

Boston Scientific's FCPA Problems Go Beyond Vietnam ... Again



Summary and Opinion: Are we back in China?

Boston Scientific had a relatively recent FCPA investigation involving China it never disclosed.

It ended just two years before a disclosed one involving Vietnam started. In Aug-2024, the company said its Vietnam FCPA investigation has expanded. Not good.

- In Aug-2022, Boston Scientific first disclosed that in Mar-2022, "it received a whistleblower letter alleging Foreign Corrupt Practices Act violations in Vietnam."
- **We doubt many investors caught this.** In its most recent 10-Q, filed in Aug-2024, the company tells us **the Vietnam FCPA investigation has expanded.** It now involves "foreign regulators," "other potential concerns in Vietnam," and, "other countries," none of which have been identified.
- **This is new information, from our research.** Boston Scientific had a **recent and separate FCPA investigation involving China it never disclosed.** It ended in Feb-2020, just two years before the new one in Vietnam started in Mar-2022. We have a document showing the China FCPA investigation was expansive, with a five-year look back to 2013. (Excerpts below.)

Think about it: The Vietnam FCPA exposure was disclosed, and relatively quickly too. But a seemingly larger FCPA investigation just two years earlier involving China was not? It doesn't add up.

Now, consider this: When the Vietnam matter was first disclosed in Aug-2022, Boston Scientific assured investors it was, "cooperating with government agencies while investigating these allegations." **Now, fully two years after that first disclosure, the company still hasn't said a peep about the results of its internal investigation.** Why? When they can, companies are quick to tell you when their internal investigations find no wrongdoing. But when they find problems, many stay silent, recognizing few investors will think to follow-up. That appears to be the case here.

DI's Take: Why the Vietnam FCPA Exposure is Bad

Boston Scientific's management and board previously concluded they could keep you in the dark on an expansive FCPA investigation involving China. Yet they judged a more recent Vietnam FCPA exposure had to be disclosed? That reveals their view on the Vietnam matter.

Further, that earlier FCPA investigation involving China created an investigative record for Boston Scientific. Regulators have long institutional memories on these things. With jaded eye, earlier promises made to go forth and sin no more will now be resurrected and challenged.

The fact Boston Scientific's Vietnam FCPA investigation has now expanded begs these important questions:

- Where / How has it expanded?
- Why are you telling us now?
- Are investigators focusing on China again?
- If not, why are you not identifying the countries and regulators involved in the expanded investigation?

The absence of detail on these items leaves you unable to adequately assess the added risk to Boston Scientific now.

Finally, we note that FCPA matters are often blown-off by investors. That's a mistake. **Ask yourself: What's the proper accounting treatment for a bribe?**

- At their core, FCPA investigations are about deficiencies in accounting and internal controls.
- Further, as an SEC investigation proceeds, the pressure can build to rein-in practices previously used to conduct business. This can make it harder to hit revenue and profit targets that were previously met.

– John P. Gavin, CFA

Investigation timeline with document excerpts below.

Timeline of Boston Scientific's Vietnam FCPA Investigation

Mar-2022: Boston Scientific received a whistleblower letter alleging Foreign Corrupt Practices Act violations in Vietnam. It was not disclosed for five more months.

From the Boston Scientific 10-Q filed on 04-Aug-2022: First disclosure of Vietnam whistleblower letter.

In March 2022, the Company received a whistleblower letter alleging Foreign Corrupt Practices Act violations in Vietnam. The Company is cooperating with government agencies while investigating these allegations.

DI's Take: For five months, Boston Scientific did not think the whistleblower allegations were serious enough to disclose. Something changed to alter their thinking on that. Further, since this first disclosure, at no time has Boston Scientific spoken to the results of its own investigation into the Vietnam whistleblower's allegations. We note the earnings call held 27-Jul-2022 was silent on the Vietnam exposure.

Oct-2022: Boston Scientific received a DOJ subpoena related to the FCPA allegation.

From the Boston Scientific 10-Q filed on 03-Nov-2022: First disclosure of receipt of an Oct-2022 DOJ subpoena.

In March 2022, the Company received a whistleblower letter alleging Foreign Corrupt Practices Act violations in Vietnam. In October 2022, the Company received a subpoena for documents from the Office of the U.S. Attorney for the District of Massachusetts. The Company is cooperating with government agencies while investigating these allegations.

DI's Take: As you can plainly see, in that 10-Q, only the US Attorney's involvement was disclosed, but not the SEC. That's unusual, as FCPA investigations are typically conducted by both the SEC and DOJ at the same time. The earnings call held 26-Oct-2022 was silent on the Vietnam exposure and the related US Attorney subpoena.

From the Boston Scientific 10-K filed on 23-Feb-2023: First disclosure of an SEC subpoena.

In March 2022, the Company received a whistleblower letter alleging Foreign Corrupt Practices Act violations in Vietnam. The Company has received related subpoenas for documents from the Office of the U.S. Attorney for the District of Massachusetts and the Securities and Exchange Commission. The Company is cooperating with government agencies while investigating these allegations.

DI's Take: We note the earnings call held 01-Feb-2023 was again silent on the Vietnam exposure and the related US Attorney and SEC subpoenas.

