

The Pfizer DPA: The New Minimum Best Practices for a FCPA Compliance Program? Part I

It's Friday and once again it was a wild week in the Foreign Corrupt Practices Act (FCPA) and wider compliance world. In the FCPA arena, as most compliance practitioners are aware, Pfizer settled its FCPA enforcement action this week. In its settlement Pfizer paid \$15 million in criminal penalties to the Department of Justice (DOJ) and \$45.2 million in disgorgement and pre-judgment interest to the Securities and Exchange Commission (SEC). While the total settlement did not put Pfizer on the coveted 'Top 10 FCPA Settlements of All-Time' list, Pfizer did land on the FCPA Blog's 'Top Ten Disgorgement' list. A special kudos goes to the FCPA Professor for his exhaustive review, over two separate blog postings, of the Criminal Information, Deferred Prosecution Agreement (DPA), SEC Civil Complaint and the DOJ and SEC Press Releases.

The DPA had some very interesting new wrinkles regarding the compliance regime that Pfizer agreed to institute. They were all called "enhanced compliance obligations" and were included in three supplemental attachments to the standard Attachment C, of the DPA. They were monikered Attachments C.1, C.2 and C.3. I have set out below the obligations that Pfizer agreed to in Attachment C.1.

Attachment C.1 - Corporate Compliance Program

This is the attachment that has traditionally set out the standard 13 point minimum *best practices* compliance program that has been in each DPA since at least the Panalpina settlement of November, 2010. The Pfizer corporate compliance program is as follows:

1. A clearly articulated corporate policy against violations of the FCPA, including its anti-bribery, books and records, and internal controls provisions, and other applicable counterparts (collectively, the "anti-corruption laws");
2. Promulgation of compliance standards and procedures designed to reduce the prospect of violations of the anti-corruption laws and Pfizer's compliance code. These standards and procedures shall apply to all directors, officers, and employees and, where necessary and appropriate, outside parties while acting on behalf of Pfizer in a foreign jurisdiction, including but not limited to, agents, consultants, representatives, distributors, teaming partners, and joint venture partners (collectively, "agents and business partners").
3. The assignment of responsibility to one or more senior corporate executives of Pfizer for the implementation and oversight of compliance with policies, standards, and procedures regarding the anti-corruption laws. Such corporate officials) shall have the authority to report matters directly to Pfizer's Board of Directors or any appropriate committee of the Board of Directors.

4. Mechanisms designed to ensure that the policies, standards, and procedures of Pfizer regarding the anti-corruption laws are effectively communicated to all directors, officers, employees, and, where appropriate, agents and business partners. These mechanisms shall include: (a) periodic training for all directors, officers, and employees, and, where necessary and appropriate, agents and business partners; and (b) accompanying certifications by all such directors, officers, and employees, and, where necessary and appropriate, agents, and business partners, certifying compliance with the training requirements.
5. An effective system for reporting suspected criminal conduct and/or violations of the compliance policies, standards, and procedures regarding the anti-corruption laws for directors, officers, employees, and, where necessary and appropriate, agents and business partners.
6. Appropriate disciplinary procedures to address, among other things, violations of the anti-corruption laws and Pfizer's compliance code by Pfizer's directors, officers, and employees.
7. Appropriate due diligence requirements pertaining to the retention and oversight of agents and business partners.
8. Standard provisions in agreements, contracts, and renewals thereof with all agents and business partners that are reasonably calculated to prevent violations of the anti-corruption laws, which may, depending upon the circumstances, include: (a) anti-corruption representations and undertakings relating to compliance with the anti-corruption laws; (b) rights to conduct audits of the books and records of the agent or business partner to ensure compliance with the foregoing; and (c) rights to terminate an agent or business partner as a result of any breach of anti-corruption laws, and regulations or representations and undertakings related to such matters.
9. Periodic testing of the compliance code, standards, and procedures designed to evaluate their effectiveness in detecting and reducing violations of anti-corruption laws and Pfizer's compliance code.

In a subsequent posting I will dive more deeply into the Enhanced Compliance Obligations and the Corporate Reporting Obligations and what these new requirements might portend for your compliance program.

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