

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 77005 / February 1, 2016**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3736 / February 1, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17080**

<p><b>In the Matter of</b></p> <p><b>SAP SE,</b></p> <p style="text-align:center"><b>Respondent.</b></p>
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**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 (the “Exchange Act”) against SAP SE (“SAP” 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, Respondent admits the Commission’s jurisdiction over it and the subject matter of these proceedings, and 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 (the “Order”), as set forth below.

**III.**

On the basis of this Order and Respondent’s Offer, the Commission finds<sup>1</sup> that:

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<sup>1</sup> The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

## **Summary**

1. This matter concerns violations of the books and records and internal controls provisions of the Foreign Corrupt Practices Act of 1977 (“FCPA”) by SAP SE (“SAP”), a European Union corporation headquartered in Waldorf, Germany. The violations occurred due to deficient internal controls, which allowed SAP’s former Vice-President of Global and Strategic Accounts, Vicente E. Garcia, to discount the software price to a former SAP local partner at a level sufficient to permit Garcia and the local partner to pay \$145,000 in bribes to one senior Panamanian government official, and offer bribes to two others. Through these bribes, Garcia secured government sales contracts of approximately \$3.7 million for SAP, and also self-profited through kickbacks. By excessively discounting the SAP software, Garcia created a slush fund that the partner used to pay the bribes and kickbacks. Garcia concealed his scheme from others at SAP, circumvented SAP’s internal controls, and justified the excessive discounts by falsifying SAP’s internal approval forms.

2. The deep discounts that Garcia used to create the slush fund were falsely recorded as legitimate discounts on the books of SAP’s Mexican subsidiary, which were subsequently consolidated into SAP’s financial statements. In addition, SAP failed to devise and maintain an adequate system of internal accounting controls sufficient to provide reasonable assurances that these improper payments to government officials did not occur.

## **Respondent**

3. SAP SE (“SAP”) is a European Union corporation headquartered in Waldorf, Germany. SAP’s American Depository Shares are registered with the Commission pursuant to Section 12(b) of the Securities Act of 1933, and listed on the New York Stock Exchange. SAP markets its software all over the world through various country subsidiaries.

## **Related Individual and Entities**

4. Vicente E. Garcia is a U.S. citizen residing in Miami, Florida. Garcia was SAP’s Vice-President of Global and Strategic Accounts, responsible for sales in Latin America for SAP from February 2008 until April 2014, when SAP terminated Garcia for his misconduct described herein.

5. SAP International, Inc. (“SAPI”), a Miami, Florida-based wholly-owned subsidiary of SAP, is engaged in selling software in the Latin American and Caribbean markets. SAPI does not enter into direct or indirect software or software-related services deals with end customers. Instead, SAPI employs some of the members of the Latin America and Caribbean (“LAC”) regional leadership team and provides some back office operational support for some of the LAC regional subsidiaries. Garcia was on the payroll of SAPI.

6. SAP Mexico S.A. de C.V. (“SAP Mexico”) is a Mexico City, Mexico-based wholly-owned subsidiary of SAP engaged in selling software in the Mexican and Central American markets. SAP Mexico is authorized by SAP to distribute, sell, license, and sublicense software directly and indirectly to end customers. Garcia negotiated the Panamanian contracts on behalf of SAP Mexico. SAP Mexico’s financial statements are consolidated and reported in SAP’s financial statements.

## Facts

### **A. Background**

7. SAP, through its 272 subsidiaries, sells software licenses and related services to 263,000 customers in 188 countries. SAP's global business is directed and operated from its headquarters in Waldorf, Germany and executed through its numerous subsidiaries. SAP's business is conducted through a network of more than 11,500 partners worldwide that provide an additional workforce of 380,000 individuals skilled in SAP software solutions and technology. SAP's sales using a local partner can be either (i) a direct sale to a customer with a sales commission paid to a partner that provides assistance, (ii) an indirect sale through a partner that purchases the software license and resells it to a customer at an independently determined increased price, or (iii) a direct sale to the partner, which acts as a distributor and independently resells the software licenses to customers in the future.

8. From 2008 to April 2014, Garcia served as SAP's Vice-President of Global and Strategic Accounts and was responsible for sales in Latin America for SAP. Although Garcia was technically employed by SAPI, SAP presented him to customers as an SAP employee and his supervisors included employees of SAPI (from January 16, 2010 to April 10, 2014), SAP's Brazilian subsidiary (from February 25, 2008 to January 15, 2010), and indirectly SAP (throughout the relevant time period).

