

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 78402 / July 25, 2016**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3792 / July 25, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17357**

**In the Matter of**

**LAN Airlines S.A.**

**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 LAN Airlines S.A. (“LAN” or “Respondent”), now known as LATAM Airlines Group.

**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 finds<sup>1</sup> that:

#### **Summary**

1. These proceedings arise from violations of the Foreign Corrupt Practices Act of 1977 (the "FCPA") [15 U.S.C. 78dd] by Respondent LAN Airlines S.A. In 2006 and 2007, LAN, through Ignacio Cueto Plaza ("the CEO"), the current CEO of LAN, authorized \$1.15 million in improper payments to a third party consultant in Argentina in connection with LAN's attempts to settle disputes on wages and other work conditions between LAN Argentina S.A. ("LAN Argentina"), a subsidiary of LAN, and its employees.<sup>2</sup> At the time, LAN understood that it was possible the consultant would pass some portion of the \$1.15 million to union officials in Argentina. The payments were made pursuant to an unsigned consulting agreement that purported to provide services that LAN understood would not occur. The CEO authorized subordinates to make the payments that were improperly booked in the Company's books and records, which circumvented LAN's internal accounting controls.

#### **Respondent**

2. LAN Airlines S.A. ("LAN") was a publicly traded airline company headquartered in Santiago, Chile, that provided passenger and cargo airline services throughout Latin America. LAN merged with TAM, S.A. in 2012. Throughout the relevant period, LAN's common stock was registered in the United States pursuant to Section 12(b) of the Exchange Act and LAN filed annual and quarterly reports as required under Section 13(a) of the Exchange Act and Rules thereunder. Prior to the merger with TAM, LAN's common stock traded on the NYSE under the symbol "LFL."

#### **Relevant Entities**

3. LATAM Airlines Group ("LATAM") is a Chilean based holding company. LAN became LATAM after the merger of LAN and its consolidated subsidiaries/or affiliates and TAM, S.A. and its consolidated subsidiaries ("TAM") on June 22, 2012. Following the merger, LATAM's holdings included LAN and its subsidiaries/or affiliates in Peru, Argentina, Colombia and Ecuador, TAM and its subsidiaries, and LAN Cargo and its affiliates. LATAM's common stock is registered pursuant to Section 12(b) of the Exchange Act and LATAM files annual and quarterly reports as required under Section 13(a) of the Exchange Act and Rules thereunder. LATAM's common stock trades on the NYSE under the symbol "LFL."

4. LAN Argentina S.A. ("LAN Argentina"), formerly known as AERO 2000, was a subsidiary of LAN during the relevant period. LAN Argentina began operations in 2005, and

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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.

<sup>2</sup> On February 4, 2016, the Commission instituted settled cease-and-desist proceedings against the CEO for his role in this same conduct.

operated domestic and international flights throughout Latin America. It continues to do business as part of LATAM. LAN Argentina's books and records were consolidated into the books and records of LAN and later LATAM.

5. Atlantic Aviation Investments LLC ("AAI") was an indirect subsidiary of LAN incorporated in Delaware. LAN used AAI to conceal the sham payments to a company controlled by its consultant in Argentina. AAI's books and records were consolidated into the financial statements of LAN and later LATAM.

### **LAN's Entry into Argentina**

6. For several years prior to 2004, LAN, a Chilean airline, explored expansion into Argentina. LAN put its Vice President of Business Development at LAN Cargo, a LAN subsidiary, in charge of the expansion efforts. The Vice President of Business Development was based in Miami, Florida, and reported directly to the CEO.

7. In late 2004, the Vice President of Business Development received a call from a lawyer and purported business consultant in Argentina offering to help LAN with its expansion efforts. The two men later met in Buenos Aires and discussed the obstacles that LAN might face in trying to break into the Argentine airline market. Following the meeting, they kept in touch.

8. In early 2005, officials from the Argentine Transportation Secretary's Office contacted LAN to ask whether it would be interested in purchasing Lineas Aereas Federales S.A. ("LAFSA"), a state owned airline, as a means to enter Argentina. LAN declined the offer to purchase LAFSA but continued discussions with government officials to enter into the market. Eventually the officials informed LAN that LAFSA would cease operations and LAN could enter the Argentine market through the purchase of 49% of the shares of AERO 2000, a non-operating Argentinean airline that possessed an airline operation certificate and owned various flight routes. As part of the deal, LAN agreed to hire workers from LAFSA and another Argentine airline, Southern Winds, to operate AERO 2000.

