

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 75684 / August 12, 2015**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3678 / August 12, 2015**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16750**

<p><b>In the Matter of</b></p> <p><b>VICENTE E. GARCIA,</b></p> <p><b>Respondent.</b></p>
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**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING 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 (the “Exchange Act”) against Vicente E. Garcia (“Garcia” 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, Respondent admits the Commission’s jurisdiction over him and the subject matter of these proceedings, and consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (the “Order”), as set forth below.

**III.**

On the basis of this Order and Respondent’s Offer, the Commission finds<sup>1</sup> that:

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<sup>1</sup> 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.

## **Summary**

1. This matter concerns violations of the anti-bribery, books and records and internal controls provisions of the Foreign Corrupt Practices Act of 1977 (“FCPA”) by Vicente E. Garcia (“Garcia”), a U.S. citizen and the head of Latin American sales for SAP SE (“SAP”), a European Union corporation headquartered in Waldorf, Germany. SAP provides technology solutions and services in approximately 188 countries and has more than 68,000 employees. Garcia and others offered to pay bribes to two government officials, and paid bribes of at least \$145,000 to another senior government official of the Republic of Panama in order to secure software license sales of approximately \$3.7 million to various government agencies; the sales were recorded initially in the books and records of SAP Mexico and subsequently consolidated into the financial statements of SAP. Garcia circumvented SAP’s internal controls by falsely justifying the discount amount offered to its local partner. In doing so Garcia helped to facilitate the local partner’s ability to generate excess earnings on the final, end-user sale, which earnings were then used to create a slush fund to finance the bribes paid to government officials.

## **Respondent**

2. Vicente E. Garcia (age 65), a U.S. citizen residing in Miami, Florida, was the Vice-President of Global and Strategic Accounts, responsible for sales in Latin America for SAP from February 2008 until April 2014.

## **Related Entities**

3. SAP SE (“SAP”) is a European Union corporation headquartered in Waldorf, Germany, that provides technology solutions and services in over 180 countries. SAP’s American Depository Shares are registered with the Commission pursuant to Section 12(b) of the Securities Act of 1933, and listed on the New York Stock Exchange.

4. SAP International, Inc. (“SAPI”), a Miami, Florida-based wholly-owned subsidiary of SAP, is engaged in selling software in the North and Latin American and Caribbean markets. SAPI does not enter into direct or indirect software or software-related services deals with end customers. Instead, SAPI employs some of the members of the Latin America and Caribbean (“LAC”) regional leadership team and provides some back office operational support for some of the LAC regional subsidiaries. Garcia was on the payroll of SAPI, but he reported to managers of both SAPI and SAP’s Brazilian subsidiary, and his reporting chain ultimately went up to SAP in Germany.

5. SAP Mexico S.A. de C.V. (“SAP Mexico”) is a Mexico City, Mexico-based wholly-owned subsidiary of SAP engaged in selling software in the Mexican and Central American markets. SAP Mexico is authorized by SAP to distribute, sell, license, and sublicense software directly and indirectly to end customers. SAP Mexico is also authorized to provide customers with software-related services such as implementation, maintenance, training, and consulting. Garcia negotiated the Panamanian contracts on behalf of SAP Mexico. SAP Mexico’s financial statements are consolidated and reported in SAP’s financial statements.

## Facts

6. From at least June 2009 through November 2013, Garcia, along with others, planned and executed a scheme to offer and pay bribes to three senior government officials of the Republic of Panama in order to obtain approximately \$3.7 million worth of software sales by SAP to the Panamanian government. Garcia, in concert with others, paid bribes to one Panamanian government official in the amount of \$145,000, and promised to pay bribes to two other government officials, all in contravention of the Foreign Corrupt Practices Act of 1977 (the “FCPA”).