9. In June 2009, SAP conducted an internal investigation and found that Garcia violated its internal Code of Business Conduct when he invited an executive of Petroleos Mexicanos ("PEMEX"), the Mexican national oil company, to an SAP marketing event at the Monaco Grand Prix. SAP did not find any attempt to improperly influence any government official in connection with the 2008 PEMEX sale. As a result of the internal investigation, SAP revised its policies prohibiting government officials or employees from attending any "hospitality" event, which it defined as any event where business constitutes less than 80% of the event.

### **B. Garcia Bribed Government Officials in Panama to Obtain Business for SAP**

10. Garcia continued working for SAP, and from at least June 2009 to November 2013, he along with others outside of SAP, planned and executed a bribery scheme in Panama, as described below.

11. In June 2009, Garcia's business associate, a Panamanian lobbyist (the "Lobbyist"), informed Garcia about potential software sales opportunities with the government of Panama and that he had an existing relationship with the newly elected government, including a high ranking Government Official A, who was tasked with improving technology solutions across multiple government agencies in Panama and had significant influence over Panama's software purchasing decisions. Around the same time, SAP independently began investigating possible software sales to the Panamanian government. Initially the overall SAP endeavor was led by local SAP sales employees in Mexico and Panama. Garcia, however, took over the

business opportunity by recommending that SAP designate the Panama government as part of the Premier Customer Network – a group of large, strategically important, regional customers – that Garcia headed.

12. Garcia and others outside of SAP were informed by the Lobbyist that in order to obtain contracts from the government of Panama, they needed to bribe three Panamanian government officials that had significant influence in the Panamanian government's award of contracts to purchase software.

13. In anticipation of the sales to the government of Panama, Garcia and others outside of SAP began planning the details of the bribery scheme. On June 9 and 10, 2010, Garcia discussed with others, including via personal e-mail, their plans to pay bribes to Government Official A (2% of the value of the contract) and Government Official B (10%), and receive kickbacks for themselves (2%). Also, on October 26, 2010, e-mails were exchanged with two attached spreadsheets referencing planned payments to Government Officials A and C of approximately \$100,000 and \$300,000, respectively.

14. One of the four contracts was a software license sale to the Panamanian social security agency, which was initially proposed to be a direct sale with the assistance of local partners. In order to facilitate the bribery scheme, the existing partners were replaced with a new local Panamanian partner. This last-minute change, and other red flags, triggered an SAP compliance review which resulted in SAP rejecting Garcia's request to pay a commission to the local partner. Therefore, Garcia and others began looking for other ways to advance the bribery scheme. Finally, in the fall of 2010, Garcia finalized an indirect sale of the software license to the agency through the local partner, who, with Garcia's assistance, ultimately sought and obtained an 82% discount on SAP's sale price to the local partner. Garcia caused various approval forms to be submitted that misstated the reasons for the large discount. Garcia stated that the discounts were necessary to compete with other software companies in establishing a relationship with the government of Panama when, in fact, the discounts were necessary to fund and pay bribes to government officials. Garcia and others planned to sell SAP software to the local partner at an 82% discount, who in turn would sell the software at significantly higher prices to the Panamanian government and use part of the profits from the sale to pay bribes.

15. Garcia, as a senior vice-president of SAP responsible for sales in Latin America, used his knowledge of the availability of discounts to push through large discounts in order to create a slush fund from which the local partner was able to pay the bribes. SAP routinely provides large discounts to local partners for legitimate reasons that Garcia used to justify the illegitimate discounts. Once Garcia obtained approval of the discounts based on his falsified justification forms, the bribes were then paid from the local partner.

16. SAP agreed to sell the software licenses for the Panamanian social security agency to the local partner for approximately \$2.1 million, an 82% discount. In November 2010, the local partner successfully bid \$14.5 million for a contract, which included SAP software. On January 31, 2011, the Panamanian government awarded the contract to the local partner. Garcia, along with others, planned to pay bribes to Panamanian government officials from the proceeds of the software sale to the government of Panama.

17. Thereafter, between June 2012 and December 2013, the Panamanian government awarded three additional contracts that included SAP software products valued at approximately \$13.5 million, which were also sold at deep discounts by SAP to its local partner. For these contracts also, Garcia and others outside of SAP agreed to pay bribes to Panamanian officials from the proceeds of the software sales.

18. As a result of Garcia's conduct in the bribery scheme, SAP, with its local partner, was able to sell software to the Panamanian government through four contracts from 2010 to 2013. These contracts generated revenues of approximately \$3.7 million to SAP.

