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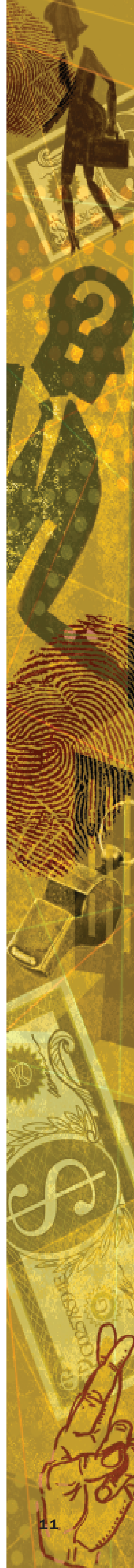

A Disturbing 30 Days

Recent days have been very fruitful for prosecutors and regulators enforcing the securities acts and other laws designed to protect consumers and investors. The total amounts for fines, penalties, and settlements reported during a single 30-day period are staggering.

Within a single 30-day period beginning on June 12, 2012, a number of fraud and ethics-related items made news throughout the business world. To start, three different companies in the pharmaceutical industry—Pfizer, GlaxoSmithKline, and Johnson & Johnson (J&J)—agreed to immense penalties totaling approximately $4 billion for breaking various laws designed to protect patients. The laws they allegedly violated include statutes preventing the marketing of drugs for uses that haven't been approved by the U.S. Food and Drug Administration (FDA) as well as tort claims alleging that certain drugs did more harm than good.

A report about the world's largest drug maker, Pfizer, notes that the company said in a securities filing that it has paid $896 million to resolve about 60% of the cases that allege its drugs to treat symptoms of menopause in women were responsible for causing cancer. The report also states the company has provided an additional $330 million to resolve the remaining lawsuits, for a total cost of $1.2 billion.

Meanwhile, the U.S. operations of GlaxoSmithKline plc, the largest drug manufacturer in the United Kingdom, agreed to plead guilty and pay fines of $3 billion to resolve fraud allegations and for failure to report safety data. This is the largest healthcare fraud settlement in U.S. history. The U.S. Department of Justice (DOJ) asserts the company failed to provide regulators with adverse data concerning its diabetes drug Avandia, marketed its antidepression treatment Wellbutrin for weight loss, and illegally promoted its antidepressant Paxil to children. Although criminal, these are misdemeanors, not felony-level crimes. A felony conviction would preclude the firm from selling to the U.S. government's health programs, such as Medicare.

Then there are the reports of an imminent blockbuster settlement from Johnson & Johnson, which has been accused of marketing Risperdal, its once best-selling antipsychotic schizophrenia drug, to nursing homes. The homes would allegedly use it to calm anxiety among patients having Alzheimer's disease or for general dementia, which aren't approved uses. There was an earlier probe into whether J&J paid tens of millions of dollars in kickbacks to boost sales of certain J&J medicines to nursing home patients. A final settlement hasn't been announced, but the estimated amounts varied from $1.5 billion to more than $2 billion.

As the pharmaceutical giants faced their difficulties, the global banking industry also faced some unsettling news items. The biggest item was the fine of £290 million ($451.4 million) imposed on Barclays plc, Britain's second-largest bank. It's the largest penalty ever assessed by U.S. and U.K. financial regulators. Barclays admitted submitting false information about its interbank borrowing rates, which masked the bank's true financial health and increased trading profits. The interbank rate, called LIBOR (London InterBank Offered Rate), is used as the benchmark for setting the rate on approximately $350 trillion of debt and derivative securities. Many of these instruments have adjustable rate terms that change as often as daily.

Chancellor of the Exchequer

George Osborne told Parliament that "The behavior of some in the financial services has damaged the reputation of an industry that employs hundreds of thousands of people and is vital to the economic prosperity of the country…It's time to deal with the culture that flourished in the age of irresponsibility and hold those who allowed it to do so to account."

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The investigation involved the U.K. Financial Services Authority (FSA) as well as the U.S. Commodity Futures Trading Commission (CFTC) and U.S. Department of Justice (DOJ). The settlement is being split as follows: $200 million to the CFTC, $160 million to the DOJ, and the rest to the FSA.

