

# Trade controls investigations & enforcement

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Christine Lee and Peter Lichtenbaum

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# Agenda

- Disclosure Policy
- Lifecycle of an Investigation
- Practical Steps to Reduce Risk
- Enforcement Trends
- Criminal Matters
- Collateral Damage

# Disclosure Policy

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- Who is responsible for investigations and disclosures?
- Need to balance:
  - Confidentiality
  - Privilege
  - Ownership
- When to disclose?
- What to disclose?
- Formal, written investigations and disclosure policy

# Lifecycle of an Investigation

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- Managing an investigation from the initial allegation through disclosure and corrective actions
- The importance of transparency and reporting to senior management
- Tracking metrics and trends to identify risks

## Practical Steps to Reduce Risk

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- If you are dealing with a significant problem...
- Before making substantive statements to the government:
  - Conduct a full and detailed investigation
  - Engage both white collar defense counsel *and* trade compliance, government contracts, or other regulatory counsel
- Consider creative ways to short-circuit enforcement action
  - E.g., affirmative submissions to primary regulators

# Enforcement Trends

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- Jurisdiction and Classification
  - Meggitt
  - Intersil
  - Aeroflex
  
- Cases can turn on whether an item is of U.S. origin, in addition to ITAR vs. EAR
  
- Focus on culpable individuals

# Criminal Matters

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- DOJ vs. DDTTC and BIS
  - Inter-agency relationships can be complex
  - Agencies have different perspectives and priorities
    - E.g., different views on “rogue” employees
  
- Extended timeframes and costs
  
- Additional risks:
  - Procurement suspension and debarment
  - Imposition of compliance monitor
  - False statements

# Collateral Damage

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- Breach of financing agreements or other contracts with compliance clauses
  - May trigger notification requirements
- Business disruption
- Compliance strategy driven by investigation rather than broader view of company's needs:
  - Paralyzed compliance team
  - Unplanned company-wide risk assessment or investigation