

Parallel Proceedings: Establishing the Boundaries

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An investigation by the SEC is always cause for great concern by corporations, executives and their attorneys. In recent years, there has been reason for even greater concern due to prosecutors' increased focus on corporate fraud and the resulting increase in "parallel proceedings." Parallel proceedings involve simultaneous or successive investigations and/or litigation of separate criminal and civil actions by different government agencies arising out of the same set of facts. This trend requires defense counsel to assess whether corporations and individuals may be subjects of a criminal investigation in cases that would not have given rise to such scrutiny several years ago.

Faced with possible criminal liability, clients and counsel must carefully evaluate and weigh the potential benefits of cooperating in an SEC civil investigation versus the very real possibility of furnishing incriminating information to the government for use in a criminal proceeding. To make matters worse, this decision must often be made very early in the investigative process, when defense counsel has an imperfect or incomplete set of facts.

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