

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99308 / January 10, 2024

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4481 / January 10, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-21824

In the Matter of

SAP SE,

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 and in the public interest that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against SAP SE (“SAP” 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 it 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 (“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 SAP's violations of the anti-bribery, books and records, and internal accounting controls provisions of the Foreign Corrupt Practices Act (the "FCPA"). SAP is a global software company headquartered in Walldorf, Germany. From at least December 2014 through December 2018, SAP employed third-party intermediaries and consultants in various schemes to make improper payments to government officials in order to obtain and retain business in South Africa, Greater Africa (Malawi, Kenya, Tanzania, and Ghana), and Indonesia. Additionally, an SAP Azerbaijan employee provided improper gifts to a government official in order to obtain and retain business in Azerbaijan in January 2022.

2. SAP failed to make and keep accurate books and records and failed to devise and maintain a sufficient system of internal accounting controls necessary to detect and prevent the improper payments. The bribes were inaccurately recorded as legitimate business expenses in SAP's books and records. SAP failed to implement sufficient internal accounting controls over the engagement of, and payments to, third parties and lacked sufficient entity level controls over its subsidiaries in South Africa, Greater Africa, Indonesia, and Azerbaijan.

Respondent

3. **SAP SE** is a European Union corporation headquartered in Walldorf, Germany. SAP's American Depositary 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. SAP markets its software all over the world through various country subsidiaries, including wholly-owned subsidiaries in South Africa, Greater Africa (Malawi, Kenya, Tanzania, and Ghana), Indonesia, and Azerbaijan, which SAP manages and supervises. SAP is a recidivist. In 2016, the Commission charged SAP with books and records and internal accounting controls violations in connection with a bribe scheme in Panama.²

Related Entities

4. **SAP South Africa Ltd.** ("SAP South Africa") is a Johannesburg, Gauteng Province, South Africa-based wholly-owned subsidiary of SAP engaged in selling software in the South African market. SAP South Africa is authorized by SAP to distribute, sell, license, and sublicense software directly and indirectly to customers. SAP South Africa's financial statements are consolidated and reported in SAP's financial statements.

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.

² *In the Matter of SAP SE*, Exchange Act Release No. 77005 (Feb. 1, 2016).

5. **SAP Africa Ltd.** (“SAP Africa”) is a Johannesburg, Gauteng Province, South Africa-based wholly-owned subsidiary of SAP engaged in selling software in the Sub-Saharan African market outside of South Africa. SAP Africa is authorized by SAP to distribute, sell, license, and sublicense software directly and indirectly to customers. SAP Africa’s financial statements are consolidated and reported in SAP’s financial statements.

6. **PT. SAP Indonesia** (“SAP Indonesia”) is a Jakarta, Indonesia-based wholly-owned subsidiary of SAP engaged in selling software in the Indonesian market. SAP Indonesia is authorized by SAP to distribute, sell, license, and sublicense software directly and indirectly to customers. SAP Indonesia’s financial statements are consolidated and reported in SAP’s financial statements.

7. **SAP AZ LLC (“SAP Azerbaijan”)** is a Baku, Azerbaijan-based wholly-owned subsidiary of SAP engaged in selling software in the Azerbaijan market. SAP Azerbaijan is authorized by SAP to distribute, sell, license, and sublicense software directly and indirectly to customers. SAP Azerbaijan’s financial statements are consolidated and reported in SAP’s financial statements.

FACTS

Background

8. SAP sells software licenses and related services. Its operations are currently divided into seven regions: (1) North America region, (2) Latin America/Caribbean (LAC) region, (3) the Europe/Middle East/Africa (EMEA) North region, (4) EMEA South region, (5) the Middle and Eastern Europe MEE region, (6) Asia Pacific/Japan region, and (7) Greater China region. Revenues are allocated to these seven regions based on the location of the customer. SAP’s global business is executed through its numerous subsidiaries and the subsidiaries’ financial statements are consolidated into SAP’s financial statements. SAP conducts its business by using local business partners, consultants, resellers, value added resellers and other intermediaries.

9. While SAP uses third parties for a variety of legitimate business reasons, it knows that the use of third parties can increase the risk of improper payments being made to secure business. In the past, these included Business Development Partners (“BDPs”), which were eligible to earn commissions for SAP sales on which they assisted. The BDP program was terminated in 2018.