9. In March 2005, the CEO and the Vice President of Business Development met with the President of Argentina and the Transportation Secretary, as well as other officials from the Ministry of Federal Planning, Public Investment and Services, and Transportation to finalize the terms of the deal. LAN completed its purchase of 49% of AERO 2000 on or about April 2005, and AERO 2000 began operations in June 2005. In December 2005, AERO 2000's name was changed to LAN Argentina S.A. The LAN employees primarily involved in these negotiations were the Vice President of Business Development and the General Manager of LAN Argentina, who later became Chief Operating Officer of LAN. Both employees reported directly to the CEO.

### **LAN Faces Major Issues Upon Entering the Argentine Market**

10. Upon entering the Argentine passenger airline market LAN immediately faced several major issues impacting its viability and began losing money. First, it needed to meet demands from labor unions representing the employees acquired from LAFSA and Southern Winds. Second, LAN needed majority ownership of its Argentine subsidiary, and therefore had to

persuade the Argentine government to change its existing law on foreign ownership of domestic airlines and to increase caps on airfares. Third, LAN needed regulatory authorization to operate various flight routes, both domestically and internationally, in Argentina. Since the Argentine passenger airline market was heavily regulated by the government, particularly officials within the Department of Transportation who had close ties to the unions, LAN engaged in discussions with government officials with each of these issues.

11. LAN executives, including the CEO, knew that for LAN Argentina to become profitable it would need an infusion of cash. LAN asked Argentine government officials to liberalize the laws on foreign ownership so that LAN could own a majority share of LAN Argentina and sought government authorization to raise regulated airfares. On or about August 8, 2006, the President of Argentina signed a Decree that enabled LAN to become a majority owner of LAN Argentina and allowed LAN to raise airfares by 20%. LAN Argentina was also awarded critical additional flight routes by the Transportation Secretary.

### **LAN Encounters Problems with the Unions in Argentina**

12. The Argentine government in March 2005, required that LAN hire between six and eight hundred employees from the defunct LAFSA and Southern Winds airlines. LAN was bound by the existing bargaining agreements between LAFSA, Southern Winds and the labor unions.

13. There were five unions representing airline employees in Argentina. They included the grounds crew union, the *Asociación del Personal Aeronautico* (APA), the pilots' union, the *Asociación de Pilotos de Líneas Aéreas* (APLA), the mechanics' union, *Asociación del Personal Técnico Aeronautico* (APTA), the flight attendants' union, *Asociación de Tripulantes de Cabina de Pasajeros de Empresas Aerocomerciales* (ATCPEA), and the supervisors' union, *Unión del Personal Superior y Profesional de Empresas Aerocomerciales* (UPSA).

14. All of the unions were powerful and unafraid to make demands on LAN. They sought wage increases and additional benefits, and used the terms of their respective Collective Bargaining Agreements ("CBAs") as leverage. These labor agreements contained provisions that LAN believed were unfavorable, such as restrictions on the hours employees could work and their work locations.

15. The mechanics' union, the flight attendants' union and the supervisors' union each had a single-function rule contained in their collective CBAs. The single-function rule was a provision that limited workers from performing more than one work function for LAN. The single-function rule was loosely interpreted and for the most part not enforced by the unions. Had it been enforced, the single-function rule would have required LAN to double its work force and would have seriously imperiled LAN's ability to continue its operations in Argentina.

16. Around 2006 the unions began campaigning for wage increases. The unions threatened to enforce the single-function rule unless LAN Argentina agreed to a substantial wage increase. LAN's management, including the CEO, attempted to negotiate on the wage issues but made no progress and things worsened over time. Eventually there were work stoppages and

slowdowns on the part of the workforce, including strikes involving the pilots' and the mechanics' unions.

