

CEP Magazine – October 2023



Daniel Arbel (daniel.arbel@ultra.global) is the Vice President General Counsel & Chief Compliance Officer for Ultra Information Solutions in Herzliya, Israel.

Distributor discounts: The no longer neglected risk in compliance programs

By Daniel Arbel, LLB, LLM

A recent Foreign Corrupt Practices Act (FCPA) enforcement action involving Philips highlights a bribery risk often overlooked: excessive discounts to distributors.^[1] This case underscores the need for companies operating globally to manage not just the well-known risks of paying intermediaries for assistance with securing overseas customers, but also the risks associated with offering excessive discounts to distributors—a practice that can raise as much of a bribery risk as an excessive commission. While it's logical to identify discounts as a risk, understanding why requires a deeper dive into the principles behind the regulations—a main theme in compliance.

In recent years, FCPA enforcement actions have increasingly focused on distributor relationships, as evidenced by cases involving Oracle,^[2] Microsoft,^[3] and now Philips. Oracle faced FCPA issues related to distributor discounts and marketing reimbursements. Microsoft faced scrutiny due to a lack of knowledge about who its distributors were doing business with, including some sanctioned entities. The Philips case accentuates the necessity of ongoing risk assessment, monitoring, and improvement with respect to distributor relationships. From the enforcement action and related order, it was apparent that these steps were missing in Philips's operations.

Moreover, the Philips case has shone a light on the need for robust and effective anti-corruption training. Despite promising to enhance its anti-corruption training program in 2013, Philips failed to ensure the implementation of its training in China, suggesting that the message about avoiding bribery and corruption wasn't adequately integrated into its business operations.

This document is only available to members. Please log in or become a member.

[Become a Member Login](#)