

Anatomy of an Internal Investigation

SCCE Compliance and Ethics Institute - Chicago
September 13, 2010

Larry Parsons
Vice President and Chief Ethics and Compliance Officer
Freescale Semiconductor, Inc.

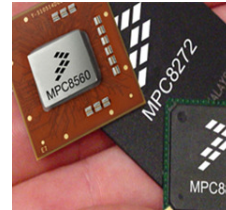


Freescale™ and the Freescale logo are trademarks of Freescale Semiconductor, Inc. All other product or service names are the property of their respective owners. © Freescale Semiconductor, Inc. 2006.



Freescale – Company Overview

- Semiconductor design and manufacturing company established in 1953
- Focused on the networking, automotive, industrial control and consumer electronics markets
- Engaged with **10,000+ customers** globally; over **100 of the top electronic manufacturers**
- **\$3.5 billion** in revenue in 2009
- Headquartered in **Austin, Texas**
20,000+ employees in over **25** countries
- Separated from Motorola in 2004 (IPO/Spin)
- Leveraged buyout by consortium of private equity funds completed December 1, 2006



Freescale™ and the Freescale logo are trademarks of Freescale Semiconductor, Inc. All other product or service names are the property of their respective owners. © Freescale Semiconductor, Inc. 2006.



Overview of This Session

- Learn how to prepare for and conduct an internal investigation (not focused on a “bet the company matter”)
- Review privilege issues related to conducting the investigation and reporting and documentation of the results
- Completing the investigation and implementing corrective actions

Freescale™ and the Freescale logo are trademarks of Freescale Semiconductor, Inc. All other product or service names are the property of their respective owners. © Freescale Semiconductor, Inc. 2006.

2



Freescale's Investigative Process

- **Initial Report of Potential Violation**
- **Scoping the Investigation**
- **Determining Records Sources and Implementing Preservation Steps**
- **Staffing the Investigation**
- **Investigation Recommendation to Impacted Management (Privilege Issues)**
- **Directing the Investigation**
 - **Reviewing Documents**
 - **Conducting Interviews**
- **Documenting the Investigation – Findings, Conclusions and Recommendations (Privilege Issues)**
- **Implementing Corrective Actions**

Freescale™ and the Freescale logo are trademarks of Freescale Semiconductor, Inc. All other product or service names are the property of their respective owners. © Freescale Semiconductor, Inc. 2006.

3



Portion of Email Sent to Freescale

I wanted to let you know of another situation you should be aware of. I came on-board with [FSL Supplier] about 11 months ago and some things had taken place prior to my arrival that needs to be addressed and put behind us.

One of my executives will be sending in a package to your ethics committee later this week. He claims that he was required to purchase airline tickets in exchange for continuing to do work with Freescale. I know very little about this situation but he claims to have records of this and is compiling a package to send to Freescale.

I know that this type of issues is very sensitive not only for the companies but also for the employees involved. I wanted to let you know about this situation so that you were not caught off guard when this was brought to your attention.

Freescale™ and the Freescale logo are trademarks of Freescale Semiconductor, Inc. All other product or service names are the property of their respective owners. © Freescale Semiconductor, Inc. 2006.

4



Decision to Investigate and Initial Scope

- Question: What should be investigated?
 - Answer: Virtually every allegation requires some investigation. But, the nature of the violation determines the scope of the investigation
- Some questions to consider
 - Credibility of the source (circumstances raising doubt)
 - Level of corroboration/detail provided
 - Can you make an informed decision without an investigation
 - Consequences to the company if the allegation is true
 - Should the investigation be conducted under the privilege

Freescale™ and the Freescale logo are trademarks of Freescale Semiconductor, Inc. All other product or service names are the property of their respective owners. © Freescale Semiconductor, Inc. 2006.

