

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 84308 / September 28, 2018

ACCOUNTING AND AUDITING ENFORCEMENT

Release No. 3990 / September 28, 2018

ADMINISTRATIVE PROCEEDING

File No. 3-18853

In the Matter of

STRYKER CORPORATION

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND 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 Stryker Corporation (“Stryker” 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 Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

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

Summary

1. This matter concerns violations of the books and records and internal accounting controls provisions of the Exchange Act by Stryker, a global leader in the medical technology industry, related to its operations in India, China, and Kuwait.

2. Stryker's policies, which applied to its global operations, prohibit bribery and other improper payments. As part of its internal accounting controls, the company had policies, which applied to its subsidiaries, requiring, among other things, proper documentation of transactions; written agreements with distributors and sub-distributors that included anti-corruption provisions and review rights to determine compliance; and due diligence and approval of, and anti-corruption training for, all distributors and sub-distributors.

India

3. From at least 2010 through 2015, Stryker's wholly-owned subsidiary in India ("Stryker India") failed to keep and maintain any documentation with respect to 27% of the transactions tested in an internal forensic review that targeted Stryker India's high-risk and compliance-sensitive accounts and payments during the relevant period. Additionally, the forensic review found missing or inaccurate documentation for numerous other transactions flagged as high-risk, including expenses related to consulting fees, travel, and other benefits to health-care professionals ("HCPs") in India.

4. The sales transactions here involved Stryker India's sales of orthopedic products to dealers, which subsequently sold the products to certain private hospitals. Stryker India authorized these dealer transactions only after Stryker India's management negotiated and approved the price that the hospitals would pay to the dealers. Thus, in determining the price charged to dealers, Stryker India's management and the dealers specifically negotiated the profit margin such dealers would stand to earn based on the difference between what hospitals paid the dealers and what the dealers paid Stryker India. Furthermore, all such transactions were governed by Stryker India's policy of prohibiting dealers from making, requesting, or accepting any "improper payments to government or non-government officials, employees, or entities."

5. During the relevant period, certain of Stryker India's dealers regularly issued "inflated invoices" upon the request of certain private hospitals. The private hospitals that requested inflated invoices from dealers profited from their purchase of Stryker orthopedic products by passing on the higher (invoiced) prices to their patients or their patients' insurers, even as the hospitals paid the lower prices previously negotiated with Stryker India to Stryker India's dealers. Stryker received internal complaints of this practice and uncovered evidence of such overbilling by one dealer when it conducted audits of three dealers in 2012. Yet Stryker failed to devise and maintain a system of internal accounting controls sufficient to detect, address, and prevent this widespread practice at the dealer level, which violated Stryker's own policies governing the activities of Stryker India's dealers.

China

6. In China, Stryker operates through a wholly-owned subsidiary (“Stryker China”) that sells its Sonopet ultrasonic aspirator, as well as other products, through distributors. From 2015 through 2017, at least 21 sub-distributors of Stryker’s Sonopet product in China were not vetted, approved, or trained, as required by Stryker’s policies. At times, Stryker China employees worked directly with these unauthorized sub-distributors, and at other times installation records were falsified to hide the involvement of the unauthorized sub-distributors in the sale of Sonopet products. Stryker had in place certain internal accounting controls relating to third parties that limited transactions to those that complied with their contractual undertakings to adhere to Stryker’s anti-corruption policies and procedures. The use of these unauthorized sub-distributors increased the risk of improper payments in connection with the sale of Stryker products. Stryker failed to sufficiently implement its policies to detect and prevent the use of these unauthorized sub-distributors in China.

