

2017R00136/BJC/JLH

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA : Criminal No. 20-539
 :
 v. : 18 U.S.C. § 371
 :
 ALCON PTE LTD :

INFORMATION

The United States charges that, at all times relevant to this Information, unless otherwise specified:

GENERAL ALLEGATIONS

Relevant Statutory Background

1. The Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, *et seq.* (the “FCPA”), was enacted by Congress for the purpose of, among other things, making it unlawful to act corruptly in furtherance of an offer, promise, authorization, or payment of money or anything of value, directly or indirectly, to a foreign official for the purpose of obtaining or retaining business for, or directing business to, any person. Pertinent to this charge, the FCPA’s accounting provisions, among other things, require every issuer of publicly traded securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78l, or required to file periodic reports with the United States Securities and Exchange Commission (“SEC”) under Section 15(d) of the Securities Exchange Act, 15 U.S.C §

78o(d), to make and keep books, records, and accounts that accurately and fairly reflect transactions and the distribution of the company's assets, and prohibit the knowing and willful falsification of an issuer's books, records, or accounts. 15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(5), and 78ff(a).

ALCON PTE LTD and Other Relevant Entities

2. Alcon, Inc. was a multinational eye care company with headquarters in Fort Worth, Texas, and incorporated in Hünenberg, Switzerland. In or about April 2011, Alcon, Inc. merged with Novartis AG, a global pharmaceutical company based in Basel, Switzerland, after which Alcon, Inc. (the “Alcon Division”) became a wholly owned subsidiary of Novartis AG. Novartis AG’s American Depository Shares were listed and traded on the New York Stock Exchange under the symbol “NVS.” Novartis AG was an issuer of publicly traded securities registered pursuant to Section 12(b) of the Securities Exchange Act and was required to file periodic reports with the SEC under Section 13 of the Securities Exchange Act. Thus, Novartis AG was an “issuer” within the meaning of the FCPA, 15 U.S.C. §§ 78dd-1(a) and 78m(b). The Alcon Division’s books, records, and accounts were included in the consolidated financial statements of Novartis AG filed with the SEC.

3. In or about April 2019, Novartis AG spun off the Alcon Division, including defendant ALCON PTE LTD, and the newly established independent parent company was named “Alcon Inc.” Alcon Inc. is the lawful successor-in-interest to Alcon, Inc. (i.e., the Alcon Division).

4. From in or about 2011 to in or about 2014 (the “relevant time period”), ALCON PTE LTD was an affiliate of the Alcon Division with headquarters in Singapore. Among other functions, ALCON PTE LTD provided financial services and managerial oversight for the Alcon Division’s operations in Asia, including for two representative offices in Vietnam. ALCON PTE LTD’s books, records, and accounts were included in the consolidated financial statements that Novartis AG filed with the SEC.

5. The “Distributor Company,” an entity whose identity is known to the United States and ALCON PTE LTD, was a limited liability company incorporated in Vietnam. Among other business, Distributor Company marketed and sold Alcon Division products to health care providers (“HCPs”) and hospitals in Vietnam.

Relevant Individuals

6. “Alcon Pte Ltd Executive 1,” an individual whose identity is known to the United States, was a high level executive of ALCON PTE LTD and, at various times, was located in the United States or Singapore. For fiscal year 2014, Alcon Pte Ltd Executive 1 signed two Sarbanes-Oxley sub-certifications that were false. These false sub-certifications were maintained as part of Novartis AG’s books, records, and accounts.

7. “Alcon Pte Ltd Executive 2,” an individual whose identity is known to the United States, was an employee of ALCON PTE LTD and, at various times, was located in the United States or Singapore.

8. “Distributor Company Executive 1,” an individual whose identity is known to the United States, was a high level executive of Distributor Company during the relevant time period.

9. “Distributor Company Executive 2,” an individual whose identity is known to the United States, was a high level accounting executive of Distributor Company during the relevant time period.

