

February 16, 2016

SEC Charges U.S. Pharmaceutical Company for FCPA Violations Arising from Alleged Bribery in China

On February 4, 2016, the U.S. Securities and Exchange Commission (“SEC”) announced a settlement with U.S. pharmaceutical company SciClone Pharmaceuticals, Inc. (the “Company”) to resolve FCPA charges arising from its subsidiaries’ alleged bribery of Chinese health care professionals and officials in order to increase the sales of the Company’s products in China. Without admitting or denying the SEC’s findings, the Company will pay a total of \$12.8 million, including disgorgement, pre-judgment interest, and a civil penalty of \$2.5 million. For health care companies operating in China, this case is especially noteworthy for the SEC’s detailed description of the facts of the case and the Company’s remedial efforts, which provide important guidance on compliance practices.

According to the SEC, the Company operates in China primarily through SciClone Pharmaceuticals International Ltd. (“SPIL”), a wholly owned subsidiary incorporated in the Cayman Islands with an affiliate in Hong Kong, and SPIL’s subsidiaries. The Company directs and oversees these activities and SPIL’s books and records are consolidated into the Company’s financial statements.

The SEC alleges that from at least 2007 to 2012, employees of the Company’s subsidiaries gave gifts, money or various items of value to Chinese officials, including HCPs employed by Chinese state-owned hospitals, in order to increase the sales of the Company’s products. According to the SEC, managers within the Company’s China-based corporate structure knew of and condoned such behavior. Alleged misconduct included:

- Providing weekend trips, vacations, gifts, expensive meals, foreign language classes and entertainment to HCPs in order to increase prescriptions from those HCPs;
- Sponsoring VIP clients to the annual Qingdao Beer Festival from August 2005 onwards;
- Providing VIP clients with vacations to Anji, China in February 2007;
- Recruiting a VIP client by paying for the client’s family vacations and regular family dinners, which resulted in a near four fold sales increase from that VIP client, as described by a sales representative in November 2007.

The SEC further alleged that in 2007, the Company hired a regulatory affairs specialist (the “Specialist”) who arranged for the Company to sponsor two Chinese officials to attend an academic conference in Greece at the same time it had pending applications for approval under the officials. When the two officials were unable to obtain travel visas to Greece in time, the Specialist provided them instead with gifts worth at least \$8,600. One of the expense reimbursements for these gifts was approved by the senior vice president of SPIL. Upon learning of the gifts, the Company terminated the Specialist and conducted an internal investigation into the Specialist’s conduct. The investigation concluded in 2008 but did not result in any remedial action or review of the sales and marketing practices in China.

The SEC also found a lack of due diligence on local Chinese travel vendors and a lack of controls over events held for HCPs. Examples included the sponsorship of HCPs to conferences in the United States between 2008 and 2010 and Japan in 2010 that had minimal educational activities compared to sightseeing activities, and the hosting of HCPs to a weekend stay in a Chinese resort in 2010 with no educational component.

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The SEC brought charges against the Company under the Securities Exchange Act pursuant to Section 30A(g) for the above misconduct. The SEC also brought related charges pursuant to Sections 13(b)(2)(A) and 13(b)(2)(B) for the improper recording of the payments to the HCPs as sales, marketing and promotion expenses and the failure to devise and maintain a sufficient system of internal controls.

The settlement also laid out in detail the Company's remedial efforts, which include (1) hiring a compliance officer for its China operations; (2) creating an internal audit department and compliance department; (3) conducting an extensive review of employee reimbursement policies and procedures; (4) disciplining employees and their managers for compliance policy violations; (5) reducing the number of third-party vendors providing travel and event planning services; (6) enhancing controls around third-party due diligence and payments; (7) incorporating anti-corruption provisions into its third-party contracts; and (8) providing anti-corruption training to third-party vendors. The SEC also required the Company to submit reports to the SEC on the operation and implementation of its anti-corruption remediation measures at no less than nine-month intervals over a three-year period and to certify compliance with the measures set forth in the reports.