Kuwait

7. EMEA Supply Chain Services B.V. is a wholly-owned subsidiary of Stryker based in the Netherlands. From an office located in Dubai, employees of this subsidiary oversee sales by Stryker’s distributors in Kuwait. Until 2018, Stryker had one primary distributor in Kuwait (the “Kuwait Distributor”) that sold Stryker orthopedic products to the Kuwait Ministry of Health. From 2015 through 2017, the Kuwait Distributor made over \$32,000 in improper “per diem” payments to Kuwaiti HCPs to attend Stryker events, when Stryker had directly paid the costs for lodging, meals, and local transportation for these individuals. Stryker had in place certain internal accounting controls relating to third parties that limited transactions to those that complied with their contractual undertakings to adhere to Stryker’s anti-corruption policies and procedures. Stryker failed to sufficiently implement policies to test or otherwise assess whether the Kuwait Distributor would allow the company to exercise its audit right to review records, and whether it was complying with the company’s policies prohibiting bribes and other improper payments by its distributors.

8. Based on all of the above, Stryker violated Section 13(b)(2)(B) of the Exchange Act because it failed to devise and maintain, in its India, China, and Kuwait operations, a system of internal accounting controls sufficient to provide reasonable assurances that transactions were executed in accordance with management’s general or specific authorization, and that transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets. In addition, the failure to have internal accounting controls that ensured proper documentation of transactions involving Stryker India, described above, caused Stryker to violate Section 13(b)(2)(A) of the Exchange Act because its books and records did not, in reasonable detail, accurately or fairly reflect the transactions and dispositions of the assets of Stryker.

Respondent

9. Stryker is a Michigan corporation with its principal executive offices in Kalamazoo, Michigan. Its common stock is registered with the Commission pursuant to Section

12(b) of the Exchange Act and is listed on the New York Stock Exchange under the symbol “SYK.” Stryker manufactures and distributes medical devices and products in more than 100 countries around the world, including India, China, and Kuwait. The financial results of sales made in these countries are consolidated into the financial statements of Stryker.

Prior Commission Action

10. On October 24, 2013, the SEC filed settled cease-and-desist proceedings against Stryker for violations of the books and records and internal accounting controls provisions of the Exchange Act. The Commission order found that, from approximately August 2003 to February 2008, through five wholly-owned subsidiaries, Stryker made approximately \$2.2 million in unlawful payments to government employees, including public HCPs in Mexico, Poland, Romania, Argentina, and Greece. In the company’s books and records, Stryker incorrectly described these unlawful payments to foreign officials as legitimate consulting and service contracts, travel expenses, charitable donations, or commissions, when in fact the payments were made by Stryker to obtain or retain business. Stryker also failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that the company maintained accountability for its assets and that transactions were executed in accordance with management’s authorization. As a result of those payments, Stryker earned approximately \$7.5 million in illicit profits.

11. In settling with the Commission, Stryker consented to the issuance of an order requiring it to cease-and-desist from any violations and any future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and to pay \$7,502,635 in disgorgement, \$2,280,888 in prejudgment interest, and a civil penalty of \$3,500,000.

Stryker India’s Business

12. From at least 2010 through December 2015, Stryker sold its medical products in India through Stryker India, which generated approximately 85% of its revenues through sales to third-party dealers. These dealers, in turn, sold Stryker products to end customers, primarily hospitals. Approximately 85% of Stryker India’s end customers are hospitals in the private sector.

13. Stryker’s policies required Stryker and its subsidiaries, including Stryker India, to maintain sufficient internal accounting controls. Stryker India was also subject to Stryker’s code of conduct, which required, among other things, that Stryker India take steps to ensure that all payments made to government or non-government officials, employees, customers, and other persons and entities were proper. Further, Stryker India was required to generate or obtain proper documentation to provide assurances that all transactions and business relationships with dealers, HCPs, consultants, and other third parties were legitimate.

14. Stryker India entered into a contract with each dealer through which Stryker products were sold. Pursuant to such contracts, Stryker India’s dealers were required to follow Stryker’s policies regarding the proper conduct of their business, which included a prohibition on making, requesting, or accepting any “improper payments to government or non-government officials, employees, or entities.” The contracts also obligated dealers to “maintain complete and

accurate records relating to [their] promotion, marketing, use and distribution of [Stryker] Products.” Finally, under its contracts with dealers, Stryker India held audit rights to inspect the books and records of any of the 198 dealers through which Stryker products were sold in India.