Operations in Vietnam

10. Vietnam owned and operated state-owned and state-controlled hospitals and clinics, and these hospitals and clinics performed a government function. Employees of state-owned and state-controlled hospitals and clinics in Vietnam (“Vietnam State HCPs”) were “foreign officials” within the meaning of the FCPA, 15 U.S.C. § 78dd-3(f)(2)(A).

11. The Alcon Division conducted business operations in Vietnam through two representative offices located in Hanoi, Vietnam, and Ho Chi Minh City, Vietnam (“Alcon Vietnam Representative Offices”). ALCON PTE LTD provided management and financial reporting oversight for the Alcon Vietnam Representative Offices.

12. The Alcon Vietnam Representative Offices did not directly conduct sales to end-customers in Vietnam, including to state-owned and state-controlled hospitals and clinics in Vietnam. Rather, sales to end-customers in Vietnam were conducted through the Distributor Company.

13. Among other lines of the Alcon Division's eye care business, the Alcon Vietnam Representative Offices, through the Distributor Company, sold surgical equipment and devices such as lasers and intraocular lenses ("IOLs") to end-customers in Vietnam, including to state-owned and state-controlled hospitals and clinics in Vietnam. IOLs are artificial replacement lenses that are implanted in the eye as part of a treatment for a variety of ailments, such as cataracts.

Overview of the Conspiracy

14. Beginning in or about 2007, the Alcon Vietnam Representative Offices and the Distributor Company engaged in a scheme to bribe Vietnam State HCPs in order to increase sales of IOLs. Participants in the scheme referred to it as the "consultancy program."

15. Under the guise of the consultancy program, the Distributor Company made corrupt payments to HCPs, including Vietnam State HCPs, in connection with sales of Alcon Division IOLs by the Distributor Company. The Distributor Company made the payments directly to HCPs, including to Vietnam State HCPs. The Alcon Vietnam Representative Offices, with the approval of

employees of ALCON PTE LTD, reimbursed the Distributor Company for up to 50 percent of the costs associated with the improper payments to HCPs.

16. The scheme continued after the Alcon Division merged with Novartis AG in or about April 2011. Thereafter, between in or about April 2011 and in or about June 2014, ALCON PTE LTD, through its executives, employees, and agents, knowingly and willfully conspired and agreed with others to cause Novartis AG to maintain false accounting records, by, among other things, falsely recording partial reimbursements to the Distributor Company for improper payments made to Vietnam State HCPs in ALCON PTE LTD's internal financial records, which were consolidated into Novartis AG's financial records, and by transmitting false Sarbanes-Oxley sub-certification letters to Novartis AG. These false sub-certification letters were subsequently maintained in the books, records, and accounts of Novartis AG.

17. In total, from in or about 2011 through in or about 2014, as a result of the improper payments to Vietnam State HCPs, ALCON PTE LTD realized approximately \$8,500,000 in profits.

Details of the Scheme

18. In or about April 2007, prior to Novartis AG's merger with the Alcon Division, the Alcon Vietnam Representative Offices, with the knowledge and involvement of Alcon Pte Ltd Executive 1, an Alcon Vietnam Representative Offices executive, and others, began providing money to the Distributor Company, disguised

as consultancy payments and in the form of credit notes, that the Distributor Company used to make corrupt payments to HCPs, including Vietnam State HCPs.

19. In furtherance of the scheme, on or about April 3, 2007, Distributor Company Executive 2 sent an email to Alcon Pte Ltd Executive 1, an Alcon Vietnam Representative Offices executive, and others. In the email, Distributor Company Executive 2 referenced a meeting from March 2007 in which details of the corrupt consultancy program were discussed. The email attached a list of approximately 35 HCPs, including Vietnam State HCPs, who were designated to receive payments in exchange for purchasing Alcon Division IOLs. The email—and other contemporaneous communications—also outlined a proposal for the consultancy program as follows:

a. The consultancy program would cover two types of Alcon Division IOLs: IQ and Restore;

b. HCPs would be paid 200,000 VND (then equivalent to approximately \$12.50) per IQ IOL purchased and 400,000 VND (then equivalent to approximately \$25.00) per Restore IOL purchased;

c. The Distributor Company would make the payments to HCPs through bank transfers; and

d. Alcon Vietnam Representative Offices would reimburse Distributor Company for up to 50 percent of the costs associated with the consultancy program.

