

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95913 / September 27, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21158

In the Matter of

ORACLE CORPORATION

Respondent.

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 (“Exchange Act”), against Oracle Corporation (“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 Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

SUMMARY

1. This matter concerns violations of the anti-bribery, books and records, and internal accounting controls provisions of the Foreign Corrupt Practices Act ("FCPA") by Oracle Corporation ("Oracle"), a Texas headquartered technology company, resulting from conduct undertaken by agents and employees of certain of its subsidiaries. From at least 2014 through 2019 (the "Relevant Period"), employees of Oracle subsidiaries based in India, Turkey, and the United Arab Emirates (collectively, the "Subsidiaries") used discount schemes and sham marketing reimbursement payments to finance slush funds held at Oracle's channel partners in those markets. The slush funds were used both to (i) bribe foreign officials, and/or (ii) provide other benefits such as paying for foreign officials to attend technology conferences around the world in violation of Oracle's internal policies.

RESPONDENT

2. **Oracle Corporation** is a multinational information technology company headquartered in Austin, Texas. Oracle's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the New York Stock Exchange under the Ticker "ORCL." Oracle employs a global workforce to service its international customers that include businesses of all sizes, government agencies, and educational institutions. On August 16, 2012, Oracle agreed to pay a \$2 million penalty to settle the SEC's allegations that Oracle violated the books and records and internal accounting controls provisions of the FCPA by failing to prevent Oracle India Private Limited ("Oracle India") from keeping unauthorized side funds at distributors from 2005 to 2007.

FACTS

Background

3. During the Relevant Period, Oracle exercised control over its subsidiaries. Oracle's legal, audit, and compliance functions were centrally coordinated from its U.S. headquarters within the United States and implemented on a regional basis. Additionally, Oracle consolidated the Subsidiaries' financial statements into Oracle's financial statements.

4. The employees of Oracle's subsidiaries reported up to the parent company through lines of business ("LOB"). LOB heads set the financial and business targets for

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.

their respective LOB by region or territory, not by country or subsidiary. Consistent with the LOB structure, certain employees in Oracle's organization moved between Oracle subsidiaries to perform different roles or even while performing the same role.

5. During the Relevant Period, Oracle used both a direct and indirect sales model. Under the direct model, Oracle transacted directly with customers, and the customers paid Oracle directly. Under the indirect method, Oracle transacted through various types of distributors, including value added distributors ("VADs") and value added resellers ("VARs"). Oracle utilized a global on-boarding and due diligence process for these channel partners that Oracle implemented at the regional and country levels. Oracle only permitted its subsidiaries to work with VADs or VARs who were accepted to its Oracle Partner Network ("OPN"). Similarly, Oracle prohibited its subsidiaries from conducting business with companies removed from the OPN.

6. While Oracle used the indirect sales model for a variety of legitimate business reasons, such as local law requirements or to satisfy payment terms, it recognized since at least 2012 that the indirect model also presented certain risks of abuse – including the creation of improper slush funds.

Improper Use of Discounts

7. According to Oracle's policies, an employee was only supposed to request a discount from a product's list price for a legitimate business reason. Oracle used a three-tier system for approving discount requests above designated amounts, depending on the product. Depending on the amount of the discount, Oracle at times required subsidiary employees to obtain approval from an approver in a subsidiary other than that of the employee seeking the discount. For the highest level of discounts, Oracle required the subsidiary employee to obtain approval from an Oracle headquarters designated approver. Typical discount justifications referred to budgetary caps at end customers or competition from other original equipment manufacturers. However, while Oracle policy mandated that all discount requests be supported by accurate information and Oracle reviewers could request documentary support, Oracle policy did not require documentary support for the requested discounts – even at the highest level.

8. As a result, Oracle Subsidiary employees were able to implement a scheme whereby larger discounts than required for legitimate business reasons were used in order to create slush funds with complicit VADs or VARs. The channel partners profited from the scheme by keeping a portion of the excess deal margin.

Improper Use of Marketing Reimbursements

9. During the Relevant Period, Oracle allowed its sales employees at the Subsidiaries to request purchase orders meant to reimburse VADs and VARs for certain expenses associated with marketing Oracle's products. As long as the purchase orders were under \$5,000, first-level supervisors at the Subsidiaries could approve the purchase order

requests without any corroborating documentation indicating that the marketing activity actually took place. For example, Oracle Turkey sales employees opened purchase orders totaling approximately \$115,200 to VADs and VARs in 2018 that were ostensibly for marketing purposes and were individually under this \$5,000 threshold.

10. Oracle subsidiary employees based in Turkey and the United Arab Emirates requested sham marketing reimbursements to VADs and VARs as a way to increase the amount of money available in the slush funds held at certain channel partners. The direct supervisors of these sales employees, who were complicit in the scheme, approved the fraudulent requests.