Stryker India’s Inadequate Oversight of Its Dealers

15. In 2012, in response to allegations of misconduct concerning Stryker India’s dealers, Stryker exercised its audit rights over three dealers in India. Those audits revealed insufficiencies in the financial record-keeping and internal accounting controls of all three dealers. Additionally, Stryker identified suspicious expenses by one dealer and instances of another dealer over-billing a hospital upon the hospital’s request. While Stryker took some corrective actions in response to these audits, including terminating one of the three dealers, the actions were limited to the three dealers audited.

16. The above deficiencies violated Stryker India’s agreements with its dealers. Specifically, the deficiencies in dealers’ financial record-keeping violated dealers’ obligation to “maintain complete and accurate records relating to [their] promotion, marketing, use and distribution of [Stryker] Products,” and the over-billing violated Stryker’s business conduct policy prohibiting participation in any improper payments. Despite the red flags raised during the 2012 audits, and numerous complaints reported to Stryker of dealer misconduct, Stryker did not act to determine the scope of dealer-inflated invoices until 2015.

17. In 2015, Stryker performed audits of other dealers in India. The audits revealed that the practice of Stryker India’s dealers inflating invoices for the sale of Stryker orthopedic products to certain private hospitals – an improper practice identified three years earlier in connection with the 2012 audits – had become more widespread. Certain private hospitals in India (mostly large, corporate hospitals) routinely asked dealers to mark up the cost of the orthopedic products above the price that those hospitals had directly negotiated with Stryker India and actually paid to Stryker India’s dealers. In doing so, dealers allowed these private hospitals to gain a windfall from passing on the higher (invoiced) prices to their patients or their insurance companies.

18. The 2015 audits further confirmed that dealers failed to adequately maintain their financial records and had provided questionable payments or benefits to HCPs in contravention of Stryker’s business conduct policy, which prohibits the participation in any improper payments. These practices, like the deficiencies identified in the 2012 audits, violated the dealers’ agreements with Stryker India.

Stryker India Failed to Maintain Complete and Accurate Books and Records

19. From 2010 through 2015, Stryker India failed to make and keep complete and accurate books and records that reflected its transactions and disposition of assets. In particular, Stryker India recorded potentially problematic payments to its dealers and to HCPs, some of which lacked any supporting documentation reflecting a clear business purpose.

20. A forensic review of Stryker India’s general ledger for the period 2010 through 2015 found a complete lack of documentation for 144 out of 533 transactions selected as a sample of Stryker India’s highest-risk and most compliance-sensitive accounts. The missing

documentation encompassed transactions of nearly every high-risk category, including: consulting payments to HCPs, payments of travel and lodging for HCPs, payments to event organizers, discounts on the price of Stryker products to dealers, commissions awarded to dealers, and marketing expenses.

21. In addition, for many other high-risk transactions, Stryker India recorded payments with inaccurate or inadequate documentary support. For example, Stryker India paid commissions to dealers for which the supporting documentation did not provide a clear justification, or the amount of such commissions exceeded Stryker India's commission guidelines. Payments intended to benefit HCPs also lacked sufficient documentation, such as consulting fees paid to doctors without adequate explanation of the doctors' consulting services or hours billed, and payments for HCP travel with documentation that appeared falsified or lacking an appropriate basis for the travel.

Stryker's Sonopet Sales in China

22. Stryker China sells Sonopet products directly to a state-owned "hub" distributor, which in turn sells the products to a network of sub-distributors. From 2015 through 2017, at least 21 sub-distributors of Stryker's Sonopet products in China were not vetted, approved, and trained by Stryker in accordance with its internal accounting controls. During that time, the sale of some Sonopet products to hospitals involved third, fourth, and even fifth tier sub-distributors, none of which were subjected to due diligence approval or training. Stryker China employees knew of and worked directly with certain of these unauthorized sub-distributors, and at times installation records Stryker China maintained were falsified to hide the involvement of the unauthorized sub-distributors. Stryker's failure to vet, approve, train, and monitor its distributors and sub-distributors in China in accordance with the company's policies, increased the risk of bribery and other improper payments in connection with the sale of Stryker products. Stryker failed to implement its internal accounting controls to detect and prevent the use of these unauthorized sub-distributors in China.