10. During the relevant time frame, SAP’s internal policies and procedures for working with third parties required employees to conduct due diligence to assess risk and ensure: (1) That a third party had no relations (as a family member) to the SAP customer or a potential customer, and (2) That the third party was not a government official, government employee, political party official or candidate, or officer or employee of any public international organization or an immediate family member of any of these. In addition, with respect to BDPs, all sales commission contracts had to be in writing and clearly define the services to be provided and the related business

and payment terms. SAP subsidiaries and employees were required to use a model agreement that included standard commission rates and to follow a standardized internal approval process, which required the involvement and approval of the local legal department or compliance officer, the subsidiary's local managing director, and its local chief financial officer. In cases where a BDP agreement required non-standard terms, regional management had to provide additional approvals. The policy documents explicitly state that they were put into place to ensure that no relationship with a third party would be used to inappropriately influence a business decision or pay bribes to government officials.

11. SAP's wholly-owned subsidiaries—SAP South Africa, SAP Africa, SAP Indonesia and SAP Azerbaijan—repeatedly violated these internal policies to engage in bribery schemes with the help of third party intermediaries from at least December 2014, to obtain or retain business. Because the payments were made by third parties acting outside of SAP's own systems, SAP lacks sufficient records to determine with specificity the full scope of the bribe schemes.

SAP South Africa

12. SAP South Africa retained multiple third party consultants in South Africa to offer or pay bribes to government officials or intermediaries in order to obtain contracts with public sector customers. SAP South Africa recorded the payments as legitimate business expenses in SAP's books and records, despite the fact that certain intermediaries could not show that they provided the services for which they had been contracted.

13. On December 23, 2014, SAP South Africa closed on a \$4.4 million deal with South African state-owned rail and logistics company, Transnet, with an intermediary third party ("SA Intermediary 1") purportedly acting as a BDP. SA Intermediary 1 is a South African tech company, known for various corrupt business activities, and is controlled by a South African-based family. According to the terms of the deal, SA Intermediary 1 was to receive a 10% commission for the deal and was to perform certain deliverables. In reality, it did not perform any actual work for SAP. There is no record of SA Intermediary 1 ever being present at meetings with Transnet, nor does SA Intermediary 1 appear to have a credible IT background or experience. Furthermore, bank records indicate that shortly after the deal closed, SA Intermediary 1 paid \$562,215, characterized as "loans," to an individual known to be involved in making bribe payments.

14. SAP South Africa and its employees used another intermediary also controlled by the same South African-based family ("SA Intermediary 2"), which was also known as a conduit for bribing government officials, to help it secure a September 30, 2015 contract valued at \$6.58 million with Transnet. SAP South Africa paid approximately \$1 million in commission fees to SA Intermediary 2, a South African 3D printing firm despite the fact that it provided no tangible services to SAP. SAP South Africa and its employees knew about the red flags relating to SA Intermediary 2's ownership. The former director of SA Intermediary 2 admitted that the entity had "no expertise" or skills to provide meaningful services on the Transnet deal and also said he had no knowledge of SA Intermediary 2 providing any services. During an SAP-initiated audit of SA Intermediary 2, the third party failed to provide evidence of any services performed.

15. SAP South Africa again used SA Intermediary 2 in connection with a June 1, 2016 contract with the South African Revenue Service.

16. SAP South Africa also paid bribes in order to obtain a December 29, 2015 contract with the City of Johannesburg valued at \$13.16 million for a license consolidation. SAP did so with the help of two BDPs, each of whom were contracted to receive a 10% commission. In August 2016, an SAP South Africa account executive directed one of the partners to make an improper ZAR 2.2 million (approximately \$120,000) payment to an account for an entity known to be involved with corrupt activities. Chat messages between the SAP South Africa local account executive and a City of Johannesburg employee corroborate that the local account executive directed, and the business partner made, the improper payment. In addition to these cash payments, SAP South Africa paid for trips to New York for government officials in May and September 2015, including the officials' meals and golf outings on the trips.

