

Mead Johnson Pays \$12 Million to Settle FCPA Allegations Relating to Payments to Employees of Chinese Hospitals

July 29, 2015

Anti-Corruption

On July 28, 2015, Mead Johnson Nutrition Company (“Mead Johnson”) agreed to pay more than \$12 million to settle [allegations](#) brought by the U.S. Securities and Exchange Commission (“SEC”) that Mead Johnson violated the US Foreign Corrupt Practices Act (“FCPA”) by bribing healthcare professionals employed by Chinese state-owned hospitals in China. This settlement, as set out in the [cease-and-desist order](#) filed by the SEC (the “SEC Order”), resolves allegations that, from 2008 through 2013, Mead Johnson violated the books and records and internal controls provisions of the FCPA.

Alleged Misconduct

Mead Johnson is a publicly traded corporation headquartered in Illinois, USA, that manufactures and markets infant formula and child nutrition products. The facts alleged in the SEC Order focus on Mead Johnson’s Chinese subsidiary’s (“Mead Johnson China”) marketing efforts through the medical sector in China. Mead Johnson China used third-party distributors to market, sell and distribute Mead Johnson’s products in China. According to the SEC Order, Mead Johnson China would provide a discount on the products sold to the distributors. The discount, the amount of which is not specified in the SEC Order, was allocated for a “Distributor Allowance,” which was used by the distributors for marketing and sales efforts on behalf of Mead Johnson China. Although the Distributor Allowance contractually belonged to the distributors, certain personnel at Mead Johnson China exercised some control over how the money was spent, provided guidance to distributors regarding the use of the funds, and maintained certain records related to how distributors spent the funds.

The SEC Order alleges that Mead Johnson China’s sales personnel provided cash and other incentives to healthcare professionals (“HCPs”) employed by state-owned hospitals in China in exchange for the providers’ recommending Mead Johnson products to new and expectant mothers. Money from the Distributor Allowance were used to fund the cash and other incentives paid to these hospital employees.

The SEC Order also alleges that Mead Johnson failed to maintain an adequate system of internal controls over the operations of Mead Johnson China to ensure that Mead Johnson China’s method of funding marketing and sales expenditures through the Distributor Allowance was not for unauthorized purposes, such as improper compensation for hospital employees.

The SEC Order noted that an initial internal investigation in 2011 failed to find evidence that the Distributor Allowance funds were being used for improper payments to HCPs. Mead Johnson ceased funding of Distributor Allowance thereafter.

Consequences

To settle the SEC claims, and without admitting or denying the claims, Mead Johnson entered into a settlement agreement under which Mead Johnson must pay a civil penalty of \$3 million, \$7.77 million in disgorgement, and \$1.2 million in prejudgment interest.

Implications

This settlement agreement continues a string of actions reminding companies in the life science sector that US enforcement agencies continue to take the position that HCPs that are employees of state-owned hospitals are “foreign officials” under the FCPA.¹ The settlement also reinforces lessons learned from FCPA and other anti-corruption cases, including the need to:

- monitor discounts given to distributors to make sure they are not misused;
- devise and maintain an adequate system of internal accounting controls to ensure that transactions entered into by foreign subsidiaries or their agents are not for any unauthorized purpose;
- monitor and audit discretionary authority delegated to foreign subsidiaries to ensure independent compliance judgments;
- ensure that a company’s compliance program extends to its foreign subsidiaries with a focus on robust financial accounting controls, easy access by employees of foreign subsidiaries to company anti-corruption policies and requirements, regular anti-corruption trainings in local languages to employees of foreign subsidiaries and consideration of establishing a separate compliance unit on the ground for high risk foreign subsidiaries or jurisdictions;

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¹ US regulators have so asserted in recent enforcement actions involving Biomet, Tyco, Johnson & Johnson, Smith & Nephew, Pfizer, Eli Lilly, and Stryker, among others.