

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84978 / December 26, 2018

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4011 / December 26, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18964

In the Matter of

POLYCOM, INC.,

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Polycom, Inc. (“Polycom” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-And-Desist Proceedings Pursuant To Section 21C Of The Securities Exchange Act Of 1934, Making Findings, And Imposing A Cease-And-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that:

Summary

1. This matter concerns violations of the books and records and internal accounting controls provisions of the Foreign Corrupt Practices Act (“FCPA”) by San Jose, California-based communications solutions provider, Polycom, Inc. From 2006 through at least July 2014,

Polycom's Vice President of China at Polycom's China subsidiary, along with senior managers, provided significant discounts to Polycom's distributors and/or resellers, knowing and intending that the distributors and/or resellers would use the discounts to make payments to officials at Chinese government agencies and government-owned enterprises in exchange for those officials' assistance in obtaining orders for Polycom's products. Employees and managers at the China subsidiary recorded the payments in a parallel deal-tracking and email system located in China, outside of Polycom's company-approved systems. These senior managers at Polycom's Chinese subsidiary also instructed their sales personnel not to use their Polycom email addresses when discussing sales opportunities with Polycom's distributors. Throughout this period, Polycom failed to devise and maintain a sufficient system of internal accounting controls and lacked an effective anti-corruption compliance program with regard to its Chinese sales operations. During the period of September 27, 2012 through July 2014, the efforts to make, and conceal, improper payments to Chinese government officials carried out by Polycom's Chinese subsidiary ultimately netted Polycom approximately \$10.7 million.

Respondent

2. Polycom is a Delaware corporation headquartered in San Jose, California that sells voice and video communications products and services. From 1996 until 2016, Polycom's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was quoted on the Nasdaq Global Select Market under the ticker PLCM. On September 27, 2016, a private equity firm acquired Polycom, and the company ceased to trade on the NASDAQ. On July 2, 2018, Plantronics, Inc. acquired Polycom from the private equity firm. Polycom is now a wholly-owned subsidiary of Plantronics. Plantronics' common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act.

3. On March 31, 2015, the Commission entered an Order (the "2015 Order") finding that Polycom, Inc. had violated Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act and Rules 13a-1, 12b-20, 14a-3 and 14a-9 thereunder. According to the 2015 Order, from May 2010 to July 2013, Polycom paid for approximately \$190,000 worth of its then-CEO's personal expenses. Polycom failed to disclose these perquisites, falsely recorded many of these personal expenses as business expenses, and failed to implement adequate internal accounting controls related to company purchasing cards and air travel booking.

Other Relevant Entity

4. During the relevant time period, Polycom Communications Solutions (Beijing) Co., Ltd. (China) ("Polycom China") was a company organized in China that sold Polycom's products and services into the China Market. During the relevant time period, Polycom China was, through a chain of holding companies, a wholly-owned subsidiary of Polycom. Polycom China engaged

distributors to facilitate the sale of Polycom products throughout China and maintained its own sales and marketing staff to promote Polycom products.

Facts

5. Polycom sells its voice and video communications equipment in China through several distributors. Polycom China sells Polycom's products to these distributors, who sell the products to resellers who in turn sell the products to end users.

6. From 2006 through at least July 2014, Polycom's Vice President of China devised and implemented a scheme to obtain additional business from public-sector customers by facilitating improper payments to government officials through Polycom's distributors.

7. According to Polycom's policies and procedures, Polycom sales personnel worldwide were required to enter details concerning sales opportunities and deals into a single, centralized customer relations management ("CRM") database. However, Polycom China's senior managers directed Polycom China's sales personnel to enter details concerning sales opportunities into a separate, parallel sales management system outside of Polycom's company-approved systems, which was orchestrated by Polycom's Vice President of China. Polycom personnel outside China were unaware of the existence of this parallel system. Polycom China's senior managers also directed Polycom China's sales personnel to use non-Polycom email addresses when discussing deals with Polycom's distributors.

8. On numerous occasions during years leading up to July 2014, Polycom China's distributors obtained business from public-sector customers in China by offering and making cash payments to government officials who exercised influence over those customers' purchasing decisions. When a distributor sought to make such a payment, it requested that Polycom provide it with a discount on the equipment that was to be sold to the public-sector customer. As senior management at Polycom China knew, these discounts were not passed on to the end customer, but instead were intended to cover the cost of the payments the distributors made to the Chinese government officials.

9. Polycom China sales employees entered the requested discounts into the non-Polycom sales management system for approval by senior managers at Polycom China, and recorded information about the reason for the payments in the same off-line system. Polycom China's senior managers routinely approved these discounts, knowing that they would be used to make improper payments to Chinese government officials. Polycom's Vice President of China recorded information regarding these improper payments in excel spreadsheets he maintained.

