

CLEVELAND BUSINESS

LEGAL AFFAIRS

THE INTERVIEW

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As the FBI and other agencies begin investigations into mortgage lenders and banks in connection with subprime lending, white-collar investigations are back in the spotlight.

Stephen G. Sozio, a partner with Jones Day in Cleveland, says the key to staying out of that spotlight is to put in place practices that enable a company to avoid being subject to criminal charges.

Mr. Sozio heads Jones Day's corporate criminal investigations practice in Cleveland. He also served as assistant U.S. attorney with the U.S. Department of Justice in Cleveland before rejoining Jones Day. He has represented dozens of public and private companies and senior executives in investigations around the country, with all but one avoiding indictment.

He articulates the steps firms need to put in place to avoid criminal investigations and what to do when an investigation is imminent.

Q: How can companies avoid criminal investigations?

A: There must be a tone set from the top of the organization that demands behavior that is ethical and compliant with the law.

Second, the company should have a rigorous compliance program, understanding where it is most vulnerable to noncompliance with the law. Essentially, put in place a program that requires and fosters compliance with the

law in those areas where the company carries risk.

Third, the company needs to implement the compliance program by disseminating it to its employees, offering training, establishing hotlines or help lines and ensuring that the employees get the message. The company also needs to sanction employees who don't comply and reward those who do comply.

Finally, there should be a monitoring or verification component to the program to make sure it's being followed and working. Companies that follow those rigorous compliance programs greatly minimize their risk of being exposed.

Q: If a company finds itself under investigation, what should it do?

A: Preserve all relevant documents, electronic and paper. Often it's not the underlying substantive conduct that gets companies in trouble, but how they respond to the investigation. In addition, companies want to conduct a thorough internal investigation to understand the issues and risks associated with this external investigation.

Another thing to do when you are under investigation is reach out to the investigating authorities. Try to be proactive. Often it will work to a company's benefit if it cooperates with regulators. Start to prepare a strategy to convince regulators why actions shouldn't be taken against the company. Or if the company will be charged, try to reduce the charges or the penalties.

Even though a company is under investigation, often the authorities won't file charges if a company establishes that doing so doesn't serve the ends of jus-



JASON MILLER

"You have to deal with the investigation in a proactive way."

— Stephen G. Sozio (above)

tice. There are a host of factors to show the government it doesn't make sense to charge a company — providing evidence that the company has already been severely penalized through the investigative stage through costs of the investigation, decreases in share value and civil penalties; and showing that the conduct at issue is abhorrent and not consistent with the company's values.

Make sure the investigators see the whole company and not just the piece that is under investigation or the people in the company under investigation.

Q: What shouldn't occur during an investigation?

A: Don't attempt to block the investigation, such as hiding documents or trying to encourage employees to tell anything but the complete truth. The biggest thing a company shouldn't do is stick its head in the sand. You have to deal with it in a proactive way during the investigative stage to try to minimize the risk.

For most companies, being indicted and then acquitted at trial is not a win. There are serious collateral consequences to businesses being charged with a crime, even if they are later exonerated. It sub-

jects the company to civil liability, demoralizes employees, causes other company stakeholders — shareholders, lenders, customers, suppliers — to question the company's values and ability to do business in an appropriate way.

Q: What corporate areas are targets for investigation now?

A: Health care is a very hot area — not only hospitals and doctors, but medical device and pharmaceutical companies. The government spends billions of dollars on health care every year through Medicare, Medicaid and other programs and demands accountability.

Another very hot area is defense and other government contractors because of increased defense spending in the Iraq war and other activities around the globe.

The government continues to be active in investigating financial irregularities in public companies post-Enron and WorldCom.

Mortgage fraud is a very hot area. We haven't seen a lot of indictments yet, but there are investigations going on throughout the country, both on the federal and local level.