

# Internal Investigations: Retaining and Working with Forensic Accountants Checklist

A Practical Guidance® Checklist by Elissa M. McClure, Litigation and Investigations Partner at Holland & Knight LLP; Sydne K. Collier, formerly of Holland & Knight LLP; and Jean-Michel Ferat, Senior Managing Director at Ankura Consulting Group, LLC



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This checklist addresses identifying the need for forensic accountants, how to retain them, and best practices for working with them throughout an internal investigation. Forensic accountants are accounting specialists who analyze data and underlying accounting documentation to detect anomalies, questionable activity, and fraud.

For more detailed information about retaining forensic accountants in an internal investigations, see [Internal Investigations: Retaining and Working with Forensic Accountants](#). For information relating to liability, see [Materiality in Securities Fraud Actions](#), [Liability of Compliance Personnel at Financial Institutions](#), [Liability](#)

[under the Federal Securities Laws for Securities Offerings, and Corporations, Directors, and Officers: Potential Criminal and Civil Liability](#).

## Step 1: Determine Whether the Investigation Warrants Forensic Accountants' Assistance

First, determine the type of internal investigation needed and what typical issues may arise that will warrant a forensic accounting expert. Typical investigations where a forensic accountant is helpful include:

- Allegations concerning bribery, kickbacks, corruption (e.g., FCPA-related issues), embezzlement, theft, or asset misappropriation
- Complex financial transactions and fund tracing (e.g., Ponzi schemes and money laundering allegations)
- Audit failure cases
- Data-heavy cases including those requiring the identification, acquisition, and analysis of large volumes of transactional data (e.g., data found in Enterprise Resource Planning systems)

## Step 2: Determine the Appropriate Scope of the Forensic Accountants' Work to Advance the Investigation

The scope of the internal investigation will determine the initial scope of work for the accounting professional(s). Choose accountants with the right mix of skills for the investigation at hand.

- **Forensic skills.** Assess to what extent each of the following will be necessary:
  - Analyzing relevant financial statements
  - Checking for compliance with U.S. Generally Accepted Accounting Practices

- o Tracing monetary outflows to catch possible money laundering
- **Investigation skills.** As an investigation proceeds, the scope of the investigation may evolve. Forensic accountants can also assist counsel with identifying:
  - o Additional issues that warrant investigation
  - o Information to obtain from the client and potentially other sources
  - o Witnesses to consider interviewing
  - o Financial analyses and implications to incorporate into the ongoing investigation strategy, presentations/recommendations to the client, and (if appropriate) presentations to regulators
- **Consultant or expert witness skills.** Determine whether the forensic accountant should also fill the role of a privileged consultant or a potential expert witness.
  - o The anticipated role will dictate whether the forensic accountant should be considered an extension of the legal investigative team or whether their role is to be much more independent and at an arm's length from the legal investigative team.
  - o If a forensic accountant is hired as an independent expert, carefully determine which documents and data to make available to the expert.

### Step 3: Identify the Appropriate Forensic Accountants

The next step is to identify the type of forensic accountant and forensic accounting firm to hire.

- Consider the following criteria:
  - o The size and geographic reach of the forensic accountant's firm
  - o Licensing (certified public accountant, certified fraud examiner, certified internal auditor, etc.)
  - o Subject matter expertise
  - o Experience as an expert or summary witness
  - o Experience with regulators or enforcement agencies (e.g., former employees at the Securities and Exchange Commission, Department of Justice, or Federal Bureau of Investigation)
- Consider whether the investigation will need a forensic accountant with experience in serving as a summary witness or an opinion witness pursuant to [Rule 702 of the Federal Rules of Evidence](#).

### Step 4: Retaining Forensic Accountants: Privilege, Conflicts, and Insurance Issues

Before proceeding with an interview process, you must confirm that no conflicts (and no appearance of a conflict) exist between the forensic accountant candidates and the client(s) or parties that may be related to the investigation, such as parent companies, subsidiaries, and affiliates.

