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## CORPORATE COMPLIANCE AND REGULATORY RESPONSE ALERT

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### Criminal and Regulatory Investigations: A Primer

*by Melanie Ann Hines, Esq.*

If you own or manage a regulated business, there is a chance you will one day face an inspection or investigation of some kind. When government investigators or law enforcement officers knock on your door, it can be an unsettling experience. The keys to reacting responsibly on behalf of your business interests lie in following a few simple steps – the same ones you would use if you weren't overwhelmed with dread. As a former prosecutor who has accompanied law enforcement officers on business searches and interviewed hundreds of witnesses and suspects, I can assure you that investigators count on surprise and fear to generate evidence they can use in subsequent legal proceedings. Surprise and fear make us do things we wouldn't ordinarily do, and it is in your best interest to control your emotions and your actions from the outset.

**What can you do to protect your lawful business interests when law enforcement comes to your door?**

#### Step #1

**Always ask the purpose of the visit and the basis upon which the officers believe they have authority to enter your premises.**

Here is a possible scenario:

Officers walk through the front door of your business and ask to see the person in charge. You are called on the phone by your receptionist.

- As hard as this might be, do not cuss, yell, slam down the phone, or show any emotion other than your usual good business sense.
- Tell your receptionist you will be right there.
- Immediately and calmly ask your assistant to find your lawyer and ask him or her to be on standby.
- Proceed confidently toward the officers and introduce yourself. Some people fear giving their name to the police; people running a lawful business should

avoid doing this as it creates suspicion (and if they've done their homework, the officers already know who you are).

- Ask the officers how you can be of help. They will tell you in general terms why they are there.

At this point, you should assert your right to learn as much about the situation as you can – but in a non-confrontational way. Simply ask these questions:

*“Do you have a warrant?”*

*“May I see it?”*

The first thing to examine if they provide a warrant: does it have your address on it?

#### Step #2

**Call your lawyer outside the hearing of the officers but within their line of sight or some place nearby.**

After reviewing the warrant (or if they do not provide one), you need to call your lawyer.

- First you should ask the officers if you may call your attorney and read it to her “so she can help us determine what we need to do to be cooperative.”
- Do not speak to your lawyer in the presence of the officers, if possible, but be visible or nearby so as to assure them that you are not running back to your office to destroy critical documents.
- Call your lawyer on the nearest phone and briefly describe the circumstances to your lawyer.
- Do not make any statements regarding your feelings, thoughts, or concerns.
- Do not repeat to anyone, including the officers, what your lawyer says.
- Follow the advice your lawyer gives you.

If the officers want to inspect your premises and do not have a warrant, they may or may not have statutory authority to conduct a warrantless search. They may assume they have such authority and may be wrong. It is very important that you know ahead of time – when you first start your business – if law enforcement or regulators of any kind have immediate inspection authority of your premises. You need to know the parameters of their authority. Some statutes require notice, even if just a few

hours; some require probable cause; many have specific limitations on scope of the inspection. Your attorney can give you this information, and you should keep it handy.

If you are pre-armed with the knowledge that the officers have immediate inspection authority, or if they produce a warrant, you still have the right to confirm that the officers are who they say they are. Simply ask for their names and a phone number you can call to verify their identity. Requests that begin: “Would you mind giving me more information, such as . . .” are generally well-received. Give this information to your lawyer.

You also have a right to ask the officers the information you need to give to your lawyer to determine if they are acting within the scope and confines of their authority. Again, I suggest relating this information to your attorney in their presence, but out of earshot, so they don’t suspect you of alerting your employees or destroying evidence.

If your attorney confirms that the officers have the right to inspect without a warrant, or if you are given a copy of a warrant, all you can lawfully do is step aside and let the officers do their work. As questions come up, get legal advice.

Next month, we’ll discuss some steps you can take to protect your business interests during the inspection or the search. ■

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