strategic planning, comprehensive assessment, and applying effort to improvement.

### Know when to end an investigation

In concluding a board-led investigation, it's important to ensure that the objectives have been





met and that the results can withstand scrutiny. Guests offered several recommendations:

- **Remember that counsel serves at the pleasure of their client.** The board defines the objectives and overall trajectory of the investigation, aligns the investigation with strategic organizational goals, and ensures all actions serve the best interests of the company and its shareholders. Mr. Hanna noted that legal counsel is a supportive role: *“Ultimately, the audit committee calls the shots. When you think it’s enough, it should be enough.”*
- **Determine whether the investigation’s objectives have been reached.** The board should review the stated objectives and compare them with the investigation’s outcomes. Mr. Feig mused that an investigation is both art and science, but *“now we’re in art—experience and understanding objectives can help you know when you’ve done enough.”* Mr. O’Callaghan explained that reaching *“a point where you’ve done a diligent investigation, followed the established plan, and tied off offshoot issues to the extent they arose”* can mean an investigation is ready to conclude. Mr. Thomas noted that the most difficult investigations to end are those without proven findings: *“You can continue to keep looking but may never find what you’re looking for or the facts may just not fully support the initial allegation. In those circumstances, it is important to rely on a thoughtful approach with a documented methodology that is agreed upon and socialized with auditors and regulators. This is especially relevant where the procedures are limited, or a sampling methodology is deployed.”*
- **Ensure that the investigation’s procedure and results are defensible and relevant stakeholders are satisfied.** The results should be based on concrete evidence, thorough analysis, and sound reasoning to withstand scrutiny from regulators, auditors, and even a court of law. *“When you get to the point where an investigation is done, consider whether you can go to the DOJ with credibility or if you are well prepared to defend the investigation if the DOJ calls,”* Mr. O’Callaghan explained.
- **Ask and answer the right questions.** Aside from considering the investigation’s objectives and defensibility, guests recommended asking a few other questions to determine whether to conclude an investigation:
  - Has the investigation unearthed sufficient information to answer important questions? Is there comfort with the degree of certainty reached?
  - What is the risk of continuing the investigation?
  - Was there wrongdoing? If so, did it happen anywhere else?
  - If there is an issue, how will it be fixed?

## Remediate during and after an investigation

Undertaking forward-looking remediation improves future resilience and governance.

Members and guests highlighted good practices:



- **Make improvements as you go.** Mr. Hanna recommended immediate action to rectify policy or compliance gaps. Real-time remediation enhances the investigative process, maintains stakeholder trust, and deters further misconduct. *“If you realize there’s a big compliance gap, don’t wait until the end to fix it. If you remediate as you go, then you will be in a better position when you get to the end or interact with a regulator,”* he said.
- **Find and eradicate the matter’s root cause.** While immediate remediation efforts are important, they can address symptoms of an underlying problem. Mr. Hanna commented that a CEO’s tone contributes to a culture of compliance, and members agreed that tone at the top is important. One recalled a previous colleague who would say, *“‘You never find just one cockroach.’ It was a funny line, but it sent a message to the organization that leadership will find and fix the issue.”* However, Mr. Feig noted, investigative functions don’t often provide root-cause analysis, even among the biggest and best companies. Mr. Lausch elaborated, *“You can put a great compliance program together on paper, have special people handling it, have a great tone at the top and a strong code of conduct, but if you’re a company with the same problem over and over, that’s a problem.”* As an example, Mr. Feig and Mr. Lausch described that a training program by itself might not address a root cause issue of ensuring employees deliver difficult news upstream. Where addressing the root cause can be difficult, Mr. Hanna underscored the value of feasibility in effective remediation: *“It’s important to work with the company so you’re not making recommendations that can’t be implemented effectively. Figure out what’s feasible.”*

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## Appendix 1: Meeting participants

### *West Audit Committee Network-South—May 8, 2023*

The following network members attended the meeting in Santa Monica, CA:

- George Bravante, Sabre
- Leslie Heisz, Edwards Lifesciences
- Ginnie Henkels, LCI Industries
- Bala Iyer, Power Integrations (WACN-N member)
- Leon Janks, PriceSmart
- Patrick Kinsella, PennyMac Financial Services
- Diana Laing, Spirit Realty Capital
- Sara Lewis, Weyerhaeuser
- Tim Leyden, Itron
- Dick Poladian, Occidental Petroleum
- Jim Scilacci, Hawaiian Electric Industries
- Stephanie Streeter, Kohls
- David Tehle, Jack in the Box, National Vision Holdings, and US Foods Holding