Stryker's Business in Kuwait

23. From its office in Dubai, United Arab Emirates, Stryker, until recently, sold its orthopedic products to hospitals in Kuwait primarily through the Kuwait Distributor. Most of the Kuwait Distributor's sales of Stryker products were to Kuwait's Ministry of Health, which procured medical products on behalf of Kuwait's public hospitals. From 2015 through 2017, the Kuwait Distributor made at least \$32,000 in improper "per diem" payments to Kuwaiti HCPs to attend Stryker events, when Stryker had already directly paid the lodging, meals, and transportation costs for these individuals to attend the events. When Stryker sought to exercise its audit rights under its distribution agreement with the Kuwait Distributor to review records to determine whether improper payments had been made to any government official, the Kuwait Distributor denied access. Stryker had not before attempted to audit or otherwise review the Kuwait Distributor's records to determine whether it was complying with Stryker's policies even though Stryker had previously received a complaint from a former employee of the Kuwait Distributor alleging that the Kuwait Distributor paid bribes in connection with the sale of Stryker products. Stryker failed to implement its internal accounting controls to test or otherwise assess whether the Kuwait Distributor was complying with Stryker's anti-corruption policies.

IV.

Internal Accounting Controls Violations

24. As detailed above, Stryker failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles. For example, Stryker recorded transactions of Stryker India for which Stryker could not verify the business purpose or otherwise account for the legitimacy of those expenses.

25. Further, Stryker failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were executed in accordance with management's general or specific authorizations. In India, even after the 2012 audits revealed evidence of dealers not complying with Stryker policies — as required by their contracts with Stryker India — and of hospitals requesting invoices with prices higher than the prices that Stryker India had specifically negotiated with such hospitals, Stryker failed to devise and maintain a system of internal accounting controls designed to detect and prevent dealers from engaging in the practice of inflating invoices to certain private hospitals for the sale of Stryker orthopedic products. In China, Stryker failed to vet, approve, train, and monitor sub-distributors of its Sonopet product in accordance with the company's policies, thereby increasing the risk of bribery and other improper payments in connection with the sale of Sonopet products. And in Kuwait, Stryker failed to implement its policies to test or otherwise assess whether the Kuwait Distributor was complying with Stryker's anti-corruption policies.

26. As a result of the conduct described above, Stryker violated Section 13(b)(2)(B) of the Exchange Act, which requires every issuer with a class of securities registered pursuant to Section 12 of the Exchange Act to, among other things, devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are (i) executed in accordance with management's general or specific authorization; (ii) recorded as necessary to (I) permit preparation of financial statements in conformity with generally accepted accounting principles or any other applicable criteria and (II) maintain accountability for assets.

Books and Records Violations

27. As detailed above regarding Stryker India, during the period of 2010 through 2015, Stryker was unable to provide any documentation for 27% of sampled high-risk transactions on Stryker India's general ledger. For other compliance-sensitive transactions, the available documentation was insufficient for purposes of determining accurately the recipient, amount, or purpose of the payments at issue.

28. As a result of the conduct described above regarding Stryker India, Stryker violated Section 13(b)(2)(A) of the Exchange Act, which 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 that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

Stryker's Remedial Efforts

29. In response to the Commission's investigation, Stryker retained outside counsel and forensic auditors to conduct an internal investigation into the company's compliance with the Foreign Corrupt Practices Act ("FCPA") concerning Stryker's activities in India, China, and Kuwait. As the internal investigation progressed, Stryker shared its findings on an ongoing basis, voluntarily produced reports and other materials, and cooperated with the Commission staff's investigation.

