

The regulator in sheep's clothing

BY ROBERT CALO

Banking regulators have acquired a powerful ally: federal and state prosecutors eager to make headlines with banking prosecutions. More and more, regulators who find misconduct are turning their findings over to law enforcement agents. Accordingly, banks and bankers need to know how to react when allegations of misconduct arise.

The general rule: be proactive. When a regulator finds something amiss, take it seriously. Propose solutions that show the bank is "self-correcting" the problems; such moves will go a long way to prevent the regulator from handing the file to a prosecutor.

However, if that fails and you are contacted by the FBI or some other law enforcement agency, you have to take "proactive" to a whole new level. Engage experienced white-collar attorneys to safeguard the interests of the bank and any employees involved in the alleged misconduct. This prevents law enforcement agencies from conducting an unguarded,

surprise interview. They may approach somebody (often at home in the evening) and seek to "ask a few questions to clear things up." Well, maybe, but they could also be hoping that an unguarded interview will yield admissions to support criminal charges.

Don't speak to the authorities without an attorney present. I have represented several banking executives who very kindly agreed to help explain matters to the FBI agents and later found out (mostly from calls by reporters) they had been charged with federal crimes. An attorney can also negotiate with the prosecutor. If the government says you are a witness, the attorney can work to seek immunity or other assurances to help you remain a witness. If the government says you are a suspect, the attorney has an opportunity to urge the prosecutor to either close the investigation or argue for a lesser sanction.

Early intervention by an experienced attorney can keep a regulatory problem from morphing into a criminal case and/or contain the damage in a criminal investigation.



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