



Developing an Effective Anti-Bribery
and Corruption Compliance Program
in an Environment of Heightened
Enforcement

HCCA Research Compliance Conference

Jay Perlman – Daylight Forensic & Advisory
Joel Rush – Epstein, Becker & Green

April 22, 2010

Jay Perlman
Director – Daylight Forensic & Advisory LLC



Jay Perlman is a director with Daylight in its Washington office. He has more than 18 years of legal, regulatory compliance and investigative experience relating to the financial services sector. At Daylight, Jay concentrates on matters relating to securities, anti-money laundering and anti-bribery and corruption compliance, and conducts investigations and due diligence reviews, performs compliance program reviews and risk-assessments and develops and delivers training programs.

Prior to joining Daylight, Jay was an attorney in the securities enforcement and regulatory group of a large law firm. He was also Associate General Counsel for a broker-dealer/ investment adviser where he developed and implemented policies, procedures and training programs relating to SEC and FINRA regulatory requirements and coordinated the firm's responses to regulatory matters and litigation. Additionally, Jay was Associate General Counsel of The Motley Fool Inc. in Alexandria, Va. and frequently appeared in the media as a spokesman for the company and authored several articles about investor education and securities fraud.

Before entering the private sector, he held various positions in at the Securities and Exchange Commission and served as a Special Assistant United States attorney in the Eastern District of Virginia.

Jay has a bachelor's degree from Fordham University and earned his law degree from Albany Law School of Union University.

Daylight Forensic & Advisory LLC
1155 Connecticut Avenue, NW
4th Floor
Washington, D.C. 20036
Phone: 202-552-8407
jperlman@daylightforensic.com

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.

Professional Biography



Epstein, Becker & Green P.C.
1227 25th Street, NW
Washington, D.C. 20037-1156
Phone: 202-861-3569
jrush@ebglaw.com

Joel C. Rush
Associate – Epstein, Becker & Green P.C.

JOEL C. RUSH is an Associate in the Business Law and Health Care and Life Sciences Practices in the firm's Washington, DC office. Mr. Rush:

Advises clients with respect to the establishment and implementation of effective Foreign Corrupt Practices Act compliance programs and provides due diligence advice related to corporate transactions and helps clients develop, implement and evaluate health care corporate compliance programs.

Represents clients in a broad array of business transactions, in and outside of the health industry, with a particular emphasis on tax-exempt health system affiliation and restructuring transactions.

Represents buyers and sellers of businesses during all stages of the sale process, including and emphasizing the negotiation of the terms of the transaction and drafting documents for the transaction

Advises clients with regard to corporate structure, mergers and acquisitions, joint ventures, contracting, licensing requirements, and strategic planning

Advises clients on matters related to tax-exemption qualification and compliance, including issues related to private inurement, intermediate sanctions, and joint ventures

Provides counsel to managed care organizations and health systems on a broad range of issues, including contracting, business development, licensing, and federal and state regulatory compliance

EPSTEINBECKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.


Presentation Outline

- Overview of the FCPA
 - Anti-Bribery Provisions
 - Accounting Standards and Internal Control Provisions
- Trends in FCPA Enforcement
- FCPA Compliance

EPSTEINBECKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.

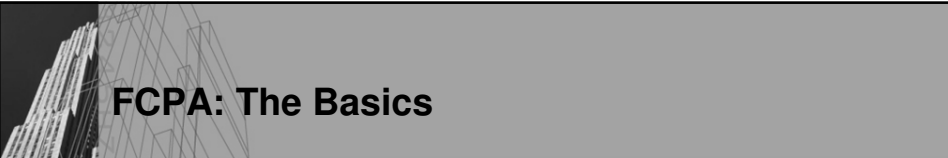


Overview of the FCPA

EPSTEINBECKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.



FCPA: The Basics

- FCPA is comprised of two primary sets of provisions:
 - Anti-Bribery Provisions
 - Accounting Standards (Books and Records Provisions) and Internal Controls

EPSTEINBECKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.