17. In early 2006, the consultant again contacted the Vice President of Business Development and offered to assist LAN in Argentina. By this time, the consultant was a Cabinet Advisor in the Ministry of Federal Planning, Public Investment and Services, Department of Transportation. On January 31, 2005, the Secretary of Transportation appointed the consultant as a Cabinet Advisor "ad-honorem" pursuant to an unpublished Resolution<sup>3</sup>

### **LAN Makes Improper Payments**

18. Beginning in the summer of 2006, the consultant supplied some LAN executives with information on how to deal with specific union members and the unions in general. Eventually, the consultant offered to negotiate directly with the unions on LAN's behalf, making it clear that he would expect compensation for such negotiations, and that payments would be made to third parties who had influence over the unions. After his staff informed the CEO that the consultant was well connected with the unions and could effectively negotiate an agreement with union officials, the CEO approved the retention of the consultant.

19. During the summer of 2006, the CEO approved payments totaling \$1,150,000 to the consultant in connection with LAN's attempts to settle disputes on wages and other work conditions with the unions. At the time, the CEO understood that it was possible the consultant would pass some portion of the \$1.15 million to union officials in Argentina. The CEO approved the payments to get the unions to abandon their threats to enforce the single-function rule and to get them to accept a wage increase lower than the amount asked for in negotiations. LAN and the consultant agreed that LAN would make the payment to a company controlled by the consultant in Argentina. In 2006, LAN did not have a policy requiring that due diligence be performed on consultants, and neither the CEO nor LAN conducted any due diligence on the consultant or any of his related entities.

20. Around August 2006, the CEO's staff informed him that the consultant had reached an oral agreement to settle the wage dispute with the mechanics' union on LAN's behalf. Although the existing Collective Bargaining Agreement with the mechanics' union would remain unchanged, the CEO understood that the union would orally agree not to seek enforcement of the single-function rule for a period of four years in exchange for a wage increase of approximately 15% of salary. The wage increase of approximately 15% was lower than the amount originally sought by the mechanics' union.

21. Around August 2006, the flight attendants' and supervisors' unions both agreed to accept wage increases of approximately 15% and 10% respectively of salaries. The amounts were lower than the amounts originally sought by each union.

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<sup>3</sup> The consultant resigned from the position on or about July 2, 2009.

### **Sham Contract with Consultant's Company**

22. On October 2, 2006, the consultant sent the Vice President of Business Development an e-mail attaching a draft consulting contract between LAN and the consultant's company for his "consideration." The consultant copied the e-mail and draft contract to a chief advisor to the Transportation Secretary who oversaw airline and union issues. The following day, the Vice President of Business Development forwarded the draft contract to the CEO for his review. The contract described the \$1,150,000 to be paid to the consultant's company in three installments, and falsely stated that the consultant would undertake a study of existing air routes in Argentina and the regional market as a basis for the payment. The draft contract was never signed by the parties. The CEO knew that the consultant would not perform a study. The CEO did not inform anyone at LAN that the contract falsely stated the purpose of the payments to the consultant.

23. To further disguise the sham arrangement, an unrelated LAN subsidiary, AAI incorporated in Delaware, was used to make the improper payments to the consultant's company. Around October 20, 2006, the consultant's company sent a backdated invoice for \$300,000 to AAI, the LAN subsidiary that was designated by LAN to make the improper payments to the consultant's company. The invoice indicated that the amount due was for "consulting services provided by and payable... under contract signed by both parties." It also contained wire transfer instructions to a brokerage account in Virginia owned by the consultant and his wife. On October 20, 2006, LAN wired the \$300,000 to the brokerage account. Additional invoices for \$300,000 on November 21, 2006 and \$550,000 on January 17, 2007 were sent to AAI and paid to the same brokerage account. All of the improperly booked payments to the consultant's company were intentionally mis-recorded as payments to "other debtors" on AAI's books and records.

24. In November 2007, the Vice President of Business Development received an invoice from the consultant for \$58,000 payable to an account in Spain in the name of another company, which was owned by the consultant's son and wife and was headquartered in Costa Rica. The invoice was also directed for payment by LAN's AAI subsidiary. The payment was in addition to the \$1.15 million already authorized by the CEO and paid to the consultant. The CEO received a copy of the invoice via e-mail from the Vice President of Business Development. Like the consultant's draft contract, the invoice indicated that it was for payment for a study of existing air routes in Argentina and the regional market, which the CEO knew was inaccurate. In November 2007, LAN paid the invoice.

