UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 85819 / May 9, 2019

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4046 / May 9, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19162

In the Matter of: **Telefônica Brasil S.A.,** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Telefônica Brasil S.A. ("Telefônica Brasil" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

1. These proceedings arise out of Telefônica Brasil's violations of the internal accounting controls and recordkeeping provisions of the Foreign Corrupt Practices Act of 1977 (the "FCPA") [15 U.S.C. § 78m].

2. As described below, Telefônica Brasil failed to devise and maintain sufficient internal accounting controls over a hospitality program that the company hosted in connection with the 2014 World Cup and 2013 Confederations Cup. In the context of this program, Telefônica Brasil offered and provided tickets and hospitality to government officials who were directly involved with, or in a position to influence, legislative actions, regulatory approvals, and business dealings involving the company. In total, Telefônica Brasil provided World Cup tickets and related hospitality to approximately 93 government officials and Confederations Cup tickets and related hospitality to approximately 34 government officials.

3. The payments for the tickets were not accurately reflected in Telefônica Brasil's books and records, and the company failed to devise and maintain a sufficient system of internal accounting controls. This conduct arose in an environment in which the company failed to adequately enforce its corporate antibribery and anticorruption policies.

4. As a result, Telefônica Brasil violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

<u>Respondent</u>

5. Telefônica Brasil is a subsidiary of Telefónica S.A., a Spanish multinational broadband and telecommunications provider with worldwide operations, and is the largest telecommunications company in Brazil with headquarters in São Paulo. Telefônica Brasil's American Depositary Receipts are registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange under the symbol "VIV."

6. Telefônica Brasil markets its mobile services under its Vivo brand. Telefônica Brasil employs approximately 34,000 employees with revenues of approximately $14 billion as of December 31, 2017.

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Facts

Telefônica Brasil's World Cup Ticket Program

7. In March 2012, the opportunity arose for Telefônica Brasil to purchase tickets for the World Cup that would take place in Brazil in June and July 2014. Telefônica Brasil agreed to purchase 1860 World Cup tickets from a FIFA vendor, for a total of approximately $5.1 million, to be paid in three installments in 2012, 2013, and 2014. An internal memorandum by Telefônica Brasil's Marketing Director dated May 23, 2012, which sought approval for the purchase of the tickets, described the purchase as being "for relationship-building activities with strategic audiences." An executive expense committee at Telefônica Brasil, comprising of senior leadership at the company, approved the general purchase of the tickets. The paperwork seeking internal approval to purchase these tickets included no mention of giving tickets to government officials. However, it was known within the company that some of the tickets would be given to government officials.

8. Telefônica Brasil purchased the World Cup tickets and intended to pay for related hospitality at an average cost per guest of approximately $3,204, of which $2,750 comprised the cost of the tickets. The company allocated these tickets to its various departments, including approximately 10 percent of the tickets to the Institutional Relations Department ("IR Department"), which interacted with the Brazilian government and foreign governments. Telefônica Brasil, primarily through the IR Department, gave a total of 194 World Cup tickets to 93 government officials (in some cases, more than one ticket was given to an official so that he or she could invite friends or family members). The total value of tickets and related hospitality given to these government officials amounted to $621,576.

9. Most of the tickets given to government officials were given to individuals who were significant to the company's business interests, including federal congressmen and senators, mayors, and other government officials. A small number of personnel from foreign embassies who were commercial customers of Telefônica Brasil, including one ambassador, also received tickets. In selecting ticket recipients, management looked at the possible benefit to the company and at opportunities to build relationships with important officials. In an internal IR Department email dated May 27, 2014, an IR Manager noted that in creating the lists of suggested guests, he took "into account the importance of the actions that each guest has already effectively done in our favor." The employee then suggested that certain government officials be given tickets and outlined their roles in the Brazilian government. Among other examples, in a June 4, 2014 email, an IR employee requested from an IR Manager a ticket for a federal legislator's chief of staff who "has opened many doors for us" and noted that there was further legislative activity "going through the House and I will need his help." Other June 2014 emails reflect that a free trade tax zone official responsible for providing customs clearances was given a ticket and asked for his "ongoing support" in receiving a customs clearance for a particular invoice. A July 2014 email between IR Department employees suggested inviting two Brazilian mayors but only if, during the telephone calls inviting them, the IT Department could raise with them certain "legislative amendments" of importance to the company.

