

J&J Settlement Includes Board Committee and Clawback

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The Corporate Integrity [Agreement](#) between Johnson & Johnson and the Department of Health and Human Services, the purpose of which is to promote compliance with federal health care programs and FDA requirements, contains two particularly interesting corporate governance provisions in its 71 pages.

Under the agreement, J&J formed a Regulatory, Compliance and Government Affairs board committee comprised of independent directors. The agreement lists specific requirements for the committee, including quarterly meetings and reviewing the effectiveness of the compliance program, as well as a signed resolution by each member of the committee summarizing its review and oversight of the compliance program with specific language regarding the committee's conclusion that the compliance program meets federal requirements and the obligations of the agreement. A number of employees are also required to provide personal certifications with similar statements. Board members must also undergo specific training related to their responsibilities and corporate governance.

In addition, the company is required to adopt a recoupment policy that puts at risk of forfeiture and recoupment an amount equivalent to up to three years of annual incentive compensation (including bonuses and equity awards) for certain executives based on significant misconduct relating to the sales or marketing of pharmaceutical products by those executives, or significant misconduct relating to the sales or marketing of such products in the business unit for which the executives had responsibility. The recoupment program applies to current and former executives.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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