ALERT AND ORGANIZATION

• Don’t obstruct: Be professional and cooperative.
• Don’t destroy documents or other evidence.
• Call counsel immediately to protect your rights.
• Keep a record of what is searched, what is taken, who was involved in the search, and persons in focus.
• Know your rights:
  — The search should be limited to the scope of the warrant.
  — You have the right to receive inventory of materials seized.
  — You have the right to withhold or receive back-privileged materials.
  — In the United States, interviews on substantive topics are voluntary and may be refused. You may insist on counsel being present.
  — In the European Union, you must answer purely factual questions but may refuse to answer questions to which the answers may be self-incriminating.

STEP-BY-STEP RESPONSE

1. Ask to see investigators’ identification and documents authorizing the search.
   a. Confirm that your company’s premises are permitted to be searched.
   b. Keep a record of the investigators’ names and affiliations.
2. Call counsel immediately.
   a. Ask investigators to wait for counsel to arrive (they may refuse).
   b. Put counsel in touch by phone with investigators.
3. Assign a point of contact to interface with the investigators and organize the response.
   a. Provide a conference room free of business materials and away from business operations for investigators.
   b. Assign individuals to “shadow” investigators.
   c. Interface with outside counsel.
4. Ensure document preservation, send out a litigation hold notice immediately, and take steps to ensure that all relevant evidence is preserved—regardless of location.
5. “Shadow” the search—assign someone to follow each investigator.
   a. This person should be trained to understand the rights of both the company and individuals.
   b. Ensure that company employees are cooperating with the search.
   c. Keep a record of all items searched and seized.
   d. Involve external counsel for any questions regarding privilege.
6. Make copies of all materials seized—one copy for investigators and one copy for company files.
7. Protect privileged materials by objecting to the seizure of any privileged material and agreeing to a procedure to ensure that any privileged materials seized are returned. Involve outside counsel in this exercise.
8. Do not break seals where the investigators have sealed the company’s premises (e.g., overnight).

HOW WE CAN HELP

If you need assistance with more detailed dawn raid guidelines or training, contact a Morgan Lewis lawyer listed below:

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