7. Garcia was SAP’s Vice-President of Global and Strategic Accounts, responsible for sales in Latin America from February 2008 until April 2014, when SAP requested that he resign for his misconduct discussed herein. Garcia was employed by SAPI and worked on large deals all over Latin America using resources and personnel from other SAP subsidiaries including SAP Mexico.

8. SAP, through its 272 subsidiaries, sells software licenses and related services to 263,000 customers in 188 countries. SAP’s global business is directed and operated from its headquarters in Waldorf, Germany and executed through its numerous subsidiaries. Approximately 15% of SAP’s sales are directly to the customer. The remainder of SAP’s business is conducted through a network of more than 11,500 partners worldwide that provide an additional workforce of 380,000 individuals skilled in SAP software solutions and technology. SAP’s sales using a partner can be either (i) a direct sale to a customer with a sales commission paid to a partner that provides assistance, (ii) an indirect sale through a partner that purchases the software license and resells it to a customer at an independently determined increased price, or (iii) a direct sale to the partner, which acts as a distributor and independently resells the software licenses to customers in the future.

9. In June 2009, Garcia’s business associate, a Panamanian lobbyist (the “Lobbyist”), informed Garcia about potential software sales opportunities with the government of Panama and that he had an existing relationship with the newly elected government, including a high ranking Government Official A, who was tasked with improving technology solutions across multiple government agencies in Panama and had significant influence over Panama’s software purchasing decisions. Thereafter, SAP began investigating possible software sales to the Panamanian government. Initially this endeavor was led by local SAP sales employees in Mexico. Garcia, however, took over the business opportunity by recommending that SAP designate the Panama government as part of the Premier Customer Network – a group of large, strategically important, regional customers – which Garcia headed.

10. On February 9, 2010, Government Official A asked in an e-mail whether SAP could send him a letter inviting him to Mexico for “some fictional meetings in order to justify a trip there on Monday and Tuesday of Carnival.” The same day, Garcia acceded to the request and sent an e-mail to Government Official A with an attached fictitious letter on SAP letterhead inviting him “to Mexico City so that you can directly and personally evaluate the benefits that the Government of Mexico has obtained by adopting our products and services.” The letter also

included a fictitious itinerary of proposed meetings that never occurred. The next day, on February 10, Garcia sent an e-mail from his personal Yahoo! e-mail account inquiring about possible business opportunities from Government Official A stating: "Any news . . . ? Was the document OK for him? Can you ask him to finalize a deal for us in Feb-March, I need between \$5 and \$10 million."

11. In late February 2010, Garcia and another SAP employee traveled from Miami, Florida to Panama and met with Government Official A and others to discuss business opportunities. Thereafter, in April 2010, Garcia began preparing a proposal to sell approximately \$29 million worth of software licenses to the Panamanian social security agency, anticipating that this sale would be the first of multiple deals with various ministries and agencies of the Panamanian government totaling over \$100 million. Ultimately, some of these additional sales never materialized and others were smaller than expected.

12. Garcia and others were informed by the Lobbyist that in order to obtain these contracts from the government of Panama, they needed to bribe three Panamanian government officials that had significant influence in the Panamanian government's award of contracts to purchase software.

13. In anticipation of the sales to the government of Panama, Garcia and others began planning the details of the bribery scheme. On June 9 and 10, 2010, Garcia discussed with others, including via e-mail, their plans to pay bribes to Government Official A (2% of the value of the contract) and Government Official B (10%), and receive kickbacks for themselves (2%). Also, on October 26, 2010, e-mails were exchanged with two attached spreadsheets referencing planned payments to Government Officials A and C of approximately \$100,000 and \$300,000, respectively.

14. To facilitate payments to Government Official B, the Lobbyist proposed using a sham contract for fictitious services to be provided by Government Official B's brother-in-law's company. On June 17, 2010, Government Official A received two draft sham contracts with the stated purpose of having these two back-to-back contracts so that "no trace remains if SAP conducts an audit . . . . I made it as simple as possible and made it look like a real contract." On June 18, 2010, the Lobbyist e-mailed Garcia an unsigned corrected copy of the proposed consulting agreement, which provided that Government Official B's brother-in-law's company would receive "10% (ten percent) for performance of its Services and Consulting duties" relating to all "business opportunities" with the Panamanian government.