FCPA: The Basics

- Enforcement of the FCPA
 - Department of Justice (DOJ)
 - Criminal and civil enforcement of anti-bribery provisions
 - Securities & Exchange Commission (SEC)
 - Criminal and civil enforcement of accounting standards and internal controls
 - Civil injunctive authority, fines & disgorgement of profits

EPSTEINBECKERGREEN

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

Anti-Bribery Provisions

Key Elements – It is unlawful for:

1. a U.S. person, U.S. company, or any other person in the U.S.
2. with corrupt intent, to offer, pay, promise to pay, or authorize payment of, directly or indirectly, anything of value
3. to a “foreign official,” foreign political party (or official thereof), or any candidate for foreign political office (each a “covered official”), or any person while “knowing” that all or a portion of the payment or thing of value will be offered, given, or promised directly or indirectly to a covered official
4. for the purpose of influencing any official act or decision, inducing any act or omission in violation of a lawful official duty, or securing an improper advantage
5. in order to assist in obtaining, retaining, or directing business to any person

EPSTEINBECKERGREEN

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

Anti-Bribery Provisions: “Foreign Officials”

- “Foreign Officials” include:
 - Any officer or employee of a foreign government or any department, agency, or instrumentality of a foreign government
- FCPA applies to payments to *any* “foreign official,” regardless of rank or position, and focuses on the *purpose* of the payment instead of the particular duties of the foreign official receiving the payment
 - Doctors/nurses/technicians employed by state owned hospitals and clinics
 - Pharmacists employed by state owned entities

EPSTEINBECKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.

Anti-Bribery Provisions: “Knowledge”

- A person’s state of mind is “knowing” with respect to conduct, a circumstance, or a result if such person:
 - has actual knowledge
 - has a firm belief that such circumstance exists or that such result is substantially certain to occur
 - has awareness of a high probability of the existence of the circumstance
 - is willfully blind or consciously disregards the facts

EPSTEINBECKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.

Anti-Bribery Provisions: Grease Payments

- FCPA contains exceptions for “routine government action” or “grease payments” including
 - obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;
 - processing governmental papers, such as visas and work orders;
 - providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;
 - providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or
 - actions of a similar nature.
- Such payments may nevertheless violate (i) the accounting provisions if not properly reported or (ii) local laws
- The term “routine governmental action” does not include any decision by a foreign official relating to the award of business to a particular party

EPSTEINBECKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.

Anti-Bribery Provisions: Affirmative Defenses

- Affirmative Defenses
 - Conduct was lawful under the written laws and regulations of the covered official's country
 - Conduct was reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a covered official and was directly related to
 - the promotion, demonstration, or explanation of products or services
 - the execution or performance of a contract with a foreign government or agency thereof

EPSTEINBECKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.

Anti-Bribery Provisions: Penalties

- **Criminal Penalties**
 - \$2 Million per violation for business entities
 - Individuals face a fine up to \$100,000 and/or up to 5 years in prison
 - To the extent the violation causes pecuniary gain or loss, U.S. law authorizes alternative maximum fines equal to the greater of twice the gross gain or twice the gross loss
- **Civil Penalties**
 - Civil penalties up to \$10,000 for violations of anti-bribery provisions
- **Debarment from contracting with U.S. government**

EPSTEINBECKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.

Accounting and Internal Control Provisions

- Apply to “Issuers,” as well as individual officers, directors and employees of Issuers
- “Issuers” are public companies with registered securities in the U.S. or companies required to file reports under the Securities Exchange Act
 - Includes foreign companies with American Depositary Receipts (ADRs)
- Apply to subsidiaries, joint ventures and affiliates owned and controlled (more than 50% voting power) by the Issuer
 - Control can also be a facts and circumstances test (i.e., board seats, management control)



EPSTEINBECKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.