5



Determine Sources of Records

- Become good friends with your IT Security folks
 - Learn what is available and the time frame
 - Have a process for capturing hard drives and emails
- Determine universe of relevant documents, e.g.:
 - Emails
 - Contracts
 - Financial Records
 - Expense Reports
 - HR Files
 - Don't forget – review applicable policies, including your Code and training records
- Don't become overzealous in the collection of information – stay within appropriate bounds

Freescale™ and the Freescale logo are trademarks of Freescale Semiconductor, Inc. All other product or service names are the property of their respective owners. © Freescale Semiconductor, Inc. 2006.

6



Document Preservation

- Document Holds (discussion of *Zubulake* and other spoliation cases beyond scope of this presentation)
- If the matter is likely to result in litigation, you will need to ensure relevant documents are preserved;
 - Determine sources of documents
 - Issue document hold notice
 - Turn off any automatic document destruction actions
 - Don't ignore either paper or electronic documents

Freescale™ and the Freescale logo are trademarks of Freescale Semiconductor, Inc. All other product or service names are the property of their respective owners. © Freescale Semiconductor, Inc. 2006.

7



Document Hold Example

Privileged & Confidential – Attorney Work Product

URGENT

NOTICE TO PRESERVE DOCUMENTS

As you may know, from time to time Freescale receives requests for information from government entities. Government requests for information are standard for large companies like Freescale, and the company regularly cooperates with such requests. Freescale recently received such a request in the form of a subpoena from [Name of Government Agency]

The purpose of this memorandum is to provide guidance regarding the preservation of information relevant to this request.

To be sure that we comply with the agency's request and that Freescale's interests are fully protected, we must preserve all documents and data that you possess relating to the matters described in the subpoena. Accordingly, please retain all documents and data referring to, or relating to, the following topics:

Freescale™ and the Freescale logo are trademarks of Freescale Semiconductor, Inc. All other product or service names are the property of their respective owners. © Freescale Semiconductor, Inc. 2006.

8



Who Should Conduct the Investigation?

- Know the Investigatory Resources Available to you
 - Dedicated in-house investigators (FSL does not have)
 - Inside Counsel
 - Outside Counsel
 - Human Resources
 - Security
 - Internal Audit/Corporate Assurance
- Factors to consider in making the decision
 - Expertise
 - Workload (time to commit to investigation)
 - Investigative Experience
 - Subject matter
 - Sources of information (document review v. interviews)
 - Perception (influence v. intimidation)

•FSL Process

Freescale™ and the Freescale logo are trademarks of Freescale Semiconductor, Inc. All other product or service names are the property of their respective owners. © Freescale Semiconductor, Inc. 2006.

9



Investigation Recommendation

- Who is the decision maker in this matter
 - Will be the primary recipient of the investigation finding
 - Will ultimately decide and implement corrective actions (with coaching)
 - Will likely help with witness cooperation
- Outline initial scope and timing
 - Nature of allegation
 - Stop inappropriate activity
 - Mitigating civil or criminal exposure
 - Availability of witnesses
- Attorney/Client Privilege
 - Determine if the investigation should be privileged and proceed accordingly

Freescale™ and the Freescale logo are trademarks of Freescale Semiconductor, Inc. All other product or service names are the property of their respective owners. © Freescale Semiconductor, Inc. 2006.

10



Protecting the Privilege - General

- Establish the intent to conduct a privileged investigation at the outset in an explicit written agreement
 - If using outside counsel, between counsel and the company
 - If using inside counsel, in a written request from a senior manager to the law department requesting an investigation
 - If investigators other than attorneys are used, document that they are working at the request of counsel
- Control documents and mark privileged documents as appropriate
 - e.g., "Privileged and Confidential, Attorney Work Product" or "Attorney/Client Communication" or both
 - Limit access to privileged documents to those involved in the receipt or provision of legal advice
 - Consider the possibility of separate reports – one with factual findings only and the other with advice based on those findings.
- *Upjohn* warnings to employees being interviewed (discussed later)

Freescale™ and the Freescale logo are trademarks of Freescale Semiconductor, Inc. All other product or service names are the property of their respective owners. © Freescale Semiconductor, Inc. 2006.

