

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 77261 / March 1, 2016

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3751 / March 1, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17145

In the Matter of

QUALCOMM
INCORPORATED,

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 Qualcomm Incorporated (“Qualcomm” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Qualcomm 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, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Qualcomm 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 Qualcomm's Offer, the Commission finds¹ that:

Summary

1. This matter concerns Qualcomm's violations of the anti-bribery, books and records, and internal controls provisions of the Foreign Corrupt Practices Act ("FCPA"). From 2002 through 2012, Qualcomm provided things of value to foreign officials – including high-ranking employees of state owned enterprises ("SOEs") and government ministers – to try to influence these decision makers to favor and/or promote Qualcomm-developed technology in an evolving international telecommunications market, thereby providing Qualcomm with a business advantage.

2. Qualcomm's extensive international operations accounted for more than 90% of the company's revenue. Even so, Qualcomm's internal controls were insufficient to prevent or detect improper payments to foreign officials. In several areas of its business operations, including hiring, hospitality planning, and business development, Qualcomm lacked an adequate oversight process to determine whether things of value that it provided to foreign officials were made with the intent to induce those officials to provide a business benefit to Qualcomm.

3. Qualcomm's insufficient internal controls resulted in books and records violations. Qualcomm misrepresented in its books and records that things of value provided to foreign officials were legitimate business expenses.

4. In sum, Qualcomm, through its agents and subsidiaries, violated Section 30A of the Exchange Act by providing things of value to foreign officials to obtain and retain business in China. Qualcomm also violated Section 13(b)(2)(B) of the Exchange Act by failing to devise and maintain internal accounting controls sufficient to provide reasonable assurance of preventing or detecting the authorization or payment of improper payments. Qualcomm violated Section 13(b)(2)(A) of the Exchange Act by having recorded improper payments to foreign officials in its books and records in a manner that failed to accurately and fairly reflect the provision of things of value to foreign officials.

Qualcomm

5. **Qualcomm Incorporated** is a Delaware corporation headquartered in San Diego, California. Qualcomm designs and sells wireless telecommunication products. The company also earns royalties from licensing its patented technologies. Qualcomm's common stock trades on the Nasdaq Global Select Market under the symbol "QCOM" and is registered with the Commission pursuant to Section 12(b) of the Exchange Act.

¹ 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.

Background

6. Qualcomm is a multinational corporation that does business throughout the world. By Qualcomm's fiscal year 2010, international handset manufacturers and other Qualcomm customers and licensees comprised approximately 95% of the company's consolidated total revenue. 42% of 2012 revenue came from Chinese handset manufacturers and other Qualcomm customers and licensees in China.

7. Qualcomm develops and patents wireless communications technologies, including technologies that are incorporated into one or more of the following standards: Code Division Multiple Access ("CDMA"), Wideband CDMA ("WCDMA") and Long Term Evolution ("LTE"). Mobile phone manufacturers make handsets that operate on networks based on Qualcomm technologies. Those handsets sometimes incorporate Qualcomm's chips. Qualcomm also licenses its patented technologies to mobile phone manufacturers.

8. Qualcomm was among the first companies to patent and commercialize CDMA technology for wireless communications. As the leading patent holder for CDMA and WCDMA technologies, Qualcomm earns substantial royalties from its CDMA patent portfolio.

9. In the early 2000's, in many countries, competing digital wireless communications technologies, particularly Global System for Mobile Communications ("GSM") "single mode" technology, were more widely deployed than CDMA technology. Qualcomm generally did not sell GSM chips or earn royalty revenue from the sale by manufacturers of single-mode handsets using GSM technology. Therefore, as Qualcomm's public filings explained, growth in the company's revenue and presence in the market depended on the "commercial deployment of third generation (3G) wireless communications equipment, products and services based on [Qualcomm's] CDMA technology."

10. As fourth generation ("4G") technology developed, Qualcomm's public filings warned investors that the company's licensing program for certain non-CDMA technologies, which may be adopted in 4G products, was "less established," and therefore, "might not be as successful in generating licensing income as [the company's] CDMA licensing program." Qualcomm also disclosed in its public filings that the company's business depended on customers, licensees, and wireless network operators using Qualcomm-developed technologies and "develop[ing] products and services with value-added features to drive selling prices as well as consumer demand for new 3G and 3G/4G devices."

