

Monitoring: One Method to Track Adverse Information Discovered During Due Diligence Inquiries



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While due diligence investigations provide valuable information about the prior history of corporations and their high-ranking executives, an ongoing monitoring report provides companies with up-to-date information on the progress of pending litigation and investigations, which could jeopardize a pending transaction or current business relationship. Some pertinent examples where monitoring activity can be beneficial are outlined below:

Sub-prime Mortgage Industry Monitoring

In 2007, the United States witnessed the sub-prime mortgage industry endure widespread defaults. While the sub-prime industry was booming just a few years ago, the practice of selling homes to buyers who have less than stellar credit has now started to erode. Buyers who bought homes by putting little or no money down are now left with mortgage payments they cannot afford, resulting in a rash of foreclosures throughout the country. Through monitoring the ongoing progress of this industry's struggles in recent months, analysts predicted the probable impact on prime mortgage loans (those loans to buyers with excellent credit histories). In the fluid environment of the current mortgage industry, up-to-date information is provided by monitoring the industry as well as specific lenders who have incurred losses from defaults and foreclosures by sub-prime homebuyers.

Financial Industry Monitoring

Financial companies and investors involved in IPOs, mergers, or acquisitions should monitor any adverse information revealed during the course of the transaction. Pertinent information is often discovered during the process, such as material changes to the agreement, changes among executive management personnel, and the impact that government legislation may have on the completion of the transaction. One recently planned sale of a major student loan company is on hold after the lead investor informed the student lender that recent congressional proposals could trigger provisions allowing it to back out of the offer. Depending on the impact of the legislation, and whether or not the sale is terminated, there could be wide-ranging implications for the lender and other companies in the industry.

Foreign Investment Monitoring

Monitoring is also pertinent for international matters, particularly when a controversial foreign investor is involved in the transaction. A business relationship with a controversial figure should be followed closely by monitoring news media, regulatory status, and reliable source comments. Local sources provide valuable, culturally significant perspectives on the subject and his or her professional reputation.

Energy Industry Monitoring

In January 2006, 12 miners descended into the Sago Mine in Upshur County, West Virginia. After an explosion killed 11 of the miners, answers were demanded by family members, regulators, and government officials. Monitoring this incident determined the causes as well as the enforcement and regulatory sanctions put in place afterward, and steps toward compliance taken by the company.

Food Industry Monitoring

The food industry risks claims arising from consumers who become sick after eating their products. Food recalls within the last year have resulted from suspected contamination of fresh spinach and ground beef by

E. coli bacteria. By monitoring the fallout that comes in the wake of an outbreak, information obtained from congressional hearings and other authorities provides insight into new regulations and standards that will affect the way in which the products are prepared and subsequently, impact the price of the product and the industry's bottom line.

Monitoring a situation provides powerful insight and indicators. What may begin as a minor incident or threat can grow during the course of an investigation into a high profile problem that will impact a company's reputation, marketability, profitability and stock price.



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