

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75532 / July 28, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16704

In the Matter of

**MEAD JOHNSON NUTRITION
COMPANY**

Respondent.

**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 Mead Johnson Nutrition Company (“Mead Johnson” 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, and except as provided herein in Section V, 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:

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.

Summary

1. This matter concerns violations of the books and records and internal controls provisions of the Foreign Corrupt Practices Act (“FCPA”) by Mead Johnson. The violations, which occurred in connection with the operations of Mead Johnson’s subsidiary in China, took place up through 2013.

2. The conduct at issue relates primarily to the misuse of marketing and sales funds in China. Despite prohibitions in the FCPA and Mead Johnson’s internal policies, certain employees of Mead Johnson’s majority-owned subsidiary in China, Mead Johnson Nutrition (China) Co., Ltd. (“Mead Johnson China”), made improper payments to certain health care professionals (“HCPs”) at state-owned hospitals in China to recommend Mead Johnson’s nutrition products to, and provide information about, expectant and new mothers. These payments were made to assist Mead Johnson China in developing its business. For the period from 2008 through 2013, Mead Johnson China paid approximately \$2,070,000 to HCPs in improper payments and derived profits therefrom of approximately \$7,770,000.

3. Mead Johnson China failed to accurately reflect the improper payments in its books and records. Mead Johnson China’s books and records were consolidated into Mead Johnson’s books and records, thereby causing Mead Johnson’s consolidated books and records to be inaccurate. Mead Johnson failed to devise and maintain an adequate system of internal accounting controls over Mead Johnson China’s operations sufficient to prevent and detect the improper payments that occurred over a period of years.

Respondent

4. **Mead Johnson** is a Delaware corporation headquartered in Glenview, Illinois. The company’s common stock has been registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed on the NYSE since February 11, 2009. The company is a global manufacturer and marketer of infant formula and child nutrition products. Mead Johnson has subsidiaries throughout the world, including Mead Johnson China, and the financial results of its subsidiaries are consolidated into the financial statements of Mead Johnson. Mead Johnson’s total revenues for 2013 were \$4.2 billion.

Facts

5. Mead Johnson has established internal policies to comport with the FCPA and local laws, and to prevent related illegal and unethical conduct. Mead Johnson’s internal policies include prohibitions against providing improper payments and gifts to HCPs that would influence their recommendation of Mead Johnson’s products.

6. Mead Johnson began doing business in China in the 1990s, and in 1995 constructed a manufacturing plant in Guangzhou, China. From 2008 through 2013, Mead Johnson China's geographic presence grew from 28 to 241 cities in China.

Mead Johnson China's Improper Payments to HCPs

7. A portion of Mead Johnson China's marketing efforts during the 2008 to 2013 period was through the medical sector, which included marketing through healthcare facilities and HCPs. Despite the prohibitions in the FCPA and Mead Johnson's internal policies, certain employees of Mead Johnson China improperly compensated HCPs, who were foreign officials under the FCPA, to recommend Mead Johnson's infant formula to, and to improperly provide contact information for, expectant and new mothers.

8. Funding for those payments came from funds generated by discounts provided to Mead Johnson China's network of distributors.

9. Mead Johnson China uses third-party distributors to market, sell and distribute product in China. Some of Mead Johnson China's funding of its marketing and sales practices were effected through discounts provided to the distributors. Pursuant to contracts between Mead Johnson China and its distributors, Mead Johnson China provided the distributors a discount for Mead Johnson's products that was allocated for, among other purposes, funding certain marketing and sales efforts of Mead Johnson China. This form of funding was referred to as "Distributor Allowance."

10. Although the Distributor Allowance contractually belonged to the distributors, certain members of Mead Johnson China's workforce exercised some control over how the money was spent, and certain Mead Johnson China employees provided specific guidance to distributors concerning the use of the funds. Mead Johnson China staff also maintained certain records related to Distributor Allowance expenditure by distributors. In addition, Mead Johnson China used some of the funds to reimburse Mead Johnson China's sales personnel for a portion of their marketing and other expenditures on behalf of Mead Johnson China.

11. Mead Johnson China's sales personnel marketed product through medical channels, including healthcare facilities. These sales personnel encouraged HCPs at the healthcare facilities to recommend Mead Johnson products to mothers and to collect contact information of the mothers for Mead Johnson China's marketing purposes. To incentivize HCPs to recommend Mead Johnson product and collect information from the mothers, these sales personnel improperly paid HCPs, providing cash and other incentives, contrary to Mead Johnson's internal policies. The Distributor Allowance was the funding source for the cash and other incentives paid to HCPs.

