

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 88303 / February 28, 2020

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4118 / February 28, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19718

<p>In the Matter of</p> <p style="text-align:center">Cardinal Health, Inc.</p> <p>Respondent.</p>
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ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Cardinal Health, Inc. (“Cardinal” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of Cardinal's violations of the internal accounting controls and recordkeeping provisions of the Foreign Corrupt Practices Act of 1977 (the "FCPA") through the operations of its former subsidiary in China.

2. In November 2010, Cardinal entered the Chinese market by acquiring the Chinese subsidiaries of an established pharmaceutical distribution company. Cardinal rebranded the acquired entities as "Cardinal China" after the acquisition. Prior to the acquisition, the pharmaceutical distribution company had longstanding distribution agreements with a number of global manufacturers of prescription medications, medical devices, and consumer health products.

3. In addition to its role as a distributor for the products sold by its business partners, Cardinal China also operated and maintained on its own books, financial accounts that certain distribution customers used to fund their operations and marketing efforts in China. These accounts largely consisted of excess distribution margin that Cardinal China generated from distributing customers' products, and Cardinal China was obligated to return these funds to the customers in accordance with its contractual agreements. Cardinal China authorized and made payments from these marketing accounts as directed by the employees of its distribution customers.

4. After it was acquired by Cardinal, Cardinal China terminated most of the marketing accounts due in part to known FCPA-related compliance risks associated with channeling the marketing expenses of third parties through its own books and records. But despite these risks, until 2016, Cardinal China maintained and operated marketing accounts for a European supplier of non-prescription, over-the-counter dermocosmetic products for which Cardinal China served as the exclusive product distributor in China.

5. In addition to maintaining and operating marketing accounts for the dermocosmetic company, Cardinal China also formally employed approximately 2,400 employees for the dermocosmetic company pursuant to an administrative and HR services agreement. The 2,400 employees reported to the dermocosmetic company, and while Cardinal China administratively managed the employees pursuant to its contractual agreement, it did not supervise their day-to-day activities. Most of these employees were beauty assistants and supervisors, who worked in retail stores and interacted with individual consumers. The remaining approximately 100 employees were sales, marketing, management, and back office employees. The sales and marketing employees were responsible for marketing and selling the

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

dermocosmetic company's products in China, and regularly drew down funds from the marketing accounts to pay third parties for marketing-related expenses.

6. Although Cardinal determined that other marketing accounts should be terminated because of their significant FCPA-related compliance risks, Cardinal inaccurately assessed the risks of the arrangements with the dermocosmetic company as minimal. Cardinal thus did not apply its full internal accounting controls to these accounts, or to the conduct of the marketing employees Cardinal China employed for the company. Cardinal China regularly authorized and made payments from the marketing accounts at the direction of the dermocosmetic company without controls sufficient to provide reasonable assurance that the transactions were executed in accordance with management's general or specific authorization, and failed accurately to record on its books and records payments made from the accounts.

7. In 2016, Cardinal China learned that the marketing employees and the dermocosmetic company had hidden the purpose of certain purported marketing payments, which were redirected to healthcare professionals who provided marketing services to the dermocosmetic company, and to other employees of state-owned retail entities who had influence over purchasing decisions related to the dermocosmetic company's products. Upon learning of the misconduct, Cardinal and Cardinal China took action to cease these payments in 2016.

8. Cardinal benefitted from its arrangement with the dermocosmetic company. As the company's exclusive distributor in China, Cardinal China directly profited from the distribution, administrative, and HR services it provided to the dermocosmetic company, and Cardinal was unjustly enriched by approximately \$5,400,000 between March 1, 2013, and December 31, 2016, as a result of its deficient internal accounting controls relating to the marketing accounts.

Respondent

9. Cardinal is a global, integrated healthcare services and products company, incorporated and headquartered in Ohio, specializing in the distribution of pharmaceuticals and other medical products. Cardinal's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act, and trades on the New York Stock Exchange. Cardinal operates in forty-six countries and has over 50,000 employees worldwide.

10. Between November 2010 and February 2018, Cardinal China was owned and controlled by Cardinal, and distributed pharmaceuticals, medical devices, and consumer health products into the Chinese market. Cardinal China's books and records were consolidated into Cardinal's financial statements.