11



Analyzing the Records

- The type of records might determine the reviewer (financial records v. invoices v. expense reports)
- Complete the review of relevant records prior to conducting interviews
 - Organize records for each interview
 - Consult with subject matter experts as needed to understand records (don't embarrass yourself by assuming the meaning of words or entries)
 - Determine the order you will present documents during interviews – remember that as investigator you control the interview
 - Start putting the puzzle together

Freescale™ and the Freescale logo are trademarks of Freescale Semiconductor, Inc. All other product or service names are the property of their respective owners. © Freescale Semiconductor, Inc. 2006.

12



Interviews

- Interviewing skills
 - Some investigations require only the ability to read questions and record answers
 - Other investigations require significant skill to elicit the truth
- Who will be interviewed
 - Person making the allegation (if possible)
 - Witnesses to relevant activity
 - Individuals who can explain relevant processes or documents
 - The accused
- If a Privileged Investigation
 - Upjohn warnings
 - I am an attorney conducting an investigation to provide legal advice to the company
 - The company is my client – I do not represent you as an individual
 - This conversation is privileged and must be kept confidential by you
 - The company alone owns privilege and can choose whether to waive it.
- The Admissions Interview

Freescale™ and the Freescale logo are trademarks of Freescale Semiconductor, Inc. All other product or service names are the property of their respective owners. © Freescale Semiconductor, Inc. 2006.

13



Reporting

- Report findings to decision maker
- Written or oral report
 - Privilege and Discoverability
 - Confidentiality
 - Defensive use
 - Two reports – privileged and non-privileged (good in theory, difficult to do well)
- Items to include in a written report
 - Basis for the investigation
 - Investigative actions taken (document review, interviews)
 - Relevant policies
 - Chronology of events
 - Results of investigative interviews
 - Summary of investigative findings
 - Exhibits
 - If privileged report – relevant law and legal analysis
- Influencing corrective action

Freescale™ and the Freescale logo are trademarks of Freescale Semiconductor, Inc. All other product or service names are the property of their respective owners. © Freescale Semiconductor, Inc. 2006.

14



Implementing Corrective Action

- General goals
 - Stop the inappropriate conduct
 - Remedy the damage caused by the violation
 - Deter future similar conduct
 - Reinforce that the company values integrity
- Understand relevant company policy
- Understand how similar violations have been handled in the past
- Help decision maker reach an appropriate decision
 - How much of a role the investigator plays depends upon the investigator
- Ensure that corrective action occurs
- Consider using matters as teachable moments
 - See above – Deterrence and Integrity

Freescale™ and the Freescale logo are trademarks of Freescale Semiconductor, Inc. All other product or service names are the property of their respective owners. © Freescale Semiconductor, Inc. 2006.

15



My Investigation Mantras

- **“Like loose threads on clothing, the clues you need are easily overlooked.”**
 - Thomas Golden in *A Guide to Forensic Accounting Investigation*, (2006) p.106.
 - Restated: Pay attention to small anomalies in the information.
- **“Trust but verify”** – Ronald Reagan
 - Restated: Neither assume dishonesty nor assume unquestioned honesty.
- **Exercise objectivity and professional skepticism**
 - AICPA Statement of Auditing Standards, No. 99
- **Don't get locked into your initial view of the facts and subconsciously steer your investigation to support that view.** (Parsons)
- **Don't let the perfect overcome the good – avoid investigation paralysis.** (Parsons)
- **Follow the evidence and don't ever be surprised by what people are capable of doing.** (Parsons)

Freescale™ and the Freescale logo are trademarks of Freescale Semiconductor, Inc. All other product or service names are the property of their respective owners. © Freescale Semiconductor, Inc. 2006.

16