Improper Conduct at Turkish Subsidiary - Oracle Bilgisayar Sistemleri Limited Sirketi (“Oracle Turkey”)

The VAD Accounts

11. From 2009 – 2019, Oracle Turkey used both excessive discounts and sham marketing reimbursement payments to create off-book slush funds at its two VADs. Internally, Oracle Turkey sales employees referred to the accounts as “havuz,” which means “pool” or “kumbara,” which means “moneybox,” and used the accounts for purposes that were prohibited under Oracle’s internal policies. Oracle Turkey employees routinely used the slush funds to pay for the travel and accommodation expenses of end-user customers, including foreign officials, to attend annual technology conferences in Turkey and the United States, including Oracle’s own annual technology conference. In some instances, these funds were also used to pay for the travel and accommodation expenses of foreign officials’ spouses and children, as well as for side trips to Los Angeles and Napa Valley.

12. Oracle Turkey employees used these slush funds for roughly a decade. Oracle Turkey’s management, including the country leader, knew of and condoned the practice. Given how these schemes were implemented, Oracle lacks records regarding the full size and scope of how these off-book slush funds were used.

The 112 Project

13. In May 2018, Oracle Turkey was attempting to win a lucrative contract with Turkey’s Ministry of Interior (“MOI”) related to the ongoing creation of an emergency call system for Turkish citizens (“112 Project”), for which Oracle Turkey had previously provided services. The sales account manager for the MOI (“Turkey Sales Representative”), with the knowledge of the then-country leader, sought to improperly influence relevant officials and planned a week-long trip to California for four MOI officials that was likely paid for with funds from a VAD account. Ostensibly, the purpose of the trip was for the MOI officials to attend a meeting at Oracle’s headquarters in California with a senior Oracle executive. But the meeting at Oracle’s headquarters only lasted approximately fifteen to twenty minutes. During the rest of the week, the Turkey Sales Representative entertained the MOI officials in Los Angeles and Napa Valley and

took them to a theme park. On May 31, 2018, Oracle received a large follow-on order related to the 112 Project.

14. In order to fund the MOI officials' leisure trip, the Turkey Sales Representative needed to request a non-standard discount. Accordingly, the Turkey Sales Representative requested an excessive discount for the 112 Project by claiming the MOI had budgetary restraints and that Oracle Turkey was facing stiff competition from other original equipment manufacturers. Oracle headquarters personnel in the United States relied on the Turkey Sales Representative's claim of competition when it approved the discount, but they did not require proof. In reality, the MOI did not conduct a competitive bidding process for this contract. Instead, the MOI required any bidders that responded to the tender offer to include Oracle products in their bid.

The SSI Deals

15. The same Turkey Sales Representative involved with the 112 Project also directed cash bribes to officials at Turkey's Social Security Institute ("SSI"). According to a spreadsheet the Turkey Sales Representative maintained, the Turkey Sales Representative was tracking how much potential margin he could create from a discount request six months before he finalized a deal with the SSI in 2016. Then, three months before he closed the deal, the Turkey Sales Representative met with an intermediary for the SSI officials ("Intermediary"). The subject of the calendar entry for the meeting read, "Those who think big are meeting up."

16. In order to fund the bribes in connection with the 2016 SSI deal, the Turkey Sales Representative again falsely claimed he needed a significant discount due to intense competition from other original equipment manufacturers. An Oracle employee located in the U.S. approved the discount due to the deal's size. As before, no additional documentary support for the justification was required. However, instead of intense competition, Turkey's public procurement records that were available at the time indicated that the SSI required Oracle products to fulfill the tender, which precluded competition from other original equipment manufacturers. The Turkey Sales Representative used the excess margin to increase the amount of money kept in a slush fund maintained by the VAD for the deal.

17. In 2017, the same Turkey Sales Representative used a VAR to create a slush fund for SSI officials related to a database infrastructure order ("Turkey VAR"). As with the other examples, a significant discount was approved by Oracle headquarters personnel in the United States without documentary support. A spreadsheet maintained by the Turkey Sales Representative shows an excessive margin of approximately \$1.1 million, only a portion of which was used to purchase legitimate products such as software licenses.

18. The Turkey VAR only kept a nominal amount for itself and while following instructions from the Turkey Sales Representative, the Turkey VAR passed the majority of the funds to other entities, including an entity controlled by the Intermediary. The

Intermediary-controlled entity that was responsible for providing the cash bribes to SSI officials received at least \$185,605.

Improper Conduct at UAE Subsidiary - Oracle Systems Limited (“Oracle UAE”)

The VAR “Wallets”

19. From at least 2014 to 2019, certain Oracle UAE sales employees used both excessive discounts and marketing reimbursement payments to maintain slush funds at VARs. In some instances, the sales people referred to slush funds that they maintained over a period of time at a specific VAR as a “wallet.” Oracle UAE sales employees directed the VARs how to spend the funds, and used the wallets to pay for the travel and accommodation expenses of end customers, including foreign officials, to attend Oracle’s annual technology conference in violation of Oracle’s internal policies.

The Corrupt UAE Deals

20. In 2018 and 2019, an Oracle UAE sales account manager (“UAE Sales Representative”) for a UAE state-owned entity (“SOE”) paid approximately \$130,000 in bribes to the SOE’s Chief Technology Officer in return for six different contracts over the same period. The first three bribes were funded with the assistance of two complicit VARs through an excessive discount and paid through another entity (“UAE Entity”) that was not an Oracle approved VAR for public sector transactions and whose sole purpose was to make the bribe payments. For the final three deals, the UAE Entity was the actual entity that contracted with the UAE SOE despite the fact that Oracle’s deal documents represented an Oracle approved partner as the VAR for the deal.