30. Since the time of the conduct detailed above, Stryker undertook a number of remedial efforts, which include: (1) enhanced and updated policies, procedures, and best practices for Stryker India; (2) new compliance measures with additional controls around (i) the monitoring of Stryker's relationship with HCPs and indirect channels, including dealers and distributors, (ii) reducing the risk of unauthorized business practices in India, and (iii) due diligence of third parties; (3) increased training of all Stryker India employees and local management, including an FCPA compliance workshop for Stryker India's leadership team; (4) a new centralized system for dealer documentation, and a modified dealer commission model designed to increase transparency around the payment of commissions to dealers in India; (5) compliance audits related to marketing events, event documentation, and employee reimbursements in India; and (6) audits of dealers' and distributors' business practices in India. Further, Stryker terminated certain senior employees at Stryker India, appointed new leadership to head Stryker India, and sent a notice of termination to the Kuwait Distributor.

31. Also in response to the Commission's investigation, Stryker fortified its existing compliance program, which is designed to prevent, detect, and remediate potential misconduct. This program develops, maintains, and implements corporate policies and standard operating procedures setting forth specific due diligence and documentation requirements for relationships with foreign officials, HCPs, consultants, and distributors.

32. In determining to accept Stryker's Offer, the Commission considered Stryker's cooperation and remedial acts undertaken.

V.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Stryker 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 Stryker shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$7,800,000 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 Stryker as 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 Sanjay Wadhwa, Senior Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281.

C. 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 30 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.

D. Respondent Stryker shall comply with the following undertakings:

1. Retain an independent consultant (the "Independent Consultant") not unacceptable to the Staff within sixty (60) calendar days after the issuance of this Order. Within thirty (30) calendar days after the issuance of this Order, Respondent shall recommend to the Staff a qualified candidate to serve as the Independent Consultant. The Staff shall provide feedback to Respondent within fifteen (15) calendar days of receiving Respondent's recommendation.

2. The Independent Consultant candidate shall have, at a minimum, the following qualifications: demonstrated expertise with respect to the FCPA, including experience counseling on FCPA issues; experience designing and/or reviewing corporate compliance policies, procedures, and internal controls, including FCPA-specific policies, procedures, and internal controls; ability to access and deploy resources as necessary to discharge the Independent Consultant's duties as described herein; and independence from Respondent to ensure effective and impartial performance of the Independent Consultant's duties.
3. The Independent Consultant should not have provided legal, auditing, or other services to, or have had any affiliations with, the Respondent during the two years prior to the issuance of this Order.
4. Respondent shall retain the Independent Consultant for a period of eighteen (18) months from the date of the engagement. Respondent shall exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant.
5. To ensure the independence of the Independent Consultant, Respondent shall not have the authority to terminate the Independent Consultant without the prior written approval of the Staff.
6. The Independent Consultant's responsibility is to review and evaluate Respondent's internal controls, record-keeping, and anti-corruption policies and procedures relating to use of dealers, agents, distributors, sub-distributors, and other such third parties that sell on behalf of Stryker ("the Policies and Procedures") and to make recommendations designed to reasonably improve the Policies and Procedures. This review and evaluation shall include an assessment of the Policies and Procedures as actually implemented, including in India, China, Kuwait, and other countries selected by the Independent Consultant, and how the Policies and Procedures fit within Respondent's ethics and compliance function. The Independent Consultant shall consider whether the ethics and compliance function has sufficient resources, authority, and independence, and provides sufficient training and guidance.
7. Respondent and the Independent Consultant shall agree that the Independent Consultant is an independent third-party and not an employee or agent of the Respondent. In addition, Respondent and the Independent Consultant agree that no attorney-client relationship shall be formed between them.
8. Respondent shall require the Independent Consultant to enter in an agreement with Respondent providing that, for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant,

attorney-client, auditing, or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the Independent Consultant is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order, shall not, without prior written consent of the Staff, enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two (2) years after the engagement.