20. The consultancy program targeted doctors and nurses, many of whom were Vietnam State HCPs. As explained in an attachment to an email from an Alcon Vietnam Representative Offices executive dated July 21, 2008, the “[t]arget customer[s]” for the scheme consisted of the following: “[d]octor[s] in the consulta[tion] room,” “[d]octor[s] in the exam room,” “[n]urse[s] in the consulta[tion] room,” and the “[c]hief[s] of [Operating Rooms] in” two specific eye hospitals in Vietnam.

21. Furthermore, the purpose of the consultancy program, as explained in an email dated July 26, 2008, from a Distributor Company employee to an Alcon Vietnam Representative Offices executive, among others, was to “encourage[] doctors to introduce and use Alcon’s IOLs and . . . speed up IOLs sales.”

22. At the consultancy program’s peak, in or about 2011, the Distributor Company made corrupt payments to approximately 200 HCPs, a number of whom were Vietnam State HCPs, and the Alcon Vietnam Representative Offices disguised reimbursement for those payments as legitimate payments made pursuant to the consultancy program. These payments aggregated over time. For example, during 2010, a proposed payment schedule showed one Vietnam State HCP was scheduled to receive more than 360,000,000 VND (then equivalent to approximately \$18,450) pursuant to the consultancy program, while another Vietnam State HCP was scheduled to receive more than 450,000,000 VND (then equivalent to approximately \$23,352).

23. Between in or about 2007 and in or about June 2014, the Alcon Vietnam Representative Offices, with the approval of employees of ALCON PTE LTD and others, partially reimbursed the Distributor Company periodically for improper payments that the Distributor Company made to HCPs, including to Vietnam State HCPs (for instance, reimbursing approximately \$180,000 in or about 2010 and up to approximately \$100,000 in or about 2013 and 2014).

The False Records

24. Prior to in or about 2012, the Alcon Vietnam Representative Offices partially reimbursed the Distributor Company for improper payments made through the consultancy program by causing another Alcon entity to issue credits to the Distributor Company that offset its outstanding debt balances. These credits were referred to as “credit notes.”

25. The typical system for issuing the credit notes included the following steps: (a) Distributor Company employees would regularly send emails to an Alcon Vietnam Representative Offices employee requesting a credit note for a certain amount related to the consultancy program; (b) the Alcon Vietnam Representative Offices employee reviewed and forwarded the requests to regional management, including Alcon Pte Ltd Executive 2; and (c) once approved by regional management, credit notes were issued to the Distributor Company with the stated reason for the credit note as “consultancy fees.”

26. After 2011, the Distributor Company, with the knowledge of certain employees of ALCON PTE LTD, continued to make improper payments to HCPs, including to Vietnam State HCPs, in order to increase sales of Alcon Division IOLs, and ALCON PTE LTD continued to reimburse the Distributor Company indirectly for a portion of those payments.

27. Between in or about August 2011 and in or about 2012, the Alcon Vietnam Representative Offices, with the approval of employees of ALCON PTE LTD and others, changed the methodology for reimbursing the Distributor Company for a portion of the improper payments made through the consultancy program. Specifically, rather than reimburse the Distributor Company by issuing credit notes for “consultancy fees,” the Alcon Vietnam Representative Offices partially reimbursed the Distributor Company for the payments through other, inflated reimbursable costs, such as marketing, human resources, or margin reconciliation costs.

28. In furtherance of the scheme, in an email dated August 15, 2011, an Alcon Vietnam Representative Offices executive wrote to Alcon Pte Ltd Executive 2 and others about continued financial support for the consultancy program and suggested using the Distributor Company’s margin in order to cover the consultancy program costs. The email noted that “[Distributor Company Executive 1] agreed to remain their activities to secure business as much as possible but [Distributor Company Executive 1] need[s] our support more in term[s] of finance.” In the email,

an Alcon Vietnam Representative Offices executive noted further, “I also discuss[ed] with [Distributor Company Executive 1] our scenario of increasing the margin to cover USD 120K . . . With this support, [the Distributor Company] will propose the marketing plan for next year for Alcon[’s] review and agree[ment] before implementation.”

