Pfizer DPA Part III – What Does It All Mean?

Last week I began an exploration of the Pfizer Deferred Prosecution Agreement (DPA) which was announced last week by the Department of Justice (DOJ) in connection with its settlement of Foreign Corrupt Practices Act (FCPA) violations. In Part I, I reviewed the Corporate Compliance Obligations, Attachment C.1. In Part II, I reviewed the Enhanced Compliance Obligations, Attachment C.2 and Corporate Reporting Obligation, Attachment C.3, which Pfizer agreed to implement and operate under. In Part III, I will discuss some of the implications raised by the Pfizer DPA for the compliance practitioner.

Below is a comparison chart of the minimum *best practices* compliance program as set out in the Panalpina DPA and all DPAs coming forward with the minimum *best practices* compliance program as set out in the Pfizer DPA. While the number of compliance obligations is somewhat different, when read in conjunction with the Enhanced Compliance Obligations of Attachment C.2, there is not significant difference. Therefore, and initially, the compliance practitioner must read both the Corporate Compliance Obligations and Enhanced Compliance Obligations in conjunction with each other.

CORPORATE COMPLIANCE COMPARISON CHART

Panalpina Minimum Best Practices	**Pfizer 9 Point Corporate Compliance Program**
1. Code of Conduct. To ensure against FCPA violations.	1. Clearly articulated corporate policy against FCPA violations.
2. Tone at the Top. A company will ensure that its senior management provides visible support and commitment to its corporate anti-corruption policy.	2. Promulgation of compliance standards and procedures designed to reduce the prospect of violations of the anti-corruption laws and Pfizer's compliance code.
3. **Written policies and procedures.** Should be created in the following areas (a) gifts; (b) hospitality, entertainment, and expenses; (c) customer travel; (d) political contributions; (e) charitable donations and sponsorships; (f) facilitation payments; and (g) solicitation and extortion.	3. Assignment of one or more senior corporate execs for implementation and oversight of compliance program. They shall report to the Board.
4. Risk Assessment. Perform risk assessment and use it to inform your compliance program. 9(b)-internal and confidential reporting system.	4. Effective communication of the compliance policies including training and certification of training.
5. Annual Reviews. No less than annually, a company should review and update as appropriate to ensure continued compliance program effectiveness.	5. An effective system for reporting illegal conduct or violations of the company anti-corruption program.
6. Senior Management Oversight and Reporting. Assignment of one or more senior corporate executives for implementation &	6. Appropriate disciplinary procedures.

oversight of compliance program and they shall report to Board of Directors	
7. Internal controls. These should include financial and accounting procedures which should ensure that the company has accurate and fair books and records, which cannot be used for or conceal bribery.	7. Appropriate due diligence for retention and oversight of agents and business partners.
8. Training. A company shall effectively communicate compliance program through training and annual certifications	8. Standard compliance terms and conditions in contracts including (1) reps and undertakings re: anti-corruption compliance; (2) right to audit; and (3) right to terminate for breach thereof.
9. Advice and Guidance. The Company should establish or maintain an effective system for: (a) Providing guidance; (b) Internal and confidential reporting; and (c) Responding to such requests and undertaking appropriate action in response to such reports.	9. Periodic testing of Pfizer compliance code and anti-corruption procedures.
10. Discipline. A company shall institute appropriate disciplinary procedures to address violations compliance policy or ant-corruption laws.	
11. Third Party Reps. (a) Properly documented risk-based due diligence and regular oversight of agents and business partners; (b) Informing agents and business partners of the compliance standards; and (c) Seeking a reciprocal commitment from agents and business partners.	
12. Compliance terms and conditions. Should be included in every agent agreement.	
13. Ongoing Assessment. Period review and testing of compliance program to evaluate it and improve the program's effectiveness.	

In addition to a Chief Compliance Officer (CCO) and Risk Officer (RO) who will have report directly to the Chief Executive Officer (CEO), there was further specified requirements for compliance leads to be appointed with responsibility for each of its business units who would in turn report to the CCO and RO or General Counsel (GC). Finally, similar to the situation we observed in the Halliburton settlement of its shareholder derivative action, Pfizer will have an Executive Compliance Committee, which will sit below the Board of Directors to oversee Pfizer's compliance program.

