

The Compliance Monitor's Perspective – Where Companies Have Gone Right and Wrong on FCPA Compliance and Remediation

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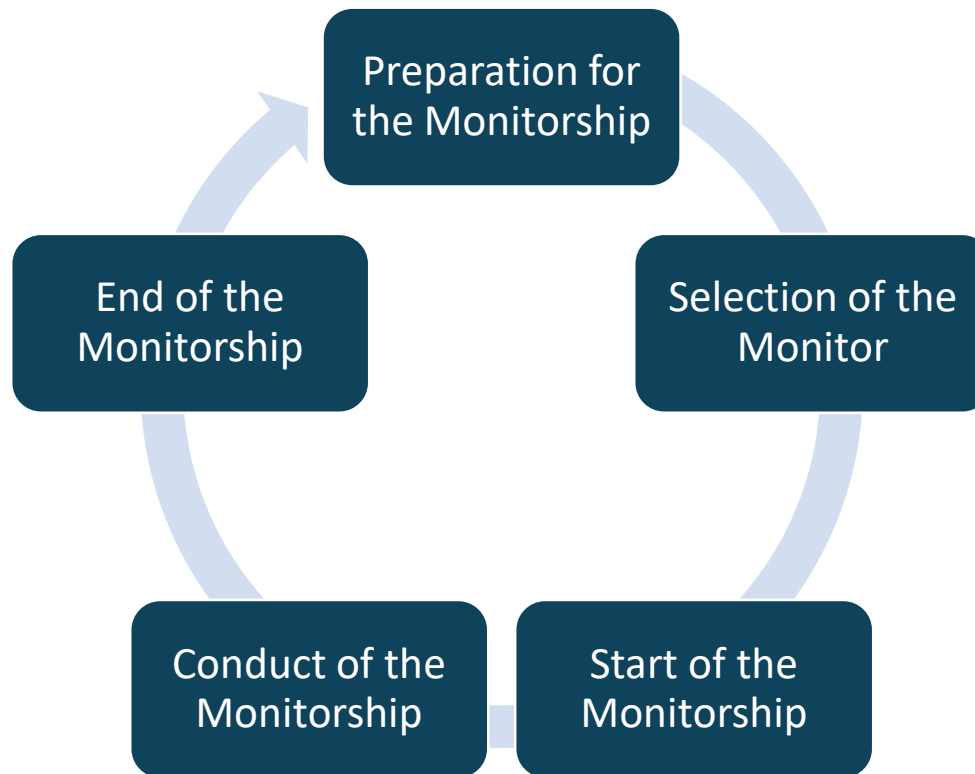
Monitor Challenges for a Company

- External interference in internal processes and procedures
- Lack of understanding of monitor's role
- Management attention required
- Uncertainty among employees
- Potential of “corporate fatigue”
- Significant (internal and external) costs
- Increased public scrutiny

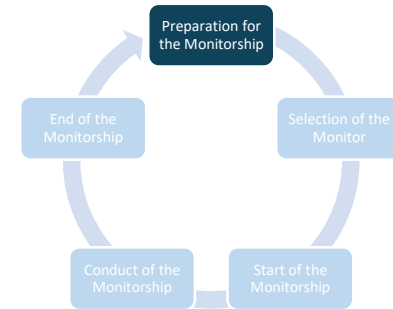
Monitor Opportunities for a Company

- Advancing implementation of effective corporate compliance program and compliance controls
- Support for establishing a culture of integrity
- Added value through collaborative and proactive approach
- Monitor as open-minded sparring partner
- “From zero to hero”

The Monitorship LifeCycle



Preparation for the Monitorship



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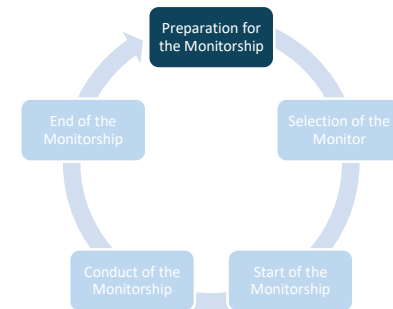
A Monitor is the most effective solution for a Company to remediate its compliance and controls failures.

