

Siemens Announces Staggering €1 Billion (\$1.3 Billion) Charge In Connection With Possible Anti-Corruption Settlements

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On November 5, 2008, Siemens AG (“Siemens”) announced in an SEC filing that it would accrue a staggering €1 billion (approximately \$1.3 billion) in connection with possible settlements with German and United States regulators relating to ongoing anti-corruption investigations. The announcement is a mere three sentences and sparse on detail, stating only that the “current estimate is based on the status of ongoing discussions being held between the company and authorities in Germany and the U.S.” Despite its brevity, however, it speaks volumes on the current state of global anti-corruption enforcement and, if the amount proves accurate, may signal a new era of outsized corporate penalties in connection with anti-corruption settlements.

The on-going anti-corruption investigations of Siemens have been widely reported over the past several years. The investigations began after allegations surfaced that members of the company’s former Communications, or “Com,” business unit may have been engaged in bribery, embezzlement and tax evasion in connection with Siemens projects. The scope of the investigation has since broadened significantly, and the company has reportedly spent tens of millions of dollars investigating potential bribery and other corrupt activities. According to the company’s public filings, it faces continuing investigations into possible corruption related activities across various of its business units and in numerous countries, including Austria, China, Germany, Greece, Hungary, Italy, Israel, Malaysia, Nigeria, Norway, Poland, Russia, Switzerland and the United States. Siemens has also apparently been cooperating with the World Bank Department of Institutional Integrity, and has been contacted by several regional development banks (such as the Inter-American Development Bank) regarding anti-corruption issues.

Should a settlement within the estimated accrual amount be reached with German and United States regulators, it would be significant for several reasons.

- First, it has long been speculated that the Siemens settlement amount would far eclipse any previous FCPA and related anti-corruption penalty issued by the United States. The more surprising aspect of the announcement is the magnitude by which such a settlement will potentially do so. Although the accrual relates to a potential settlement with both German and United States regulators, it is likely safe to assume that any amount devoted towards the U.S. portion of the settlement will dwarf what is currently the largest U.S. FCPA-related penalty ever awarded – the \$44 million combined penalty levied against Baker Hughes and its subsidiary.
- Second, despite the enormity of the potential penalty, it may not spell the end of Siemens' corruption-related expenses. As noted above, the company faces ongoing investigations in numerous other countries that span its business units and implicate various levels of employees. To the extent that other countries do not defer to the U.S./German settlement, the company will face additional expenses investigating, defending and potentially settling such matters with regulators. It should be recalled that the latest announcement comes after the imposition of a €201 million fine by a Munich court in October 2007 relating to bribery allegations within the company's former Com unit.
- Third, the potential settlement amount appears to reflect the increasingly active role that non-U.S. regulators are taking in investigating and prosecuting anti-corruption law violations. For example, in its June 2008 Progress Report, Transparency International cited both Germany and Switzerland (which both reportedly have ongoing Siemens investigations) as two countries that have been increasingly aggressive in their anti-corruption efforts. The severity of the fines that appear likely from German regulators in this case seems to confirm its aggressive stance.

In the event that the Siemens settlement amounts reach or come near to those estimated in its SEC filing, one can expect a new era of corporate anti-corruption penalties of a magnitude once thought unimaginable.

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