The Enhanced Compliance Obligations require that Pfizer maintain policies and procedures regarding gifts, hospitality, and travel in each jurisdiction that are appropriately designed to prevent violations of the anti-corruption laws and regulations, presumably tailored to each jurisdiction. This statement would seem to focus on reasonableness not only in terms of monetary value but also in factoring in the jurisdiction where the gift or hospitality is to be provided. Finally, and as always, travel and training must have a business purpose.

There was a very detailed plan laid out for a risk-based program of annual proactive anti-corruption reviews of high-risk markets. It consists of five markets which are at high risk for corruption because of the business and location. The specifics for each visit will be a useful guide for the compliance practitioner to compare with similar work done by his compliance group. It includes (a) On-site visits by an FCPA review team comprised of qualified personnel from the Compliance, Audit and Legal functions who have received FCPA and anti-corruption training; (b) Review of a representative sample, appropriately adjusted for the risks of the market, of contracts with, and payments, to individual foreign government officials or health care providers, as well as other high-risk transactions in the market; (c) Creation of action plans resulting from issues identified during the proactive reviews; these action plans will be shared with appropriate senior management and should contain mandatory remedial steps designed to enhance anti-corruption compliance, repair process weaknesses, and deter violations; and (d) a review of the books and records of a sample of distributors which, in the view of the FCPA proactive review team, may present corruption risk.

Interesting, the DPA specifies that Pfizer will maintain "significant" resources for the compliance function. These significant resources will be dedicated to several different types of compliance tools, including (a) an international investigations group charged with responding to and investigating anti-corruption compliance issues and ensuring that appropriate remedial measures are undertaken after the completion of an investigation; (b) an anti-corruption program office providing centralized assistance and guidance regarding the implementation, updating and revising of the FCPA Procedure, the establishment of systems to enhance compliance with the FCPA Procedure, and the administration of corporate-level training and annual anti-corruption certifications; and (c) a mergers and acquisitions (M&A) compliance team designed to support early identification of compliance risks associated with complex business transactions and to ensure the integration of Pfizer's compliance procedures into newly acquired entities. There was a slightly different time schedule listed for Pfizer to complete post-acquisition auditing, training and implementation of the Pfizer compliance program into the acquired company. I have added to my recent FCPA M&A Box Score Summary.

Time Frames	Halliburton 08-02	J&J	DS&S	Pfizer
FCPA Audit	1. High Risk Agents **- 90 days** 2. Medium Risk	**18 months** to conduct full FCPA audit	As soon "*as practicable*"	One year

	Agents - **120 Days** 3. Low Risk Agents - **180 days**			
Implement FCPA Compliance Program	Immediately upon closing	**12 months**	As soon "*as practicable*"	One year
Training on FCPA Compliance Program	**60 days** to complete training for high risk employees, **90 days** for all others	**12 months** to complete training	As soon "*as practicable*"	One Year

While there was no new language regarding risk evaluation, due diligence on, or other management of third party business parties, the DPA did specify that when it is appropriate on the basis of a FCPA risk assessment, the company will provide FCPA and anti-corruption training to relevant agents and business partners, at least once every three years.

The company is also to use annual certifications from senior managers in each of Pfizer's Business Units, Divisions, and operational functions confirming that their standard operating procedures adequately implement Pfizer's anti-corruption policies, procedures and controls, including training requirements; that they have reviewed and followed up on any issues identified in FCPA trend analyses; and that they are not aware of any FCFA or other corruption issues that have not already been reported to the Compliance Division or the Legal Division.

There is a wealth of information in the Pfizer DPA and other documents relating to its resolution of these FCPA issues. I would commend all the documents to you to read and see what areas your company may need to look at more closely and how these Compliance and Enhanced Compliance Obligation Attachments may provide insight into areas where you might be lacking or need to enhance your compliance program and coverage. These enhanced obligations could well become the new minimum *best practices* in the FCPA compliance arena.