17. In November 2016, SAP South Africa closed a deal with Eskom, a state-owned entity and the largest producer of electricity in South Africa, to renew software licenses for approximately \$28.58 million. Internally, SAP South Africa set aside several million dollars from this renewal fee to pay SA Intermediary 3, a purported IT consultant on the Eskom project. SA Intermediary 3, however, never performed any services. Instead, SAP South Africa's Managing Director instructed SAP South Africa employees to perform the consulting work in SA Intermediary 3's stead and still paid the entity a total of \$1.6 million. Notably, officials at Eskom approved these payments despite SA Intermediary 3's absence on the project. SAP also retained SA Intermediary 2 to perform vague services on Eskom contracts dated March, 2016 and November 2016 that, as a 3D printing company, SA Intermediary 2 was unqualified to perform. Regardless, SAP South Africa paid SA Intermediary 2 a total of \$5.18 million in consulting fees.

18. Finally, SAP South Africa used two local BDPs in connection with obtaining deals valued at \$35.4 million with South African public sector customer, Department of Water and Sanitation ("DWS") in December 2015 and July 2016. The local business partners were paid at a 14.9% commission rate, the maximum allowed under SAP policy without approval from the Board. SAP South Africa employees engaged both BDPs at the highest commission percentage allowed, staying under the 15% commission rate so as to avoid the need to obtain higher level approvals, and authorized the payment despite the local partners' failure to meet deliverables relating to the DWS transactions.

SAP Greater Africa

19. SAP Africa used resellers to conduct business throughout Greater Africa, including a Zimbabwe-based reseller ("GA Intermediary 1") that was used to conduct business in Malawi, Tanzania, Ghana, and Kenya. GA Intermediary 1 engaged in bid-rigging and arranged corrupt payments to government officials in connection with SAP Africa deals in all four countries between 2014 and 2018.

20. GA Intermediary 1 helped SAP Africa improperly access tender documents to obtain a December 29, 2017 contract with the Government of Malawi valued at \$1,416,878 in

exchange for improper payments to Malawi government officials. GA Intermediary 1 benefited from this deal as a reseller of the SAP products to the government. Emails indicate that certain SAP Africa employees, including an account executive and a local sales director, knew of efforts by employees at GA Intermediary 1 to access draft tender documents to influence the outcome of the tender in SAP Africa's favor. The CEO of GA Intermediary 1 emailed two SAP Africa sales executives saying, "we have already seen the documents in confidence. Please keep this very confidential." One of those two sales executives sent the other an internal email stating, "[GA Intermediary 1] has been ready for quite some time now—they got the script months ago—of course from 'internal friends.'"

21. Again with the help of GA Intermediary 1, SAP Africa paid bribes to win a tender for a June 2015 sales contract and a subsequent June 2016 contract with the Tanzania Ports Authority ("TPA"), valued at \$768,561 and \$41,745, respectively. GA Intermediary 1 again benefited from these deals as a reseller. Emails and documents show that the Kenya country manager for GA Intermediary 1 shared TPA draft tender materials with an SAP Africa account executive on a thumb drive in order to get information on bid specifications that could help win the tender. SAP Africa executives contacted individuals known as bribe "facilitators" around the time of the TPA tender to assist GA Intermediary 1 to pay bribes to TPA officials in exchange for the materials that helped SAP Africa win the tender.

22. SAP Africa worked with two reseller partners, GA Intermediary 1 and a second intermediary ("GA Intermediary 2"), to pursue a 2016 contract with the Ghana National Petroleum Corporation ("GNPC") valued at \$1,205,175. GA Intermediary 2 was unqualified for the project and was retained for its political connections. Initially, GA Intermediary 1 tried to win the contract on behalf of SAP Africa by offering to pay a company associated with a government official, "40% of the total deal value" in exchange for unspecified "support services leading to the successful award of the opportunity." The "support services" to be performed were not legitimate, rather the payment was in return for the government official's help ensuring that GNPC would forego the tender process and sole source the contract to GA Intermediary 1. Two senior SAP Africa executives knew of and encouraged the arrangement. Emails indicate that SAP Africa provided GA Intermediary 1 with the specifications needed for GNPC to justify sole sourcing the contract, and then the intermediary passed those specifications to GNPC in order to win the tender. GA Intermediary 1's efforts ultimately failed, however, leaving GA Intermediary 2, with its political connections, to secure the deal instead.

