

# ATTORNEY-FORENSIC ACCOUNTANT RELATIONSHIP GROWS IN VALUE

*By avoiding email conversations, savvy employees have made fraud cases less obvious to detect, giving forensic accountants the opportunity to prove their worth*

It has become increasingly difficult to find the smoking gun document in an email review that cracks a fraud investigation open. Gone are the days when the client's local management could be confronted with indisputable accounts of employees openly discussing fraudulent or corrupt behaviour in an email chain on company servers.

Employees around the world are more sophisticated, more discrete in their conversations, and they know their emails can be used against them many years after the fact.

Today, employees communicate via 'temporary' media like Snapchat, or end-to-end encrypted media such as WhatsApp, for their more candid discussions of illegal conduct.

The one thing that has not changed is that fraudulent conduct will always involve a financial transaction. This transaction will be recorded somewhere in the company's books and records.

It might be well-camouflaged. It may be recorded before or after cash changed hands, be buried in a larger transaction or consist of a number of small transactions. It may flow from a slush fund generated by a complex system of discounts with a willing distributor. But it will be there.

As a result, the relationship between attorneys and forensic accountants is closer than ever. Law firms are hiring accountants and eDiscovery specialists, and accounting firms outside the US are expanding their legal practices, blurring the lines between these industries. But the high-risk, high-profile investigations are still being conducted by leading white-collar litigation firms, in partnership with dedicated forensic accountants.

## At what point in an investigation should this partnership commence?

Government guidance makes it emphatically clear that regulators will be involved early and often in a company's internal investigations.

Before regulators get involved, law firms should:

- Integrate forensic accountants into the very first stages of an investigation. US regulators are familiar both with the ever-decreasing utility of simple email searches as a source of evidence, and with the ever-increasing protection of personal data by overseas regulators, which email searches invariably implicate. Understanding the client's financial and data architecture at the earliest stages, before interviews, is

critical both to preserve evidence against spoliation and to identify risk points.

- Understand the company's enterprise resource planning platform, revenue recognition policies, sales and marketing organisation, and key third parties and customers in the market at issue even before the first round of custodial interviews. This often can be undertaken remotely at the parent company level, before the local office is even aware that allegations over its conduct have surfaced.

During the investigation, forensic accountants can apply analytics to structured data to identify and test outlier transactions and accounting entries that may not be discussed in emails. Perplexing accounting for a transaction is anathema to a well-run business that seeks clarity in its books and records.

Whether a scheme involves overly complicated discounts, inscrutable joint venture partner contributions or layers of third parties that provide questionable services, forensic accountants can identify and test transactions that appear designed to obscure their accounting treatment. As the investigation closes in on executives who appear to be culpable, forensic accountants provide added value.

A savvy business executive may be able to explain away seemingly obvious discussions of fraud in an email, but a finance officer will be hard-pressed to defend an accounting treatment that makes no sense.

As fraudulent schemes become more complicated and less openly discussed, attorneys should focus on understanding the client's accounting books and records from the first hint of an allegation.



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