25. The CEO approved the consultant's compensation and instructed the CFO of LAN to pay the consultant's invoices. The invoices contained false references to consulting services that were never rendered by the consultant. At the time he approved the payments to the consultant, the CEO knew that the unsigned consulting contract with the consultant's company was a sham contract. The CEO did not inform the CFO or LAN's legal department that \$1,150,000 in payments was being made to the consultant's company pursuant to a fake contract for improper purposes. Further, while copied on an email attaching the \$58,000 invoice for payment to the company owned by consultant's son and wife, the CEO took no action to stop the payment, which he knew contained false references to services never rendered.

26. LAN obtained a benefit of \$6,743,932 as a result of the improper payments to resolve LAN's union issues.

### **Failure to Maintain Accurate Books and Records**

27. LAN, directly and through LAN Argentina and AAI, failed to make and keep books, records, and accounts that accurately and fairly reflected LAN's transactions with the consultant's company and the company owned by consultant's son and wife. The improper payments were concealed within AAI's books and records in transitory holding accounts. Later, the payments were mis-recorded in AAI's accounts as "various other debtors' debits." LAN failed to accurately disclose in its books and records that payments to consultant's company and the company owned by consultant's son and wife could benefit union officials in Argentina.

### **Failure to Maintain Adequate Internal Controls**

28. LAN failed to devise and maintain an adequate system of internal accounting controls. The controls in place during 2006 and 2007 were minimal and clearly deficient. The conduct in Argentina involved executives at the highest levels of LAN. High level executives approved the payments to the consultant's company and to the company owned by consultant's son and wife, and other executives and managers made the payments while overlooking numerous red flags. During the relevant period LAN had no internal controls requiring due diligence on third parties, and as a result no due diligence was conducted on the consultant or his related entities, or the company owned by his son and wife. If a due diligence review had been conducted on the consultant, LAN might have become aware of his January 2005 appointment as a Cabinet Advisor to Argentina's Transportation Secretary.

29. The payments to the consultant were supported by a sham contract between the consultant's company and AAI, a LAN subsidiary incorporated in Delaware that had no personnel and was completely unrelated to LAN's business in Argentina. LAN's legal department reviewed the sham contract with the consultant's company and raised no concerns. The contract was never finalized and never signed by the parties. LAN's accounting division did not require any proof of services before paying the \$1,150,000 to the consultant's company, and no one questioned why payments were wired to a U.S. brokerage account in the name of the consultant and his wife rather than to an account in the name of the consultant's company. Similarly, LAN paid \$58,000 to a Costa Rican company owned by the consultant's wife and son without any proof of services. Despite the consultant's receipt of illicit funds in 2006 and 2007, LAN executives considered hiring him again in 2009 to work on another airline matter but ultimately did not retain him.

30. LAN did not implement even the most basic compliance controls until 2008, when it issued a new Code of Conduct, which for the first time contained anti-corruption policies. The company did not offer any compliance training until about 2010, and the training was minimal and did not apply to all employees. Training did not become compulsory for managers until about 2011.

31. LAN did not implement a comprehensive company-wide corporate compliance program until early 2014. In addition, the primary individuals who caused the controls failures at LAN and LAN Argentina are still with the company and no disciplinary action has been taken against them.

### **Legal Standards and Violations**

32. As a result of the conduct described above, LAN 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 their transactions and dispositions of the assets of the issuer.

33. In addition, as a result of the conduct described above, LAN 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.

### **Remedial Actions and Undertakings**

34. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent. In 2008, LAN began steps to create a basic compliance program by hiring a new General Counsel and Vice President who was tasked with monitoring the compliance department. In 2013, LATAM adopted a new Code of Conduct, as well as other internal corporate policies, including an Anti-Corruption Guide, a Gifts, Travel, Hospitality and Entertainment Policy, an Escalation Policy, and Procurement and Payment policies. The new compliance program was implemented in early 2014. LAN also hired a new Compliance Manager who, along with two deputies and a senior compliance analyst, oversees twenty people, including regional heads of legal, located in nine different regions to ensure compliance. LATAM also now requires annual training of employees who must certify compliance with LAN's Code of Conduct.