23. SAP Africa again used GA Intermediary 1 to help it improperly influence a tender by the Kenya Revenue Authority in 2015. Again, GA Intermediary 1 stood to benefit as the reseller. SAP Africa violated its own internal processes and procedures regarding due diligence, and the retention of third parties when it failed to properly vet GA Intermediary 1, and ignored repeated red flags—including payment requests for vague and undefined deliverables—indicating that GA Intermediary 1 was funneling money to make improper payments.

24. While GA Intermediary 1 was suspended on September 12, 2018, after red flags surfaced indicating it was paying bribes to officials at the Tanzania Ports Authority and the Kenya Revenue Authority, SAP Africa allowed the reseller to start resales later in 2018 despite the

continuing presence of red flags. SAP Africa ultimately terminated GA intermediary 1 in July 2019.

SAP Indonesia

25. During the relevant time, the SAP Indonesia public sector market consisted almost entirely of indirect sales through local Value Added Resellers (“VARs”). SAP Indonesia, with its VARs, engaged in a variety of schemes in Indonesia to make, offer, or attempt to make improper payments to government officials at eight state-owned-entities—Balai Penyedia dan Pengelola Pemdiayaan Telekomunikasi dan Informatika (“BP3TI”), the Ministry of Maritime Affairs and Fisheries, the Social Ministry, PT Pertamina, Pemda DKI, PT Mass Rapid Transit (“MRT”) Jakarta, PT Angkasa Pura I, and PT Angkasa Pura II—to obtain or retain contracts with those customers. The schemes were orchestrated by two SAP Indonesia account executives who worked with at least one VAR (“Indonesia Intermediary 1”) known for a pattern of corrupt business dealings and paying bribes. In some cases, SAP Indonesia and Indonesia Intermediary 1 used fake training invoices to issue payments that created slush funds to pay bribes. Employees at Indonesia Intermediary 1 created shell companies to generate these false expenses. Some of the false invoices generated kickback payments to employees at the Indonesia Intermediary 1, some paid for customer excursions, and others generated cash payments to government officials at state-owned entities.

26. The two SAP Indonesia account executives orchestrating the schemes told employees at Indonesia Intermediary 1 to do “whatever was needed” to secure deals. WhatsApp messages between the account executives and employees of Indonesia Intermediary 1 show requests for “baggage” and “envelopes,” both understood to be codes for bribes to government officials. In certain cases, photographs and videos evidence cash payments made to government officials. One of the SAP Indonesia local account executives admitted facilitating and, in some cases, personally making payments to public sector clients while he was an employee of Indonesia Intermediary 1. He also said that SAP VARs were active participants in these efforts and specifically named Indonesia Intermediary 1 as helping with these schemes. Two Indonesia Intermediary 1 employees also admitted to facilitating payments to government officials.

27. With the help of Indonesia Intermediary 1, SAP Indonesia paid bribes to government officials at BP3TI, an entity formed by the Indonesian Ministry of Communication and Information Technology. SAP Indonesia paid the bribes to obtain a March 23, 2018 contract with BP3TI valued at \$268,135. WhatsApp chat transcripts show one of the SAP Indonesia account executives messaging an Indonesia Intermediary 1 employee saying, “Hehehe... This is government bro, to catch a big fish we need to use a large bait (sic).” In another message chain discussing a transfer of funds to an intermediary that was intended to benefit officials at BP3TI, an Indonesia Intermediary 1 employee confirmed the transfer amount as being “around 1 billion rupiahs,” which amounted to \$67,380 at the time of transfer. Some of the payments were routed through a sham entity created by Indonesia Intermediary 1 employees. In addition, SAP Indonesia, through Indonesia Intermediary 1 employees, paid for shopping excursions and dining for a BP3TI official and his wife during a June 2018 trip to New York City, in route to attending the 2018 SAP Sapphire Conference in Orlando, Florida.

28. An SAP Indonesia account executive also paid cash bribes to government officials to obtain a December 16, 2015 deal with the Indonesian Ministry of Maritime Affairs and Fisheries valued at \$80,750. WhatsApp chats between the SAP Indonesia account executive and a freelance consultant and former Indonesia Intermediary 1 employee contain explicit discussions of cash payments made in person to Ministry officials in which the consultant states, “Seventy million, in fifty thousand bills...Bring empty envelope.”