Accounting and Internal Control Provisions



- **Issuers must:**
 - maintain books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and
 - devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:
 - (i) transactions are executed in accordance with management's general or specific authorization;
 - transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements, and (II) to maintain accountability for assets;
 - access to assets is permitted only in accordance with management's general or specific authorization; and
 - the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences (audits).
- Issuers are required to make a good faith effort to cause non-U.S. affiliates in which a U.S. Issuer owns 50% or less of the voting power to maintain internal accounting controls

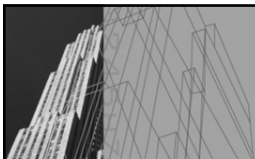
© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010. All Rights Reserved.

Accounting and Internal Control Provisions: Penalties

- **Criminal Penalties**
 - Fines up to \$25 Million per willful violation for business entities
 - Individuals face criminal fines up to \$5 Million and/or prison sentences up to 20 years for willful violations
- **Civil Penalties**
 - Fines up to \$500,000 for business entities and up to \$50,000 for individuals
 - Additional penalties may be imposed

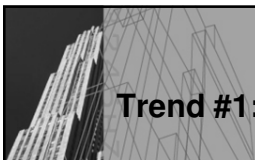
© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010. All Rights Reserved.



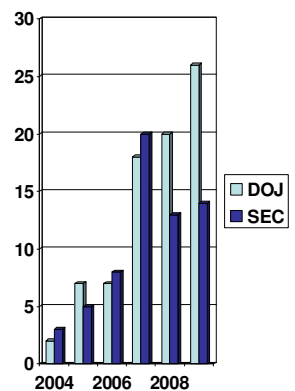
Trends in FCPA Enforcement






© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010. All Rights Reserved.



Trend #1: Heightened FCPA Enforcement



- 2009 continued the annual trend of record levels of FCPA enforcement brought by DOJ and SEC
- Since 2005, DOJ has brought more prosecutions than in the almost 30 years between the enactment of the FCPA in 1977 and 2005
- Criminal fines over the past 5 years have exceeded \$1 Billion
- DOJ has disclosed that it currently has at least 140 open FCPA investigations, indicating that aggressive FCPA enforcement can be expected for the foreseeable future

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010. All Rights Reserved.

Trend #1: Heightened FCPA Enforcement

“We must vigorously enforce our own laws that prohibit bribery of foreign officials, such as...the Foreign Corrupt Practices Act. And we must work together to support our partners in anti-corruption enforcement, and expose all efforts to undermine the effectiveness of anti-corruption initiatives.”

Attorney General Eric Holder (November 7, 2009)

“FCPA violations have been and will continue to be dealt with severely by the SEC and other law enforcement agencies. Any company that seeks to put greed ahead of the law by making illegal payments to win business should beware that we are working vigorously across borders to detect and punish such illicit conduct.”

Mary Schapiro, SEC Chairman (Feb. 11, 2009)

EPSTEINBECKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.


Trend #1: Heightened FCPA Enforcement

- DOJ and SEC policy decisions to aggressively combat domestic and foreign corruption
 - Increased resources are being devoted to FCPA Enforcement
 - DOJ Fraud Section has increased in size
 - FBI has established a dedicated FCPA squad in its Washington Field Office
 - SEC has established a dedicated FCPA Enforcement Unit
 - Aggressive Tactics
 - Close coordinate between DOJ and SEC
 - Better and increased utilization of traditional investigative tools (i.e., under cover operations, asset forfeiture and recovery)
 - DOJ and SEC pushing the limits of the FCPA's extraterritorial reach (i.e., use of U.S. banking system for funds transfers)

EPSTEINBECKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.




Trend #1: Heightened FCPA Enforcement

- Increased international cooperation among enforcement authorities
 - Increase in parallel investigations
- Increased attention to M&A, joint ventures, and IPOs
- Corporate Cooperation
 - More companies are voluntarily disclosing FCPA issues in hope of avoiding or mitigating potential penalties
 - However, DOJ has cautioned that case load will no longer be predominantly the result of voluntary disclosures

EPSTEINBECKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010. All Rights Reserved.