10. Senior managers at Polycom China recorded information about each deal in Polycom's centralized CRM database. Entries in the centralized CRM database did not reflect that

Polycom was providing discounts to its distributors in China in order to fund improper payments to Chinese government officials. Rather, the entries in the CRM database falsely attributed the discounts to purportedly legitimate purposes. For example:

- a. In connection with a project with a state-owned entity, Polycom China authorized an improper payment of 60,000 RMB to a government official through a discount given to one of Polycom China's channel partners. The Polycom China distributor made the improper payment in exchange for the official's assistance in securing an agreement to purchase Polycom products. In an excel spreadsheet maintained by Polycom's Vice President of China, the purpose of the discount was described as "in order to thank [the official] for help, we promised to give him 60,000 RMB." However, the information entered into the centralized CRM database cited "competition" with another communications products provider as the reason for the discount that funded this improper payment.
- b. In connection with a transaction with a state-owned entity, Polycom China authorized an improper payment of 170,000 RMB to a government official through a discount given to one of Polycom China's channel partners. The payment was made in exchange for the official's assistance in causing the entity to issue a tender that specifically called for Polycom products. However, the information entered into the centralized CRM database cited "competition" with two other communication products providers as the reason for the discount that funded this improper payment.
- c. In connection with a deal with a public institution, Polycom China authorized a payment of an 850,000 RMB "end-user fee" through a discount given to one of Polycom China's channel partners. However, the information entered into the centralized CRM database cited only competition and the customer's refusal to pay a higher price as the reason for the discount that funded this fee. According to Polycom China employees, "end-user fees" at times represented kickbacks to Chinese government officials.
- d. In connection with a sale of Polycom products to a government entity, Polycom China authorized payments of 20,000 RMB, 70,000 RMB, and 200,000 RMB through a discount to one of Polycom China's channel partners to three separate officials who worked at the entity. However, the information entered into the centralized CRM database cited only "competition" with two other communications products providers as the reason for the discount that funded these payments.

11. Product discounts up to a certain threshold could be approved unilaterally by Polycom China's senior managers. However, discounts above this threshold had to be approved by Singapore-based personnel who worked for another wholly-owned Polycom subsidiary. When these Singapore-based personnel sought information regarding the reasons for particular discounts, Polycom China's senior managers always cited legitimate concerns such as competition with other communications products providers or end-user budget constraints. Polycom China's senior managers never told the Singapore-based personnel that certain discounts were being used to fund improper payments to government officials.

12. During the relevant period, Polycom failed to devise and maintain adequate controls to detect whether any reasons for discounts entered in the centralized CRM database, or given to Polycom's Singapore-based personnel, were accurate. Accordingly, Polycom failed to devise and maintain sufficient accounting controls to detect whether Polycom China was using product discounts as a vehicle for funding improper payments to government officials.

13. Polycom also failed to translate certain anticorruption training materials into the Polycom China employees' local language, Mandarin, and frequently did not follow up if Polycom China personnel did not attend anticorruption trainings. Moreover, as part of a 2013 due diligence procedure, Polycom became aware of allegations that one of Polycom China's distributors had, years prior on a deal unrelated to Polycom, made an improper payment to a Chinese government official. Polycom never finished its due diligence review of the relevant distributor. Polycom nonetheless allowed Polycom China to continue using this distributor to sell its products to public-sector customers.

14. As a result of the conduct described above, Polycom violated Section 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act. Polycom violated Section 13(b)(2)(A) of the Exchange Act by falsely recording improper payments by Polycom China's employees and agents as legitimate business expenses, whose results were then consolidated and reported by Polycom on its books and records. Polycom also violated Section 13(b)(2)(B) of the Exchange Act by failing to devise and maintain a sufficient system of internal accounting controls to detect and prevent the making of improper payments by Polycom China to foreign government officials. As a result, Polycom generated profits of approximately \$10.7 million.

Polycom's Self-Disclosure, Cooperation, and Remedial Efforts

15. In determining to accept the Offer, the Commission considered Polycom's self-disclosure, cooperation, and remedial efforts. Polycom hired outside counsel to conduct an independent investigation to determine the scope of potential issues related to payments made by Polycom China's distributors. Polycom then voluntarily disclosed this misconduct to the Commission staff and provided cooperation to the Commission during the entire course of its investigation. Polycom shared facts that it discovered during the course of its internal investigation

into the matters described above. Polycom also cooperated by voluntarily producing all documents requested by Commission staff, translating a large volume of documents into English, and making certain employees available for interviews.

16. Polycom also undertook remedial actions in response to the matters it identified in its internal investigation. These remedial measures included terminating the employment of eight employees involved in the matters described above, disciplining 18 other employees, terminating the Company's relationship with one of its channel partners and requiring personnel changes at several others, improving the anticorruption and other related trainings Polycom provides to its China-based employees, hiring additional personnel, including in China, to enhance oversight, supplementing existing third party policies and trainings and third party due diligence procedures, and enhancing existing, as well as adopting additional, policies, procedures and controls designed to detect and prevent improper payments.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Polycom's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Polycom cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

B. Respondent shall, within 10 days of the entry of this Order, pay disgorgement of \$10,672,926 and prejudgment interest of \$1,833,410 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

C. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$3,800,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Polycom, Inc. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Erin Schneider, Associate Regional Director, Securities and Exchange Commission, San Francisco Regional Office, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields
Secretary