35. Respondent undertakes to do the following: in connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Respondent (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Respondent's undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure

and any applicable local rules, provided that the party requesting the testimony reimburses Respondent's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Respondent in any United States District Court for purposes of enforcing any such subpoena.

36. Respondent undertakes to engage an Independent Compliance Monitor pursuant to the provisions set forth in Attachment A of the Order.

37. Respondent undertakes to require the Independent Compliance Monitor to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Compliance Monitor shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Compliance Monitor will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Compliance Monitor in performance of his/her duties under this Order shall not, without prior written consent of the Division of Enforcement, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

38. Certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Kara Novaco Brockmeyer, FCPA Unit Chief, Division of Enforcement, U.S. Securities and Exchange Commission, 100 F Street, N.E., Mail Stop 5631, Washington, D.C. 20549, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

### **Deferred Prosecution Agreement**

39. Respondent has entered into a deferred prosecution agreement with the Department of Justice that acknowledges responsibility for criminal conduct relating to the findings in the Order. Specifically, Respondent acknowledges responsibility for (i) violating the internal controls provisions of the Foreign Corrupt Practices Act of 1977 ("FCPA"), as amended, 15 U.S.C. §§ 78m(b)(2)(B), 78m(b)(5), and 78ff(a); and (ii) violating the FCPA's books and records provisions, 15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(5), and 78ff(a).

### **Non-Imposition of a Civil Penalty**

40. Respondent acknowledges that the Commission is not imposing a civil penalty based upon its payment of a \$12,750,000 criminal fine as part of Respondent's settlement with the United States Department of Justice.

#### **IV.**

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent LAN Airlines S.A. cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

B. Respondent will comply with its Undertakings as enumerated in paragraphs 35 through 38 above.

C. Respondent shall pay disgorgement of \$6,743,932 and prejudgment interest of \$2,693,856 for total payment of \$9,437,788 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: LAN shall pay \$4,718,894 within 14 days of the entry of this Order and \$4,718,894 within 360 days from the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of \$9,437,788, plus any additional interest accrued pursuant to SEC Rule of Practice 600, shall be due and payable immediately, without further application. 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 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, 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 LAN Airlines S.A. 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 Tracy L. Price, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5631.

By the Commission.

Brent J. Fields  
Secretary

## Attachment A

### Independent Compliance Monitor

#### *Retention of Monitor and Term of Engagement*

1. The Company shall engage an independent compliance monitor (the “Monitor”) not unacceptable to the Commission staff within sixty (60) calendar days of the issuance of the Order. The Monitor shall have, at a minimum, the following qualifications: (i) demonstrated expertise with the Foreign Corrupt Practices Act (“FCPA”) and other applicable anti-corruption laws, including experience counseling on FCPA issues; (ii) experience designing and/or reviewing corporate compliance policies, procedures, and internal accounting controls, including FCPA and anti-corruption policies, procedures, and internal accounting controls; (iii) the ability to access and deploy resources as necessary to discharge the Monitor’s duties; and (iv) sufficient independence from the Company to ensure effective and impartial performance of the Monitor’s duties. The Commission staff may extend the Company’s time period to retain the Monitor in its sole discretion. If the Monitor resigns or is otherwise unable to fulfill the obligations herein, the Company shall retain a Monitor that is not unacceptable to the Commission staff within thirty (30) calendar days.

2. The Company shall retain the Monitor for a period of not less than twenty-seven (27) months from the date the Monitor is retained (the “Term of the Monitorship”), unless the Commission staff finds, in its sole discretion, that there exists a change in circumstances sufficient to terminate the Monitorship early or extend the Monitorship as set forth in paragraphs 24-25 (Termination or Extension of Monitorship).

### *Company's Obligations*

3. The Company shall cooperate fully with the Monitor, and provide the Monitor with access to all information, documents, records, facilities, and employees as reasonably requested by the Monitor. The Company shall use its best efforts to provide the Monitor with access to the Company's former employees and its third-party vendors, agents, and consultants.

