



DOJ SIGNALS NARROWER, MORE EFFICIENT USE OF ENFORCEMENT MONITORS: PRACTICAL GUIDANCE FOR COMPANIES

Overview

Recent memoranda and speeches by the U.S. Department of Justice (DOJ) have announced the DOJ's shift toward a more focused, cost-conscious, and collaborative approach to corporate monitorships. Monitors remain an important tool in the DOJ's white-collar enforcement arsenal, but the DOJ now intends their use to be more selective, targeted, and efficient. This is good news, especially for companies that have feared the burdens, disruption, expense, and "scope creep" that too often have accompanied or marked monitorships.

Equally important, however, is the need for companies confronting a monitorship to align with their monitors and the DOJ on a clear, detailed work plan and budget focused on relevant issues and sectors (albeit with appropriate modifications for unexpected contingencies and developments). The DOJ has now undertaken to ensure that that occurs. For their part, companies also should commit to engage constructively and transparently to facilitate the monitor's endeavors and hold their personnel accountable for implementing that commitment.

This alert outlines the DOJ's evolving monitorship policy and offers practical recommendations for managing monitors effectively and efficiently, while avoiding unnecessary expense, disruption, and adversarial friction. The founders of GCEA have significant experience both serving as, and working with, monitors and understand both the costs, burdens, and challenges involved and the need for a collaborative approach to monitorships instead of limitless, combative engagements that are the dread of every board room and "C Suite."

Recent DOJ Developments

- The DOJ has recognized that "the value monitors add is often outweighed by the costs they impose" and, therefore, should be used less frequently.
- The DOJ has identified four factors that should be considered in determinations of whether to impose a monitor:
 - The risk of recurring criminal conduct that significantly affects U.S. interests,
 - The availability and efficacy of other independent governmental oversight,
 - The efficacy of the company's compliance culture and controls at the time of resolution, and
 - The maturity of the company's controls and ability to test and update them.
- The DOJ has committed to exercise more control over the monitor's plans and activities, including the associated costs

UK Monitorships and Compliance Oversight

Across the Atlantic, the UK's approach to monitorships, particularly in the context of Deferred Prosecution Agreements (DPAs) overseen by the Serious Fraud Office (SFO), has evolved more cautiously and sparingly. While monitorships are less frequently imposed in the UK than in the U.S., recent cases

(e.g., *Rolls-Royce* and *Airbus*) illustrate that they remain a viable enforcement tool, especially where systemic compliance failures exist. Notably:

- UK authorities emphasize proportionality and necessity when considering monitorships.
- Courts play a formal oversight role in approving and monitoring DPAs, providing a legal check that is less common in U.S. resolutions.
- The SFO has signaled increasing interest in examining post-resolution compliance progress, which may lead to greater use of compliance monitors, particularly in cross-border cases involving cooperation with U.S. or EU regulators.

Multinational companies should therefore be mindful of the different but increasingly harmonized expectations from U.S. and UK regulators and should coordinate compliance reforms to satisfy both regimes. A well-structured compliance program, supported by clear documentation and third-party validation, can help avoid the imposition of a formal monitor altogether or minimize its scope and duration.

The Emerging Role of Artificial Intelligence in Monitorships

The increasing prevalence of artificial intelligence (AI) opens the way for efficiencies, innovations, and cost effective enhancements in monitorships. Although still in its early stages, AI offers meaningful potential in several areas:

- **Data Review and Analysis:** AI tools can rapidly process vast amounts of transactional, communications, and audit data to identify patterns, anomalies, or indicators of risk that would be labor-intensive for human reviewers.
- **Predictive Risk Modeling:** Machine learning algorithms can be employed to flag high-risk behaviors or areas needing enhanced compliance controls, allowing the monitor to focus efforts more precisely.
- **Continuous Monitoring and Dashboarding:** AI-powered platforms can facilitate real-time oversight of compliance metrics, reducing the need for more costly and cumbersome searches, such as manual data pulls.
- **Efficiency and Cost Management:** When appropriately deployed, AI tools can lower the administrative burden on companies and monitors alike, helping ensure that the cost of oversight does not outweigh the value delivered.