- **Check insurance coverage.** Identify any insurance coverage limits that require choosing accounting professionals from a preapproved list.
  - o If it is necessary or beneficial to retain a firm not on the list (and request coverage from the insurer), discuss this with the client.
- **Identify and contact potential accountants.** Be mindful about sharing too many facts or details without first clearing conflicts.
- **Check for conflicts.** Confirm that no conflicts of interest exist between the forensic accountant candidates or their firm and the client(s) or parties that may be related to the investigation, such as parent companies, subsidiaries, and affiliates whether on the client or opposing side.
- **Set expectations.** Direct the forensic accountants' preliminary scope, methodology, reporting format, and reporting cadence.
- **Draft the engagement letter.** This will formalize the scope of the accountant's work, the role, and the fee and billing procedures. Importantly, the professional should be retained to work at the direction of counsel in order to preserve privilege during the investigation.

### Step 5: Collaborate with and Direct Forensic Accountants Effectively

- **Establish working procedures.** Set early timeline expectations for the forensic accountant. Timing, expectations, and overall strategy should be communicated clearly and regularly. This can include scheduling frequent check-ins to ensure everything and everyone is on track to meet internal deadlines.
- **Provide necessary access.** Provide forensic accountants with access to all documents and information relevant to their analysis.
- **Set document retention procedures.** Confirm document retention procedures are in place and communicated to relevant personnel.

- **Preserve privilege.** Ensure the forensic professionals maintain and protect their work in order to preserve attorney-client privilege.

#### **Step 6: Culminating the Forensic Accountants' Work: Work Product, Recommendations, and Presentation Considerations**

- **Request the forensic accounts present all findings, whether final or preliminary, to you as counsel and not directly to the client.** The findings can be presented orally or in writing, being mindful of attorney-client privilege.
  - The findings from the professional should describe all of the following:
    - The initiating event / scope of work, including the legal purpose and that the accountants work at the direction of counsel
- The process and procedures followed/undertaken
- The documents reviewed
- Their findings relating to any financial/accounting issues
- Any recommendations or next steps the client should consider based upon their findings
- **Incorporate the accountant's findings into the final report to the client.** This occurs either at a set point during the investigation or at the conclusion. Discuss in advance with the client whether a written report is necessary.

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Elissa McClure is a partner in Holland & Knight's Dallas and Orange County offices who focuses her practice on complex commercial litigation and corporate investigations. She advises clients, including Fortune 500 companies and individual executives, in all stages of disputes, from pre-litigation strategy through trial and appeal. Ms. McClure has extensive experience advising clients in connection with the False Claims Act (FCA) and the Anti-Kickback Statute, as well as government and corporate investigations involving the Foreign Corrupt Practices Act (FCPA), consumer protection, healthcare enforcement, trade secret misappropriation, discrimination, whistleblower, regulatory, accounting and securities fraud matters.

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Sydne Collier attended law school and graduated from Texas Tech University School of Law in 2016. Sydne Collier began practicing law in 2016. Sydne Collier is an attorney at Holland & Knight LLP, helping people with Business Litigation issues. Holland & Knight LLP has an office in Dallas, Texas, serving the local community.

Sydne Collier was selected to Rising Stars for 2022. Rising Stars is an exclusive list of top-rated attorneys in specific practice areas who were chosen after thorough evaluation of numerous criteria.

#### **Jean-Michel Ferat, Senior Managing Director, Ankura Consulting Group, LLC**

Jean-Michel Ferat is a Senior Managing Director at Ankura with over 20 years of experience in the specialized fields of forensic accounting, fraud detection, and data analytics. He has applied his skills in a variety of cases involving corruption, kickbacks, collusive bidding rings, money laundering, embezzlement, asset misappropriation, terrorist financing, and financial statement fraud. He has led or participated in reactive investigations and proactive compliance engagements, including Foreign Corrupt Practices Act monitorships, across the United States and in over 25 countries around the world. Jean-Michel served two terms as the forensic accounting expert on the audit and finance committee of the board of directors of the Global Fund to Fight Aids, Tuberculosis and Malaria and currently serves on the international advisory board of the CEELI Institute where he advises the organization on anti-corruption initiatives.

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