

Client Alert

Financial Markets Developments

Siemens AG and Several Subsidiaries (“Siemens”) Agree to Combined Criminal and Civil Fines of US\$800 Million for Violations of the US Foreign Corrupt Practices Act (“FCPA”)

The US\$450 million criminal penalty and a US\$350 million civil penalty are nearly twenty times the largest prior combined fine for FCPA violations, which was the US\$44.1 million in fines paid by Baker Hughes in 2007. Additionally, Siemens agreed to pay a fine of approximately US\$569 million to the Office of the Prosecutor General in Munich, to whom Siemens had previously paid a US\$285 million fine to resolve related allegations.

Siemens also agreed to the imposition of an outside compliance monitor, who will have the support of a US law firm with FCPA experience, for a period of four years.

Siemens Avoided a Potential Criminal Fine of US\$2.7 Billion through “Exceptional” Cooperation

According to the sentencing memorandum filed by the Department of Justice (“DOJ”), the criminal fine could have been six times the fine actually imposed. Siemens made US\$805 million in corrupt payments and enjoyed a pecuniary gain of US\$38,000,000 from its abuse of the UN’s Oil-for-Food program, for a total loss of US\$843 million under the US Sentencing Guidelines.

A straightforward application of the Guidelines would have recommended a criminal fine of between US\$1.35 and US\$2.70 billion; however, the DOJ believed that a criminal fine of US\$448 million against Siemens AG and US\$500,000 each against three Siemens subsidiaries was appropriate because of Siemens’ “substantial assistance to the Department in the investigation of other persons and entities, its extraordinary efforts to uncover evidence of prior corrupt activities, and in its extensive commitment to restructure and remediate its operations to make it a worldwide leader in transparent and responsible corporate practices going forward....” The DOJ characterized Siemens’ overall cooperation as “exceptional.”

Details of the Corrupt Conduct

DOJ Investigation

Three Siemens subsidiaries, Siemens S.A. (Argentina), Siemens Bangladesh Ltd., and Siemens S.A. (Venezuela), all pled guilty to conspiracy to violate the books and records provisions of the FCPA; the Bangladesh and Venezuela subsidiaries also pled guilty to conspiring to violate the antibribery



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provisions of the FCPA. According to court documents, Siemens engaged in an extensive corruption scheme across the globe, including:

- From 2000 to 2002, Siemens S.A.S. of France, Siemens Sanayi ve Ticaret A.S. of Turkey, Osram Middle East FZE and Gas Turbine Technologies S.p.A. engaged in a kickback scheme whereby they collectively paid a total of at least US\$1.7 million to the Iraqi government and in turn earned a combined US\$38 million profit through violations of the UN's Oil-for-Food Program
- From around 1998 until 2007, Siemens S.A. (Argentina) made and caused to be made significant payments to various Argentine government officials in exchange for favorable business treatment in connection with a US\$1 billion national identity card project
- From March 12, 2001 through January 2007, Siemens S.A. (Argentina) made over US\$31 million in corrupt payments to Argentine government officials through conduit entities, and improperly characterized those payments as consulting or legal fees
- From around November 2001 until about May 2007, Siemens S.A. (Venezuela) made and caused to be made over US\$18 million in corrupt payments to officials in exchange for favorable business treatment in connection with two major metropolitan mass transit projects. The corrupt payments were made indirectly through purported business consultants
- From May 2001 until August 2006, Siemens Bangladesh Ltd. caused corrupt payments of at least US\$5.3 million to be made through purported consultants to Bangladeshi government officials in exchange for favorable treatment during the bidding process for a mobile telephone project

Securities and Exchange Commission ("SEC") Investigation

The SEC alleged that Siemens made at least 4,283 corrupt payments, worth more than US\$1.4 billion, to government officials in Africa, the Americas, Asia, Europe, and the Middle East. An additional 1,185 payments totaling US\$391 million are alleged to have been used for commercial bribery and embezzlement. As alleged by the SEC, these bribes targeted

projects ranging from the design and construction of the Venezuelan metro transit projects mentioned above, to power plants in Israel, and to refineries in Mexico.

Siemens, without admitting or denying the allegations, consented to the entry of a court order permanently enjoining it from future violations of the FCPA and agreed to disgorge US\$350 million in ill-gotten gains. Siemens was ordered to comply with certain provisions regarding its FCPA compliance program, and the resolution of the SEC's investigation required Siemens' use of a corporate monitor for four years.

The Siemens Disposition May Represent a Watershed Moment in US Enforcement of the FCPA

The settlement announcement echoes the October 22, 2008, sentiments of Scott Friestad, Deputy Director of the Enforcement Division at the SEC, that "significant FCPA cases—cases that are going to dwarf any cases previously brought under the FCPA—will be brought" within the next year.

Importantly for companies making efforts to assess their own FCPA compliance, the staggering fines imposed on Siemens will necessitate the reevaluation of companies' risk management strategies and will also raise US enforcement agencies' expectations regarding companies' appreciation for and awareness of the need for FCPA compliance.

The reputational costs to Siemens are readily apparent, as are the legal costs and the risk to individuals. Siemens reportedly has spent more than €850 million on third-party professionals since late 2006—including more than €200 million alone on an independent investigation conducted by a private law firm—and has pledged to pursue eleven former members of its management board for negligence and failed oversight related to the events reported in the DOJ and SEC filings.

White & Case's White Collar Practice Group will continue to provide updates regarding emerging white collar enforcement actions.

The criminal information filed by the DOJ can be downloaded here.

https://www.whitecase.com/files/upload/fileRepository/Alert_WhiteCollar_FMD_Siemens_FCPA_121608_addendum_1.pdf

The DOJ's sentencing memorandum can be downloaded here.

https://www.whitecase.com/files/upload/fileRepository/Alert_WhiteCollar_FMD_Siemens_FCPA_121608_addendum_2.pdf

The DOJ's plea offer can be found here:

<http://www.usdoj.gov/opa/documents/siemens.pdf>

The DOJ's press release can be found here:

<http://www.usdoj.gov/opa/pr/2008/December/08-crm-1105.html>

A transcript of Acting Assistant Attorney General Friedrich can be found here:

<http://www.usdoj.gov/opa/pr/2008/December/08-opa-1112.html>

The civil complaint filed by the SEC can be found here:

<http://www.sec.gov/litigation/complaints/2008/comp20829.pdf>

The SEC's litigation release can be found here:

<http://www.sec.gov/litigation/litreleases/2008/lr20829.htm>

The SEC's press release can be found here:

<http://www.sec.gov/news/press/2008/2008-294.htm>

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