



DOJ and SEC Close Out 2016 with a \$520 Million FCPA Settlement

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The Securities and Exchange Commission (SEC) and Department of Justice (DOJ) wrapped up 2016 on December 22 with a near record-breaking Foreign Corrupt Practices Act (FCPA) settlement involving Teva Pharmaceuticals and its foreign subsidiaries. The settlement includes a \$283 million payment to the DOJ to settle criminal bribery charges and a separate payment of \$236 million to the SEC in disgorged profits plus interest. At a total of over \$519 million, this settlement is the fourth largest in FCPA history.

The settlement arises from Teva's alleged bribery of and improper dealing with government officials in Russia, Mexico, and Ukraine related to its Copaxone product, a multiple sclerosis treatment. The long arm of the FCPA reaches an Israeli corporation and its affiliates because Teva stock trades as an American Depositary Receipt on the New York Stock Exchange.

As with many FCPA claims, the SEC's primary concern is whether the company being investigated has properly maintained accounting controls, books, and records. Much of the settlement focuses on Teva's alleged conduct in Russia, where Teva allegedly bribed a government official to increase sales of Copaxone to the government. The bribes were structured as legitimate payments to Russian repackaging and distribution companies, and then were passed on to Russian government officials. A total of \$65 million was paid to Russian government officials through these agreements and structure; these payments were not properly booked in Teva's financial records. Teva claims that none the employees involved in the bribery scheme are currently employed by Teva and the entire Teva Russia leadership team was replaced in 2013.

The settlement also discusses allegations that Teva subsidiaries bribed government officials in Ukraine. In Ukraine, Teva was charged with bribing a Ukrainian Ministry of Health official who was hired as a consultant to assist Teva in getting its drug registries approved (necessary to market drugs) in Ukraine. The Ukrainian official received \$200,000 in payments and other transfers of value. Teva was also charged with bribing doctors in Mexico to increase the number of Copaxone prescriptions.

The settlement states that Teva management approved policies that would neither detect nor stop the FCPA violations and retained compliance managers who did not enforce Teva's anti-corruption program. Many of the FCPA violations began over a decade ago, but Teva claims it only became aware of the concerns in 2012, from the U.S. government and Teva employees. In this settlement, Teva signed a deferred prosecution agreement with the DOJ, agreed to enhance its compliance program, and retain an independent corporate compliance monitor for the next three years.

AGG Observations

- This settlement places pharmaceutical and medical device companies in the first tier of industries subject to FCPA scrutiny. Seven of the ten highest FCPA settlements have occurred in the past five years, showing a significant focus on such claims.

- Cooperation pays, literally. The US Sentencing Guidelines give the DOJ leeway to grant cooperation credit, which lessens the ultimate financial penalty paid by a company. A company can mitigate its punishment by having an effective compliance and ethics program, and by self-reporting any misconduct and cooperating with the investigation. Teva did not timely or voluntarily self-disclose the misconduct, but did cooperate with U.S. government investigators once served, and it received a 20% cooperation credit.

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