Mead Johnson Failed to Make and Keep Accurate Books and Records and Devise and Maintain an Adequate Internal Control System

12. The Distributor Allowance funds contractually belonged to the distributors, but were in large part under Mead Johnson China's control. Mead Johnson China's employees

maintained certain records related to the Distributor Allowance, including records reflecting payments to HCPs. However, those records were incomplete and did not reflect that a portion of Distributor Allowance was being used contrary to Mead Johnson's policies.

13. Mead Johnson failed to devise and maintain an adequate system of internal controls over the operations of Mead Johnson China to ensure that Mead Johnson China's method of funding marketing and sales expenditures through its distributors was not used for unauthorized purposes, such as the improper compensation of HCPs. The use of the Distributor Allowance to improperly compensate HCPs was contrary to management's authorization and Mead Johnson's internal policies. Mead Johnson failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that Mead Johnson China's funding of marketing and sales expenditures through third-party distributors was done in accordance with management's authorization.

Internal Investigation and Remedial Efforts

14. In 2011, Mead Johnson received an allegation of possible violations of the FCPA in connection with the Distributor Allowance in China. In response, Mead Johnson conducted an internal investigation, but failed to find evidence that Distributor Allowance funds were being used to make improper payments to HCPs. Thereafter, Mead Johnson China discontinued Distributor Allowance funding to reduce the likelihood of improper payments to HCPs, and discontinued all practices related to compensating HCPs by 2013. Mead Johnson did not initially self-report the 2011 allegation of potential FCPA violations and did not thereafter promptly disclose the existence of this allegation in response to the Commission's inquiry into this matter.

15. As a result of its second internal investigation commenced in 2013, Mead Johnson undertook significant remedial measures including: termination of senior staff at Mead Johnson China; updating and enhancing financial accounting controls; significantly revising its compliance program; enhancing Mead Johnson's compliance division, adding positions including a second senior-level position; establishing new business conduct controls and third party due-diligence procedures and contracts; establishing a unit in China that monitors compliance and controls in China on an on-going basis; and providing employees with a method to have immediate access the company's policies and requirements.

16. Despite not self-reporting the 2011 allegation of potential FCPA violations or promptly disclosing the existence of this allegation in response to the Commission's inquiry into this matter, Mead Johnson subsequently provided extensive and thorough cooperation. Mead Johnson voluntarily provided reports of its investigative findings; shared its analysis of documents and summaries of witness interviews; and responded to the Commission's requests for documents and information and provided translations of key documents. These actions assisted the Commission staff in efficiently collecting valuable evidence, including information that may not have been otherwise available to the staff.

Legal Standards and Violations

17. Under Section 21C(a) of the Exchange Act, the Commission may impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act or any regulation thereunder, and upon any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such a violation.

18. Section 13(b)(2)(A) of the Exchange Act requires every issuer with a class of securities registered pursuant to Section 12 of the Exchange Act to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

19. Section 13(b)(2)(B) of the Exchange Act requires such issuers to, among other things, devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that the transactions are (i) executed in accordance with management's general or specific authorization; (ii) recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles ("GAAP") or any other applicable criteria; and (iii) recorded as necessary to maintain accountability for assets.

20. Up through 2013, certain Mead Johnson China employees made payments to HCPs using funds maintained by third parties. These funds and payments from the funds were not accurately reflected on Mead Johnson China's books and records. The books and records of Mead Johnson China were consolidated into Mead Johnson's books and records. As a result of the misconduct of Mead Johnson China, Mead Johnson failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected its transactions as required by Section 13(b)(2)(A) of the Exchange Act.

21. Up through 2013, Mead Johnson failed to devise and maintain an adequate system of internal accounting controls to ensure that Mead Johnson China's method of funding marketing and sales expenditures through third-party distributors was not used for unauthorized purposes, such as improperly compensating Chinese HCPs to recommend Mead Johnson's products. As a result of such failure, the improper payments to HCPs occurred contrary to management's authorizations, in violation of Section 13(b)(2)(B) of the Exchange Act.

IV.

On the basis of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in the Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Mead Johnson 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. Pursuant to Section 21(B)(a)(2) of the Exchange Act, Mead Johnson shall, within ten (10) days of entry of this Order, pay disgorgement of \$7,770,000, prejudgment interest of \$1,260,000, and a civil monetary penalty in the amount of \$3,000,000 for a total payment of \$12,030,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 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 Mead Johnson Nutrition Company 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 Karen L. Martinez, Regional Director, Salt Lake Regional Office, Securities and Exchange Commission, 351 South West Temple, Suite 6.100, Salt Lake City, Utah 84101.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Brent J. Fields
Secretary