

United States Senate

WASHINGTON, DC 20510-4305

April 14, 2021

Attorney General Merrick Garland
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Acting SEC Chair Allison Herren Lee
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Attorney General Garland and Acting Chair Lee,

I am writing to urge you to conduct an investigation of a publicly-traded American company for its apparent longstanding contribution to the opioid epidemic that killed 50,000 of our fellow citizens in 2019, the most recent year for which data is available.

As you know, opioids include heroin and pharmaceuticals like OxyContin, Vicodin, codeine, morphine, methadone, and fentanyl. Families and communities have been ripped apart by the opioid epidemic. The United States Government has fought this killer with all of the tools available. In recent years, Congress has passed two major laws to do just that —the Comprehensive Addiction and Recovery Act (CARA; P.L. 114-198) and the 21st Century Cures Act (Cures Act; P.L. 114-255). Since 2016, Congress has appropriated 1.75 billion taxpayer dollars for CARA grants alone.

In 2018, Congress also enacted the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (P.L. 115-271; the SUPPORT for Patients and Communities Act, or the SUPPORT Act). This law authorized over a billion dollars in funding for health care and law enforcement programs to help fight the opioid epidemic and deal with the devastating effects of opioid addiction.

The enforcement role played by the Department of Justice (“DOJ”) and the Securities and Exchange Commission (“SEC”) in helping fight against the opioid epidemic cannot be overstated. Enforcement of our civil and criminal laws is an important piece in stemming the tide of the opioid epidemic. Criminals need to know that if they choose to divert precursor chemicals, sell, manufacture, or deal opioids, or materially misrepresent their actions to the American people, they will be brought to justice.

Fortunately, the Department of Justice has a record of rising to this challenge. In October 2020, for example, the DOJ announced an \$8 billion settlement with Purdue Pharma, the OxyContin maker. In its settlement agreement, Purdue Pharma admitted that “it marketed and sold its dangerous opioid products to healthcare providers, even though it had reason to believe those providers were diverting them to abusers.”

I recently learned of a deeply troubling connection between another American company, Avantor, and the opioid crisis. Avantor is a publicly-traded company in the U.S. that has produced, manufactured, and sold a dangerous precursor chemical—(acetic anhydride)—for years in Mexico. While it is true that acetic anhydride can be used for legitimate purposes, it is also the key ingredient to convert opium to heroin. Acetic anhydride is banned in many countries due to its use in heroin production and also in the manufacture of improvised explosive devices (“IEDs”).¹

In August 2020, Bloomberg investigative journalists highlighted that Avantor’s acetic anhydride product line, J.T. Baker, was being diverted to Mexican drug cartels, who would then use it to produce heroin and methamphetamine. Avantor availed itself of foreign subsidiaries based in Mexico to produce, manufacture, and distribute this precursor chemical in the cartels’ backyard. According to the Bloomberg investigation, there is a “thriving retail market” in Mexico for the purchase of smaller containers of acetic anhydride. Indeed, Bloomberg investigative journalists highlighted instances where acetic anhydride was solicited and purchased with no questions asked. Yet the toll even one jug of acetic anhydride has on a community is devastating—one \$324 jug of acetic anhydride is capable of producing approximately 90,000 hits of heroin.

When the Bloomberg articles were published, Avantor abruptly stopped selling acetic anhydride in Mexico and ordered the destruction of any remaining inventory. Under all the circumstances, it is simply not credible to believe or argue that Avantor was not aware of the use of its product in Mexico for the production of heroin, 92% of which is exported to the United States.

The diversion of acetic anhydride to drug traffickers is not something that first came to light in August 2020. Since the 2000s, the International Narcotics Control Board (“INCB”) has been sounding the alarm regarding the diversion of acetic anhydride to drug traffickers. INCB has urged companies, like Avantor, to incorporate best practices and abide by INCB protocols to stop diversion. Unfortunately, Avantor’s J.T. Baker product of acetic anhydride has shown up in numerous drug busts in Mexico since 2010. Furthermore, Bloomberg reported that before its initial public offering (“IPO”) in 2019, “Avantor . . . became the only U.S. company to have international sales of its acetic anhydride blocked by authorities from 2016 through 2018, according to officials involved and INCB records.”

