WILLKIE FARR & GALLAGHER LLP

CLIENT MEMORANDUM

SIEMENS PLEADS GUILTY TO FCPA CHARGES, INCLUDING FIRST EVER CRIMINAL INTERNAL CONTROLS VIOLATION, AND AGREES TO PAY A RECORD $800 MILLION IN PENALTIES

On December 15, 2008, Siemens AG ("Siemens") and three of its foreign subsidiaries pleaded guilty to violating the U.S. Foreign Corrupt Practices Act (the "FCPA") and agreed to pay record fines pursuant to agreements reached with the Department of Justice ("DOJ") and the Securities and Exchange Commission (the "SEC"). In connection with these agreements, the Munich-based engineering giant and its subsidiaries agreed to pay $800 million in fines, penalties, and disgorgement—an amount that dwarfs the previous record penalty in an FCPA settlement of $44.1 million, reached last year with oilfield service company Baker Hughes Inc. Siemens agreed to pay $450 million to settle criminal FCPA charges brought by DOJ and $350 million to settle civil claims brought by the SEC.

Notwithstanding widespread bribery allegations, DOJ refrained from directly charging Siemens with bribery under the FCPA. Instead, in a two-count information filed in the United States District Court for the District of Columbia, DOJ charged Siemens with (1) violating the FCPA's internal controls provisions under 15 U.S.C. §§ 78m(b)(2)(B), 78m(b)(5), and 78ff(a), and (2) violating the FCPA's books and records provisions under 15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(5), and 78ff(a). DOJ also charged Siemens' subsidiaries in Argentina, Bangladesh, and Venezuela with conspiracy to violate the FCPA under 18 U.S.C. § 371.

Siemens' cooperation with regulatory authorities likely reduced the company's total fine significantly. According to a Sentencing Memorandum filed by DOJ, Siemens and its subsidiaries faced potential criminal fines ranging from $1.35 billion to $2.7 billion for the misconduct. DOJ agreed, however, to recommend a reduced penalty because it viewed "as exceptional Siemens' wide-ranging cooperation efforts throughout this investigation, which included a sweeping internal investigation, the creation of innovative and effective amnesty and leniency programs, and exemplary efforts with respect to preservation, collection, testing, and analysis of evidence."

The Siemens investigation involved widespread misconduct. According to the SEC, Siemens made at least 4,283 payments totaling approximately $1.4 billion to foreign government officials in at least ten countries across the globe. The investigation began in November 2006 shortly after the Munich Public Prosecutor's Office conducted raids on multiple Siemens offices and the homes of Siemens employees.

The investigation confirmed the existence of widespread corruption. From the mid-1990s to 2007, Siemens engaged in systematic efforts to falsify its corporate books and records and knowingly circumvented and failed to implement internal accounting controls. These efforts included, among other things:

- using off-books accounts for corrupt payments, even after the highest levels of management were warned about compliance risks;
- entering into sham business consulting agreements for purposes of making improper payments;
- engaging former Siemens employees as sham business consultants to act as conduits for improper payments;
- justifying payments to sham business consultants with false invoices;
- mischaracterizing corrupt payments in Siemens' books and records as consulting fees and other expenses;
- limiting the quantity and scope of audits of payments to sham business consultants;
- accumulating profit reserves as liabilities in internal balance sheet accounts and then using the reserves to make corrupt payments through business consultants;
- using removable Post-It notes to affix signatures on approval forms authorizing payments to conceal the identity of the signors and to obscure the audit trail;
- allowing third-party payments to be made based on a single signature in violation of a Siemens policy requiring authorization by two Siemens managers;
- drafting and backdating sham business consulting agreements for third-party payments; and
- changing the name of the business consulting agreements to "agency agreements" or similar titles to avoid detection.

Siemens allegedly made corrupt payments in business sectors relating to a variety of products and services, including power equipment, medical equipment, telecommunications, and transportation.

- In Iraq, Siemens and its subsidiaries made millions of dollars of improper payments in connection with the United Nations Oil for Food Program. According to regulators, Siemens typically inflated its contracts by approximately 10% and characterized the 10% payments as sales service fees and commissions to business consultants. Siemens then transferred the payments to the Iraqi government as kickbacks in connection with the contracts.

- In Argentina, Siemens paid millions of dollars in bribes to obtain a billion-dollar contract for national identity cards. From 1997 to January 2007, Siemens' Argentine subsidiary paid at least $15,725,000 to entities directly controlled by members of the Argentine government, at least $35,150,000 to a group of sham business consultants, and at least $54,908,000 to other entities, which routed improper payments to government officials. Siemens incorrectly described these payments in its books and records as payments to business consultants.

- In Bangladesh, Siemens' Bangladeshi subsidiary paid at least $5,319,839.83 to business consultants who routed improper payments to government officials in exchange for favorable treatment during bidding for a mobile telephone project.

- In Venezuela, Siemens' Venezuelan subsidiary paid at least $18,782,965 to various Venezuelan officials through business consultants in exchange for favorable treatment on two major transportation infrastructure projects.

- Siemens made improper payments in other countries as well, including China, Vietnam, Russia, Israel, Mexico, and Nigeria.

In 2007, Siemens paid €201 million to German authorities after a Munich court ruled that the company had made €12 million in improper payments to government officials in Nigeria, Russia, and Libya; Siemens made the payments to obtain telecommunications equipment contracts. Siemens, however, has yet to settle charges with German prosecutors involving other business units. These charges will involve additional penalties against the German corporation. In addition, German courts have already given three former Siemens managers suspended prison terms in connection with the scandal. Prosecutors are reportedly reviewing a list of roughly 300 suspects for more charges.

The Siemens case highlights the increasing importance for multinational corporations, including corporations and subsidiaries based in foreign countries, of compliance with the FCPA and other anticorruption laws. FCPA fines have skyrocketed over the past few years, and companies face substantial penalties for failing to maintain stringent anticorruption programs and for failing to keep books and records properly. As the Siemens case illustrates, companies increasingly face multi-jurisdictional investigations and prosecutions for corruption. Siemens reserved €1 billion a little over a month ago in anticipation of the settlements with the U.S. and German governments in the matter. This suggests that the company expects to pay several hundred million dollars more in fines and penalties to the German government.

The Siemens case also demonstrates the importance of conducting a thorough internal investigation when potential FCPA issues are discovered. Siemens' internal investigation likely saved the company hundreds of millions of dollars in additional penalties and helped it avoid antibribery charges as part of its settlement. The company would likely have avoided even more in penalties had it conducted an internal investigation into possible FCPA issues earlier.

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