



A seismic shift

COVID-19 work-from-home conditions drive new whistleblower activity

July 30, 2020

You can't stop continental drift. In the Second and Third quarters of 2020, COVID 19 stay-at-home requirements imposed on many employees—whether by their companies or public officials—have unleashed new levels of whistleblower activity.

As one leading indicator, the US Securities and Exchange Commission's Enforcement Division reported 4,000 tips from mid-March to mid-May, a significant increase from historic levels.¹ For external and in-house legal counsel tasked with responding to allegations of business wrongdoing, the implications are wide-ranging and significant.

In the shortest term, counsel will need expanded investigative resources to quickly act upon a surge in employee-sourced allegations of fraud, or else the company may face regulatory, financial, and/

or reputational risks due to a lack of response. In the current environment, fraud claims relate not only to areas investigators are accustomed to—e.g. cyber breaches, false insurance claims, earnings-management schemes, financial reporting misrepresentation, price-fixing—but also to new types of fraud created by the government response to the pandemic, such as misconduct related to the Coronavirus Aid, Relief and Economic Security Act (CARES) or the Paycheck Protection Program (PPP). (See "A Notable Uptick, Sourced Inside the Enterprise.")

¹ Mengqi Sun; "Tips to SEC Surge as Working From Home Emboldens Whistleblowers," *The Wall Street Journal*, 6/1/20



A notable uptick, sourced inside the enterprise

The specific work-at-home requirements and general economic disruption prompted by Covid-19 have produced increases in both observed and predicted fraud activity. A May 2020 survey conducted by the Association of Certified Fraud Examiners (ACFE), compiled from more than 1800 member responses, revealed the following upticks in categories of fraud risk frequently associated with internal actors. (**Note:** The statistics represent a selected portion of total survey)

Findings :



Source: "Change in Specific Fraud Areas," page 7, from **Fraud in the Wake of COVID-19: Benchmarking Report**, Association of Certified Fraud Examiners (June 2020)

Preparing for a permanent reset

The increase in whistleblowing certainly reflects more opportunity and temptation to commit fraud. Perhaps more significantly, it may be a result of a tectonic shift in workplace attitudes. Working from home, without the pre-COVID 19 cultural constraints of their workplaces, more and more employees have become accustomed to using their companies' existing whistleblower frameworks to sound the alarm on suspect behavior. Some Forensic leaders intuitively sense that employees will not easily give up their newfound sense of empowerment after the pandemic recedes.

Aggressive global enforcement of anti-bribery and corruption laws has also increased the frequency of regulatory actions and the sizes of the associated fines and penalties. Without an understanding of the local laws, customs, and regulatory environment in high-risk and emerging markets, organizations may not be able to properly identify and/or address instances of potential bribery or corruption when they occur. Combining aggressive penalties and the effects of the global pandemic, investigative resourcing will become an ongoing, steady-state challenge.

Given the global health, public policy, economic, and business consequences of the pandemic, the newsworthy uptick in whistleblower activity is a leading indicator of what is to come: a future-state defined by spurred law enforcement and regulatory enforcement actions that last for years. Businesses—and the law firms that serve them—must prepare now for the impending wave of litigation, law enforcement, and regulatory enforcement. It's become increasingly clear

that responses to events now will be judged historically with the benefit of 20/20 hindsight. (See "A Notable Uptick" on previous page.)

Expanding capacity, containing costs

Legal teams responsible for fraud investigations need to assess a potentially permanent upsizing of their own capacities. Our Forensic professionals find that law firms trying to rescale encounter the following questions:

- How do we best deploy our own professionals, recognizing that Forensic investigations may require specialized skillsets that are outside the resources' core competencies? Or, are there learning curves that are impractical given current demands?
- How do we invest intelligently in the data, analytics and technology we need, without committing capex or locking in fixed costs?
- If we partner with external providers, how to do we maintain control of our client relationships and safeguard against potential disintermediation?

Your client relationships, our resources

KPMG Forensic helps strengthen relationships between law firms and their trusted clients. We are a one-stop, behind-the-scenes resource for attorneys charged with investigating fraud allegations and protecting their clients. Our portfolio of offerings is intentionally designed to complement the skillsets and amplify the impact of law firm attorneys and support staff, in order to enhance their reputations and competitive position. Whether the need is for pin-point solutions or comprehensive, top-down transformation, KPMG Forensics is here to help.



