Knock Knock…

When a Government Investigator Knocks on Your Door

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Knock Knock...

“It’s the (insert Government Agency name here) and we are here to help you, but first we have a couple of questions . . .”
What Agencies Take Field Trips to Investigate?

- SEC
- IRS
- ICE
- EPA
- OSHA
- HHS OIG
- FDA
- US Attorney
- State Agencies
- DOL
What Agencies Take Field Trips to Investigate?

- Those that don’t have explicit statutory powers to investigate, seek information or take direct enforcement action can do so through the United States Attorney.
- Agencies that do have the authority may still opt to have the United States Attorney take the lead, especially with certain suspected criminal activity.
Why Are They at Your Door?

• Request for an interview
• Request for information
• Serve a subpoena
• Execute a search warrant
• Execute an arrest warrant
• Indictment
• Civil or criminal enforcement action
Why Are They at Your Door? (cont.)

• May also be a routine inspection.
• EPA and OSHA, among others, perform routine compliance audits. Persons operating businesses that are highly regulated should not be surprised by compliance inspections or audits.
• People in highly regulated businesses should be prepared to deal with a compliance inspection or audit.
When the Government Knocks – What is the First Step?

If it is a criminal investigation, execution of a search warrant, delivery of an indictment, execution of an arrest warrant or other criminal enforcement action, there are not many options. Obstructing the action or failure to cooperate in this instance is not a good option, as cooperation is an important consideration at the sentencing stage.
So First Step:
Determine the Nature of the Visit

- Request identification of agent(s) including business cards
- Determine the nature of the visit. This information will determine the response.
Request for an Interview

- Request the reason for the interview
- Proposed interviewees
- Status of interviewees:
  - Target
  - General Information
  - Witness
  - Victim
• Note that investigators will frequently attempt informal interviews based on the belief that potential witnesses are more open when the discussion is outside of legal process
• Employees should know there is no obligation to speak to investigators
• Any interviewee has the right to have counsel present
Many Agencies Routinely Inspect

• EPA
  – Routine inspections to evaluate compliance status
  – Specific industry in response to a perceived issue

• OSHA
  – Routine audit
  – Response to a complaint
  – Response to an accident or event

• ICE
  – Increased I-9 audit activity
  – Focus now on employers, but workers will still be arrested.
Subpoenas

- Documents and other tangible items in existence
- Typically there is a time frame for response
- May be “Forthwith” which requires immediate response
- May be for testimony
Search Warrant

• Issue by a court, compelling compliance
• Request copy – provide it immediately to counsel
• Understand scope
• Do not object, interfere or obstruct as that may prompt obstruction charges
• May include seizure of computers and equipment
What to Do?

• Observe (DO NOT INTERFERE)
• Do not ask questions
• Keep notes of what you observe, and activities and discussions of agents
• Request a copy of the seized items inventory
Arrest Warrants or Indictment

- Contact counsel
- Lack of cooperation or resistance will make the situation worse.
- Don’t speak and don’t offer information.
There is No Single Appropriate Response

But there are some basics:

• Cooperate. Cooperating does not mean consenting to an interview.

• Do not interfere with attempts for agents to interview employees. Employees should know in advance that there is no obligation for them to speak with investigators.
Companies may want to provide access to counsel for employees. In house counsel and the corporate criminal attorney or other company counsel cannot also represent employees because of conflicts. Corporate officers and managers will also need separate counsel for the same reason.
Have a Plan

- The people most likely to first encounter agents or investigators (i.e. receptionists, security guards) should be aware of the plan and have identified contact persons
- Notify in house counsel
- Obtain qualified outside counsel
- Inform employees of investigation
Avoid Pitfalls

- Few people ever improved their positions by offering up information.
- People and companies have suffered severe consequences from failing to cooperate or actively obstructing an investigation.

(Remember the lesson of Martha Stewart)
Do not Perform an Internal Investigation

• Internal investigations, even ordered or under the oversight of inside counsel may not be privileged. Before undertaking such a step, consult with qualified civil or criminal counsel.
Conclusion

• Be prepared.
• Stay cool.
• Cooperate.
• Get qualified counsel.
• Understand the focus and nature.