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BOOK REVIEW

## New treatise is go-to source on white-collar crime



By Joseph Poluka

White-collar crime practice continues to burn white hot.

The massive corporate scandals at Enron, WorldCom, and Adelphia were

followed by dozens of still percolating options backdating investigations, some of which have resulted in several high-profile convictions.

Prosecutors continue to bring, and win, domestic and international bribery cases.

In light of a recent scandal in New York, attorneys were reaching for their code books to read the Mann Act (thankfully not covered here) as well as money laundering and structuring statutes.

And there is the one crisis that could swamp all of these: The subprime mortgage meltdown, where multi-billion dollar write-downs are reported on a steady basis, and subpoenas are issued like parking tickets to lending institutions, Wall Street investment banks, due diligence providers, and most recently, bond insurers.

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What's an in-house counsel to do?

### Good place to start

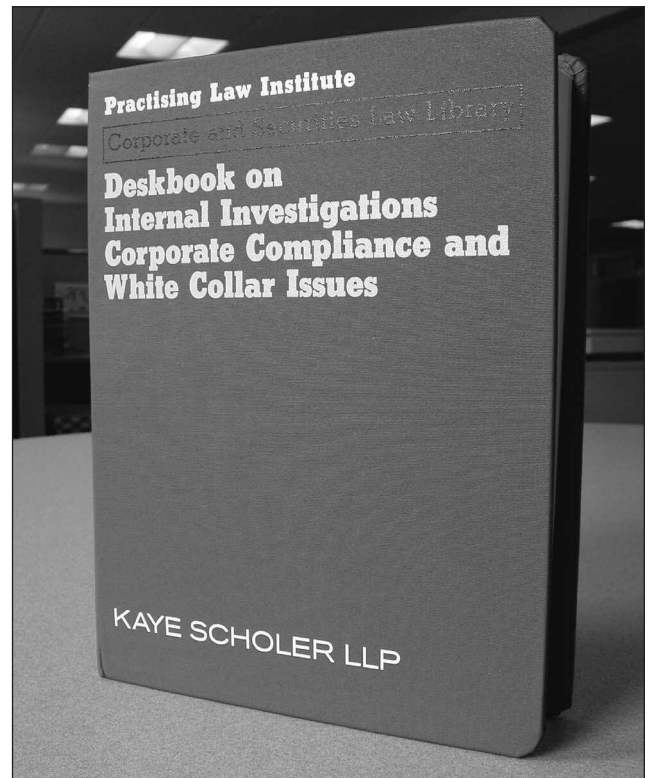
A good place to start is the Practising Law Institute's *Deskbook on Internal Investigations, Corporate Compliance and White Collar Issues*.

Written by members of Kaye Scholer LLP's top-notch White Collar Litigation and Internal Investigations Practice Group, nearly all of whom have significant prosecutorial and regulatory experience, the *Deskbook* is a must-have resource for in-house counsel, white-collar defense attorneys, and management alike.

Published in 2007, the *Deskbook* is a comprehensive single-volume reference guide.

The *Deskbook* is divided into two parts. Part I is essentially a "how-to" guide on conducting internal investigations, responding to criminal and regulatory investigations, and the issues that arise in both.

Part I also explains how to implement corporate compliance programs under the Organizational Sentencing Guidelines, how to take advantage of amnesty and



leniency programs, and how to negotiate deferred prosecution agreements.

Part II of the *Deskbook* focuses on selected substantive topics – including the Foreign Corrupt Practices Act, money laundering, perjury, pharmaceutical drug offenses, and export control violations.

If you're faced with an inquiry into one of these areas, the *Deskbook* provides an off-the-shelf grounding in the statutory frameworks. In a later addition, the authors might want to include a brief primer on the mail and wire fraud statutes – workhorses used by federal

prosecutors to capture a wide variety of alleged criminal activity.

The *Deskbook* is well-organized and well-written, and consequently easy to use. It tackles complicated topics in understandable terms and discusses high-profile cases, such as the Martha Stewart prosecution and the Kenneth Starr report, examining problems that can arise in white-collar cases. Over 400 footnotes provide accompanying authority, and there is a topical index. The *Deskbook* is an excellent place to get the basics or, as we all learned in law school, to spot the issues.

### Keeping it practical

The *Deskbook* was written with a view towards providing practical insight and guidance. Many chapters include "Practical Considerations" or "Practitioner's Checklists" that offer inside pointers.

For example, the *Deskbook's* checklist for conducting internal investigations recommends that counsel provide adequate *Upjohn* warnings to all employees who are interviewed, be aware of special rules when interviewing unionized employees, and consider whether the company is required, or even permitted, to indemnify

or advance legal fees to employees.

The benefits and pitfalls of certain choices are addressed in the *Deskbook*. For example, in deciding whether a company should enter into a deferred prosecution agreement (DPA), the *Deskbook* warns that, even though DPAs are far preferable to criminal prosecution, their provisions, which may include substantial institutional reforms, are often burdensome and very costly (i.e., millions, if not tens of millions, of dollars in "fines").

Accordingly, the *Deskbook* advises that counsel should be vigilant in assessing whether a DPA is really appropriate, particularly where a prosecutor would not otherwise pursue an indictment, and assessing whether the conditions imposed are strictly necessary to attain the stated objectives of the DPA.

The *Deskbook* also addresses ethical considerations for in-house attorneys, including whether they can represent an organization and its officers and employees?

Finally, the *Deskbook* includes 17 appendices, which include important policy statements, memoranda, and

## Deskbook on Internal Investigations, Corporate Compliance and White Collar Issues

Publisher: Practising Law Institute

Copyright: 2007

Cost: \$215

How to order: You can order the book online at [http://www.pli.edu/product/book\\_detail.asp?ptid=501&stid=59&id=EN0000000034568](http://www.pli.edu/product/book_detail.asp?ptid=501&stid=59&id=EN0000000034568).

You can also go to [www.pli.edu](http://www.pli.edu) and search for "white collar issues" to link to the order form, or call (800) 260-4PLI.

guidelines, such as the infamous "Thompson Memorandum." Here counsel can read for themselves the source documents, not filtered through a commentator's eye.

All-in-all, I enthusiastically recommend the *Deskbook* as a terrific go-to resource for in-house and other practitioners who increasingly see white-collar issues come across their desks.