29. Employees of ALCON PTE LTD and the Alcon Vietnam Representative Offices also discussed using a marketing budget to cover the costs of reimbursing Distributor Company in connection with the improper payments made under the consultancy program. For example, on or about November 23, 2011, a Distributor Company employee sent an email to two Alcon Vietnam Representative Offices executives, among others, summarizing a November 9, 2011 meeting, during which personnel from the Distributor Company and from the Alcon Vietnam Representative Offices discussed various ways that the consultancy program would operate in 2012. Specifically, the Distributor Company employee wrote: “Consultant Program in 2012: Alcon will consider and share the finance difficulties of [Distributor Company] by:

- Increasing the ratio[] share of Loss of exchange rate . . .
- [P]aying sample for [Distributor Company]
- [U]sing some money from marketing budget to support [Distributor Company].”

30. Furthermore, during a phone call in or about late summer 2014, Distributor Company Executive 1 told an Alcon Pte Ltd employee that the Distributor

Company had used up all of its funds to pay for Alcon Division's surgical equipment and could no longer pay the "usual considerations" to Vietnamese HCPs to ensure they purchased Alcon Division products.

31. In or about May or June 2014, Alcon Pte Ltd Executive 1 told an Alcon Pte Ltd employee, who was responsible for reviewing the financials for the Alcon Division's business in Vietnam, that no one needed to know about the Distributor Company's 2014 profit and loss analysis ("Distributor Company's P&L Analysis").

32. Shortly thereafter, on or about June 11, 2014, an Alcon Vietnam Representative Offices executive sent an Alcon Pte Ltd employee a copy of the Distributor Company's P&L Analysis, which included a number of line items that concealed improper payments to HCPs, including to Vietnam State HCPs, in fiscal year ("FY") 2013 and FY 2014, including: purported "[c]onsultant cost" of approximately \$111,157 for FY 2013, purported "[c]onsultant cost" of approximately \$97,000 for FY 2014, purported "HR" cost of approximately \$800,000 for FY 2013, purported "HR" cost of approximately \$740,000 for FY 2014, purported "[a]dministration cost" of approximately \$514,000 for FY 2013, and purported "[a]dministration cost" of approximately \$572,000 for FY 2014.

33. Together, these entries in the Distributor Company's P&L Analysis correlated to ongoing efforts by ALCON PTE LTD to conceal the

reimbursement of the Distributor Company for improper payments made to Vietnam State HCPs and others.

34. ALCON PTE LTD, through its executives, employees, and agents, knowingly and willfully conspired and agreed with others to falsely record in ALCON PTE LTD's internal financial records partial reimbursement of the improper payments that the Distributor Company made to HCPs, including to Vietnam State HCPs, pursuant to the consultancy program. By recording reimbursements for these payments as legitimate expenses, such as consulting expenses, marketing expenses, human resource expenses, administration costs, and/or margin reconciliation costs, ALCON PTE LTD, through its executives, employees, and agents, concealed the true nature of these payments and caused Novartis AG to maintain false financial records.

35. Furthermore, as part of the conspiracy, Alcon Pte Ltd Executive 1, who participated in the scheme and knew of the corrupt payments to Vietnam State HCPs, signed and transmitted two false Sarbanes-Oxley sub-certification letters dated July 4, 2014, and October 7, 2014, to the Alcon Division's Chief Executive Officer and Chief Financial Officer. These false sub-certification letters were subsequently maintained in the books, records, and accounts of Novartis AG.