Improper Conduct at Oracle India

21. In 2019, Oracle India sales employees also used an excessive discount scheme in connection with a transaction with a transportation company, a majority of which was owned by the Indian Ministry of Railways (“Indian SOE”). In January 2019, the sales employees working on the deal, citing intense competition from other original equipment manufacturers, claimed the deal would be lost without a 70% discount on the software component of the deal. Due to the size of the discount, Oracle required an employee based in France to approve the request. The Oracle designee provided approval for the discount without requiring the sales employee to provide further documentary support for the request. In fact, the Indian SOE’s publicly available procurement website indicated that Oracle India faced no competition because it had mandated the use of Oracle products for the project. One of the sales employees involved in the transaction maintained a spreadsheet that indicated \$67,000 was the “buffer” available to potentially make payments to a specific Indian SOE official. A total of approximately \$330,000 was funneled to an entity with a reputation for paying SOE officials and another \$62,000 was paid to an entity

controlled by the sales employees responsible for the transaction.

LEGAL STANDARDS AND FCPA VIOLATIONS

22. Under Section 21C(a) of the Exchange Act, the Commission may impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act or any rule or regulation thereunder, and upon any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation.

23. As a result of the conduct described above, Respondent violated Section 30A of the Exchange Act, which prohibits any issuer with a class of securities registered pursuant to Section 12 of the Exchange Act, or any officer, director, employee, or agent acting on behalf of such issuer, or any stockholder acting on behalf of an issuer, to make use of 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 any money, or offer, gift or promise to give anything of value to any foreign official for purposes of influencing any act or decision of such foreign official in his official capacity in order to assist such issuer in obtaining or retaining business for or with any person.

24. As a result of the conduct described above, Respondent violated Section 13(b)(2)(A) of the Exchange Act, which requires every issuer with a class of securities registered pursuant to Section 12 of the Exchange Act to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

25. As a result of the conduct described above, Respondent violated Section 13(b)(2)(B) of the Exchange Act, which requires issuers with a class of securities registered pursuant to Section 12 of the Exchange Act and issuers with reporting obligations pursuant to Section 15(d) of the Exchange Act to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

Commission Consideration of Oracle's Cooperation and Remedial Efforts

26. In determining to accept the Offer, the Commission considered that Oracle self-reported certain unrelated conduct, remedial acts it undertook, and cooperation afforded the Commission Staff.

27. Oracle's cooperation included sharing facts developed in the course of its own internal investigations, voluntarily providing translations of key documents, and facilitating the staff's requests to interview current and former employees of Oracle's foreign subsidiaries.

28. Oracle's remediation includes: (i) terminating senior regional managers and other employees involved in the misconduct and separating from employees with supervisory responsibilities over the misconduct; (ii) terminating distributors and resellers involved in the misconduct; (iii) strengthening and expanding its global compliance, risk, and control functions, including the creation of over 15 new positions and teams at headquarters and globally; (iv) improving aspects of its discount approval process and increasing transparency in the product discounting process through the implementation and expansion of transactional controls; (v) increasing oversight of, and controls on, the purchase requisition approval process; (vi) limiting financial incentives and business courtesies available to third parties, particularly in public sector transactions; (vii) improving its customer registration and payment checking processes and making other enhancements in connection with annual technology conferences; (viii) enhancing its proactive audit functions; (ix) introducing measures to improve the level of expertise and quality of its partner network and reducing substantially the number of partners within its network; (x) enhancing the procedures for engaging third parties, including the due diligence processes to which partners are subjected; (xi) implementing a compliance data analytics program; and (xii) enhancing training and communications provided to employees and third parties regarding anti-corruption, internal controls, and other compliance issues.

DISGORGEMENT AND CIVIL PENALTIES

29. The disgorgement and prejudgment interest ordered in section IV. is consistent with equitable principles, does not exceed Respondent's net profits from its violations, and allowing Respondent to retain such funds would be inconsistent with equitable principles. Therefore, in these circumstances, distributing disgorged funds to the U.S. Treasury is the most equitable alternative. The disgorgement and prejudgment interest ordered in section IV. shall be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

IV.

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

Accordingly, pursuant to Section 21C of the Exchange Act it is hereby ORDERED that:

- A. Respondent shall cease and desist from committing or causing any violations and any future violations of Sections 30A, 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(2)(B), and 78dd-1].
- B. Respondent shall, within 14 days of entry of this Order, pay disgorgement

of \$7,114,376.44 and prejudgment interest of \$791,040.20 for a total of \$7,905,416.64 and a civil money penalty in the amount of \$15,000,000 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 SEC Rule of Practice 600 and 31 U.S.C 3717.

C. 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 Web site 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 Oracle 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 Charles Cain, Unit Chief, FCPA Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

- D. 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 A. Countryman
Secretary