My Brother’s Keeper: Mitigating Risk Through Business Partner Compliance Program Took Kits

Matthew Werner, CHC
VP, Chief Compliance & Privacy Officer
Bio-Rad Laboratories

Agenda

- Drivers for Compliance Program Tool Kit Use
- Background of our Took Kit Implementation
- Surveying your Business Partner Risk Environment
- Effective Took Kit Implementation
- Measuring Took Kit Success
Drivers for Compliance Tool Kit Use - Risks

- Expanding theories of “travelling” liability for the conduct of your business partners
  - Actual or constructive knowledge of business partner misconduct
  - Authorization of business partner misconduct
- Agency
- Aiding and abetting
- Conspiracy
Drivers for Compliance Tool Kit Use - Benefits

- Improved relationships, trust, and communication between companies
- The value of legal and compliance knowledge to the business partner
- Alignment of priorities between companies

Background of our Tool Kit
Implementation
Elements of the Discussion

- These materials and my statements represent my personal thoughts and not those of Bio-Rad Laboratories or any related entity or business partner
- All information presented herein comes from publicly available sources and records

History of Bio-Rad Laboratories

- Founded in 1952 in Berkeley, California, United States by David and Alice Schwartz
- “Bio-Rad” name is based upon the words “biochemicals and radiochemicals”
- First product was a tobacco mosaic virus (TMV) in a ready-to-use format
- Initial focus on manufacturing analytical and measuring instrument systems for researchers
- Became publicly traded 1966
History of Bio-Rad Laboratories

- Currently headquartered in Hercules, CA
- Annual revenue of $2.2B
- 8000 employees
- 35 campuses around the world
- Sales in 150 countries
- Most customers qualify as government entities and government officials under the FCPA
- Extensive network of third party sales and marketing intermediaries around the world

Clinical Diagnostics
- In Vitro Diagnostic (IVD) instruments and reagents that cover more than 300 clinical diagnostic tests
- Infectious diseases testing; autoimmune disease testing; diabetes monitoring

Life Science Research
- Over 5,000 instrument and reagent products
- Cell biology; gene expression; protein quantification; drug discovery; food safety

**Russia**
- Significant sales to Russian government through sales agents
- Sales agents had no offices or employees in Russia
- Little evidence of actual services performed for commission payments

**Vietnam**
- Cash payments by Bio-Rad Vietnamese country manager to officials at government-owned hospitals & laboratories
- Payments recorded as commissions, advertising fees, and training fees

**Thailand**
- Bio-Rad purchases 49% interest in a Thai company
- Very little due diligence prior to purchase
- Thai company used a sales agent who bribed government officials
- Violative conduct occurred both before and after Bio-Rad purchase

Profile of the Company’s U.S. Foreign Corrupt Practices Act (FCPA) Enforcement Action

- **DOJ Statement of Conduct:**
  - $7.5M in bribes in 3 countries
  - Illicit profits of $35M

- **DOJ/SEC Settlement:**
  - 2 Year NPA, $14M to DOJ, $41M to SEC

- **Voluntary Disclosure to DOJ**

- **NPA Resolved**
Surveying Your Business Partner Risk Environment

Aligning your Business Partner Environment with your Risk Profile

- What is the risk you need to control?
  - Legal (traveling liability)
  - Operational
  - Strategic
  - Financial
- What portion of that risk is created by your business partners?
- Detecting business partners that are driving this risk
  - Enforcement actions
  - Internal investigations
  - Litigation
  - Business partner audits
Corruption Risk & Business Partner Involvement

Sales & Marketing Intermediaries
- Distributors
- Sales Agents

Government-Facing Consultants
- Law Firms
- Customs Brokers

Customer-Facing Service Providers
- Travel Agencies
- Conference Organizers

Suppliers
- Critical Suppliers
- Non-Critical Suppliers

Customer-Facing Service Providers
- Travel Agencies
- Conference Organizers
Narrowing the Focus

- Risk distinction between small and large business partners?
- Risk distinction between business partners in different regions?
- Distinction between different business partner types that will be amenable to use of a tool kit?
- Resource limitations of your compliance program

Selected target for tool kit deployment

- Sales & Marketing Intermediaries
  - Distributors
  - Sales Agents
- Government-Facing Consultants
  - Law Firms
  - Customs Brokers
- Customer-Facing Service Providers
  - Travel Agencies
  - Conference Organizers
- Suppliers
  - Critical Suppliers
  - Non-Critical Suppliers
Effective Took Kit Implementation

Identifying Business Partner Compliance Program Weaknesses

- The seven elements of a compliance program
  - Standards & procedures
  - Oversight
  - Education & training
  - Monitoring & auditing
  - Reporting
  - Enforcement & discipline
  - Response & prevention
Identifying Business Partner Compliance Program Weaknesses

- The seven elements of a compliance program
  - Standards & procedures
  - Oversight
  - Education & training
  - Monitoring & auditing
  - Reporting
  - Enforcement & discipline
  - Response & prevention

Took Kit Components: Standards & Procedures

- Accurate & complete books and records
  - Template internal forms
  - Template contracts
  - Model invoices, purchase orders & receipts
  - Recommended accounting systems and journal entry guides
  - Required controls for downstream sub-business partners
- Sufficient internal controls
  - Template internal policies & procedures
Took Kit Components: Training & Education

- Providing training directly to the business partner
  - Explaining the function and value of a compliance program, generally
  - Explaining the particular laws that affect your relationship with the business partner
  - Explaining the risks to your company (or mutual risks) that your compliance program has identified & seeks to control
  - Providing model training modules that the business partner may deploy itself

Effective Took Kit Deployment

- Template forms, contracts, policies & procedures
  - Delivery installed in due diligence/onboarding
  - Delivery at detection of compliance program weakness or problem
  - Full-time access through an online business partner portal
- Training materials
  - In-person, group event (e.g. distributor meetings)
  - In-person, individual event (e.g. account manager outreach)
  - Online, interactive training platform
  - Online, downloadable training content
  - Publication of a business partner code of conduct
  - Trade association codes of conduct that your company follows
Took Kit Deployment: Operational Challenges

- Providing materials in multiple languages
- Updating & maintenance is expensive
- Many business partners will not engage if there are language barriers
- Consider a process for duplicative training efforts
- Consider the challenges of policing individual business partner employees

Measuring Took Kit Success
Defining Business Partner Incentives

- Incentives
  - Favorable pricing or other business terms for successful tool kit use
  - Political accolades or awards
  - Favorable calculations in audits & assessments

- Consequences
  - Unfavorable pricing or other business terms for successful tool kit use
  - Increased severity of consequences when a problem area is identified that would have been addressed by tool kit use

Measuring Tool Kit Effectiveness with Business Partners

- A decrease in overall substantiated internal investigations with this type of business partner
- Favorable pulse survey scores from business partners
- Favorable pulse survey scores from your employees who own the business partner relationship
- Rising knowledge testing scores from business partner personnel
- Improved business partner scores in audits post tool kit implementation
Thank You!