SEC Enforcement Case Summary
Global Software Company SAP Charged with FCPA Violations

On January 10, 2024, the Securities and Exchange Commission (***SEC***) charged SAP SE, a global software company headquartered in Walldorf, Germany, with violations of the Foreign Corrupt Practices Act (***FCPA***) arising out of bribery schemes in South Africa, Malawi, Kenya, Tanzania, Ghana, Indonesia, and Azerbaijan. In the case brought by the SEC's FCPA Unit, SAP consented to the SEC's order finding that it violated the anti-bribery, recordkeeping, and internal accounting controls provisions of the Securities Exchange Act of 1934. SAP agreed to pay disgorgement of $85 million plus prejudgment interest of more than $13.4 million, totaling more than $98 million, which will be offset by up to $59 million paid by SAP to the South African government in connection with its parallel investigations into the same conduct.

According to the SEC's complaint, SAP employed third-party intermediaries and consultants in various schemes to make improper payments to government officials in order to obtain and retain business in South Africa, Greater Africa, and Indonesia. Additionally, a SAP employee allegedly provided improper gifts to a government official in order to obtain and retain business in Azerbaijan. The case noted that SAP failed to make and keep accurate books and records and failed to devise and maintain a sufficient system of internal accounting controls necessary to detect and prevent improper payments. The bribes were inaccurately recorded as legitimate business expenses in SAP's books and records.

The SEC's complaint noted that while SAP used third parties for a variety of legitimate business reasons, and utilized appropriate sales commissions, such activity increases the risk of improper payments being made to secure business. Accordingly, SAP's policies and procedures required employees to conduct due diligence on third parties to assess risk and ensure: (1) that the third party had no relations (as a family member) to the SAP customer or a potential customer, and (2) that the third party was not a government official, government employee, political party official or candidate, or officer or employee of any public international organization or an immediate family member of any of these. SAP's procedures further required the use of model agreements and approval by legal and compliance staff for all sales commission contracts and related agreements. The policy documents explicitly state that they were put into place to ensure that no relationship with a third party would be used to inappropriately influence a business decision or pay bribes to government officials.

Notwithstanding these controls, SAP employees repeatedly violated internal policies and procedures to engage in bribery schemes, involving illicit payments mischaracterized as commissions, loans, or some seemingly legitimate expense, and payments to government officials in the form of international travel, meals, and entertainment. In certain instances, SAP entities paid government officials a significant percentage of the revenues for unspecified "support services leading to the successful award of the opportunity." The case noted that the firm violated internal procedures regarding due diligence and retention of third parties, and ignored repeated red flags, including payment requests for vague and undefined deliverables.

Evidence in the case was obtained from electronic records and personal devices, containing suspect electronic communications, such as directives to "do whatever was needed" to secure deals and cryptic messages with requests for "baggage" and "envelopes," code words for bribes to government officials. Other condemning messages cited as "This is government bro, to catch a big fish we need to use a large bait (sic)." In certain cases, photographs and videos evidenced cash payments made to government officials. In one case, an SAP prepared a fake document backdating a sales contract to claim a commission on a deal before becoming ineligible due to a promotion.

The SEC noted that SAP cooperated with the investigation and instituted remedial efforts, including: (i) termination of employees and third parties responsible for the misconduct, (ii) elimination of the BDP program; (iii) enhancements to internal accounting and compliance controls; (iv) implementation of analytics to identify and review high-risk transactions and third party controls; (v) strengthening and expansion of the ethics and compliance organization; (vi) enhancements to its code of conduct, policies, and procedures regarding gifts and hospitality, and the use of third parties; (vii) increased training of employees on anti-bribery issues; and (viii) establishment of an enhanced whistleblower platform.

See Press Release – https://www.sec.gov/news/press-release/2024-4