How we partner with law firms

KPMG Forensic is structured to deliver flexible support to law firms, against whatever time horizons they specify. We offer targeted, ready-to-deploy-now solutions to meet urgent, time-sensitive requirements. We also provide comprehensive services to firms that are helping client evaluate, design and implement structural upgrades to their fraud identification, remediation and prevention systems. Select offers include:



Rapid response:

- Electronic discovery ("eDiscovery")
- Insurance claim services
- Data capture and analysis



Longer-term, strategic:

- On-call investigations
- Comprehensive integrity programs
- Crisis management programs

Your targeted needs, our configurable services

In the realm of Forensic investigations, we know one size does not fit all. Drawing upon the cumulative experience and worldwide resources of KPMG, our Forensic investigations platform delivers specialized domain expertise; advanced technology; and proprietary data, analytics and investigative resources to clients—anywhere in the world, in the configuration they need, and at whatever speed or scale they require. (See “How We Partner with Law Firms.”)

KPMG has invested continuously in advanced Forensic data analytics, technology, and processes, which we deliver to clients on as-needed basis, to save them time and money. Our professionals offer clients deep experience and domain expertise in law enforcement, forensic accounting, computer forensics, auditing, technology & data analytics, regulatory oversight, finance, and organizational integrity. It's the combination of data-driven, analytics-powered approaches, in tandem with a specialized team of global professionals that sets us apart.

How COVID-19 differs from other crises

While law firms and their clients have weathered previous crises, COVID-19 is both quantitatively and qualitatively different. It originated outside of the global economy, as opposed to other crises such as the 2008 financial crisis, the dot-com bubble of 2000, and the Asian financial crisis of 1997. As all astute observers have noted, the speed and scale of COVID-19 impacts have been unprecedented—as seen in the contraction of economies, widespread unemployment, strain on social fabrics, and fiscal or policy demands placed on governments. This less a financial crisis than an operational, demand and social crisis.

Businesses of all sizes grappling with huge range of issues as a result of COVID-19 have been in crisis mode, focused on business continuity and limiting losses. And the law firms that serve them have not had adequate time to look ahead to anticipate the litigation

and regulatory issues that are impending for their clients, or to prepare them with appropriate compliance to limit future, pandemic-related exposure.

This is where KPMG can help. We are well equipped to help law firms bring their clients insights they do not currently have and implement actions they cannot execute right now, due to resource constraints in a time of heavy demand. Looking further ahead, we are prepared to support them as they help businesses pivot towards a foreseeable future of more or less permanently increased demand for their fraud identification, remediation and prevention. We think of ourselves as potential journey partners, ready to work behind the scenes with interested law firms, as they guide their clients through current disruption and towards an eventual post-pandemic future.

KPMG Forensic: Global coverage, local delivery

In today's interconnected world, KPMG brings cross-border perspectives to help law firms assess and mitigate their clients' exposure to fraud, misconduct, and compliance risks. Our global network consists of over 3,500 multidisciplinary professionals who reside in more than 100 countries.

The three pillars of our global capabilities are on-the-ground familiarity with local laws, customs, and regulatory compliance practice; a worldwide consistency of approach, based on common KPMG-network training and professional development standards; and the cross-pollination of insight and best-practice across industries and jurisdictional boundaries.

We are built to delivery locally, engaging with clients at any scale. Our Forensic professionals deeply understand the intensely collaborative nature of fraud investigation, and are dedicated to partnering shoulder to shoulder with law firm professionals, in use cases that range from targeted rapid-response to pre-emptive strategic initiatives.

For further reading :

Todd Shields, Jason Grotto, Saleha Mohsin; **“As \$2 Trillion Relief Flows, Almost Nobody Is Watching for Abuse,”**

Bloomberg News, 4/17/20

<https://www.bloomberg.com/news/articles/2020-04-17/lag-in-pandemic-relief-oversight-risks-repeat-of-berry-martinis>

Joe Nocera; **“Pandemic Is a Great Incubator for Financial Fraud,”**

Bloomberg News, 7/8/20

<https://www.bloomberg.com/opinion/articles/2020-07-08/covid-19-pandemic-is-a-great-incubator-for-financial-fraud>

David Houghton, Emily Keenan, Leslie Bix; **“Are You Managing Your Risks From Social Media?,”** *Sloan Management Review, 4/21/20*

<https://sloanreview.mit.edu/article/are-you-managing-your-risks-from-social-media/>

Cynthia Courtois, Yves Gendron; **“Research: Why Corporate Fraud Reports are Down,”** *Harvard Business Review, 7/1/20*

<https://hbr.org/2020/07/research-why-corporate-fraud-reports-are-down>

Brenda Sharton; **“How Organizations Can Ramp Up Their Cybersecurity Efforts Right Now,”** *Harvard Business Review, 5/1/20*

<https://www.hbr.org/2020/05/how-organizations-can-ramp-up-their-cybersecurity-efforts-right-now>

Stu Bradley, **“6 essentials for fighting fraud with machine learning,”** *Technology Review (MIT), 11/18/19*

<https://www.technologyreview.com/2019/11/18/131912/6-essentials-for-fighting-fraud-with-machine-learning/>

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