4. The parties agree that no attorney-client relationship shall be formed between the Company and the Monitor. In the event that the Company seeks to withhold from the Monitor access to information, documents, records, facilities, current or former employees of the Company, its third-party vendors, agents, or consultants that may be subject to a claim of attorney-client privilege or to the attorney work-product doctrine, or where the Company reasonably believes production would otherwise be inconsistent with applicable law, the Company shall work cooperatively with the Monitor to resolve the matter to the satisfaction of the Monitor. If, during the Term of the Monitorship, the Monitor believes that the Company is unreasonably withholding access on the basis of a claim of attorney-client privilege, attorney work-product doctrine, or other asserted applicable law, the Monitor shall promptly notify the Commission staff.

5. Any disclosure by the Company to the Monitor concerning corrupt payments, false books and records, and internal accounting control failures shall not relieve the Company of any otherwise applicable obligation to truthfully disclose such matters to the Commission staff.

### *Monitor's Mandate*

6. The Monitor shall evaluate the effectiveness of the internal accounting controls, record-keeping, and financial reporting policies and procedures of the Company as they relate to

the Company's current and ongoing compliance with the anti-bribery, books and records, and internal accounting controls provisions of the FCPA and other applicable anti-corruption laws (the "anti-corruption laws"), and make recommendations reasonably designed to improve the effectiveness of the Company's internal accounting controls and corporate compliance program (the "Mandate"). This Mandate shall include an assessment of the Board of Directors' and senior management's commitment to, and effective implementation of, the corporate compliance program. In carrying out the Mandate, to the extent appropriate under the circumstances, the Monitor may coordinate with Company personnel, including in-house counsel, compliance personnel, and internal auditors. The Monitor may rely on the product of the Company's processes, such as the results of studies, reviews, sampling and testing methodologies, audits, and analyses conducted by or on behalf of the Company, as well as the Company's internal resources (e.g., legal, compliance, and internal audit), which can assist the Monitor in carrying out the Mandate, provided the Monitor has confidence in the quality of those resources and the use of those resources are maintained independent of the Company's normal functions to ensure the Monitor's independence.

7. During the Term of the Monitorship, the Monitor shall conduct an initial review and two follow-up reviews and prepare an initial report and a first and second follow-up report, and issue a Certification Report if appropriate, as described below.

*Initial Review and Report*

8. Promptly upon being retained, the Monitor shall prepare a written work plan, which shall be submitted to the Company and the Commission staff for comment no later than forty five (45) calendar days after being retained.

9. In order to conduct an effective initial review and to understand fully any existing deficiencies in the Company's internal accounting controls and corporate compliance program, the Monitor's work plan shall include such steps as are reasonably necessary to understand the Company's business and FCPA risks faced throughout its business. The steps shall include:

- a. inspection of relevant documents, including the internal accounting controls, record-keeping, and financial reporting policies and procedures as they relate to the Company's compliance with the books and records, internal accounting controls and anti-bribery provisions of the FCPA;
- b. onsite observation of selected systems and procedures comprising the Company's corporate compliance program, including anti-corruption compliance procedures, internal accounting controls, record-keeping, due diligence, and internal audit procedures, including at sample sites;
- c. meetings with, and interviews of, relevant Company employees, officers, directors, its third-party vendors, agents, or consultants and other persons at mutually convenient times and places; and
- d. risk-based analyses, studies and testing of the Company's corporate compliance program.

10. The Monitor may take such steps as are reasonably necessary to develop an understanding of the facts and circumstances surrounding prior FCPA violations that may have occurred, but shall not conduct his or her own inquiry into those historical events.

11. The Company and Commission staff shall provide any comments concerning the work plan within twenty five (25) calendar days in writing to the Monitor. Any disputes

between the Company and the Monitor with respect to the written work plan shall be decided by the Commission staff in its sole discretion. Following comments by the Company and Commission staff, the Monitor will have fifteen (15) calendar days to make revisions to the initial work plan.