The following subject matter experts provided their perspectives on special investigations:

- Nick Hanna, Litigation Partner and Co-Chair of the White Collar Defense and Investigations Practice Group, Gibson Dunn
- Amanda Massucci, EY Americas Forensic & Integrity Services Transaction Forensics Leader and West Region Leader

EY was represented by the following:

- Robyn Bew, Center for Board Matters, West Region Leader
- Scott Hefner, Global Client Service Partner
- Frank Mahoney, Vice Chair and US-West Regional Managing Partner

Tapestry Networks was represented by the following:

- Kate Cady, Project and Event Manager Team Leader
- Erin Dwyer, Partner
- Allison Greene, Associate
- Amy Sampson, Principal



## *Southwest Audit Committee Network—May 22, 2023*

The following network members attended the meeting in Dallas, TX:

- Curt Anastasio, The Chemours Co. and Par Pacific Holdings
- Judy Bruner, Applied Materials and Seagate Technology Holdings (ACLN member)
- Lee Canaan, EQT
- Vanessa Chang, Transocean
- Barbara Duganier, MRC Global
- Paulett Eberhart, LPL Financial Holdings and Valero Energy
- Marty Ellen, Eagle Materials
- Donna Epps, Texas Pacific Land and Texas Roadhouse
- Lou Grabowsky, Griffon Corporation
- Mercedes Johnson, Synopsys and Teradyne
- Gil Marmol, Foot Locker
- Don Robillard, Cheniere Energy and Helmerich & Payne
- Laura Wright, CMS Energy

The following subject matter experts provided their perspectives on special investigations:

- Jeff Ferguson, Partner, Forensic & Integrity Services, EY
- Jessica Magee, Partner and Co-Chair of the Securities Enforcement Defense Team, Holland & Knight

EY was represented by the following:

- Robyn Bew, Center for Board Matters, West Region Leader
- Scott Hefner, Global Client Service Partner
- Pat Niemann, Americas Audit Committee Forum Leader
- Michelle Vopni, Dallas Office Managing Partner

Tapestry Networks was represented by the following:

- Beverly Bahlmann, Principal
- Kate Cady, Project and Event Manager Team Leader
- Jonathan Day, Vice Chair and Chief Executive Officer
- Allison Greene, Associate
- Amy Sampson, Principal



## *East Audit Committee Network—June 8, 2023*

The following network members participated in the meeting in New York, NY:

- Bert Alfonso, Eastman Chemical
- Sallie Bailey, L3Harris Technologies
- Mary Choksi, Omnicom Group
- Mary Guilfoile, Dufry and Interpublic Group of Companies
- Low Kramer, Las Vegas Sands Corp
- Diane Nordin, Principal Financial Group
- Debra Perry, Korn Ferry
- Judy Schmeling, Constellation Brands
- Sandra Wijnberg, ADP and Cognizant Technology Solutions

The following subject matter experts provided their perspectives on special investigations:

- Ed O’Callaghan, Partner, WilmerHale
- Richard Thomas, EY Americas Forensic & Integrity Services Law Firm Alliance Leader

EY was represented by the following:

- Dante D’Egidio, US-East Region Assurance Managing Partner
- Molly Tucker McCue, US-East Region Audit Leader
- Alysia Steinmann, Metro New York City Office Managing Partner

Tapestry Networks was represented by the following:

- Beverly Bahlmann, Principal
- Kate Cady, Project and Event Manager Team Leader
- Jonathan Day, Vice Chair and Chief Executive Officer
- Erin Dwyer, Partner
- Allison Greene, Associate



## *Joint Southeast and West-North Audit Committee Network—June 13, 2023*

The following network members participated in the virtual meeting:

- Raman Chitkara, SiTime
- Mitesh Dhruv, ZoomInfo Technologies
- Denise Dickins, Watsco
- Evelyn Dilsaver, Tempur Sealy International
- Earl Fry, Hawaiian Holdings
- Carol Hayles, eBay and Webster Financial
- Laurie Hodrick, Roku
- Joe Householder, AMD
- Jim Hunt, Brown & Brown
- Bala Iyer, Power Integrations
- Karole Lloyd, Aflac
- Mary Pat McCarthy, Micron Technology and Palo Alto Networks
- Wendy Needham, Genuine Parts
- Karen Rogge, Onto Innovation
- Gretchen Schar, Carters and Cincinnati Financial Corp
- Janice Sears, Sonder Holdings
- Steve Sordello, Atlassian
- Mimi Thigpen, Globe Life
- David Walker, Chico's FAS
- Malia Wasson, Columbia Sportswear
- Janet Woodruff, Altus Group
- Carol Yancey, BlueLinx Holdings

