

## Siemens Agrees to Pay the Largest FCPA Penalty Ever Imposed

On December 15, 2008, German engineering company Siemens AG and three of its subsidiaries pleaded guilty to violating the internal controls and books and records provisions of the Foreign Corrupt Practices Act (FCPA) and conspiracy to violate the FCPA. As a result of this plea agreement and a contemporaneous settlement enforcement agreement with the Securities and Exchange Commission, Siemens is required to pay a combined \$800 million (a \$450 million criminal fine and \$350 million in disgorgement of profits to the SEC) and retain an independent compliance monitor for a four-year term.

Siemens has disclosed that it spent over \$1 billion to bribe government officials around the globe, and according to court documents, Siemens systematically violated the FCPA to prevent the detection of these payments. The Department of Justice claimed that Siemens used a number of methods, including sham consulting contracts, to conceal these bribes. These activities involved employees at all levels of the company. The Securities and Exchange Commission also alleged that Siemens' board members suppressed indications of wrongdoing and failed to alert the Audit Committee to violations of compliance measures.

Under the plea agreement, Siemens admits to having inadequate internal controls and falsifying its records. Although the fine levied against Siemens is the largest FCPA fine to date, it is still much less than the total penalty available under the Federal Sentencing Guidelines. Because of the scope of its bribery, Siemens faced fines of up to \$2.7 billion. The Department of Justice cited Siemens' exceptional cooperation in the investigation—including the identification of other parties, overhaul of its compliance program, and efforts in preserving and analyzing evidence—in recommending a lower fine. As a result of the plea agreement, Siemens must continue to fully cooperate with any domestic or foreign law enforcement agency at the direction of the Department of Justice, implement compliance enhancements, and retain an independent monitor to review and report on Siemens' compliance over the next four years.

This plea agreement comes on the heels of the Securities and Exchange Commission's announcement last month that it plans to seek larger penalties than in the past on a number of companies that have allegedly violated the FCPA. Siemens' plea also serves as a reminder that FCPA enforcement actions have an international reach and that global companies that engage in corrupt practices face sanctions from regulators around the world. In its press release, the Department of Justice revealed that the Department and the SEC closely collaborated with the Munich Public Prosecutor's Office in bringing these cases. Last year the German prosecutors required Siemens to pay €201 million (\$284 million) for alleged bribery by its telecommunications-equipment unit. Yesterday Siemens agreed to pay an additional €395 million (\$569 million) to resolve the Munich Public Prosecutor's Office's ongoing investigation into the activities of Siemens' other operating groups. In total, Siemens will pay more than \$1.6 billion in fines, penalties, and disgorgement of profits.

Businesses engaging in international transactions cannot risk engaging in activities that may violate the FCPA. Companies must develop robust FCPA compliance policies and diligently monitor whether those policies are being met.

## Contact Ropes & Gray

Ropes & Gray regularly advises clients on FCPA compliance and potential enforcement actions. If you have any questions about the FCPA or its effect on your business activities, please do not hesitate to contact your regular Ropes & Gray contact.

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