19. The deep discounts that Garcia used to create the slush fund were falsely recorded as legitimate discounts on the books of SAP Mexico, which were subsequently consolidated into SAP's financial statements.

### **SAP's Insufficient Internal Controls**

20. SAP lacked adequate internal controls to ensure that discounts to local partners were not improperly used. SAP's system required employees to electronically submit requests within SAP to obtain approval of discounts to local partners. SAP employees, however, had wide latitude in seeking and approving discounts to local partners, and employees' explanations for the discounts were accepted without verification. There were also no requirements for heightened anti-corruption scrutiny for large discounts. Garcia was therefore able to evade the basic approval procedures by taking advantage of his position and his knowledge of how discounts were approved. Furthermore, the nature of Garcia's reporting structure made it easy for him to implement the bribery scheme. Although Garcia was located in Miami and employed by SAPI, he variously reported to supervisors employed by other regional subsidiaries and used employees from other subsidiaries such as SAP Mexico to execute the sales to the Panamanian government. This indirect reporting structure at SAP created gaps in supervising Garcia that provided him the opportunity to use the large discounts for creating a slush fund for bribes. Because of the deficient controls, Garcia was able to provide the partner with deep enough discounts to enable him to implement the bribery scheme, which continued unabated for over four years.

### **SAP's Cooperation and Remediation**

21. When SAP learned of the conduct as a result of the SEC's inquiry, SAP conducted a thorough internal investigation and extensively cooperated with the SEC's investigation by, among other things: (i) conducting an internal investigation; (ii) voluntarily producing approximately 500,000 pages of documents and other information quickly, identifying significant documents and translating documents from Spanish; (iii) conducting witness interviews, sharing Power-Point presentations and timelines; (iv) facilitating an interview of Garcia at work at SAPI offices in Miami without alerting him to the investigation into his conduct; and (v) initiating a third party audit of the local partner.

22. After being alerted to Garcia's misconduct, SAP terminated Garcia and undertook remediation efforts to uncover any other possible misconduct and to improve its FCPA compliance. Specifically, SAP audited all recent public sector Latin American transactions,

regardless of Garcia's involvement, to analyze partner profit margin data especially in comparison to discounts so that any trends could be spotted and high profit margin transactions could be identified for further investigation and audit. SAP also implemented new policies and procedures to detect and prevent similar issues from recurring in the future. For example, SAP elevated the status of its Chief Compliance Officer ("CCO") by having that person now report directly to the CFO, who is a member of the Executive Board, and gave the CCO authority to independently terminate employees and partner contracts. SAP conducted, and continues to conduct, regular anti-corruption training, as well as anti-corruption audits through its internal audit function.

23. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent and cooperation afforded the Commission staff.

### **Legal Standards and Violations**

24. Section 13(b)(2)(A) of the Exchange Act requires every issuer with a class of securities registered pursuant to Section 12 of the Exchange Act "to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer."

25. Section 13(b)(2)(B) of the Exchange Act requires every issuer with a class of securities registered pursuant to Section 12 of the Exchange Act to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are executed in accordance with management's general or specific authorization; transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other applicable criteria; transactions are recorded as necessary to maintain accountability for assets; and access to assets is permitted only in accordance with management's general or specific authorization.

26. As a result of the conduct described above, the discounts used to fund the bribe payments were misrecorded in SAP Mexico's books and records as legitimate discounts to a local partner. SAP Mexico's books and records were consolidated into SAP's books and records. Based on the foregoing, SAP violated Section 13(b)(2)(A) of the Exchange Act.

27. SAP also violated Section 13(b)(2)(B) of the Exchange Act by failing to devise and maintain an adequate system of internal accounting controls relating to approving and granting discounts to local partners. As described herein, SAP lacked effective internal controls sufficient to provide reasonable assurances that discounts provided to local partners were not being used to pay bribes.

### **Findings**

28. Based on the foregoing, the Commission finds that SAP violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

#### IV.

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

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Pursuant to Section 21C of the Exchange Act, Respondent SAP 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 pay disgorgement of \$3,700,000, representing ill-gotten gains received in connection with the bribery scheme, and prejudgment interest of \$188,896 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). Payment shall be made within ten (10) days of the date of this Order. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

Payments must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which shall 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, 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 SAP as the 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 Alka N. Patel, Assistant Regional Director, Division of Enforcement, U.S. Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, California 90071.

C. Respondent acknowledges that the Commission is not imposing a civil penalty based upon its cooperation in a Commission investigation and related enforcement action. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading

information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay a civil money penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Brent J. Fields  
Secretary