A statement regarding the Order issued against Barclays by the CFTC said, "Barclays, through its traders and employees responsible for determining the Bank's LIBOR and Euribor submissions (submitters), attempted to manipulate and made false reports concerning both benchmark interest rates to benefit the Bank's derivatives trading positions by either increasing its profits or minimizing its losses. This conduct occurred regularly and was pervasive. In addition, the attempts to manipulate included Barclays' traders asking other banks to assist in manipulating Euribor, as well as Barclays aiding attempts by other banks to manipulate U.S. Dollar LIBOR and Euribor."

Peter Hahn, formerly a managing director at Citigroup and currently with London's Cass Business School, was quoted saying, "The critical regulatory and shareholder issue is 'what do managers do under pressure?' If the answer is under stress you suspend your morality, there's a problem." Barclays' chairman, CEO, and COO have all resigned because of the scandal. Stay tuned, as additional U.S. and foreign banks remain under scrutiny for possibly also participating in attempting to manipulate interest rates to their benefit and making false statements.

Another item concerns Dutch-based ING Bank NV, which was fined for violating U.S. sanctions against Cuba and Iran. ING agreed to pay a fine of $619 million, the largest fine ever assessed against a bank for sanctions violations. New York and federal authorities have been successful in prosecuting three other major banks for deleting information from wire transfer records to disguise the fact that they were moving money illegally on behalf of clients who were subject to U.S. sanctions.

For guidance in applying the *IMA Statement of Ethical Professional Practice* to your ethical dilemma, contact the IMA Ethics Helpline at (800) 245-1383 in the U.S. or Canada. In other countries, dial the AT&T USADirect Access Number from www.usa.att.com/traveler/index.jsp, then the above number.

The U.S. SEC also was very active in pursuing major wrongdoers during the 30-day period:

- A Utah-based real estate Ponzi scheme that bilked $100 million from investors nationwide was shut down.
- Fraud charges were filed against a New York-based hedge fund that operated "like the final exam in a graduate school course in how to operate a hedge fund unlawfully." The hedge fund manager misappropriated $113.2 million to pay his personal taxes.
- 14 sales agents who misled investors and illegally sold securities for a Long Island-based investment firm at the center of a $415 million Ponzi scheme were charged.

Elsewhere, Australia's largest class action settlement was approved. The case involved Centro Retail, a shopping mall management company. It was alleged that in its 2007 financial statements, Centro classified A$1.5 billion (US$1.54 billion) of short-term liabilities as noncurrent and didn't declare A$1.75 billion (US$1.8 billion) of short-term debt guarantees of an associated company. The judge also said the company didn't disclose A$500 million (US$513 million) of short-term debt at one of its units. Of the A$200 million (US$206 million) settlement, one-third will be paid by PricewaterhouseCoopers, Centro's former and long-time auditing firm, which made certain admissions of negligence in the way it handled its audit.

And in New York, Peter Madoff, the brother of convicted Ponzi-scheme operator Bernie Madoff who is in prison on a 150-year sentence, pled guilty to assisting in the multibillion-dollar fraud. Peter was the former chief compliance officer at the private investment arm of Bernie Madoff's firm. Lawyers for the trustee recovering money for investors said Peter Madoff was the company's senior managing director and had "failed miserably" to meet his responsibilities. They also claimed that the Madoff firm was used as "the family piggy bank" to pay for vacation homes, cars, boats and even a stake in a beauty parlor. Peter Madoff agreed to the criminal forfeiture of $143 billion, including all his real and personal property, and will serve a 10-year jail sentence. In addition, a hedge fund manager who served as a Madoff feeder agreed to settle a suit filed by the New York Attorney General for $405 million.

Finally, the European Union Anti-Fraud Office (OLAF), which investigates misuse of EU funds and ethical issues within EU institutions, announced it had recovered €691 million ($870 million) in the past fiscal year. The largest was an investigation into the use of road funds in Italy that recovered €389 million ($490 million). A new Internet reporting system has resulted in more reporting of wrongdoing into the use of EU funds, but EU officials have resisted giving access to OLAF investigators. This highlights the importance of allowing unfettered access to information by independent compliance personnel as a tool to eliminate corruption.

Let's hope that the recent spate of revelations of fraud and other unethical acts doesn't signify a developing trend. The best advice for the long term: Do the right thing! **SF**

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