Trend #2: Increased Focus on Individual Prosecutions

“The number of individual prosecutions has risen – and that’s not an accident. That is quite intentional on the part of the Department. It is our view that to have a credible deterrent effect, **people have to go to jail**. People have to be prosecuted where appropriate. This is a federal crime. **This is not fun and games.**”

- Mark Mendelsohn, Deputy Chief – DOJ Fraud Section, ABA Conference, Sept. 11, 2008

“We firmly believe that for our enforcement efforts to have real deterrent effect, culpable individuals must be prosecuted and go to jail where the facts and the law warrant.”

- Assistant Attorney General Lanny A. Breuer, Keynote Address at the Tenth Annual Pharmaceutical Regulatory and Compliance Congress and Best Practices Forum (November 12, 2009)

EPSTEINBECKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010. All Rights Reserved.

Trend #2: Increased Focus on Individual Prosecutions

- **Frederic Bourke**
 - Bourke convicted and sentenced to 1 year and 1 day in prison and ordered to pay a \$1M fine for conspiring to violate the FCPA
- **Former Congressman William Jefferson**
 - Jefferson convicted and sentenced to 5 years for conspiring to violate the FCPA
- **Gerald and Patria Green**
 - Greens convicted of one count of conspiracy to violate the FCPA and 9 substantive FCPA counts

EpsteinBeckerGreen

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010. All Rights Reserved.

Trend #2: Increased Focus on Individual Prosecutions

Lanny Breuer: “Put simply, the prospect of significant prison sentences for individuals should make clear to every corporate executive, every board member, and every sales agent that we will seek to hold you personally accountable for FCPA violations. As we focus on the prosecution of individuals, we will not shy away from tough prosecutions, and we will not shy away from trials.”

- 2009 - 33 individuals named in FCPA actions and 4 were convicted after trial
- 19 individuals awaiting sentencing
- 4 individuals awaiting extradition
- 10 FCPA fugitives



EpsteinBeckerGreen

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010. All Rights Reserved.

Trend # 3: Big Penalties



- Huge Penalties, Fines and Disgorgement of Profits
- Jail Time for Corporate Executives
- Loss of Reputation
- Criminal and Civil Litigation
- Massive Attorneys' Fees
 - Siemens reportedly paid in excess of \$500 million on its internal investigation
- Disruption of Business
 - Potential debarment from government contracting
- Diversion of Corporate Focus

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010. All Rights Reserved.

Big Penalties: Assessed

- Siemens - Over \$800 in combined fines and penalties
- Halliburton/KBR – \$579 Million
- BAE- \$400 Million
- Baker Hughes - \$44.1 Million
- Bourke, Jefferson and the Greens serving jail time

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010. All Rights Reserved.

Big Penalties: Expected

- ABB- \$850 Million
- Technip- \$330 Million
- Daimler- \$200 Million
- Alcatel- \$137 Million

EPSTEINBECKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.

Increase in Individual Prosecutions: 2010 Off to a Fast Start

- DOJ recently announced the indictment of 22 executives and employees of companies in the military and law enforcement products industry on charges that they engaged in schemes to bribe foreign government officials to obtain and retain business
 - Assistant Attorney General Lanny A. Breuer of the Criminal Division proclaimed that this case marks “the first large-scale use of undercover law enforcement techniques to uncover FCPA violations and the largest action ever undertaken by the Justice Department against individuals for FCPA violations.”
 - In addition to making 22 arrests, approximately 150 FBI agents executed 14 search warrants in locations across the country

EPSTEINBECKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.