Facts

Cardinal China Failed to Implement Sufficient Controls Over Marketing Accounts it Administered and Marketing Employees that it Hired on Behalf of a Customer

11. Between 2010 and 2016, Cardinal China acted as the exclusive distributor in the Chinese market for a large European dermocosmetic company. As part of its commercial agreement with the company, Cardinal China administered marketing accounts on the company's behalf. As part of an administrative and HR service agreement with the dermocosmetic company, Cardinal Health also retained approximately 2,400 employees on the company's behalf. Most of these employees were beauty assistants and supervisors, who worked in retail stores and interacted with individual consumers. The remaining approximately 100 employees were sales, marketing, management and back office employees. The sales and marketing employees were responsible for promoting the sale of the dermocosmetic company's products and interacted with employees of state-owned hospitals and retailers.

12. Although the marketing employees were managed day-to-day by, and reported to the dermocosmetic company, Cardinal China entered into employment contracts with the marketing employees, administered their payroll, and assumed other human resource and administrative functions for them. Because Cardinal China received a distribution margin from the sales of the dermocosmetic company's products, Cardinal China profited from the marketing employees' successful marketing efforts, including through improper payments made from the marketing accounts.

13. Despite these facts, Cardinal assessed the risk of the arrangements with the dermocosmetic company as minimal, and as a result, Cardinal China did not subject the marketing employees, who it employed on behalf of the dermocosmetic company, to its full internal accounting controls, such as providing FCPA and anti-bribery training, or providing any oversight of their interactions with third parties in China. In addition, as Cardinal China knew from its business arrangement with the dermocosmetic company, a large portion of the marketing employees conducted some of their business using e-mail accounts and computer systems that belonged to the dermocosmetic company and were inaccessible to Cardinal's and Cardinal China's compliance personnel, and Cardinal China had no ability to review the full scope of the marketing employees' activities.

14. From at least March 2013 through December 2016, Cardinal failed to apply sufficient internal accounting controls to the marketing employees and the marketing accounts. For example, Cardinal China executed payments requested by the marketing employees without requiring sufficient supporting documentation to verify the purpose of the transactions. Over the four-year period from 2013 through 2016, Cardinal China authorized and paid more than \$250 million from the marketing accounts, but had insufficient policies and procedures in place concerning the payments.

15. Without the authorization of Cardinal's management, Cardinal China, at the request of the marketing employees, regularly made payments from the marketing accounts that were improperly redirected to government-employed healthcare providers and employees of Chinese state-owned retailers to promote the sale of the dermocosmetic company's products.

The improper payments took varied forms, including cash, luxury goods, gift cards, and travel.

16. Due to Cardinal's insufficient internal accounting controls, the marketing employees were able to easily disguise these payments by channeling funds through complicit third-party vendors and by characterizing transactions with healthcare providers as payments to printing companies for "production fees," and they were also reimbursed for high-value gifts based on falsified or incomplete documentation.

Cardinal Did Not Properly Evaluate Red Flags and Failed to Resolve Known Internal Control Deficiencies

17. At the time that it operated the marketing accounts on behalf of the dermocosmetic company, Cardinal and Cardinal China were aware of the compliance risks posed by marketing accounts in China.

18. Shortly after it acquired Cardinal China in November 2010, Cardinal determined that Cardinal China's practice of administering marketing accounts for its suppliers created excessive FCPA-compliance risks because the accounts could be used by suppliers to facilitate surreptitious payments to government officials without Cardinal China's knowledge. By July 2011, Cardinal directed Cardinal China to wind down all of its pharmaceutical marketing accounts due to these risks. Nevertheless, Cardinal China continued to administer marketing accounts for certain large suppliers for several years.

19. After it was acquired by Cardinal, on at least two occasions, Cardinal China abruptly terminated third-party marketing accounts amid allegations that they had been used to facilitate improper payments:

- Cardinal China terminated a marketing account it administered for an Italian pharmaceutical manufacturer after receiving an internal report in 2012 that Chinese authorities had fined the Chinese subsidiary of the Italian pharmaceutical manufacturer for violating China's Pharmaceutical Administration Law by providing certain benefits to hospitals.
- Cardinal China terminated a marketing account it administered for a U.K.-based pharmaceutical manufacturer after Cardinal's CEO received an internal report in 2013 alleging that Cardinal China employees were using the account to bribe employees of China's Center for Disease Control.

