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Foreign Corrupt Practices Act Alert

PTC Inc. and Two Chinese Subsidiaries Agree to Pay More Than \$28 Million to Resolve DOJ and SEC Investigations Regarding Payments to Secure Chinese Contracts

SUMMARY

The Department of Justice (“DOJ”) and Securities and Exchange Commission (“SEC”) announced parallel settlements yesterday with PTC Inc. (“PTC”), a NASDAQ Global Select Market listed company, and its two Chinese subsidiaries, Parametric Technology (Shanghai) Software Company Ltd. and Parametric Technology (Hong Kong) Ltd. (collectively, “Parametric China”). In connection with the SEC settlement, PTC agreed to pay \$11.858 million in disgorgement and \$1.764 million in prejudgment interest to resolve claims that Parametric China violated the civil anti-bribery, books and records, and internal controls provisions of the FCPA by failing to prevent improper travel and entertainment-related payments from Parametric China to Chinese government officials to obtain contracts with Chinese state-owned entities. In connection with the DOJ Settlement, Parametric China entered into a non-prosecution agreement (“NPA”), pursuant to which Parametric China agreed to pay a \$14.54 million criminal fine to resolve allegations of criminal FCPA violations arising out of the same conduct.

According to the SEC and DOJ, from 2006-2011, Parametric China paid more than \$1.5 million to, or for the benefit of, various employees of Chinese state-owned enterprises for improper travel and entertainment expenses and other gifts. The SEC and DOJ allege that the trips, which included trips to New York, Los Angeles, Las Vegas, and Hawaii, typically involved a visit to a PTC facility accompanied by additional days of recreational travel without any business purpose, including guided tours, golfing, and other activities. The SEC and DOJ also allege that Parametric China provided the officials with gifts, including electronics, gift cards, wine, and clothing. According to the SEC and DOJ, the payments were made by Parametric China both directly and through local business partners in China, and resulted in Parametric China’s securing more than \$13 million in contracts with the Chinese state-owned entities that

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employed the officials receiving the improper payments, leading to \$11.8 million in profits. The DOJ and SEC further alleged that the improper payments, which were funded in part by excessive discounts and commissions to the business partners, were disguised in Parametric China's books and records as required contractual payments or other legitimate business expenses.

The SEC's Cease-and-Desist Order alleges that PTC failed to prevent the improper payments by Parametric China, despite investigating compliance issues at Parametric China three times during the 2006-2010 time period, and that PTC failed to ensure that Parametric China had implemented adequate internal accounting and compliance controls and procedures. The Order states that PTC voluntarily disclosed the improper payments after discovering them during the course of an internal investigation in 2011, but did not uncover or disclose the full scope of Parametric China's FCPA-related misconduct until 2014. The Order also states that PTC undertook significant remedial measures in the course of its internal review and investigation, including implementing enhanced FCPA compliance controls and procedures, terminating its relationships with business partners involved in the payments, and installing a new company management team in China. In connection with the settlement, the SEC also entered into a deferred prosecution agreement ("DPA") with a former employee of Parametric China who had provided extensive cooperation with the SEC during the course of its investigation, marking the first time that the SEC has entered into a DPA with an individual.

Parametric China's NPA with the DOJ specifically notes that Parametric China did not receive voluntarily disclosure credit in connection with the settlement. Although PTC voluntarily reported some of the misconduct to the DOJ in 2011, PTC did not disclose all relevant facts known to PTC until the DOJ independently uncovered certain facts about the travel and entertainment expenditures and brought them to Parametric China's attention. The NPA also states, however, that Parametric China received cooperation credit in the form of a 15% discount off of the minimum Sentencing Guidelines range because of Parametric China's cooperation with the DOJ's investigation and Parametric China's extensive remedial efforts, such as implementation of an enhanced compliance program at PTC and enhanced travel and expense reimbursement policies at Parametric China. Under the terms of the NPA, Parametric China also is required to provide the DOJ with annual reports for a period of three years regarding Parametric China's progress in implementing its enhanced compliance programs. The NPA further states that, in light of these measures, the DOJ determined that appointment of an independent compliance monitor is unnecessary.

The Order, like the SEC's order against SAP SE two weeks ago, provides another example of the need for companies associated with overseas business partners to scrutinize carefully the discounts, commissions and other payments to or for those partners. In addition, the SEC and DOJ actions serve as reminders that side trips and other problematic travel and entertainment expenses may run afoul of the FCPA even when there is a business purpose for a portion of the trip. The Order and NPA further highlight the need for risk-based compliance controls that provide for close oversight over subsidiaries

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and associates in at-risk jurisdictions and ensure that those subsidiaries and associates implement compliance control and procedures that adequately address the particular risks of those jurisdictions. In addition, the resolution of these actions makes clear that a company must endeavor to investigate and report fully all possible compliance issues once it becomes aware of a potential problem. As the DOJ's NPA indicates, a company is unlikely to receive voluntary disclosure credit if the U.S. authorities conclude that it did not make complete and timely disclosure of all relevant issues, even if the company had alerted the DOJ and SEC to some of the potentially improper payments.

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