12. The initial review shall commence no later than ninety (90) calendar days from the date of the engagement of the Monitor (unless otherwise agreed by the Company, the Monitor, and the Commission staff). The Monitor shall issue a written report within one hundred fifty (150) calendar days of commencing the initial review, setting forth the Monitor's assessment and, if necessary, making recommendations reasonably designed to improve the effectiveness of the Company's internal accounting controls and corporate compliance program as they relate to the Company's compliance with the anti-corruption laws. The Monitor should consult with the Company concerning his or her findings and recommendations on an ongoing basis and should consider the Company's comments and input to the extent the Monitor deems appropriate. The Monitor may also choose to share a draft of his or her report with the Company and Commission staff prior to finalizing them. The Monitor shall provide the report to the Board of Directors of the Company and contemporaneously transmit a copy to Commission staff.

13. Within ninety (90) calendar days after receiving the Monitor's initial report, the Company shall adopt and implement all recommendations in the report, provided, however, that as to any recommendation that the Company considers unduly burdensome, impractical or costly, or inconsistent with applicable law or regulation, the Company need not adopt that recommendation at that time, but may submit in writing to the Monitor and the Commission staff

within fifteen (15) days of receiving the report, an alternative policy, procedure, or system designed to achieve the same objective or purpose.

14. In the event the Company and the Monitor are unable to agree on an acceptable alternative proposal, the Company shall promptly consult with the Commission staff. Any disputes between the Company and the Monitor with respect to the recommendations shall be decided by the Commission staff in its sole discretion. The Commission staff may consider the Monitor's recommendation and the Company's reasons for not adopting the recommendation in determining whether the Company has fully complied with its obligations. Pending such determination, the Company shall not be required to implement any contested recommendation(s).

15. With respect to any recommendation that the Monitor determines cannot reasonably be implemented within ninety (90) calendar days after receiving the report, the Monitor may extend the time period for implementation with prior written approval of the Commission staff.

#### *Follow-Up Reviews*

16. The Monitor shall conduct a minimum of two Follow-Up Reviews. The Monitor shall submit a written work plan for each follow-up review to the Company and Commission staff within sixty (60) calendar days after the issuance of either the initial report, or the applicable follow-up report. The Company and Commission staff shall provide any comments concerning the work plan within fifteen (15) calendar days in writing to the Monitor. Any disputes between the Company and the Monitor with respect to the written work plan shall be decided by the Commission staff in its sole discretion. Following comments by the Company

and Commission staff, the Monitor will have fifteen (15) calendar days to make revisions to the follow up work plan.

17. The Monitor shall commence the follow-up review pursuant to the work plan no later than ninety (90) calendar days after the issuance of the initial report, or applicable follow-up report, (unless otherwise agreed by the Company, the Monitor and the Commission staff). The Monitor shall issue its written follow-up report within one hundred-twenty (120) calendar days of commencing the follow-up review. The follow-up report shall set forth the Monitor's assessment of, and any additional recommendations regarding, the Company's internal accounting controls and corporate compliance program as they relate to the Company's compliance with the anti-corruption laws; the Monitor's assessment of the implementation by the Company of any recommendations made in the initial report, or follow-up report if applicable; and the Monitor's assessment of the commitment of the Company's Board of Directors and senior management to compliance with the FCPA.

18. Within ninety (90) calendar days after receiving the Monitor's follow-up report, the Company shall adopt and implement all recommendations in the report, provided, however, that as to any recommendation that the Company considers unduly burdensome, impractical or costly, or inconsistent with applicable law or regulation, the Company need not adopt that recommendation at that time, but may submit in writing to the Monitor and the Commission staff within fifteen (15) days of receiving the report, an alternative policy, procedure, or system designed to achieve the same objective or purpose.

19. In the event the Company and the Monitor are unable to agree on an acceptable alternative proposal within fifteen (15) days, the Company shall promptly consult with the Commission staff. Any disputes between the Company and the Monitor with respect to the recommendations shall be decided by the Commission staff in its sole discretion. The Commission staff may consider the Monitor's recommendation and the Company's reasons for not adopting the recommendation in determining whether the Company has fully complied with its obligations. Pending such determination, the Company shall not be required to implement any contested recommendation(s). The Monitor shall repeat the process of Follow-Up Reviews until the terms in paragraph 21 (Certification of Compliance) or paragraphs 24-25 (Termination or Extension of Monitorship) are met.

