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FROM COP TO COUNSELOR

Independent corporate integrity monitors can help companies increase transparency and improve reporting standards.

The role of the corporate monitor has evolved since its inception in the post-Watergate era. Once viewed strictly as compliance enforcement mechanisms, independent integrity monitors are increasingly seen as a way to help a tarnished organization regain credibility with the government and its customers.

As the name implies, independent monitors provide an objective view of a company's operations — a perspective that can lead to valuable insights about the company's operations and business practices. While actions leading to the appointment of a monitor can damage a company's reputation, not to mention shareholder value, a monitor's presence can actually make a business stronger over the long term.

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A GROWING EMPHASIS ON MONITORS

Independent monitors were first used in the context of resolving local corruption and organized crime investigations, but their role has expanded over the past three decades. Most monitorships now come as part of a settlement agreement between an organization and a court or a government agency as a way to defer or avoid prosecution. Deferred prosecution agreements allow companies to avoid indictment if they pay a fine, cooperate with investigators and institute reforms. These reforms are often tracked under the watchful eye of an independent integrity monitor.

Not surprisingly, companies with court-appointed monitors tend to balk at their presence, even when they offer an alternative to prosecution. Executives rarely like the idea of an outsider looking over their shoulder and — in their view at least — intruding on their business.

CHANGING PERCEPTIONS — AND BUSINESS PRACTICES

However, once a monitor has been at a company for a while, employees begin to understand he is not there to interfere. He is there to observe and report back periodically to the government about what's going on — which means he can also present the positive aspects of what an organization is doing. Once management sees that, they begin to feel quite different about the role. Properly administered, a monitorship can be an effective, efficient and economical way of resolving an enforcement matter and avoiding future violations — all while helping the company rebuild its relationship with regulators.

For this reason, selecting the right monitor is a critical step. Where the court or government agency allows a company to choose its own monitor — subject to approval — the organization should carefully evaluate its options as it would for any other service. A monitor who is ineffective in his role won't sit well with the court or the government and could further damage the organization's reputation.

A MULTIDISCIPLINARY APPROACH

FTI Consulting was recently appointed as the monitor for PokerStars, one of the world's largest online poker sites. Prosecutors in the U.S. Attorney's Office for the Southern District of New York indicted an owner of PokerStars and also brought a civil suit to seize its domain name, effectively putting it out of business. Subsequently, PokerStars reached an agreement with the government that allowed it to reopen around the world on the condition that PokerStars block players from the United States from accessing the site

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to play for real money. FTI Consulting was selected to monitor PokerStars' compliance with the agreement. FTI Consulting's multidisciplinary team comprised former prosecutors, investigators, technology experts, financial and enterprise data analytics experts and forensic accountants. They traveled to PokerStars' headquarters on the Isle of Man and are currently in the process of analyzing all of PokerStars' systems to measure its compliance with its agreement. This multidisciplinary approach can help a company avoid the perception that it's not fully invested in compliance activities.

Consider the case of a construction materials supplier, which in 2007 hired an independent monitor as part of a plea agreement to resolve criminal and civil liabilities involving a large public works project. The monitor's activities were limited to reviewing the company's books every quarter. This narrow scope missed several infractions in the company's field operations. When these incidents came to light, prosecutors demanded that a new monitor be appointed. FTI Consulting took over the monitor's role, with a broader mandate for tracking compliance.

The construction company's experience reinforces the point that monitors should not just be accountants — they must provide oversight and reporting on all parts of the business. The construction company is beginning to warm up to these benefits. They're beginning to see the positive effect that the monitorship can have in changing the government's perception of their company. As part of its efforts to increase transparency, FTI Consulting's five-person team created an intranet that is accessible 24/7 by the government and the company. Information on findings is posted daily, including a report card that tracks compliance against benchmarks. Transparency leads to confidence in the company's commitment to change its corporate culture to one of compliance.

> Monitors can help companies instill better transparency and reporting, which lead to better management practices generally.

AN OPPORTUNITY

Corporate monitors are almost never invited in by the company they monitor. On the contrary, they are usually viewed with some suspicion. But instead of pushing back against independent monitors, companies can take advantage of them to present the organization in a better light to regulators, investors and customers.

They can help a management team improve the way it does business in two important ways. First, they enable management to devote its full energies to managing the business instead of managing compliance. Second, monitors can help companies instill better transparency and reporting, which lead to better management practices generally. Since companies are obliged to pay for the service anyway, it makes sense for them to extract the maximum benefit from it. ■

The views expressed in this article are those of the authors and not necessarily those of FTI Consulting, Inc., or its other professionals.