PRESS RELEASE

SEC Charges Software Company in Silicon Valley and Two Former Executives Behind Fraudulent Accounting Scheme

CEO Agrees to Return $2.5 Million Under Clawback Provision

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Washington D.C., Sept. 24, 2014 — The Securities and Exchange Commission today charged a Silicon Valley-based software company and two former executives behind an accounting fraud in which timesheets were falsified to hit quarterly financial targets.

An SEC investigation found that company vice presidents Patrick Farrell and Sajeev Menon were atop a scheme at Saba Software in which managers based in the U.S. directed consultants in India to either falsely record time that they had not yet worked, or purposely fail to record hours worked during certain pay periods to conceal budget overruns from management and finance divisions. The improper time-reporting practices enabled Saba Software to achieve its quarterly revenue and margin targets by improperly accelerating and misstating virtually all of its professional services revenue during a four-year period as well as a substantial portion of its license revenue.

Saba Software agreed to pay $1.75 million to settle the SEC's charges, and Farrell and Menon agreed to settle the case as well.

Under the "clawback" provision of the Sarbanes-Oxley Act, executives can be compelled to return to the company and its shareholders certain money they earned while their company was misleading investors. In a separate order instituted today, the SEC required Saba Software's CEO Babak "Bobby" Yazdani to reimburse the company

$2.5 million in bonuses and stock profits that he received while the accounting fraud was occurring, even though he was not charged with misconduct.

"CEOs and CFOs can be deprived of bonuses and stock profits if there is misconduct on their watch that requires a restatement by their employer," said Andrew J. Ceresney, Director of the SEC's Division of Enforcement. "We will not hesitate to pursue clawbacks in appropriate cases."

According to the SEC's order instituting a settled administrative proceeding, Saba Software offers professional services often sold simultaneously with software products. The professional services historically have accounted for about one-third of approximately $120 million in yearly revenues, and the company maintains a group of consultants within its subsidiary in India to help deliver professional services to its customers. The SEC's order finds that Saba Software's timekeeping practices of "pre-booking" and "under-booking" hours worked by these consultants precluded the time records from serving as reliable evidence under U.S. Generally Accepted Accounting Principles to recognize revenue in the manner that the company did. Therefore, from Oct. 4, 2007 to Jan. 6, 2012, Saba Software cumulatively overstated its pre-tax earnings by approximately $70 million.

According to the SEC's order, Farrell and Menon were responsible for ensuring that the professional services group within Saba Software met financial targets set by senior management. Farrell was aware of situations where consultants planned to pre-book hours in order to achieve their quarterly revenue targets yet he failed to stop the practice. In other instances when they had overrun their budgets, he directed consultants to "eat" the hours or back them out of the timesheet database. Menon directed consultants reporting to him to book time to the timesheet database at quarter-end even though those hours would not be worked until the following quarter. In other instances, he advised them to avoid inputting in the timekeeping system non-billable hours that they had worked.

The SEC's order further finds that internal accounting controls at Saba Software were ineffective to counter-balance the revenue and margin targets set by senior management. This problem was particularly acute in Saba Software's India-based consulting group, which was referred to throughout the consulting organization as a "black box." This characterization reflected the fact that U.S. and European managers approving time records of India-based consultants for revenue recognition purposes had little visibility into who was performing what work and when.

"Saba Software used off-shore operations to cut costs, but also cut corners on its internal controls over financial reporting," said Jina L. Choi, Director of the SEC's San Francisco Regional Office. "Weak internal controls create greater opportunity for accounting fraud, and investors are left holding the bag."

Saba Software consented to the entry of an order finding that it violated the anti-fraud, books and records, and internal control provisions of the federal securities laws. In addition to the $1.75 million financial penalty, Saba Software agreed to pay further penalties if it has not filed restatements of its earnings during those periods by later this year, and revocation of the registration for its securities if it doesn't file those restatements by early next year. Without admitting or denying the findings in the order, Saba Software also agreed to cease and desist from committing or causing future violations of these provisions of the securities laws.

Farrell and Menon each consented to the entry of an order finding that they violated the anti-fraud provisions and caused Saba Software's violations. The order also finds that they falsified books and records and circumvented the company's internal controls. Farrell agreed to pay disgorgement and prejudgment interest of $35,017 and a penalty of $50,000, and Menon agreed to pay disgorgement and prejudgment interest of $19,621 and a penalty of $50,000. Without admitting or denying the findings, they each agreed to cease and desist from committing or causing future violations of these provisions the securities laws.

Yazdani consented to reimburse Saba Software for $2,570,596 in bonuses, incentive compensation, and stock sale profits that he received following the regulatory filings that the company is now required to restate. He neither admitted nor denied the findings against the company in the order.

The SEC's investigation, which is continuing, is being conducted by Mike Foley, Rebecca Lubens, and Erin Schneider of the San Francisco Regional Office.

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Related Materials

- SEC order: Saba Software, Farrell, and Menon
- SEC order: Yazdani