Trend #4: Aggressive New Enforcement Theories from SEC

- “Control Person” theory of liability
 - Section 20(a) of the Securities Exchange Act of 1934 provides that any “who, directly or indirectly, controls any person liable” for violating the Act is himself liable to the same extent as the violator
 - Used to hold U.S. based executives responsible for alleged corrupt payments made at the foreign subsidiary level when the U.S. officers did not authorize or even have knowledge of the payments

- SEC Asst. Director Kara N. Brockmeyer publicly opined that when the SEC invokes the “control person” theory, it is “signaling that it believes there were red flags” to which the alleged control persons “should have been paying more attention.”

EPSTEINBECKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.


Aggressive New Enforcement Theories from SEC: Nature’s Sunshine Products, Inc. (NSP)

- Former NSP officers, CEO Douglas Faggioli and CFO Craig D. Huff, settled civil FCPA charges with the SEC arising from the alleged payment of bribes to customs officials in Brazil
- An operations manager for the company’s Brazilian subsidiary notified U.S.-based controllers that he had concerns that NSP products were being illegally imported into the country and that NSP was paying exorbitant fees to its customs brokers to facilitate this, but apparently the controllers did not investigate these alleged “red flags.”
- SEC concluded that both executives failed to supervise NSP personnel to ensure that the company’s books and records were accurately prepared and that an adequate system of internal controls was in place to monitor the registration of NSP products sold in Brazil
- Importantly, the SEC did not allege that Faggioli or Huff had any involvement in the payment of bribes or any knowledge that corrupt activity was occurring in Brazil
- Without admitting or denying the charges, Faggioli and Huff each agreed to pay \$25,000 in civil penalties to settle the SEC’s novel charges

EPSTEINBECKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.




Trend #5: Increase in Industry Wide Investigations

- DOJ and SEC officials consider it is possible that, in response to market pressures and demands, competitors may adopt similar, but improper, practices and strategies to enhance their competitive positions

EpSTEINBeCKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010. All Rights Reserved.




Industry Wide Investigations: Heightened Focus on Pharmaceutical and Medical Device Industries

- Speaking at the Pharmaceutical Regulatory and Compliance Congress, Assistant Attorney General Breuer said that DOJ “will be intensely focused on rooting out foreign bribery” in the pharmaceutical industry
 - pharmaceutical companies generate approximately one-third of their total revenue, about \$100 billion dollars, from sales outside the U.S.
 - because many health systems outside the U.S. are regulated, operated and financed by foreign governments “...it is entirely possible...that nearly every aspect of the approval, manufacture, import, export, pricing, sale and marketing of a drug product in a foreign country will involve a ‘foreign official’ within the meaning of the FCPA..”
 - companies should carefully reconsider the range of individuals who could be deemed “foreign officials” under the FCPA—from the health minister to a lab technician at a government-owned hospital. “The depth of government involvement in foreign health systems, combined with fierce industry competition...creates a significant risk that corrupt payments will infect the process.”

EpSTEINBeCKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010. All Rights Reserved.




Industry Wide Investigations: Heightened Focus on Pharmaceutical and Medical Device Industries

- AAG Breuer confirmed that DOJ's FCPA unit and health care fraud unit have already begun to work together to investigate FCPA violations in the pharmaceutical and device industries
- DOJ has been able to leverage the expertise of analysts with extensive industry knowledge in its health care fraud group in connection with FCPA investigations to significantly improve its ability to identify corrupt practices and investigate and prosecute complex FCPA cases in the pharmaceutical and medical device industries

EPSTEINBECKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.




Industry Wide Investigations: Heightened Focus on Pharmaceutical and Medical Device Industries

- **Medical Device/Orthopedic Implant Industry**
 - DOJ FCPA investigation followed domestic investigation of violations of the anti-kickback statute
 - Impacted Companies include: Biomet, Medtronic, Smith & Nephew, Stryker, and Zimmer Holdings

EPSTEINBECKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.




FCPA Compliance

EPSTEINBECKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.



