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### **Checklist for Government Contact**

When a party is contacted by the United States Securities and Exchange Commission, the Commodity Futures Trading Commission, Federal Trade Commission, Medicare/Medicaid agencies such as the Center for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration) and the Office of Inspector General of the United States Department of Health and Human Services, the Federal Bureau of Investigation, the Department of Justice, the United States Attorney's Office, the State Attorney General's Office, the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, or state agencies on securities, banking, health, senior services, public welfare, and insurance, it should immediately notify counsel. Employees of the company should not respond to any requests for information that are outside of the ordinary scope of routine reports regularly made to governmental authorities. If you are served with a subpoena, summons, complaint, search warrant or other legal document, call counsel immediately.

### **Subpoenas**

If a law enforcement agent, investigator or other governmental authority appears in person — whether in the office, at home or elsewhere — and seeks information from you involving the company or requests information through a subpoena, you should be advised of the following rights:

- You have the right and the responsibility to request credentials of the agent or investigator for identification purposes;
- You have the right to speak or decline to speak, as all such conversation is voluntary;
- You have the right to consult with an attorney before deciding to be interviewed; and
- If you agree to be interviewed, you can insist that an attorney or other person (including a representative of the company) be present, you can choose the time and place of the interview, and you can terminate the interview at any time.

DO NOT turn over documents called for in a subpoena until instructed by the company's legal counsel.

### **Search Warrants**

If a law enforcement agent, investigator or other governmental authority arrives to execute a search warrant on the company's property, the following steps should be taken:

- DO NOT interfere with the agents in their search;

- Demand a copy of the search warrant and the business card (or name) of the agent in charge, including the office or agency that he/she represents;
- Be sure the highest ranking employee of the company on the premises is informed of the situation; and
- Call the president and/or compliance officer.

Next, the president and/or compliance officer (or if neither is available, the highest ranking employee of the company on the premises) should take the following steps:

- Review the search warrant or other legal authority under which the agents assert the right to search the company's premises or seize company documents, equipment or records, noting the specific areas of the premises and items designated for the search and seizure;
- Ask for the name and telephone number of the supervising governmental attorney;
- Inquire into what the agents are seeking, and attempt to ascertain the nature of the inquiry and the alleged violations that are the basis for the investigation (treating the agents courteously throughout the entire visit);
- Ensure that only those items referred to in the search warrant are taken (voicing objection if the agents stray outside the physical space identified in the warrant or attempt to seize items that are not referred to in the warrant);
- Urge the other employees to remain calm, and to the extent possible, ensure that the presence of the agents does not unduly interfere with the ability of company staff to carry on their essential job functions, assessing the advisability of sending nonessential employees home;
- Advise the other employees not to make small talk with the agents, and ensure that company staff understand their obligation not to obstruct the investigation (although they are not required to explain the company's operations, bookkeeping, records or what any document means), as well as their right to refuse to be interviewed by the agents or to be interviewed only in the presence of legal counsel or other persons (including company representatives) or at another time and place, if they so choose;
- Accompany the agents while they remain on company property, making notes of areas searched and the general description of items seized;
- As applicable, identify for the agents any documents sought that fall under the attorney-client, attorney work product or self-evaluation privileges;
- As applicable, attempt to convince the agents to take only computer files, not the entire computer hardware;
- At the close of the search, obtain an inventory and receipt of any items seized by the agents (and compare the list of seized documents and items on the government's receipt with the list created internally during the course of the search); and

- Request the opportunity to make copies of all documents to be taken off the premises by the agents, especially those essential to the company's ongoing operations.

### **Informal Contacts with Government Agents/Investigators**

All contacts with anyone claiming to represent any local, state or federal agency shall be immediately reported to counsel. In complying with this policy, keep the following in mind:

- It is not uncommon for investigators to arrive unannounced at somebody's home and then try to make the person feel guilty if he or she does not consent to an interview. Occasionally, the investigator will try to suggest that you must speak with him or her "or else." Nobody is required to submit to questioning by a government agent or investigator. Beware of any agent who says that you have nothing to worry about or who suggests that by talking to him or her, things will be better for you. Agents and investigators do not have the authority to promise anything to a witness. Only a government attorney, working with your attorney, can make promises binding on the government.
- If someone claiming to represent the government contacts you at work or at your home, you should follow these steps:
  - Ask for identification and a business card;
  - Determine why the individual wants to speak with you; and
  - If you prefer, tell the individual that you do not wish to speak with him or her, or that you want to make an appointment for a date and time in the future. Do not be intimidated by a claim that there should be no delay because "honest people have nothing to hide."

After the investigator or agent leaves, contact the president, the compliance officer or the company's legal counsel.

### **Contacts with Non-Company Employees**

Unless it is part of a person's written job description to have contact with the following categories of individuals, all of the company's personnel are governed by the following rules:

- **Contact with the Media**
  - All contacts with the media **MUST** be referred to the president or counsel. You should politely, but firmly, decline to engage in any discussion with media representatives, no matter how seemingly harmless.
  - Reporters are skilled at extracting information, often pretending to know more than they really do or claiming to have already talked to someone inside the organization. Do not confirm, deny or otherwise discuss information related to the company with anyone from the media unless directed to do so by counsel.

➤ **Contact with Attorneys**

- All contacts with anyone claiming to be an attorney should be immediately referred to counsel.
- Like all companies, the company may become involved in legal disputes and litigation. Attorneys representing those with interests contrary to the company may try to contact company personnel directly in an effort to obtain information. You should politely, but firmly, refuse to discuss anything with the attorney. Instead, refer the attorney to counsel.
- The company also realizes that it may receive requests and subpoenas for certain customary documents from attorneys for use in connection with litigation, claims and disputes that do not involve the company as a party. The company's personnel should feel free to respond to such routine document requests, but to maintain control over contacts with attorneys, the request must be reported as required above.

For more information, please contact me at 816.527.9445, [braden@kennyhertzperry.com](mailto:braden@kennyhertzperry.com), or online at [www.kennyhertzperry.com](http://www.kennyhertzperry.com).

**About Kennyhertz Perry:** Kennyhertz Perry is a business and litigation law firm representing clients in highly-regulated industries. Founded by two veteran Kansas City attorneys, John Kennyhertz and Braden Perry, Kennyhertz Perry brings a unique mix of top law firm quality expertise, practical experience, and pragmatic business solutions.

**About Braden Perry:** Mr. Perry is a litigation, regulatory and government investigations attorney with [Kennyhertz Perry, LLC](#). He has the unique tripartite experience of a white collar criminal defense and government compliance, investigations, and litigation attorney at a national law firm; a senior enforcement attorney at a federal regulatory agency; and the Chief Compliance Officer/Chief Regulatory Attorney of a global financial institution. Mr. Perry has extensive experience advising clients in federal inquiries and investigations, particularly in enforcement matters involving complex or novel issues. He couples his technical knowledge and experience defending clients in front of federal agencies with a broad-based understanding of compliance from an institutional and regulatory perspective.