

CORPORATE MONITORING SERVICES

Federal prosecutors and SEC staff often require appointment of a corporate monitor to verify a company's compliance with the terms of a settlement. The appointment of a monitor extends the reach of law enforcement by enabling the government to conditionally suspend a prosecution or enforcement action while a company works to implement agreed business and compliance reforms. FTI Consulting has a wealth of experience and resources to serve as independent monitor across all industries and professions.

INTRODUCTION

The Department of Justice (DOJ) often requires companies to retain an independent monitor when settling a threatened prosecution. The company enters into a deferred prosecution agreement (DPA) or non-prosecution agreement (NPA) in which it agrees, among other things, to undertake a number of compliance and operational reforms. The monitor typically supervises the implementation and tests the effectiveness of these reforms, recommends improvements to the company, and submits periodic reports to the government and the company. The SEC has also used monitors to verify compliance with settlements. Recent developments suggest that monitors will become an increasingly popular method of extending the reach of SEC enforcement activities.

Our professionals have substantial experience serving as an independent monitor; providing forensic accounting, investigative and other analytical support services to monitors; assessing compliance programs and systems of internal control; and reporting to government agencies. We employ our extensive resources and industry knowledge in a manner designed to avoid unnecessary interference with ongoing business operations and to control costs, while maintaining rigorous independence.

BENEFITS AND CHALLENGES OF MONITORSHIPS

Monitorships entail potential benefits and challenges. The primary benefit in most cases is enabling the company to avoid more draconian sanctions and lower the public profile of the controversy while management addresses weaknesses in compliance and internal controls. Eliminating the overhang of a threatened prosecution and making a commitment to improve compliance and operations under the oversight of an independent third party can provide the basis to investors, customers, creditors and other stakeholders to remain committed to the company. It is impossible to quantify the value of retaining (or perhaps enhancing) the confidence and loyalty of those on whom the company's success most directly depends. A successful outcome may also help a company regain the trust of its regulators, especially in cases where management cooperates with the monitor and implements reforms in good faith.

Another intangible benefit of a successful monitorship is avoiding future violations of law or other compliance failures that could threaten the company. "An ounce of prevention..." is a timeworn phrase, but it applies in the context of DPAs and NPAs. The primary purpose of the compliance elements of a DPA/NPA is to reduce the likelihood that the conduct in question will recur. If that goal is met, the company's investment in the monitor has produced a healthy return.

But monitorships can also introduce uncertainties about the scope and expense of the monitor's activities and the corresponding impact on business operations and customer relations. We believe that the intended benefits of a monitorship are most likely to be realized, and the risks and burdens avoided, if the project is staffed by knowledgeable professionals and is conducted in a transparent manner. This involves regular communication among the parties as well as implementation of a monitoring work plan that is designed to promote efficiency and manage costs while fulfilling all of the monitor's obligations as set forth in the governing agreement. These are the hallmarks of FTI Consulting's approach to compliance monitoring.

FTI CONSULTING'S APPROACH TO MONITORSHIPS

We have three paramount goals in every monitorship assignment: effectiveness, efficiency and economy. We fulfill these goals by designing our monitoring plan in a manner that (i.) utilizes our extensive experience and resources; (ii.) ensures independence and transparency in our work; (iii.) promotes cooperation with all interested parties; (iv.) manages both tangible and intangible costs to the enterprise; and (v.) maintains oversight and accountability. The following are FTI Consulting's "rules of the road" in conducting monitorships.

A successful monitorship results primarily from the depth of experience and resources of the monitoring team.

Our work plan and recommendations are designed to promote a successful outcome while maintaining our independence.

Cooperation and transparency in monitoring activities facilitate a successful process.

We will work within the scope of our responsibilities as set forth in the governing agreement.

We will use the resources within our firm to facilitate effective oversight and accountability; we will not subcontract our responsibilities to third parties.

We will deploy our talent and technology in a manner designed to achieve effectiveness, control costs, and minimize disruption to the enterprise.

OUR MONITORING EXPERIENCE AND RESOURCES

While every case presents unique facts and circumstances, we believe that a monitor should possess certain core attributes and expertise. FTI Consulting professionals have considerable expertise in each of these areas. We can provide a highly qualified and efficient team for any type of monitorship.

ATTRIBUTE/EXPERTISE	FTI CONSULTING QUALIFICATIONS AND EXPERIENCE
Independence and objectivity	Our professionals have held senior positions at DOJ, the SEC, PCAOB and other agencies. We have significant experience with SEC and PCAOB enforcement staffs and U.S. Attorneys and have track records of honesty and integrity in dealing with them.
Compliance programs, training	We have significant expertise in evaluating the design and efficacy of corporate compliance programs and have advised many companies on improving compliance programs following alleged FCPA violations.
Corporate governance, ICFR	We specialize in corporate governance services (including board and committee structure and process, executive and director compensation, and audit committee responsibilities) and in the design and evaluation of internal controls over financial reporting and internal audit functions.
Accounting principles and standards; forensic accounting	We are highly experienced in the application of U.S. and international accounting principles and auditing standards. Our forensic accounting professionals provide expertise in data collection and analysis, reconstructing financial records, unraveling complex financial transactions, and conducting forensic examinations and interviews.
Information technology and systems	Our IT tools effectively automate required governance, risk management and compliance procedures, and enable rapid detection of anomalies or events that might indicate a failure of internal controls or other compliance safeguards.
Industry knowledge	We have broad industry expertise, including, for example, automotive, chemicals, communications, construction, energy, financial services, healthcare, insurance, life sciences, media and entertainment, professional services and public accounting.

Our senior professionals have served as monitor or led professional teams in numerous DOJ and SEC monitorships, both at FTI Consulting and prior firms. Examples include:

KPMG LLP. – Managed a multidisciplinary professional team in monitoring KPMG’s compliance with the terms of a DPA relating to the sale of tax shelters.

Baker Hughes – Supported Baker Hughes FCPA monitor in a 3-year, multi-country review of corporate compliance policies, procedures and internal controls and of corruption risk mitigation activities in high-risk jurisdictions.

York International Inc. – Supported the monitor for York International Corp. under the terms of a 3-year DPA relating to FCPA matters arising from violations of the U.N. Oil-for-Food Program.

Bank of New York – Examined enhancements to bank’s compliance and ethics program code of conduct and ethics training curriculum, and monitored bank’s internal compliance and monitoring and audit processes, under an NPA relating to money laundering allegations.

Mellon Bank – Supported the Independent Examiner under the terms of an NPA in monitoring and reporting on the bank’s suspicious activity reporting practices and anti-money laundering procedures.

Hollinger International – Supported the Special Monitor appointed under terms of an SEC consent to ensure completion of special committee investigation following attempted interference by the controlling shareholder.

WorldCom/MCI – Advised the Corporate Monitor appointed under an SEC settlement to develop and implement comprehensive internal controls and corporate governance measures, a new ethics and education program, and a restatement of historical financial statements.



Critical thinking at the critical time.™

About FTI Consulting

FTI Consulting, Inc. is a global business advisory firm dedicated to helping organizations protect and enhance enterprise value in an increasingly complex legal, regulatory and economic environment. With more than 3,700 employees located in 22 countries, FTI Consulting professionals work closely with clients to anticipate, illuminate and overcome complex business challenges in areas such as investigations, litigation, mergers and acquisitions, regulatory issues, reputation management and restructuring. The company generated \$1.4 billion in revenues during fiscal year 2010. More information can be found at www.fticonsulting.com.