A. True

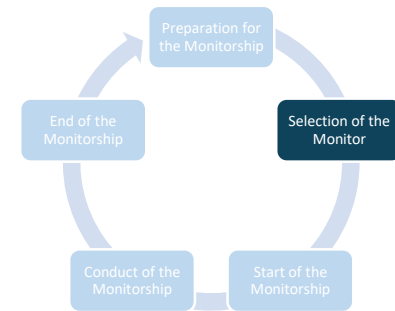
B. False

Preparation for the Monitorship

- Government expectations
- Monitor expectations
- Improvement of the Company's systems before the start of the Monitorship
- Set-up of an MLO



Selection of the Monitor



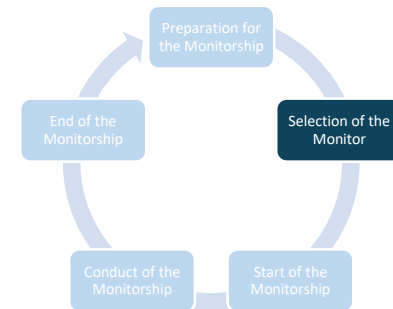
It does make sense for a Company to name a preferred Monitor candidate.

A. True

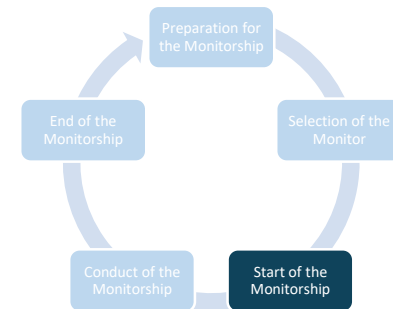
B. False

Selection of the Monitor

- General selection process
- Morford Memorandum
- Breuer Memorandum
- **Benczkowski Memorandum**



Start of the Monitorship



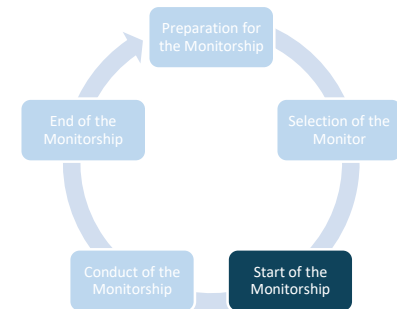
Monitors define their scope of work too broadly.

A. True

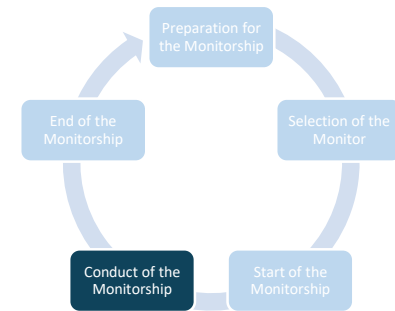
B. False

Start of the Monitorship

- Mutual understanding of the Monitorship scope
- Structure of interaction between the Company and the Monitor
- Involvement of outside counsel and additional external support
- Monitor team set-up
- Monitorship budget
- Possible NDA



Conduct of the Monitorship



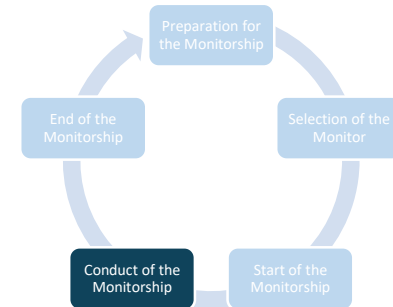
A Company should prepare its local team before each on-site visit.

A. True

B. False

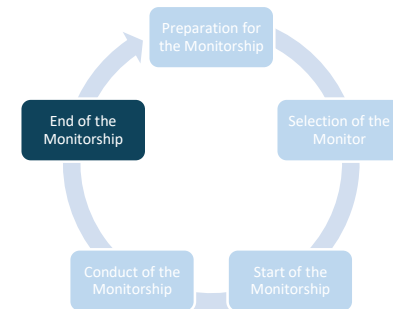
Conduct of the Monitorship

- Involvement of the Government during the Monitorship
- Channels of communications and cadence
- Monitor work product
- Wrap-ups after on-site visits
- Discussion of recommendations between Company and Monitor
- Scope-creep issue
- Possible FOIA issues (*100Reporters LLC v. DOJ*)



End of the Monitorship

- The art of ending on time: no extensions
- Requirements for certification
- Timing of certification
- Potential reasons for extension
- Post-certification requirements



Closing remarks

- Transparency is key – no surprises!
- There is a designed tension between Company and Monitor – do not get side-tracked by interpersonal issues
- As Company: prepare thoroughly before the selection and arrival of the Monitor
- As Monitor: be aware, you are going to be managed