9. Respondent shall require the Independent Consultant to prepare a written work plan and submit it to Respondent and the Staff for comment within thirty (30) calendar days of commencing the engagement. The Respondent's comments shall be provided to the Independent Consultant no more than fifteen (15) calendar days after receipt of the written work plan. In order to conduct an effective initial review and to understand fully any deficiencies in the Policies and Procedures, including how FCPA compliance fits within Respondent's ethics and compliance function, the Independent Consultant's initial work plan shall include such steps as are reasonably necessary to develop an understanding of the facts and circumstances surrounding any violations that may have occurred as reflected in this matter and to assess the effectiveness of Respondent's existing Policies and Procedures, and of Respondent's ethics and compliance program. Any dispute between Respondent and the Independent Consultant with respect to the work plan shall be decided by the Staff.
10. Respondent shall cooperate fully with the Independent Consultant, and the Independent Consultant shall have the authority to take such reasonable steps as, in his or her view, may be necessary to be fully informed about Respondent's Policies and Procedures in accordance with the principles set forth herein and applicable law, including data protection, blocking statutes, and labor laws and regulations applicable to Respondent. To that end Respondent shall provide the Independent Consultant with access to all information, documents, records, facilities and/or employees, as requested by the Independent Consultant, that fall within the scope of the Independent Consultant's responsibility, except as provided in this paragraph; and provide guidance on applicable laws (such as relevant data protection, blocking statutes, and labor laws).
11. In the event the Respondent seeks to withhold from the Independent Consultant access to information, documents, records, facilities and/or employees of Respondent that may be subject to a claim of attorney-client privilege or to the attorney work product doctrine, or where Respondent reasonably believes production would otherwise be inconsistent with

applicable law or beyond the scope of these undertakings, Respondent shall work cooperatively with the Independent Consultant. If the matter cannot be resolved, at the request of the Independent Consultant, Respondent shall promptly provide written notice to the Independent Consultant and the Staff. Such notice shall include a general description of the nature of the information, documents, records, facilities and/or employees that are being withheld, as well as the basis for the claim. To the extent Respondent has provided information to the Staff in the course of the investigation leading to this action pursuant to a non-waiver of privilege agreement, Respondent and the Independent Consultant may agree to production of such information to the Independent Consultant pursuant to a similar non-waiver agreement.

12. Respondent shall require the Independent Consultant to issue a written report (“Report”) within six (6) months after being retained. The Report shall cover the Independent Consultant’s review of Respondent’s Policies and Procedures: (a) summarizing its review and evaluation, and (b) if necessary, making recommendations based on its review and evaluation that are reasonably designed to improve Respondent’s Policies and Procedures. Respondent shall require that the Independent Consultant provide the Report to the Board of Directors of Respondent and simultaneously transmit a copy to the Staff at the following address: Thomas P. Smith, Jr. Assistant Regional Director, Division of Enforcement, New York Regional Office, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281.
13. Respondent shall adopt all recommendations in the Report within ninety (90) days of the issuance of the Report; provided, however, that, as to any recommendations that Respondent considers to be unduly burdensome, impractical, or costly, Respondent need not adopt the recommendations at that time, but may submit in writing to the Staff, within thirty (30) days of receiving the Report, an alternative policy or procedure designed to achieve the same objective or purpose. Respondent and the Independent Consultant shall attempt in good faith to reach an agreement relating to each recommendation Respondent considers unduly burdensome, impractical, or costly. In the event that Respondent and the Independent Consultant are unable to agree on an alternative proposal within thirty (30) days, Respondent will abide by the determinations of the Staff.
14. After 180 days of completion of the implementation set forth above, the Independent Consultant shall have thirty (30) days to complete a follow-up review to confirm that Respondent has implemented the recommendations or agreed-upon alternatives and continued the application of the Policies and Procedures, and to deliver a supplemental report to the Board of Directors of Respondent and the Staff setting forth its conclusions and whether any further improvements should be implemented.

15. Respondent agrees that the Staff may extend any of the dates set forth above at its direction.
16. Respondent shall certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. Respondent shall submit the certification and supporting material to: Thomas P. Smith, Jr., Assistant Regional Director, Division of Enforcement, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.
17. Respondent agrees that these undertakings shall be binding upon any successor in interest to Respondent or any acquirer of substantially all of Respondent's assets and liabilities or business.

By the Commission.

Brent J. Fields
Secretary