11. The executive vice president and president of Qualcomm's Global Business Operations (the "EVP") coordinated government relationships and worked closely with the company's international management teams to develop strategies for the adoption of Qualcomm-developed technology in key international markets with particular emphasis on the Asia Pacific Region, including China.

12. Not only was China the single largest business opportunity for Qualcomm, but Chinese operator decisions regarding technology had implications for operators in other regions. As such, Qualcomm's management was focused on the successful adoption and deployment of

Qualcomm-developed technology in China, and they hired the EVP to assist Qualcomm's expansion in China. The EVP was "instrumental in driving CDMA adoption and growth in China and South East Asia."

13. In 2002, the wireless market in China represented a significant growth opportunity for Qualcomm. Conversely, Qualcomm identified an inability to succeed in the China market as a risk to its business.

14. While a state-owned telecommunications operator ("SOE 1") had launched a 2G CDMA network in 2002, Qualcomm nonetheless believed that its business would be harmed should the telecommunications company or the Chinese government later make technology deployment decisions that impeded the expansion of CDMA technologies in China.

15. From 2002 until 2008, however, Qualcomm did not know which state-owned enterprise would be granted a license to adopt and deploy more advanced technology in China. Accordingly, Qualcomm sought to persuade executives at two telecom companies, SOE 1 and another Chinese state-owned telecommunications company ("SOE 2"), to adopt Qualcomm-developed technology and expedite deployment of the more advanced networks once the licenses were issued.

16. In May 2008, China announced the restructuring of its telecommunications industry and created three SOEs, which each obtained a different technology. In January 2009, China issued the licenses. One telecom company, SOE 2, was awarded one license and in April 2009, it launched a version of Qualcomm's CDMA technology. Another telecom company, SOE 1, was awarded a license for WCDMA technology and subsequently deployed a network using that technology. Customers using these networks began using mobile devices with Qualcomm-developed technology, resulting in Qualcomm obtaining billions in revenue from the sale of chips and licenses to cell phone manufacturers.

Qualcomm Provided Things of Value to Foreign Officials Who Were Considering Whether to Adopt Qualcomm-Developed Technology

17. From at least 2002 until 2012, Qualcomm provided things of value to try to influence: (1) foreign officials from a Chinese government agency ("Agency") to make regulatory decisions that would expand the use of Qualcomm-developed technology in China; and (2) executives at SOE 1 and SOE 2 to adopt Qualcomm-developed technology and expedite deployment of their CDMA and WCDMA networks once the licenses were issued, thereby increasing Qualcomm's revenue from the use of this technology.

18. Qualcomm urged the two telecom companies to rapidly deploy their respective networks, which would spur faster growth in the use of Qualcomm-developed technology by Chinese mobile subscribers, thus increasing Qualcomm's revenue from licensing and the sale of chips. Similarly, even after one telecom company (SOE 2) was awarded a CDMA license, Qualcomm worked to convince it to upgrade its network to the next generation of CDMA technology. Had that occurred, Qualcomm believed the upgrade would extend the life and continued usage of Qualcomm's CDMA technology in China.

19. Qualcomm also worked to try to influence the two telecom companies to use the company's products and services such as its application platform and push-to-talk service, with the goal of increasing and perpetuating use of the technologies.

Qualcomm Hired Relatives of Chinese Officials

20. Qualcomm provided or offered full-time employment and paid internships to family members and other referrals of foreign officials at SOE 1, SOE 2 and Agency – often at the request of these foreign officials. Qualcomm referred to some of these individuals as “must place” or “special” hires.

21. Qualcomm offered employment to certain foreign officials' family members and referrals despite concerns, in some cases, that the individuals did not satisfy Qualcomm's hiring standards. Certain hires also had previously failed to obtain employment with Qualcomm through the standard hiring process. And in some cases, new positions were created for these hires.

22. Qualcomm provided or offered full-time employment and paid internships to family members and other referrals of foreign officials with the purpose of trying to influence those officials to take actions that would assist Qualcomm in obtaining or retaining business in China.

23. In one case, the Deputy General Manager of a subsidiary of SOE 2 asked Qualcomm employees in 2010 to find an internship at Qualcomm for her daughter. As one Qualcomm employee noted, “We received a request from the GM of [the telecom company's subsidiary] to help find an internship position for her daughter (currently studying in the U.S.) within QC. I discussed this with [high level official] and determined that it would be important for us to support given our cooperation with [the subsidiary].” Qualcomm employees understood that the daughter's “parents are [SOE 2 subsidiary] Dept. GM level and gave us great help for Q.C. new business development.” Because “[the regional branch] is our strategic partner in China and plays an important role in leading all [the telecom company] adopting Qualcomm's technologies,” Qualcomm employees believed that the internship “would be important for us to support given our cooperation with [the subsidiary].” Specifically, the internship “would be good because we are doing quite a bit with [the subsidiary], e.g., QChat and Rev. B.”

24. In another case, between 2006 and 2010, Qualcomm provided the son of an executive responsible for network planning, construction, and maintenance at SOE 1, with: (1) support from a \$75,000 research grant to an American university where he was studying, allowing him to retain his position in a PhD program and renew his student visa; (2) a Qualcomm internship; (3) subsequent permanent employment despite interviewers concluding that he did not meet Qualcomm's hiring standards for the position; and (4) a business trip to China followed by leave to visit his parents over the Chinese New Year, despite other employees expressing concern regarding his qualifications for the assignment. The EVP also personally provided this employee with a \$70,000 loan to buy a home.

25. In fact, the initial interview decision was “No hire” because the son of the telecom company executive was not “a skills match,” didn't “meet the minimum requirements for

moving forward with an offer,” and among those who interviewed him, “there was an agreement that he would be a drain (not even neutral) on teams he would join.” Despite these assessments a director in Human Resources advocated for the son’s hire at the direction of EVP, summarizing, “I know this is a pain, but I think we’re operating under a different paradigm here than a normal “hire”/”no hire” decision tree. We’re telling this kid (and in effect, [the telecom company]) that we don’t want to waste time or extend any extra effort in this favor [the telecom company] has asked of Qualcomm, and then turn around and ask the same person we just rejected to do us a special favor.”

26. Qualcomm also offered employment to at least one individual at the request of high-level Agency executives. An intern hired by Qualcomm in 2010 was referred by a director general of the Agency. An HR employee described the intern as “a MUST PLACE since he was refererd [sic] by [the director general of the Agency] and has influence in China as per [the high level official].” When asked “How cirtical [sic] is the hiring of the [director general’s referral] for Qualcomm’s business?”, the high level official replied, “[Q]uite important from a customer relationship perspective.”

27. FCPA compliance, however, was not considered in Qualcomm’s hiring process. Indeed, for years, most Qualcomm employees who worked in Human Resources did not receive FCPA training. As a result, when Qualcomm offered paid internships or full-time employment to family members or referrals of Chinese foreign officials, it did not evaluate or attempt to mitigate the potential FCPA risks associated with such hires.

Qualcomm Provided Frequent Meals, Gifts and Entertainment to Foreign Officials

28. From at least 2002, Qualcomm, EVP and other Qualcomm employees provided meals, gifts and entertainment to foreign officials and their family members in order to try to influence these foreign officials to adopt and retain Qualcomm-developed technology.

29. Many gifts – airplane tickets for children of government officials, event tickets for spouses of foreign officials and luxury goods– had no valid business purpose. Similarly, Qualcomm paid for sightseeing for spouses and children of foreign officials and arranged golf outings.

30. Qualcomm repeatedly provided certain foreign officials at telecom companies and the Agency with gifts, travel and entertainment. In certain cases, Qualcomm also provided the family members of these foreign officials with employment at Qualcomm.