20. Despite these events, Cardinal failed to assess whether Cardinal China followed its instruction to wind down the pharmaceutical marketing accounts, or implement stricter controls to reduce the compliance risks for the marketing accounts that it administered for the dermocosmetic company.

21. In December 2012, Cardinal received a report from a Cardinal China employee raising questions about the legality of the marketing accounts and the marketing employees. The report recommended that Cardinal China hire an external auditor to assess its business arrangement with the dermocosmetic company. In response to the 2012 report, neither Cardinal

nor Cardinal China took sufficient steps to enhance their compliance practices concerning the marketing accounts or the marketing employees.

22. In September 2014, Cardinal China was fined by the Shanghai Administration of Industry and Commerce (“AIC”) for providing luxury dermocosmetic products to employees of a Chinese retailer equal to a percentage of the retailer’s sales of the dermocosmetic company’s products. The AIC found that Cardinal China had provided a “secret commission” to employees of the retailer in violation of Chinese unfair competition law. Cardinal China had engaged in the practice at the request of the dermocosmetic company, and the products were funded by the marketing accounts that Cardinal China administered on behalf of the dermocosmetic company. Cardinal and Cardinal China, again, failed to sufficiently enhance the supervision of the marketing employees and oversight of the marketing accounts.

23. In July 2015, after discovering that the marketing employees had recently used the marketing accounts to purchase smart phones for undisclosed reasons, Cardinal China’s Vice President of Compliance emailed a colleague, copying Cardinal China’s President, acknowledging that the dermocosmetic company was unlikely to allow Cardinal China to implement its standard compliance protocols to the marketing employees, and observing that this gap in controls had created an “enormous compliance risk” for Cardinal China. Another Cardinal China employee highlighted that, “This is a big exposure indeed as we have no control [over] how [the marketing employees] may be gifting and spending on entertaining.” Neither Cardinal nor Cardinal China took steps to enhance the controls associated with the marketing account or marketing employees until 2016.

24. As a result of the conduct described above, Cardinal violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act. Cardinal violated Section 13(b)(2)(A), which requires every issuer with a class of securities registered pursuant to Exchange Act Section 12 to make and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and disposition of the assets of the issuer. Cardinal also violated Section 13(b)(2)(B) of the Exchange Act, which requires every issuer with a class of securities registered pursuant to Exchange Act Section 12 to 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; (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

25. Cardinal China directly profited from the distribution, administrative, and HR services it provided to the dermocosmetic company, and Cardinal was unjustly enriched by approximately \$5,400,000 between March 1, 2013, and December 31, 2016.

Cardinal's Self-Disclosure, Cooperation, and Remedial Efforts

26. In determining to accept the Offer, the Commission considered Cardinal's self-disclosure, cooperation, and remedial efforts.

27. In May to June 2016, Cardinal China compliance conducted an audit of the marketing account's expenses, which identified evidence that payments from the marketing accounts did not comply with Cardinal China's compliance policy requirements. Also, in June 2016, Cardinal executives in the United States received an internal report stating that the marketing employees were using the marketing accounts to channel payments to government officials in China.

28. In December 2016, Cardinal voluntarily disclosed the results of its investigation to the Commission staff and subsequently cooperated with its investigation.

29. Cardinal China also undertook significant remedial measures, including terminating the marketing accounts and its employment contracts with the marketing employees, adding anti-bribery representations and obligations to the relevant contracts, and strictly limiting the use of the remaining balance of the dermocosmetic company's funds to low-risk expenses, such as salary payments, with robust controls and monitoring from Cardinal China's legal and compliance personnel.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Cardinal's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Cardinal cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

B. Respondent Cardinal shall, within ten days of the entry of this Order, pay disgorgement of \$5,400,000 and prejudgment interest of \$916,887 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

C. Respondent Cardinal shall, within ten days of the entry of this Order, pay a civil money penalty in the amount of \$2,500,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Cardinal Health, Inc. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Anita Bandy, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within thirty days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary