

ALERT

Former Siemens Executives Hit with Record Bribery Fines

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This week, two former executives of Siemens AG were ordered to pay the largest individual civil penalties for violations of the Foreign Corrupt Practices Act (FCPA) in the statute's history. These penalties follow Siemens' \$800 million corporate penalty, assessed in 2008, which remains the largest corporate settlement ever brought under the FCPA.

On February 4, 2014, a New York district court judge ordered the former Siemens officials, Ulrich Bock and Stephan Singer, to each pay a record \$524,000 civil penalty, with Bock also required to pay an additional \$414,000 in disgorgement and interest. Bock and Singer were charged by the U.S. Securities and Exchange Commission (SEC) in late 2011, along with six other former executives and agents of the German company,^[1] in connection with a decade-long bribery scheme intended to win a contract with the Argentine government.^[2] The two former senior executives of Siemens Business Services also face charges from the U.S. Department of Justice, although the criminal case is still pending. According to the DOJ and SEC, the individuals paid or authorized more than \$100 million in bribes to Argentine government officials to secure a \$1 billion contract to produce Argentine national identity cards. Ultimately, Siemens did not win the contract.

The SEC's complaint alleged the defendants committed multiple civil violations of the Securities Exchange Act of 1934, including authorizing or directing others to falsify documents in furtherance of the bribery scheme. Bock and Singer reportedly did not respond to the charges, resulting in a default judgment ordering them to pay the penalties recommended by the SEC. According to court documents, the agency factored the defendants' unresponsiveness and refusal to accept

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responsibility for their actions into the proposed penalty.

These massive civil penalties and outstanding criminal charges serve as a reminder of the importance of a strong corporate compliance program and illustrate two continuing trends in FCPA enforcement: the extraterritorial jurisdiction of the FCPA and the enforcement agencies' focus on the prosecution of individuals.

First, Bock and Singer are German nationals, who were engaged in business in Argentina. Despite the actors' foreign citizenship and the location of the alleged bribery, the United States had jurisdiction to enforce the FCPA because of Siemens' registration with the SEC and because bribe money was reportedly funneled through U.S. banks. As is becoming increasingly common, the U.S. enforcement agencies cooperated with their foreign counterparts to build the case.^[3]

Second, the charges also demonstrate the sustained increase in FCPA prosecution of individuals.^[4] While the agencies have remained committed to the aggressive pursuit of companies for FCPA violations, individuals have been increasingly targeted for both civil and criminal prosecution in recent years.

The case is *U.S. Securities and Exchange Commission v. Uriel Sharef et al.*, case number 1:11-cv-09073, in the U.S. District Court for the Southern District of New York.

[1] The other individuals charged were Uriel Sharef, a former member of Siemens' central executive committee; Herbert Steffen, a former chief executive officer of Siemens Argentina; Andres Truppel, a former chief financial officer of Siemens Argentina; Eberhard Reichert, another former senior executive of Siemens Business Services; and Carlos Sergi and Miguel Czysch, intermediaries and agents of Siemens. Czysch was not charged by the SEC. Three of the other executives that faced civil charges settled with the SEC for significantly smaller fines than Bock and Singer, and another's case was dismissed. See, e.g., U.S. Securities and Exchange Commission, *Former Siemens Executive Uriel Sharef Settles Bribery Charges*, Litigation Release No. 22676 (Apr. 16, 2013), available at <http://www.sec.gov/litigation/litreleases/2013/lr22676.htm>.

[2] See *Securities and Exchange Commission v. Uriel Sharef, et al.*, Civil Action No. 11-Civ.-09073 (S.D.N.Y.).

[3] DOJ reported that it and the SEC "closely collaborated" with the Munich Public Prosecutor's office to obtain evidence and ultimately bring the case. See U.S. Dep't Justice, *Eight Former Senior Executives and Agents of Siemens Charged in Alleged \$100 Million Foreign Bribe Scheme* (Dec. 13, 2011), available at <http://www.justice.gov/opa/pr/2011/December/11-crm-1626.html>.

[4] Indeed, in November 2013, Andrew Ceresney, co-director of the SEC's Division of Enforcement, reiterated the government's position that a "core principle of any strong enforcement program is to pursue culpable individuals wherever possible... [C]ases against individuals have a great deterrent value as they drive home to individuals the real consequences to them personally that their acts can have. In every case against a company, we ask ourselves whether an action against an individual is appropriate."