The following subject matter experts provided their perspectives on special investigations:

- Jeff Ferguson, Partner, Forensic & Integrity Services, EY
- David Woodcock, Partner and Co-Chair of the Securities Enforcement Practice Group, Gibson Dunn

EY was represented by the following:

- Chris Anger, US-West Region Audit Leader
- Robyn Bew, Center for Board Matters, West Region Leader
- Kevin Brower, US-Central Region Audit Leader
- Allison Dixon, Relationship Programs Strategist, Brand, Marketing & Communications
- Scott Hefner, Global Client Service Partner
- Cigdem Oktem, Center for Board Matters, Central Region Leader

Tapestry Networks was represented by the following:

- Kate Cady, Project and Event Manager Team Leader
- Marsha Ershaghi Hames, Partner
- Allison Greene, Associate
- Amy Sampson, Principal





## *Central Audit Committee Network—June 27, 2023*

The following network members attended the meeting in Chicago, IL:

- Kapila Anand, Elanco Animal Health
- Anne Arvia, GATX
- Jeff Boromisa, Wolverine World Wide
- John Bryant, Macy's
- Frank Dellaquila, Reliance Steel & Aluminum
- Cheryl Francis, Morningstar
- Marla Gottschalk, Big Lots and Reynolds Consumer Products
- Mike Hanley, BorgWarner
- Sandy Helton, Optinose
- Jay Henderson, ITW and Northern Trust
- Frank Jaehnert, Nordson
- Ginger Jones, Tronox Holdings
- Cary McMillan, Hyatt Hotels
- Derrick Roman, WEX
- Al Smith, Simon Property Group
- Richard Wallman, Roper Technologies
- Ray Young, International Paper

The following subject matter experts provided their perspectives on special investigations:

- Jonathan Feig, EY Americas Forensic & Integrity Services Central Region Leader
- John Lausch, Partner, Kirkland & Ellis

EY was represented by the following:

- Kevin Brower, US-Central Region Audit Leader
- Cigdem Oktem, Center for Board Matters, Central Region Leader
- Jud Snyder, Global Client Service Partner

Tapestry Networks was represented by the following:

- Kate Cady, Project and Event Manager Team Leader
- Erin Dwyer, Partner
- Allison Greene, Associate
- Amy Sampson, Principal



## Appendix 2: Questions for audit chairs to consider

- ? What processes and criteria are in place to decide if the board should oversee an investigation?
- ? Has the audit committee or audit chair established expectations with management on when and how emergent issues are communicated?
- ? What processes are in place to identify and address conflicts of interest among individuals involved in special investigations?
- ? How does the audit committee maintain communications with the investigative team, including regular updates, discussions of findings, and addressing concerns?
- ? What measures are implemented to protect both the company and whistleblowers and to encourage reporting?
- ? How are the findings and recommendations from special investigations evaluated, addressed, and implemented?
- ? Are there any key lessons learned, including process or control improvements, that can be implemented as a result of the investigation?



## Endnotes

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- <sup>1</sup> This material is provided for informational purposes only. The provision of this material, including any quote therein, does not constitute legal advice. Legal advice must be tailored to the specific circumstances of each case, and the contents of this *ViewPoints* are not a substitute for legal counsel. Do not act in reliance on the contents of this material without seeking the advice of counsel.
- <sup>2</sup> *ViewPoints* reflects the network's use of a modified version of the Chatham House Rule whereby names of members and their company affiliations are a matter of public record, but comments are not attributed to individuals or corporations. Italicized quotations reflect comments made in connection with the meeting by network members and other meeting participants.
- <sup>3</sup> See Lisa Monaco to Assistant Attorney General, Criminal Division, et al., memorandum, "[Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group](#)," September 15, 2022; US Department of Justice, Criminal Division, "[Evaluation of Corporate Compliance Programs](#)," (US Department of Justice, March 2023); Kenneth A. Polite, Jr., to all Criminal Division personnel, "[Revised Memorandum on Selection of Monitors in Criminal Division Matters](#)," March 1, 2023; "[Voluntary Self Disclosure and Monitor Selection Policies](#)," US Department of Justice, accessed July 27, 2023.
- <sup>4</sup> Mr. Woodcock referred members to the 2001 [Seaboard Report](#) for its longevity, mentioning that it gives good guidance on the factors of cooperation, self-reporting, self-policing, and remediation.