Mini Summit XIII: Compliance in the Transactional Context: Agreements, Due Diligence, Integration and Post-Transaction Step

Day 2: Tuesday, November 7, 2017
1pm – 2pm

Speakers

Alison Fethke, JD
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Partner/Principal, Fraud Investigation and Internal Audit, EY, Miami, FL (Moderator)

Discussion topics

- Discuss the importance of compliance due diligence as a key factor of deal review.
  - Pre-acquisition due diligence
  - Post-acquisition due diligence
  - Integration
  - Investigation, disclosure and remediation before and after closing

Case Study: Background

Background

US Pharma is an American publicly-traded pharmaceutical company considering the acquisition of a European-based company (the "Target") with operations worldwide (except the US).

Transaction specifications

- The European-based company does not have any activity in the US.
- Target sells wide range of medical devices, pharmaceutical products in high volumes and has a large international sales force (South America, Africa, Europe Middle East and Asia).
- Target is in the process of completing an acquisition of a US-based company, Company A, that has an active CIA (around kick back allegation and labelling issues).

Discussion topics

1. What are PA compliance due diligence best practices / practical guidance?
   I. Objective / Scope
   II. Team
   III. Timing
2. What are the typical pitfalls related to PA compliance due diligence?
3. How does the Target's pending acquisition (and related CIA) impact the company's compliance pre-acquisition due diligence plan?

Case Study: Data room / interviews

Background

There are several buyers interested in the purchase of the Target.

An online data room containing information and documents for the bidders to review is created. However, the data provided (from a compliance standpoint) is very limited or not provided.

The Target agreed to only provide access to a limited number of employees.

Discussion topics

1. What documents are expected to be included the data room (must have)?
2. The target is apparently not cooperative, what do you do in that situation? and should that be considered a compliance red flag?

Case Study: Due diligence of third party intermediaries

Background

As part of it pre acquisition due diligence process US Pharma has submitted a questionnaire and document request, and they learned the following information:

- Target relies on third-party intermediaries to make sales and to handle government relationships. 90% of the sales are done through tender processes.

In internet and media searches, Company "B" one of the Target's distributors appears to be involved in corruption activities and illegal contract awards.

- One of the recent contract awarded to this distributor, Company B, is for 3 years and represents a significant amount of the Target's revenue in this region.

Target has distributor markets in high-risk countries, including US embargo countries (e.g., Iran).

Discussion topics

1. What compliance steps should be followed regarding Targets' third party intermediaries (pre-acquisition / post-acquisition)?
2. What would be our advise to US Pharma regarding potential tainted third parties or customers?
3. What are US Pharma obligations regarding US embargo countries?

Case Study: Post acquisition / integration

Background

During the pre-acquisition process several red flags and compliance issues were identified. However, US Pharma acquires the Target. In addition the Target acquires the US based company, Company A.

US Pharma starts the integration of the various entities (including it compliance program)

The integration process results in eliminating redundant job positions in the US and other countries. During this period, US Pharma starts receiving several allegations of ABAC issues applicable to the Target's activities prior to the acquisition.

Discussion topics

1. What are some post-acquisition due diligence and compliance integration best practices / practical guidance?
   I. Complete due diligences
   II. Align compliance program
   III. Manage third parties
2. How should US Pharma manage these new allegations?
3. How should US Pharma manage its subsidiary's CIA, Company A?