

## In the Matter of Novartis AG (2020)

### Nature of the Business.

Novartis AG is a global pharmaceutical company headquartered in Basel, Switzerland. Novartis's publicly traded securities are listed on the New York Stock Exchange and registered with the SEC pursuant to Section 12(b) of the Exchange Act.

Novartis Hellas S.A.C.I., a Greek corporation, is an indirect wholly-owned subsidiary of Novartis. Its financial statements are consolidated with those of Novartis.

Novartis Korea Ltd, which conducts business in South Korea, is likewise a wholly-owned subsidiary of Novartis. Its financial statements are consolidated with those of Novartis.

Alcon Pte Ltd, which is based in Singapore, was a wholly-owned subsidiary of Novartis prior to its spin-off in 2019. It is now owned by Alcon, Inc., a multinational eye care company incorporated in Switzerland.

### Influence to be Obtained.

According to the SEC, Novartis AG violated the FCPA's recordkeeping provision because of its subsidiaries' actions in Greece, South Korea, and Vietnam. According to the SEC, the respective subsidiary in all three countries engaged in schemes to illicitly pay public and private healthcare providers to prescribe or increase use of Novartis and Alcon products. Employees of the Korean subsidiaries allegedly disguised payments to healthcare providers as payments for medical journal activities, while the Greek subsidiary allegedly sought the help of sales representatives to drive down the use of a competitor's product and to manipulate clinical studies to promote its own products. Alcon Pte Ltd allegedly implemented a consultancy program in Vietnam through which it paid bribes to public healthcare providers in exchanges for the increase of Alcon product sales.

The SEC further alleges that Novartis lacked sufficient internal accounting controls within its former Alcon business in China, conducted by Alcon Pte Ltd. In China, the former subsidiary allegedly forged contracts as part of financing arrangements that lead Novartis to write off more than \$50 million in bad debt.

As Novartis consolidated the subsidiaries' financial statements into its own, the subsidiary's transactions, and the bribes allegedly paid, led Novartis to allegedly maintain inaccurate books and records. According to the SEC, Novartis received approximately \$92.3 million of unwarranted benefit as a result of the bribery schemes – \$70.1 million in Greece, \$8.4 million in Vietnam, and \$13.8 million in South Korea. Of note, Novartis settled similar FCPA charges with the SEC in 2016, which means this action makes the company a repeat offender.

### Enforcement.

On June 25, 2020, the SEC settled its enforcement action against Novartis, noting both the company's repeat-offender status and its positive remedial efforts and cooperation with the SEC. The SEC issued a cease-and-desist and ordered Novartis to pay \$92.3 million in disgorgement as well as \$20.5 million in prejudgment interest, for a total fine of \$112.8 million.

### Key Facts

**Citation.** *In the Matter of Novartis AG*, Admin. Proc. File No. 3-19835 (June 25, 2020).

**Date Filed.** June 25, 2020.

**Country.** Greece; South Korea; Vietnam; China.

**Date of Conduct.** 2012 - 2016.

**Amount of the Value.** Not stated.

**Amount of Business Related to the Payment.** \$92.3 million.

**Intermediary.** Employees.

**Foreign Official.** Unnamed government officials in Greece, South Korea, and Vietnam.

**FCPA Statutory Provision.** Books-and-Records; Internal Controls.

**Other Statutory Provision.** None.

**Disposition.** Cease-and-Desist Order.

**Defendant Jurisdictional Basis.** Issuer.

**Defendant's Citizenship.** Switzerland.

**Total Sanction.** \$112,800,000.

**Compliance Monitor/Reporting Requirements.** Three-year reporting requirement.

**Related Enforcement Actions.** *United States v. Novartis Hellas S.A.C.I.*, 20-cr-00538 (D. NJ June 25, 2020); *United States v. Alcon Pte Ltd*, 20-cr-00539 (D. NJ June 25, 2020).

**Total Combined Sanction.** \$346,725,000.