20. Throughout the Term of the Monitorship, the Monitor shall disclose to the Commission staff any credible evidence that corrupt or otherwise suspicious transactions occurred, or payments of things of value were offered, promised, made or authorized by any entity or person within the Company, or any entity or person working directly or indirectly for or on behalf of the Company, or that related false books and records may have been maintained by or on behalf of the Company. The Monitor shall contemporaneously notify the Company's General Counsel, Chief Compliance Officer, or Audit Committee for further action unless at the Monitor's discretion he or she believes disclosure to the Company would be inappropriate under the circumstances. The Monitor shall address in his or her reports the appropriateness of the Company's response to all improper activities, whether previously disclosed to the Commission staff or not.

### *Certification of Compliance*

21. At the conclusion of the ninety (90) calendar day period following the issuance of the second follow-up report, or later follow-up report if applicable, if the Monitor believes that the Company's compliance program is reasonably designed and implemented to detect and prevent violations of the anti-corruption laws and is functioning effectively, the Monitor shall certify the Company's compliance with its compliance obligations under the Order. The Monitor shall then submit to the Commission staff a written report ("Certification Report") within sixty (60) calendar days. The Certification Report shall set forth an overview of the Company's remediation efforts to date, including the implementation status of the Monitor's recommendations, and an assessment of the sustainability of the Company's remediation efforts. The Certification Report should also recommend the scope of the Company's future self-reporting. Also at the conclusion of the ninety (90) calendar day period following the issuance of the second follow-up report, the Company shall certify in writing to the Commission staff, with a copy to the Monitor, that the Company has adopted and implemented all of the Monitor's recommendations in the initial and follow-up report(s), or the agreed-upon alternatives. The Monitor or the Company may extend the time period for issuance of the Certification Report or the Company's certification, respectively, with prior written approval of the Commission staff.

### *Self-Reporting Period*

22. At such time as the Commission staff approves the Certification Report and the Company's certification, the monitorship shall be terminated, and the Company will be permitted to self-report to the Commission staff on its enhanced compliance obligations for the remainder of the term of the Order. The Commission staff, however, reserves the right to terminate the

monitorship absent certification by the Monitor, upon a showing by the Company that termination is, nevertheless, in the interests of justice.

23. If permitted to self-report to the Commission staff, the Company shall thereafter submit to the commission staff a written report after seven (7) months setting forth a complete description of its remediation efforts to date, its proposals to improve the Company's internal accounting controls, policies, and procedures for ensuring compliance with the anti-corruption laws, and the proposed scope of the subsequent reviews. The Company shall disclose any credible evidence that corrupt or otherwise suspicious transactions occurred, or payments of things of value were offered, promised, or provided to foreign officials, that it learns of that occurred after the date of this Consent. The Company may extend the time period for issuance of the self-report with prior written approval of the Commission staff.

*Termination or Extension of the Monitorship*

24. If at the conclusion of the ninety (90) calendar-day period following the issuance of the second follow-up report, or later follow-up report if applicable, the Commission staff concludes in its sole discretion that the Company has not by that time successfully satisfied its compliance obligations under the Order, the Term of the Monitorship shall be extended for nine (9) months. Under such circumstances, the Monitor shall commence the Follow-Up Reviews in accordance with Paragraphs 16-19.

25. If at the conclusion of the thirty-six (36) month period the Commission staff concludes the Company has not met its obligations under the Order, the Commission staff in its sole discretion may extend the Monitorship or Self-Reporting requirements up to forty-eight (48)

months from the issuance of the Order, and require reporting as set forth for Follow-Up Reviews or Self-Reporting.

*Extensions of Time*

26. Upon request by the Monitor or the Company, the Commission staff may extend any procedural time period set forth above for good cause shown.

*Confidentiality of Reports*

27. The reports submitted by the Monitor and the periodic reviews and reports submitted by the Company will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (i) pursuant to court order, (ii) as agreed to by the parties in writing, (iii) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (iv) is otherwise required by law.

*Address for All Written Communications and Reports*

28. All reports or other written communications by the Monitor or the Company directed to the Commission staff shall be transmitted to the Chief of the FCPA Unit and to Tracy L. Price, Assistant Director, Division of Enforcement, U.S. Securities and Exchange Commission, 100 F Street, N.E., Washington, DC. 20549.