Key Elements of an Effective FCPA Compliance Program

1. Standards, policies and procedures to prevent and detect criminal conduct;
2. Responsibility at all levels of the program, together with adequate program resources and authority for its managers;
3. Communicating standards and procedures, including a specific requirement for training at all levels;
4. Monitoring, auditing, and non-retaliatory internal guidance/reporting systems, including periodic evaluation of program effectiveness;
5. Due diligence in hiring and assigning personnel to positions with substantial authority;
6. Promotion and enforcement of compliance and ethical conduct through incentives and discipline; and
7. Response and Prevention – Taking reasonable steps to respond appropriately and prevent further misconduct upon detecting a violation.

EPSTEINBECKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.

Key Elements of an Effective FCPA Compliance Program



Both DOJ and the SEC have stated that an Anti-Bribery and Corruption Compliance Program should be "risk based". An effective Anti-Bribery and Corruption Compliance Program should include the following:

A. Bribery and Corruption Risk Assessment

- Conduct a comprehensive review of the organization and assess the potential bribery and corruption risks associated with its products and services, customers, third-party business partners and geographic locations in which it operates.
- The risk assessment can serve as the documented rationale for the compliance program.

B. System of Policies and Procedures

- Develop and document a clearly articulated policy against bribery and corruption that enforces a tone of compliance from the board and management.
- Develop a system of procedures and processes that address permitted and prohibited conduct, supervisory and compliance approvals for certain conduct and documentation of such approvals.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010. All Rights Reserved.



Key Elements of an Effective FCPA Compliance Program

C. Internal Financial Controls System

- Develop, document and maintain a system of internal financial controls to ensure that all payments are accurately recorded in the organization's books and records in accordance with applicable regulatory requirements.
- Special attention should be paid to those areas which may directly affect the anti-bribery and corruption compliance program such as procurement, onboarding of vendors, agents, consultants and other third-party business payees and gifts and entertainment.

D. Risk- Based Third-Party Due Diligence

- Develop and document an investigative due diligence protocol that will assess the potential bribery and corruption risks associated with third-parties such as vendors, consultants, suppliers, agents and joint venture partners.
- The nature and extent of the investigative due diligence should be based on the third-party's risk profile.
- The protocol should set forth the remedial steps that may be taken for those parties that represent an elevated risk of bribery and corruption, including, but not limited to escalated due diligence or the termination of the relationship.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010. All Rights Reserved.

Key Elements of an Effective FCPA Compliance Program

E. Compliance Monitoring Program

- Develop and document processes and/or controls to periodically assess the effectiveness of the compliance program and potential vulnerabilities and monitor for employee compliance.
- Such processes may include periodic testing and validation, review of available metrics and design of self-assessment forms and exercises.

F. Training

- Develop training materials that clearly and concisely interpret applicable legal, regulatory, policy and procedural requirements as well as the possible ramifications associated with non-compliance. The training materials should be reviewed periodically to ensure their continued adequacy.
- Training should be provided regularly to senior management and key compliance and business personnel.

EpsteinBeckerGreen

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010. All Rights Reserved.

Key Elements of an Effective FCPA Compliance Program

G. Whistleblower Allegations and Investigations

Develop and maintain a system for receiving complaints containing allegations of bribery and corruption as well as a system to investigate such allegations and document the actions taken with respect to such complaints and investigations.


H. Compliance with Local Regulatory Requirements

Multi-national organizations should be aware of local anti-bribery and corruption regulations in the various jurisdictions in which it operates and ensure that its compliance program addresses such requirements.

EpsteinBeckerGreen

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010. All Rights Reserved.




Conclusions

- All indications are that the current trend in increased enforcement of the FCPA will continue for the foreseeable future
- Heightened enforcement in the Pharmaceutical and Medical Device industries is stated goal of the Department of Justice
- FCPA compliance is critical for companies to prevent and mitigate potential FCPA liability

EPSTEINBECKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.



QUESTIONS?

EPSTEINBECKERGREEN

DAYLIGHT
FORENSIC & ADVISORY
MANAGE WITH INSIGHT.

© Daylight Forensic & Advisory LLC and Epstein, Becker & Green, PC 2010.
All Rights Reserved.