

Foreign Corrupt Practices Act Group

Enforcement of the Foreign Corrupt Practices Act (“FCPA”) has increased dramatically over the past five years and is presently at an all-time high. The trend shows no signs of slowing, as top ranking officials from the Department of Justice (“DOJ”) and the Securities and Exchange Commission (“SEC”) have publicly acknowledged that they are actively pursuing over 140 open investigations. Headline-grabbing settlements of FCPA investigations, with price tags in the tens and hundreds of millions, are announced with increasing regularity.

And the health care industry is in the cross hairs.

DOJ representatives, including Assistant Attorney General Lanny Breuer and Acting Deputy Attorney General Gary Grindler, have publicly identified the pharmaceutical and medical device industries as targets for aggressive FCPA enforcement. DOJ’s FCPA unit is leveraging the extensive industry knowledge of its health care fraud unit to identify corrupt practices and investigate and prosecute complex FCPA cases in the pharmaceutical and medical device industries.

While the pharmaceutical and medical device industries may be the current focus of enforcement agencies, they are not the only ones that should be focused on the FCPA. The increased globalization of health care has created the potential for serious FCPA compliance risks for health care companies of every kind, including providers. Developing nations are increasing spending on health care, resulting in increased opportunities for health care companies. And because many foreign health systems are regulated, operated and financed by foreign governments, international health care business activities have a much higher likelihood of entailing FCPA risk than many other industries.

FCPA risk must be understood in its own unique context:

- There are no published regulations on the FCPA, which means that there is much less guidance for FCPA compliance or enforcement
- DOJ and SEC have taken an expansive reading of the operative terms in the statute and both agencies continue to push the envelope with new and evolving enforcement theories, resulting in new prosecutions of both companies and individuals
- In addition to traditional enforcement and prosecution of corporations, DOJ and SEC are actively working with the Federal Bureau of Investigation (“FBI”) to aggressively target individual executives and board members using sophisticated law enforcement tactics and investigative techniques not traditionally used in FCPA cases, including FBI undercover “sting” operations

How EpsteinBeckerGreen Can Help

EpsteinBeckerGreen is a national law firm with a global reach that takes a “boutique” approach to its Health Care and Life Sciences practice. The Foreign Corrupt Practices Act Group is an outgrowth of our tradition of anticipating and understanding developments and trends in the health care industry. The Group provides a multi-disciplined practice that focuses on the FCPA challenges facing health care companies doing business internationally, building on the firm’s insight into the unique issues facing the health care industry. The team includes experienced white collar criminal litigators, transactional attorneys and health regulatory attorneys with extensive knowledge and industry experience.

In addition to the EBG’s internal teams and resources, the firm has a long-standing relationship with the International Lawyers Network, giving EBG an “on the ground” presence around the world and allowing us to leverage a broad range of international perspectives. EBG has also developed strong strategic relationships with FCPA consultants with proven experience and expertise in conducting proactive FCPA due diligence, as well as supporting internal and government investigations.

EpsteinBeckerGreen can help health care companies with a broad array of FCPA-related matters, including:

- Establishing and implementing effective FCPA compliance programs
- Developing and conducting FCPA training programs
- Performing reviews and audits of FCPA compliance program effectiveness
- Conducting internal investigations involving suspected violations of the FCPA
- Providing FCPA due diligence advice related to corporate transactions, including mergers, acquisitions and joint ventures
- Conducting third-party FCPA due diligence of potential business partners, agents and consultants
- Representing clients subject to government investigations involving alleged violations of the FCPA

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