Regulators have begun to acknowledge the value of AI in enhancing compliance and oversight, although with the caveat that technology must be used responsibly and transparently. Companies confronting or undergoing monitorships should assess opportunities to integrate AI—whether through their own systems or as part of the monitor’s methodology—and be prepared to explain how AI outputs are validated, documented, and acted upon.

Using Monitorships Effectively and Efficiently

To align with DOJ pronouncements and to protect the company’s interests, companies should actively avail themselves of the DOJ’s intentions to pursue the following measures:

1. Define and Limit the Monitor’s Scope

- Negotiate clearly defined terms in the resolution agreement. The monitor’s mandate should be tied directly to the conduct at issue and focused on specific compliance risks.
- Include language specifying that the monitor’s role is advisory and evaluative, not operational or managerial.
- Encourage periodic tripartite check-ins to ensure agreement among the DOH, the monitor and the company on expectations and deliverables.

2. Establish Guardrails Against “Scope Creep”

- Develop jointly with the monitor and DOJ a clear, detailed monitor work plan, with input from the company’s internal compliance and legal teams.
- Secure agreement that changes to the scope or focus be formally reviewed and justified by findings—not generalized concerns.
- Obtain a detailed financial and temporal budget (including appropriate fee caps and rate structures) and staffing scheme for the monitor’s efforts, and a commitment that modifications to, or departures from, the budget, scheme, and work plan must be necessitated by findings or developments unexpected at the outset of the engagement or otherwise necessary for the monitor to implement the work plan reasonably and responsibly.
- Receive DOJ assurances and the monitor’s undertaking that the monitor’s reports will be structured, consistent, and limited to agreed-upon metrics or remediation areas.

3. Maintain Strong Internal Oversight and Coordination

- Assign a seasoned, dedicated internal team (supported, when necessary, by external advisors) to liaise with the monitor to ensure streamlined access and timely responses.
- Use project management tools to track requests, deliverables, and costs.
- Schedule regular coordination meetings with the monitor to manage expectations, minimize disruption, and ensure compliance with the terms and commitments of the engagement.

Avoiding Adversarial Monitor Relationships

A collaborative, good-faith relationship with the monitor is critical to success. Companies can foster this by:

- Demonstrating a commitment to remediation, including implementation of recommended reforms and candid discussion of challenges.
- Engaging early and openly with the monitor team to define priorities and timelines.

- Avoiding defensive posturing—focus instead on transparency and a shared interest in reaching full compliance.
- Viewing and using the monitor as a partner in strengthening controls, not merely an overseer or critic.

Achieving Finality: Monitor Termination and Certification

The DOJ has made clear that monitorships are not indefinite. Companies that meet their remediation goals, demonstrate sustained progress, and cooperate throughout the process can expect monitorships to be terminated within an appropriate timeframe.

Ensure that all improvements are:

- Documented with audit trails, training records, and test results,
- Embedded into operations through policy updates and systems, and
- Reviewed independently to support a credible exit certification.

Conclusion

Companies can now expect that, in today’s DOJ environment, the imposition of a monitor is no longer an open-ended sanction; but, rather, a targeted, time-bound measure to ensure corporate reform and robust compliance. By taking affirmative steps to define scope, manage costs, and engage constructively, companies can use the monitorship process as an opportunity to build long-term compliance value and avoid unnecessary disruption and expense. The “art” in this process is doing so without being seen to compromise the monitor’s independence or to interfere with the monitor’s reasonable mandate.

Having acted as monitor and advised major international corporations under investigation by the SFO, DOJ and Securities and Exchange Commission, GCEA is especially well placed to assist companies under investigation avoid the appointment of a monitor or limit the scope and mandate of a monitor imposed by the authorities. Given our experience and approach, we are also qualified to conduct monitorships in a measured, efficient, responsible way that accords with the issues and recommendations discussed in this article.