15. On October 19, 2011, the Lobbyist e-mailed a spreadsheet to Government Official C indicating that they would share \$274,000 in 2011 and \$226,000 in 2012. On January 9, 2013, another business associate of Garcia e-mailed Government Official A stating that Garcia and his business associate had agreed to give Government Official A some of their kickback so that Government Official A could receive a larger "commission" of \$150,000. In addition, the business associate confirmed that Government Official A already had been paid \$45,000 and acknowledged that \$105,000 was still outstanding.

16. As a result of Garcia's conduct in the bribery scheme, SAP, with its local partner, was able to sell software to the Panamanian government through four contracts from 2010 to 2013. These contracts generated revenues of \$3.7 million to SAP.

17. One of the four contracts was a software license sale to the Panamanian social security agency, which was initially proposed to be a direct sale with the assistance of local partners. In order to facilitate the bribery scheme, the existing partners were replaced with a new local Panamanian partner. Because SAP refused to pay additional commission to this new Panamanian company, Garcia and others began looking for other ways to advance the bribery scheme. Finally, in the fall of 2010, Garcia finalized an indirect sale of the software license to the agency through the local partner, which, with Garcia's assistance, ultimately sought and obtained an 82% discount on the sale price. Garcia caused various approval forms to be submitted that misstated the reasons for the large discount. Garcia stated that the discounts were necessary to compete with other software companies in establishing a relationship with the government of Panama when, in fact, the discounts were necessary to pay bribes to government officials. Garcia and others planned to sell SAP software to the intermediary at an 82% discount, who in turn would sell them at significantly higher prices to the Panamanian government and use part of the profits from the sale to pay bribes.

18. SAP agreed to sell the software licenses for the Panamanian social security agency to the local partner for approximately \$2.1 million. In November 2010, the local partner successfully bid \$14.5 million for the contract, which was awarded by the Panamanian government on January 31, 2011. Garcia, along with others, planned to pay bribes to Panamanian government officials from the proceeds of the software sale to the government of Panama.

19. Thereafter, as noted above, between June 2012 and December 2013, the Panamanian government awarded three additional contracts that included SAP software products valued at approximately \$13.5 million, which were also sold at deep discounts by SAP to its local partner. For these contracts also, Garcia and others agreed to pay bribes to Panamanian officials from the proceeds of the software sales.

20. Between April 11, 2012 and August 13, 2013, Garcia and his business associate paid at least \$145,000 in bribes to Government Official A. Between December 27, 2011 and October 29, 2012, another Garcia business associate paid Garcia a kickback of approximately \$85,965 in his bank account in Florida from the proceeds of the sale of SAP software licenses to the Panamanian government. Thus, Garcia, with the assistance of others, bribed one government official and promised to pay bribes to two other government officials to obtain contracts to sell software to Panamanian government, all in violation of the FCPA.

### **Legal Standards and Violations**

21. Section 30A(a) of the Exchange Act sets forth the anti-bribery provisions of the FCPA. It prohibits an issuer any officer, director, employee or agent of such issuer or any stockholder thereof acting on behalf of such issuer from using the "mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment" of money to any person, while knowing that all or a

portion of such money “will be offered, given, or promised, directly or indirectly, to any foreign official ... for purposes of”, among other things, “inducing such foreign official ... in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person.”

