



— Panelists and Moderator

		
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— Responding to Complaints

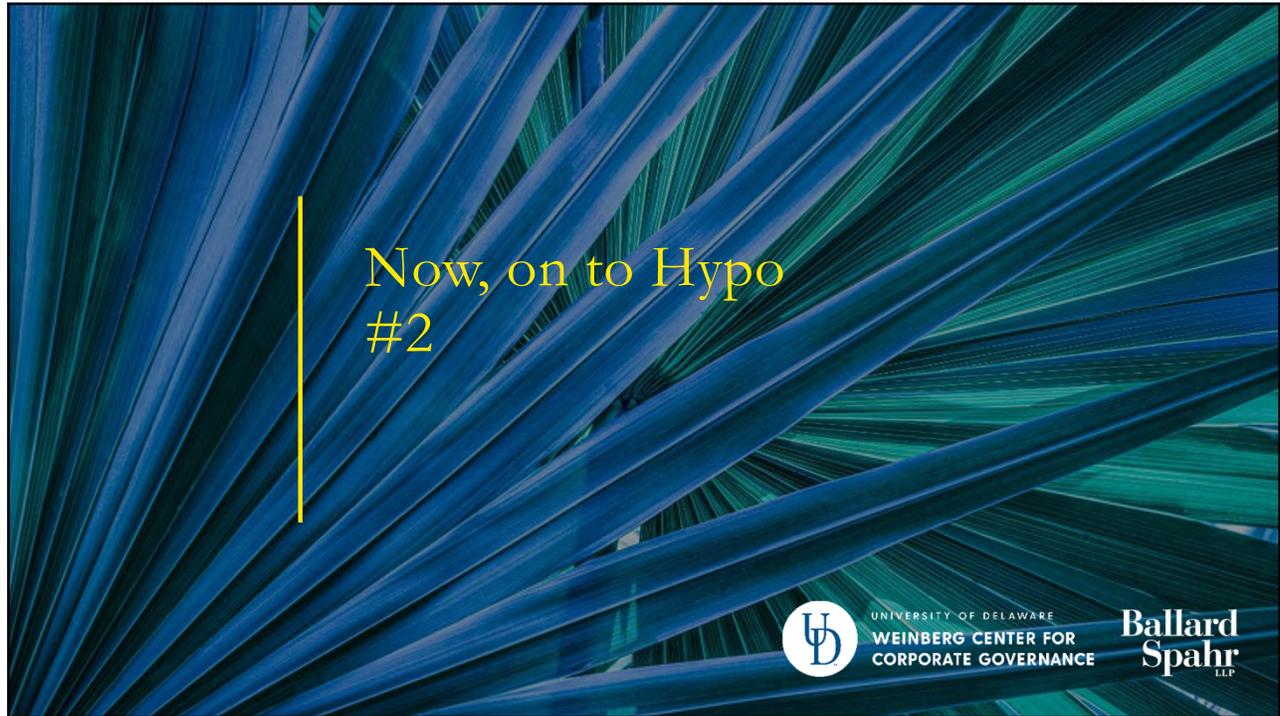
- A relatively new executive raises concerns about potential accounting errors, predominantly relating to premature revenue recognition, relating to Acme's Anvil Division
- At the same time, the company receives an anonymous complaint through its Whistleblower Hotline, also raising revenue recognition concerns
  - The whistleblower claims the CFO directed this treatment of revenue
- Both complaints are provided to the GC, who in turn advises the CEO about each

### — Responding to Complaints (cont.)

- The Company decides to handle the inquiry into these complaints internally, led by the GC
  - The CEO and GC also decide not to inform the Audit Committee or the auditors, pending the outcome of the GC's investigation
- The whistleblower, now aware that the GC is running the investigation, and believing the GC is not independent, sends an anonymous letter to the Company's outside auditors, who then refuse to sign off on the Company's financials.

### — The Writing is on the Wall

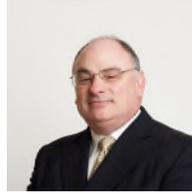
- Although not concluded, the Audit Committee investigation begins to unearth substantial evidence that the Company has, for years, overstated its revenue for several prior periods and that restatement of those financials is likely.



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The Fallout from the  
Whistleblower Complaint



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### Potential Regulatory and Governmental Investigations

- Once Acme determines it will likely need to restate its prior financials, it alerts the SEC
- Shortly thereafter, Acme receives subpoenas from the SEC and DOJ
- Both complaints are provided to the GC, who in turn advises the CEO about each

### SEC filing requirements

- The Audit Committee investigation is not completed by the time the Company's Form 10-K is due to be filed
- The investigation has determined that a restatement will be necessary
- The Company files a Form 12b-25 with the SEC reporting that it will be delayed in filing its Form 10-K and is conducting an investigation
- Soon thereafter, NASDAQ advises Acme that it is subject to delisting for failing to make its required SEC filings

### Civil Litigation Ensues

- Upon the Company's disclosure, the stock price drops
- The Company is sued for securities fraud
- Some shareholders file derivative claims and some make demands on the Board to bring claims against the insiders responsible

### Key Take-Aways

- Have policies/procedures in place to address enterprise risk
- Ensure that all disclosures are complete and correct
- Be proactive in addressing problems
- Understand duties and responsibilities
- Retain counsel well-versed in advising Boards on fiduciary duties, internal investigations, securities and derivative litigation, and SEC/DOJ responses

