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Internal Investigations: Pressure to Turn Over Sensitive Information

Following up on [our recent blog](#) as part of a series about internal investigations, some privilege waiver concerns have rarely received much attention. Privilege waiver, however, moved to the front burner in part because of the Biden administration's decision to move the focus back from Main Street to Wall Street. Whether talking about incoming PCAOB personnel, new SEC Commissioners, or leadership changes at the DOJ, the one constant is that ramped-up enforcement appears to be back with a vengeance. This is also a bellwether for how vigorously the enforcers will start pushing for access to search term lists, key document lists, investigative work plans, memoranda of interview, and interview outlines. Turning over such materials will not always trigger a blanket subject matter waiver or even waiver of work-product protection for the actual documents disclosed. That said, waiver arguments are notoriously challenging to predict. An avoidable misstep will, with the benefit of hindsight, deposit significant legal and reputational risk on the doorstep of the company and its counsel. It pays to think twice about what is turned over and to push back against risky requests, even amid contentions that everyone else is doing it.

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