

Sarah Eichenberger on Board Oversight for Special Committee Investigations in *Risk & Compliance Magazine*

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Litigation Partner Sarah Eichenberger was a featured panelist in the Expert Forum section of *Risk & Compliance*. The forum, titled "Board Oversight in Special Committee Investigations," examines how boards of directors are navigating the evolving landscape of internal investigations, regulatory expectations, and corporate governance.

On the impact of current Securities and Exchange Commission (SEC) policy, Sarah noted that while independent, board-level investigations remain critically important, the incentive structure has shifted. Companies are now more likely to receive lenient treatment when they conduct credible inquiries and promptly report misconduct. This places a premium on structured, fact-driven processes that can withstand SEC scrutiny.

Regarding how boards should handle whistleblower reports without overreacting, Sarah emphasized the importance of written triage procedures that categorize incoming complaints by risk profile. She described how disclosure committees typically conduct rapid assessments of credibility and materiality before escalating higher-risk matters to the board, ensuring a disciplined process that meets regulatory expectations without treating every complaint as a crisis.

On the meaning of "true independence" for special committee members, Sarah explained that independence extends beyond the absence of formal conflicts. It requires committee members to be free of business, social and professional relationships that could impair their judgment. Independence must be actively maintained throughout the investigation by retaining independent counsel, maintaining control over the scope and ensuring unfettered access to documents and witnesses.

Sarah also addressed why boards increasingly favor external counsel for sensitive investigations, noting that courts and regulators generally perceive outside lawyers as more independent than in-house teams. She further highlighted the advantages of external counsel, explaining that their involvement more clearly establishes the legal purpose of an inquiry and can strengthen privilege and work-product protections if the matter later moves into civil litigation.

On the question of the scope of investigation, Sarah advised anchoring work plans to objective, data-driven thresholds, such as financial materiality limits, geographic boundaries, or discrete timeframes, and to remain flexible as facts develop.

Finally, on privilege risks when sharing findings with auditors and regulators, Sarah cautioned about sharing attorney-client communications and advised boards on steps to maximize work-product protection.

"[Board Oversight in Special Committee Investigations](#)," *Risk & Compliance*, July–September, 2026

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