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## Foreign Corrupt Practices Act Alert

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### **SAP SE Agrees to Pay Almost \$3.9 Million to Resolve SEC Investigation Regarding Payments to Secure Panamanian Contracts**

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#### **SUMMARY**

Today, the Securities and Exchange Commission (“Commission”) announced that SAP SE (“SAP”) has agreed to pay disgorgement of \$3,700,000 and prejudgment interest of \$188,896 to resolve claims that SAP violated the books and records and internal controls provisions of the Foreign Corrupt Practices Act of 1977 (“FCPA”) in connection with software contracts with the Panamanian government. SAP is headquartered in Waldorf, Germany, and has American Depositary Shares listed on the New York Stock Exchange. According to the Commission’s Cease-and-Desist Order (“Order”), an SAP vice president engaged in a scheme to discount the price of SAP software to an SAP business partner in Panama. The discounts generated funds used to finance bribes for senior Panamanian government officials and certain kickbacks for the employee and business partner. SAP sold the software to the local business partner, which purchased the software license and resold it to the agency. Through these arrangements, SAP secured government sales contracts of approximately \$3.7 million.

The employee concealed the scheme from others at SAP, circumvented SAP’s internal controls, and justified the excessive discounts by falsifying SAP’s internal approval forms. The Commission’s Order charged that the discounts 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, the Commission asserted that SAP failed to devise and maintain an adequate system of internal accounting controls sufficient to prevent or detect improper payments to government officials. The Commission’s Order cited, among other control deficiencies, the wide latitude provided to SAP employees in seeking and approving discounts to local partners, and the acceptance of discounts without company verification or anti-corruption scrutiny. In August 2015, the SAP vice president settled claims by the Commission

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against him and pled guilty to criminal charges by the Department of Justice (“DOJ”) that he had conspired to violate the FCPA.

In entering into the settlement, the Commission took into consideration SAP’s remediation and cooperation with the Commission’s investigation. Those measures included, among others, SAP’s thorough internal investigation; prompt voluntary production to the Commission of documents and other information; identification for the Commission of significant documents and translation of documents from Spanish; conduct of witness interviews; presentations to the Commission on the findings of the investigation; and initiation of a third-party audit of the Panamanian business partner. The Commission also noted approvingly that SAP had terminated the vice president involved in the payments after learning of his conduct and undertook substantial remediation efforts to uncover any other possible misconduct and to improve its FCPA compliance and controls.

The Commission’s Order highlights the potentially significant exposure under the FCPA that can arise from the activities of business partners and other representatives, even when title to goods passes to those business associates. The Order is a useful reminder that controls should focus not only on direct interactions with government officials or government-affiliated entities, but also on all third parties involved in contracting and sales in all geographic regions. This action also highlights how typical business practices, such as discount programs, can be manipulated to facilitate improper payments and the need to implement controls even for those types of seemingly routine activities. At the same time, the significance the Commission ascribed to SAP’s cooperation and remediation efforts both reinforces the potential salutary effects of such conduct in limiting liability and illustrates the nature and extent of the response that the United States authorities have repeatedly emphasized they expect from companies that learn of a suspected FCPA violation.

In addition, the related SEC action and DOJ prosecution of the SAP vice president stands as a reminder of the severe sanctions to which individuals may be subject for participation in arrangements that violate the FCPA.

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