The above disclosure was then repeated in every quarterly filing since that 10-K in Feb-2023, with no update or further detail. That is, until the 10-Q filed on 01-Aug-2024.

The Aug-2024 10-Q is the first time we learn Boston Scientific's Vietnam FCPA investigation has now expanded in three troubling ways.

As highlighted below, it now involves "foreign regulators," "other potential concerns in Vietnam," and, "other countries," none of which have been identified.

From the Boston Scientific 10-Q filed on 01-Aug-2024:

Like many healthcare companies, the Company receives inquiries and has ongoing discussions with governmental agencies with respect to the Company's operations, such as the Securities and Exchange Commission (SEC), the Department of Justice (DOJ) and foreign regulators, including its operations in Vietnam with respect to alleged Foreign Corrupt Practices Act (FCPA) violations the Company received in March 2022. The Company has received related subpoenas for documents from the DOJ and the SEC with respect to the Vietnam matter, and is cooperating with the government while investigating these allegations. From time to time, the Company also self-discloses potential concerns to regulators. In the course of Vietnam-related discussions with the DOJ and SEC, the Company has disclosed that it is investigating other potential concerns in Vietnam and other countries.

Document excerpts next page.

Excerpt from SEC document request
Sent to Boston Scientific on April 03, 2018

ATTACHMENT A

In the Matter of Boston Scientific Corporation, B-03188

April 3, 2018

Definitions



As used in this Attachment, the words and phrases listed below shall have the following meanings:

1. “BSC” means the entity doing business under the name “Boston Scientific Corporation” including parents, subsidiaries, affiliates, predecessors, successors, officers, directors, employees, agents, general partners, limited partners, partnerships and aliases, code names, or trade or business names used by any of the foregoing.
2. “BSC-China” means the entity doing business under the name “BSC International Medical Trading (Shanghai) Co., Ltd.” and/or “BSC Medical Device Technology (Shanghai) Co. Ltd.” including parents, subsidiaries, affiliates, predecessors, successors, officers, directors, employees, agents, general partners, limited partners, partnerships and aliases, code names, or trade or business names used by any of the foregoing.
3. “CRM” means the Cardiac Rhythm Management business unit of BSC-China.
4. “HKMD” means the entity doing business under the name Hangzhou Kanglu Medical Device Company including parents, subsidiaries, affiliates, predecessors, successors, officers, directors, employees, agents, general partners, limited partners, partnerships and aliases, code names, or trade or business names used by any of the foregoing.

Excerpt from SEC document request
Sent to Boston Scientific on April 03, 2018

Documents to be Produced



1. Documents or information sufficient to identify all complaints (anonymous and otherwise) of bribery and/or potential violations of the Foreign Corrupt Practices Acts (“FCPA”) concerning BSC-China, its employees, agents, or business partners.

2. Documents or information sufficient to identify all FCPA and/or anti-corruption related internal audits or risk assessments (internal or outsourced) conducted by BSC concerning the CRM at BSC-China, HKMD, or (b)(6);(b)(7)(C). Please include the date of the audit/engagement, the nature of the project, the scope and any written summaries/reports prepared as a result.

3. Documents or information sufficient to identify all investigations conducted by BSC concerning allegations of bribery and/or potential violations of the FCPA by BSC-China, its employees, agents, or business partners.

4. Copies of all executed distributor agreements in place with HKMD.



5. Documents or information sufficient to identify all entities (including but not limited to business partners, distributors, and other third parties) used by BSC-China to distribute its CRM products in the Zhejiang province.

6. Documents or information sufficient to identify all onboarding or vetting of HKMD, including but not limited to documents sufficient to identify the ownership of HKMD.

7. Information sufficient to identify the BSC and/or BSC-China employees responsible for managing the relationship with HKMD.

8. Documents or information sufficient to identify total revenues generated from CRM sales in the Zhejiang province by hospital by product and by price per product sold.

9. Documents or information sufficient to identify the average sales discount given to HKMD for CRM sales in the Zhejiang province on an annual basis from 2013 through 2017.

10. Documents or information sufficient to identify all direct payments made or credits provided by BSC-China to HKMD related to CRM business.



11. Documents or information sufficient to identify all direct payments or credits provided by BSC-China to CRM end customers (hospitals) in the Zhejiang province.

SEC Investigation Termination Letter
Sent to Boston Scientific on February 25, 2020



**DIVISION OF
ENFORCEMENT**

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February 25, 2020

By Email and UPS
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Re: **In the Matter of Boston Scientific Corporation (B-03188)**

Dear Mr. Volling:

We have concluded the investigation as to Boston Scientific Corporation (“Boston Scientific”). Based on the information we have as of this date, we do not intend to recommend an enforcement action by the Commission against Boston Scientific. We are providing this notice under the guidelines set out in the final paragraph of Securities Act Release No. 5310, which states in part that the notice “must in no way be construed as indicating that the party has been exonerated or that no action may ultimately result from the staff’s investigation.” (The full text of Release No. 5310 can be found at: <http://www.sec.gov/divisions/enforce/wells-release.pdf>.)

Sincerely

(b)(6);(b)(7)(C)



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