29. The same SAP Indonesia account executive also discussed bribes in connection with an Applicant Tracking Software (ATS) maintenance tender by the Indonesian Social Ministry, which was won by another SAP Indonesia VAR partner (“Indonesia Intermediary 2”). WhatsApp messages, between the SAP Indonesia account executive involved and a freelance consultant, show them clearly discussing improper payments and a demand that SAP Indonesia use the issuance of Letters of Support to guarantee the preferred tender outcome. The SAP Indonesia account executive’s supervisor, who was at that time the SAP Indonesia Public Sector Sales Lead, was aware of the scheme. Indonesia Intermediary 2 was awarded the contract renewal with the Social Ministry in July 2018. The total amount of SAP Indonesia revenue stemming from this deal includes ongoing services associated with the original 2015 sales contract.

30. Indonesia Intermediary 1, and an SAP Indonesia account executive also paid for golfing excursions for officials at PT Pertamina, a state-owned oil and natural gas corporation. The benefits were provided to obtain a January 23, 2017 contract, which included maintenance services relating to licenses valued at \$13,331,423. WhatsApp chats also indicate that others at SAP Indonesia and employees at various VARs discussed requests to pay for meals and travel expenses for employees of public sector customers.

31. SAP Indonesia violated internal processes and procedures regarding management, due diligence, and the retention of third parties, when it retained and repeatedly used Indonesia Intermediaries 1 and 2. SAP Indonesia continued to work with Indonesia Intermediary 1 to obtain a November 26, 2018 contract with Pemda DKI (the provincial government of Jakarta) valued at \$208,198, a March 22, 2018 contract with PT Mass Rapid Transit Jakarta valued at \$174,908, and a renewal of a June 27, 2012 contract with PT Angkasa Pura I (one of two separate state-owned enterprises responsible for the management of airports in Indonesia) valued at \$1,097,119. SAP Indonesia also continued to work with Indonesia Intermediary 2 to pay bribes while seeking to obtain July 31, 2018 and December 28, 2018 contracts with PT Angkasa Pura II (the second of two state owned enterprises responsible for the management of airports) valued at \$2,535,987 and \$2,594,695, respectively. The first of these contracts was awarded to Indonesia Intermediary 2.

SAP Azerbaijan

32. An SAP Azerbaijan employee provided improper gifts to government officials in connection with a May 2022 deal with the State Oil Company of the Republic of Azerbaijan (SOCAR) valued at \$1,645,703. SAP Azerbaijan’s mid-level employee provided improper gifts in

December 2021 and January 2022 to multiple SOCAR officials in an effort to close the deal. Several SOCAR officials received gifts totaling approximately \$3,000, well above SAP's gift limit of \$30. Text messages indicate that the employee was rewarding senior officials who supported, and were directly responsible for, approving the pending sale. The employee also prepared a fake Act of Acceptance between SOCAR and a SAP Azerbaijan partner, which she submitted to the SAP contract booking team on February 4, 2022. SOCAR signed the real Act of Acceptance on May 12, 2022. Evidence indicates that the employee was attempting to claim a commission on the deal before her pending promotion to SAP Azerbaijan Managing Director became effective, after which she would not be eligible to earn additional compensation from the sale.

SAP Had Inaccurate Books and Records and Insufficient Accounting Controls to Detect or Prevent Bribery

33. The bribe payments made by SAP South Africa, SAP Africa, SAP Indonesia, and SAP Azerbaijan were inaccurately recorded as legitimate commission or other expenses in SAP's books and records. SAP lacked the internal accounting controls sufficient to detect or prevent such payments. Specifically, SAP lacked adequate due diligence and vetting to properly assess risk and approve payments to the third parties it worked with in these jurisdictions.

34. SAP did not adequately address the high risk of bribery and corruption in South Africa, Greater Africa, Indonesia, and Azerbaijan and did not implement sufficient internal accounting controls to address those risks. The company failed to implement sufficient payment approval controls to ensure that services were actually rendered, or expenses were actually incurred, before issuing payments to third parties. Although SAP had a corporate anti-corruption policy in place during the relevant time period, SAP had insufficient formal monitoring, or internal controls in place, to ensure that SAP South Africa, SAP Africa, SAP Indonesia, or SAP Azerbaijan were adhering to the relevant policies.

35. Lastly, SAP lacked entity level controls over SAP South Africa, SAP Africa, SAP Indonesia, and SAP Azerbaijan because of the lack of oversight over personnel in those jurisdictions.