31. Qualcomm also offered foreign officials hospitality packages to world-class sporting events. These foreign officials included employees of government-controlled communications companies that were customers of Qualcomm, and sometimes their spouses. The Qualcomm employees involved in planning hospitality events for foreign officials had not received FCPA training. In addition, Qualcomm lacked processes for vetting hospitality event invitations and for determining whether events had an adequate business component.

Qualcomm Failed to Devise and Maintain Adequate Internal Controls

32. Qualcomm failed to implement a system of internal accounting controls that was sufficient to provide reasonable assurances that transactions were executed and access to assets was permitted in accordance with management's authorization, and that transactions were recorded as necessary to permit the preparation of financial statements in conformity with generally accepted accounting principles.

33. These failures were widespread and involved Qualcomm's headquarters in San Diego and its international subsidiaries. These internal controls weaknesses were intensified by the absence of someone whose full-time responsibility was to act as a company-wide chief compliance officer and the absence of an FCPA compliance officer in China.

34. Qualcomm employees directly offered various benefits to foreign officials who were making decisions regarding the use of Qualcomm-developed technology without an adequate process of oversight to determine whether the offers were intended to induce the foreign officials to provide a benefit to the company.

35. For example, Qualcomm offered at least 15 foreign officials lavish hospitality packages worth approximately \$95,000 per couple for the 2008 Beijing Olympics. Then, in mid to late-July 2008, a member of Qualcomm's finance department raised FCPA issues related to the Olympics with Qualcomm counsel. In August 2008, just days before the Olympics began, Qualcomm rescinded the five hospitality invitations that had been accepted due to Qualcomm's FCPA-related concerns. The disinvited guests were from three Chinese state-owned enterprises.

36. Neither Qualcomm's executive management team nor its local management in China adequately identified the potential FCPA risk in offering the lavish Olympics hospitality packages to employees at SOEs at which Qualcomm was soliciting and conducting business, until July 2008.

37. Moreover, Qualcomm's internal audit reports found that employees repeatedly failed to request pre-approvals prior to providing things of value to foreign officials and failed to record when things of value had been provided to foreign officials. These failures violated Qualcomm's FCPA policy.

38. Qualcomm further failed to provide regular substantive training or information to employees of its subsidiaries regarding the requirements of the FCPA.

39. In addition, several important business functions such as human resources and hospitality planning were not considered in Qualcomm's FCPA compliance program.

Qualcomm Failed to Maintain Accurate Books and Records

40. Qualcomm, directly and through its subsidiaries, violated Exchange Act Section 13(b)(2)(A) when it provided things of value and engaged in transactions that caused the company to fail to make and keep books, records, and accounts, which, in reasonable detail accurately and fairly reflected the transactions and disposition of assets of the company.

41. Qualcomm provided things of value for the purpose of obtaining or retaining business yet recorded these transactions in a generic and non-descript manner that obscured their purpose. Many things of value consisted of questionable inducements to further Qualcomm's business interests. For example, travel and hospitality events offered or provided to foreign officials were booked as generic sales and marketing or industry relations expenses.

42. In addition, meals, gifts and entertainment were repeatedly noted as missing from Qualcomm's gift logs. Throughout this time period, there were also incorrect inputs into Qualcomm's expense report system because employees stated that nothing of value had been provided to a foreign official or failed to obtain the proper approvals in advance of the expenditure. Year after year these gift log and expense report deficiencies were raised in internal audit reports.

Legal Standards and FCPA Violations

43. Under Section 21C(a) of the Exchange Act, the Commission may impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act or any regulation thereunder, and upon any other person who is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation.

44. Section 30A of the Exchange Act prohibits any issuer with a class of securities registered pursuant to Section 12 of the Exchange Act, or any officer, director, employee, or agent acting on behalf of such issuer, in order to obtain or retain business, from corruptly giving or authorizing the giving of, anything of value to any foreign official for the purposes of influencing the official or inducing the official to act in violation of his or her lawful duties, or to secure any improper advantage, or to induce a foreign official to use his influence with a foreign governmental instrumentality to influence any act or decision of such government or instrumentality. [15 U.S.C. §78dd-1.]

45. Under Section 13(b)(2)(A) of the Exchange Act issuers are required to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and disposition of the assets of the issuer. [15 U.S. C. § 78m(b)(2)(A).]