Avantor’s conduct also compels an investigation under the Foreign Corrupt Practices Act (15 U.S.C. § 78dd-1, et seq.) Under federal law, Avantor, as an “issuer” of stock, is required to “make and keep accurate books, records, and accounts that, in reasonably detail, accurately and fairly reflect the issuer’s transactions and dispositions of assets.” Additionally, Avantor is

¹ See <https://www.theeastafrican.co.ke/tea/news/east-africa/tanzania-in-the-spotlight-over-bomb-chemical-seized-in-pakistan-1345098>

required to devise and maintain reasonable internal accounting controls sufficient to provide reasonable assurances that transactions are compliant with the Foreign Corrupt Practices Act (“FCPA”). In practice, and according to the FCPA Resource Guide produced by the DOJ and SEC in July of 2020, that means the following:

“Fundamentally, the design of a company’s internal controls must take into account the operation realities and risks attendant to the company’s businesses, such as: the nature of its products or services; how the products or services get to market; the nature of its work force; the degree of regulation; the extent of its government interaction; and the degree to which it has operations in countries with a high risk of corruption. Just as a company’s internal accounting controls are tailored to its operations, its compliance program needs to be tailored to the risks specific to its operations. Businesses whose operations expose them to a high risk of corruption will necessarily devise and employ different compliance programs than businesses that have a lesser exposure to corruption.”

It is not clear what, if anything, Avantor has done to address the “operational realities and risks attendant” with producing acetic anhydride, a key ingredient to make heroin, in the cartels’ backyard since acetic anhydride appears to have been easily diverted to the Mexican drug cartels for a number of years. This circumstance and the various alarm bells being sounded by the INCB and the media covering the Mexican drug busts should cause Avantor to take further precautionary measures to tighten any and all controls on products that contribute to the opioid epidemic. Additionally, in its recent annual SEC filing, Avantor did not disclose any “outstanding litigation” that it believes would result in material losses or any “unasserted matters that are reasonably possible to result in a material loss.” That Avantor did not feel the need to warn the American public in its SEC disclosures that a dangerous precursor chemical it produced in Mexico had helped fuel the opioid epidemic in the United States is alarming, and certainly warrants further investigation by the DOJ and the SEC.

In light of the foregoing, I request an investigation into Avantor. I further respectfully request that you answer the following questions:

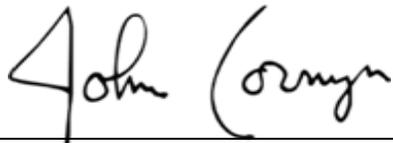
- (1) Is there an active civil or criminal investigation into Avantor and/or any of its executives?
- (2) Before the August 2020 Bloomberg story on Avantor’s connection to Mexican drug cartels was published, did Avantor self-disclose that it had produced, manufactured, and sold a precursor chemical—(acetic anhydride)—that had been diverted to Mexican drug cartels?
- (3) If there is an open investigation into Avantor’s conduct related to acetic anhydride, would you say that the company is “cooperating” with that investigation? If so, how?
- (4) If there is no open investigation into Avantor’s conduct, will you commit to me to reminding Avantor of the importance of corporations “self-policing,” and providing “voluntary disclosures to the government of any problems that a corporation discovers on its own”? See Justice Manual 9-28.900.

(5) What steps, if any, are the DOJ and SEC taking to regulate companies that are tied to the opioid epidemic, including, but not limited to, the diversion of dangerous precursor chemicals to Mexican drug cartels?

(6) Are there any other legislative solutions that could help increase internal controls and reporting requirements for chemical companies, like Avantor, who manufacture and distribute dangerous precursor chemicals?

I look forward to your prompt attention to this matter.

Sincerely,



John Cornyn
Member, Senate Judiciary Committee



Chuck Grassley
Ranking Member, Senate Judiciary
Committee



Thom Tillis
Member, Senate Judiciary Committee



Josh Hawley
Member, Senate Judiciary Committee



Ted Cruz
Member, Senate Judiciary Committee