SAP Violated Exchange Act Section 30A

36. As a result of the conduct described above, SAP violated section 30A of the Exchange Act, which prohibits any issuer with securities registered pursuant to Section 12 of the Exchange Act or which is required to file reports under Section 15(d) of the Exchange Act, or any officer, director, employee, or agent acting on its behalf, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an effort to pay or offer to pay anything of value to foreign government officials for the purpose of influencing their official decision making, in order to assist in obtaining or retaining business.

SAP Violated Exchange Act Section 13(b)(2)(A)

37. As a result of the conduct described above, SAP violated Section 13(b)(2)(A) of the Exchange Act, which requires issuers to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and disposition of the assets of the issuer.

SAP Violated Exchange Act Section 13(b)(2)(B)

38. As a result of the conduct described above, SAP violated Section 13(b)(2)(B) of the Exchange Act, which requires issuers 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.

COOPERATION AND REMEDIATION

39. In determining to accept the Offer of Settlement, the Commission considered SAP's self-reporting of certain conduct, remedial acts promptly undertaken by Respondent, and the significant cooperation afforded the Commission staff. SAP cooperated in the Commission's investigation by identifying and timely producing key documents identified in the course of its own internal investigation, providing the facts developed in its internal investigation, and making current or former employees available to the Commission staff.

40. SAP's remedial efforts included: (i) termination of employees and third parties responsible for the misconduct, (ii) elimination of the BDP program; (iii) enhancements to internal accounting and compliance controls; (iv) implementation of analytics to identify and review high-risk transactions and third party controls; (v) strengthening and expansion of the ethics and compliance organization; (vi) enhancements to its code of conduct, policies and procedures regarding gifts and hospitality, and the use of third parties; (vii) increased training of employees on anti-bribery issues; and (viii) establishment of an enhanced whistleblower platform.

DISGORGEMENT AND NON-IMPOSITION OF A CIVIL PENALTY

41. SAP acknowledges that the Commission is not imposing a civil penalty based upon the imposition of an \$ 118.8 million criminal fine as part of SAP's resolution with the United States Department of Justice.

42. On March 15, 2022, SAP entered into a civil settlement with the South African Special Investigating Unit and others relating to the DWS conduct described above and paid ZAR

344.78 million (\$21.4 million), which represented reimbursement of the entire amount SAP received from DWS under the 2015 and 2016 deals with DWS.

43. On October 18, 2023, SAP entered into a settlement agreement with the South African Special Investigative Unit and others relating to the Transnet conduct described above, pursuant to which it paid ZAR 214.39 million (approximately \$11.42 million based on the exchange rate on the date of payment).

44. On November 1, 2023, SAP entered into a civil settlement with the South African Special Investigating Unit and others relating to the Eskom conduct described above, pursuant to which it paid ZAR 500 million (approximately \$26.63 million based on the exchange rate on the date of payment).

45. The disgorgement and prejudgment interest ordered in paragraph IV.B is consistent with equitable principles, does not exceed Respondent's net profits from its violations, and returning the money to Respondent 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 paragraph IV.B 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, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, 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.

B. Respondent is liable to the U.S. Securities and Exchange Commission for disgorgement of \$85,046,035 and prejudgment interest of \$13,405,149, for a total payment of \$98,451,184. Respondent shall receive a disgorgement offset of up to \$59,455,779 based on the U.S. dollar value (based on the exchange rate on the date of the payment) of any payments made or to be made to the Government of South Africa or a South African state-owned entity reflected by evidence acceptable to the Commission staff in its sole discretion, in a parallel proceeding against Respondent in South Africa. Such evidence of payment shall include a copy of the wire transfer or other evidence of the amount of the payment, the date of the payment, and the name of the government agency or state-owned entity to which payment was made. To receive this offset, Respondent must make the above-identified payments within 365 days from the date of this Order. Any amounts not paid as an offset within the specific time shall be immediately due to the U.S. Securities and Exchange Commission. Respondent shall, within 30 days of the entry of this Order, pay disgorgement of \$25,590,256 and prejudgment interest of \$13,405,149 for a total

payment of \$38,995,405 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to the Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

Payment must be made in one of the following three 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/ofin.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 SAP 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 Ansu N. Banerjee, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 444 South Flower Street, Los Angeles, California 90071.

By the Commission.

Vanessa A. Countryman
Secretary