COUNT ONE
(Conspiracy to Violate the Books and Records Provision of the FCPA)

36. Paragraphs 1 through 35 of this Information are realleged here.

37. Between in or about 2011 and in or about 2014, in the United States and elsewhere, defendant

ALCON PTE LTD

together with others known and unknown, knowingly and willfully did combine, conspire, confederate, and agree together and with each other to commit an offense against the United States, that is: to knowingly and willfully falsify and cause to be falsified books, records, and accounts required, in reasonable detail, to accurately and fairly reflect the transactions and dispositions of the assets of Novartis AG, an issuer within the meaning of the FCPA, contrary to 15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(5), and 78ff(a).

Object of the Conspiracy

38. The object of the conspiracy was for ALCON PTE LTD and its co-conspirators to conceal improper payments made to Vietnam State HCPs by falsely recording partial reimbursements to the Distributor Company in ALCON PTE LTD's internal financial records, which were consolidated into Novartis AG's financial records, and by transmitting false Sarbanes-Oxley sub-certification letters to Novartis AG, which caused Novartis AG to maintain false accounting records.

Manner and Means of the Conspiracy

39. The manner and means by which ALCON PTE LTD and its co-conspirators sought to accomplish the object of the conspiracy included, among other things, the following:

a. Under the guise of the consultancy program, the Distributor Company made corrupt payments to HCPs, including Vietnam State HCPs, in connection with sales of Alcon Division IOLs by the Distributor Company. The Distributor Company made the payments directly to HCPs, including to Vietnam State HCPs, and the Alcon Vietnam Representative Offices, with the approval of employees of ALCON PTE LTD, reimbursed the Distributor Company for up to 50 percent of the costs associated with the improper payments to HCPs.

b. ALCON PTE LTD, through its executives, employees, and agents, falsely recorded partial reimbursements to the Distributor Company for improper payments made to Vietnam State HCPs in ALCON PTE LTD's internal financial records as legitimate expenses, such as consulting expenses, marketing expenses, human resource expenses, administration costs, and/or margin reconciliation costs, which were consolidated into Novartis AG's financial records.

Overt Acts

40. In furtherance of the conspiracy and to effect its object, ALCON PTE LTD and its co-conspirators committed or caused the commission of the following acts in the United States and elsewhere:

a. In or about late summer 2014, Distributor Company Executive 1 told an Alcon Pte Ltd employee that the Distributor Company had used all of its funds to pay for Alcon Division's surgical equipment and could no longer pay the "usual considerations" to Vietnamese HCPs to ensure that they purchased Alcon Division products.

b. In or about May or June 2014, Alcon Pte Ltd Executive 1 told an Alcon Pte Ltd employee, who was responsible for reviewing the financials for the Alcon Division's business in Vietnam, that no one needed to know about the Distributor Company's P&L Analysis.

c. On or about June 11, 2014, an Alcon Vietnam Representative Offices executive sent an Alcon Pte Ltd employee a copy of the Distributor Company's P&L Analysis, which included a number of line items that concealed improper payments to HCPs, including to Vietnam State HCPs, in FY 2013 and FY 2014.

d. At other times during the relevant time period, ALCON PTE LTD, through its executives, employees, and agents, falsely recorded reimbursements for payments to the Distributor Company as legitimate expenses, such as consulting expenses, marketing expenses, human resource expenses, administration costs, and/or margin reconciliation costs.

e. On or about July 4, 2014, Alcon Pte Ltd Executive 1, who participated in the scheme and knew of the corrupt payments to Vietnam State HCPs, signed and transmitted a false Sarbanes-Oxley sub-certification letter to the Alcon Division's Chief Executive Officer and Chief Financial Officer.

In violation of Title 18, United States Code, Section 371.

 6/22/2020

ROBERT ZINK
Chief, Fraud Section
Criminal Division
U.S. Department of Justice



CRAIG CARPENITO
United States Attorney
District of New Jersey

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CRAIG CARPENITO
UNITED STATES ATTORNEY
NEWARK, NEW JERSEY

BERNARD J. COONEY
SENIOR TRIAL COUNSEL
JOSHUA L. HABER
ASSISTANT U.S. ATTORNEY
(973) 645-2823