Telefônica Brasil's Confederations Cup Ticket Program

10. In 2013, the year before the World Cup, Telefônica Brasil also purchased Confederations Cup tickets and related hospitality for invited guests. The Confederations Cup is a major soccer tournament that precedes the World Cup by one year and takes place in the same country that is hosting the World Cup.

11. In March and April 2013, Telefônica Brasil paid a FIFA vendor $428,219 for 240 tickets for the Confederations Cup which amounted to an average cost per ticket of approximately $1,784. Telefônica Brasil also paid $312,226 for hospitality related to the Confederations Cup. Taking both the cost of the tickets and hospitality into account, the average cost per guest for the Confederations Cup amounted to approximately $3,085. As with the World Cup, the company allocated these tickets to its various departments, including approximately 15 percent to the IR Department.

12. Telefônica Brasil, primarily through the IR Department, gave a total of 38 Confederations Cup tickets to 34 government officials. The total value of tickets and related hospitality given to these government officials amounted to $117,230. Confederations Cup tickets were given to government officials who were significant to the company's business interests, including federal congressmen and various government ministry officials.

Telefônica Brasil Lacked Internal Accounting Controls

13. As with its parent company, Telefônica Brasil had a general code of ethics that explicitly prohibited offering or accepting gifts, hospitality, or other types of incentives "which may reward or influence a business decision," as well as a policy that donations would not be made if linked with political activity.

14. However, Telefônica Brasil lacked internal accounting controls sufficient to implement or maintain these policies and prevent giving things of value, like World Cup tickets, to government officials where such gifts might influence or reward an official decision. As a result, with the approval of senior managers, the company ended up offering such tickets and hospitality to government officials who were directly involved with, or in a position to influence, regulatory matters, legislation, and other business efforts of benefit to Telefônica Brasil.

15. In implementing internal accounting controls over gifts, Telefônica Brasil management focused on company employees accepting tickets and hospitality, as opposed to the company offering tickets and hospitality to others, including government officials. Although the broad policy prohibition was clear, and certain individuals inquired about its applicability, it was not followed due to the lack of internal accounting controls, a compliance breakdown, and a deficient internal audit function.

Telefônica Brasil Improperly Accounted for its Purchase of World Cup and Confederations Cup Tickets and Related Hospitality for Government Officials

16. The total cost for the World Cup ticket purchase was approximately $5.1 million and was paid in three installments in 2012, 2013, and 2014. Telefônica Brasil booked the first two installment payments for the World Cup tickets as "Publicity Institutional Events" and the third installment payment as "Advertising & Publicity" (the third payment was not also booked as "Publicity Institutional Events" because of a change in accounting codes at the company). It booked the hospitality provided for the World Cup as "Advertising & Publicity."

17. The total cost for the Confederations Cup ticket purchase was approximately $428,000 and was paid in two installments in 2013. Telefônica Brasil booked the two installment payments for the Confederations Cup tickets as "Publicity Institutional Events" and booked the hospitality provided for the event as "Advertising & Publicity."

18. Telefônica Brasil failed to properly characterize the purchase of tickets and related hospitality that were given to government officials. It recorded the purchases and hospitality as being for general advertising and publicity purposes when in fact those tickets and related hospitality were given to government officials. As such, Telefônica Brasil's books and records did not, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the company's assets.

19. As a result of the conduct described above, Telefônica Brasil violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act. Telefônica Brasil violated Section 13(b)(2)(A) of the Exchange Act by improperly recording the purchase of tickets and hospitality that were given to government officials. Telefônica Brasil also violated Section 13(b)(2)(B) by failing to devise and maintain sufficient internal accounting controls to detect and prevent the making of improper payments to foreign officials.

Telefônica Brasil's Remedial Efforts and Cooperation

20. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff. Telefonica Brasil's remediation included enhancing its internal accounting controls and compliance functions, and adopting a new anti-corruption policy and compliance structure. Telefônica Brasil's cooperation included timely sharing of facts developed during the course of an internal investigation by its board and voluntarily producing and translating documents.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A) and

13(b)(2)(B) of the Securities Exchange Act of 1934 [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

B. Respondents shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $4,125,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Telefônica Brasil S.A. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Charles Cain, FCPA Unit Chief, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa Countryman
Acting Secretary