22. By engaging in the conduct described above, Garcia, as an agent of SAP, violated Section 30A in connection with the sale of software licenses and other related services to the government of Panama. On behalf of SAP, Garcia participated in structuring the deal as an indirect sale through the local partner, with the understanding that it would act as a conduit to send corrupt payments to several government officials. Garcia, along with others, promised to make bribe payments to two senior government officials and made bribe payments to another government official, all in violation of the FCPA. Garcia used the mails and other means and instrumentalities of interstate commerce to bribe government officials. Garcia used his SAP e-mail account and his personal Yahoo! e-mail account to plan and execute the bribery scheme. In addition, as part of the bribery scheme, Garcia flew from Miami to Panama to meet with government officials and others, and Garcia received \$85,965 in “kickbacks” into his bank account in Florida.

23. Section 13(b)(5) of the Exchange Act provides that no person shall knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book, record or account of an issuer described in Section 13(b)(2) of the Exchange Act. Exchange Act Rule 13b2-1 prohibits any person from, directly or indirectly, falsifying or causing to be falsified any book, record, or account subject to Exchange Act Section 13(b)(2)(A). Scierer is not an element of a Rule 13b2-1 violation. *See SEC v. McNulty*, 137 F.2d 732, 740-41 (2<sup>nd</sup> Cir. 1998).

24. Garcia knowingly falsified SAP Mexico’s books and records by engaging in a scheme to create a slush fund at the local partner, which was used to pay bribes to Panamanian government officials. Garcia also knowingly circumvented the company’s internal controls to change the sale of the software licenses from a direct sale to the government of Panama to an indirect sale through intermediaries at deep discounts in order to facilitate payments to government officials. Specifically, Garcia justified the deep discounts by falsely claiming in approval forms that the discounts were necessary to beat competitors and obtain entry into the Panamanian market when, in fact, the discounts were necessary to generate funds to pay bribes to government officials. With respect to the leisure trip for Government Official A, Garcia prepared a fictitious letter and itinerary, and even used a personal e-mail account to avoid detection of his corrupt activities. Finally, despite signing SAP’s Code of Conduct prohibiting bribery, he engaged in an elaborate bribery scheme. Accordingly, Garcia violated Section 13(b)(5) of the Exchange Act, and Rule 13b2-1.

### **Undertaking**

25. Respondent hereby undertakes that he shall cooperate fully with the Commission in any and all investigations, litigations, administrative or other proceedings commenced by the Commission or to which the Commission is a party relating to or arising from the matters described in this Order. In connection with such investigations, litigation, administrative or other proceedings, the Respondent agrees to the following: (i) to produce, without service of a notice or subpoena, any

and all documents and other materials and information as requested by the Commission; (ii) to appear and testify without service of a notice or subpoena in such investigations, interviews, depositions, hearings and trials, at such times and places as reasonably requested by the Commission; and (iii) to respond promptly to all inquiries from the Commission. In determining whether to accept the Offer, the Commission has considered this undertaking.

### **Criminal Proceeding**

26. For his conduct relating to certain of the findings in this Order, Garcia has entered into a plea agreement with the U.S. Department of Justice agreeing to plead guilty to one count of conspiring to violate the FCPA.

### **Findings**

27. Based on the foregoing, the Commission finds that Garcia violated Sections 30A and 13(b)(5) of the Exchange Act and Rule 13b2-1.

### **IV.**

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

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Garcia cease and desist from committing or causing any violations and any future violations of Sections 30A and 13(b)(5) of the Exchange Act, and Rule 13b2-1.

B. Respondent shall pay disgorgement of \$85,965, representing the kickback Garcia received in connection with the bribery scheme, and prejudgment interest of \$6,430 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). Payment shall be made in the following installments: Respondent shall pay \$30,798 within ten (10) days of the date of this Order, and make two additional payments of \$30,798 and \$30,799 each, thirty and sixty days thereafter, respectively. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement and prejudgment interest, plus any additional interest accrued pursuant to SEC Rule of Practice 600 shall be due and payable immediately, without further application.

Payments must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which shall 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, 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 Garcia as the 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 Alka Patel, Assistant Regional Director, Division of Enforcement, U.S. Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, California 90071.

**V.**

It is further Ordered that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields  
Secretary