46. Under Section 13(b)(2)(B) of the Exchange Act issuers are required 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. [15 U.S.C. § 78m(b)(2)(B).]

47. As described above, Qualcomm violated Section 30A of the Exchange Act by providing employment and internships to relatives of foreign officials in order to assist Qualcomm in retaining and obtaining business. Qualcomm also violated Section 13(b)(2)(B) of the Exchange Act by failing to devise and maintain a sufficient system of internal accounting controls to prevent the provision of travel, gifts, and entertainment to foreign officials without prior pre-approval and to ensure all things of value given to foreign officials were properly recorded. As a result of this same conduct, Qualcomm failed to make and keep accurate books and records in violation of Section 13(b)(2)(A) of the Exchange Act.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Qualcomm cease and desist from committing or causing any violations and any future violations of Sections 30A, 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act;

B. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$7,500,000 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). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Qualcomm 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 Finola H. Manvelian, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 444 S. Flower Street, Suite 900, Los Angeles, CA 90071.

C. Respondent shall report to the Commission staff periodically, at no less than nine-month intervals during a two-year term, the status of its remediation and implementation of compliance measures. During this two-year period, should Respondent discover credible evidence, not already reported to the Commission staff, that questionable or corrupt payments or questionable or corrupt transfers of property or interests may have been offered, promised, paid, or authorized by Respondent entity or person, or any entity or person while working directly for Respondent, or that related inaccurate books and records have been maintained, Respondent shall promptly report such conduct to the Commission staff. During this two-year period, Respondent shall: (1) conduct an initial review and submit an initial report, and (2) conduct and prepare at least two follow-up reviews and reports, as described below:

- (1) Respondent shall submit to the Commission staff a written report within 180 calendar days of the entry of this Order setting forth a complete description of its Foreign Corrupt Practices Act (“FCPA”) and anti-corruption related remediation efforts to date, its proposals reasonably designed to improve the policies and procedures of Respondent for ensuring compliance with the FCPA and other applicable anti-corruption laws, and the parameters of the subsequent reviews (the “Initial Report”). The Initial Report shall be transmitted to Finola H. Manvelian, Assistant Director, Division of Enforcement, United States Securities and Exchange Commission, 444 S. Flower Street, Suite 900, Los Angeles, CA 90071. Respondent shall also provide a copy of the Initial Report to its external auditors. Respondent may extend the time period for issuance of the Initial Report with prior written approval of the Commission staff.
- (2) Respondent shall undertake at least two follow-up reviews, incorporating any comments provided by the Commission staff on the previous report, to further monitor and assess whether the policies and procedures of Respondent are reasonably designed to detect and prevent violations of the FCPA and other applicable anti-corruption laws (the “Follow-up Report”). In the Follow-up Report, Respondent shall also provide the Commission staff with its assessment of its FCPA compliance policies and procedures.
- (3) The Follow-up Report shall be completed by no later than 270 days after the Initial Report. The second Follow-up Report shall be completed no later than 270 days after the completion of the first Follow-up Report. Each Follow-up Report shall be transmitted to Finola H. Manvelian at the address listed above. Respondent shall also provide a copy of each Follow-up Report to its external auditors. Respondent may extend the time period for issuance of the Follow-up Report with prior written approval of the Commission staff.

- (4) The periodic reviews and reports submitted by Respondent will likely include proprietary, financial, confidential, and competitive business 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 (1) pursuant to court order, (2) as agreed by the parties in writing, (3) to the extent that the Commission staff determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) is otherwise required by law.
- (5) During this two-year period of review, Respondent shall provide its external auditors with its annual internal audit plan and reports of the results of internal audit procedures and its assessment of its FCPA compliance policies and procedures.
- (6) During this two-year period of review, Respondent shall provide the Commission staff with any written reports or recommendations provided by Respondent's external auditors in response to Respondent's annual internal audit plan, reports of the results of internal audit procedures, and its assessment of its FCPA compliance policies and procedures.

By the Commission.

Brent J. Fields
Secretary