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Via Email

Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
100 F. Street, N.E.  
Washington, DC 20549-1090

September 14, 2015

**Re: Comments on Proposed Rules Relating to Listing Standards for Recovery of Erroneously Awarded Compensation, Release No. 34-75342; File Number S7-12-15**

SAP SE (“**SAP**”) respectfully submits this letter in response to the solicitation by the Securities and Exchange Commission (the “**Commission**”) for comments on the proposed rule on Listing Standards for Recovery of Erroneously Awarded Compensation outlined in proposed Rule 10D-1 under the Securities Exchange Act, as amended (the “**Exchange Act**”), (the “**Proposed Rules**”).

Below SAP responds to several questions posed in the “Request for Comments” section of the Proposed Rules. In summary, SAP believes that the Proposed Rules should not apply to foreign private issuers (“**FPIs**”) and in particular FPIs whose primary trading market is not in the United States. With 2014 revenues of approximately EUR 17.6 billion and profit after tax of approximately EUR 3.3 billion, SAP is the world’s leader in application and analytics software for enterprises in terms of market share. SAP’s ordinary shares are a component of Germany’s DAX, and the principal trading market for SAP’s ordinary shares is Xetra, the electronic dealing platform of Deutsche Boerse AG. SAP’s ordinary shares are officially listed on the Frankfurt Stock Exchange, the Berlin Stock Exchange and the Stuttgart Stock Exchange. ADRs representing SAP ordinary shares are listed on the New York Stock Exchange.

**1. Should the listing standards and other requirements of the proposed rule and rule amendments apply generally to all listed issuers, as proposed? If not, what types of issuers should be exempted, and why? Please explain the rationale that justifies exempting any particular category of issuer.**

No, the listing standards and other requirements of the Proposed Rules and rule amendments should not apply to FPIs for the reasons set forth below.

**A. Recovery of erroneously awarded compensation could conflict with and be unenforceable under current German law.**

The Proposed Rules provide a narrow exception to the recovery requirement if recovery would violate home country law and certain conditions are met. It is not clear under German labor law whether the clawback requirements in the Proposed Rules would be enforceable. As a result, it is not possible to say with certainty that recovery would violate German law. As proposed, the lack of clarity would require an issuer to pursue a case even though pursuing a clawback case in Germany would likely be costly

**SAP SE**

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because the matter is by no means free from doubt and would likely lend itself to lengthy litigation and appeals. The Proposed Rules could require an issuer to spend substantial amounts of shareholders' money and resources pursuing cases that may have a low likelihood of success.

- B. Recovery of erroneously awarded compensation could conflict with and be unenforceable under future German laws.

The Proposed Rules provide an exception for FPIs if recovery would violate home country law, provided the home country law was adopted by the home country before effectiveness of Rule 10D-1. Future German laws governing the recovery of erroneously awarded compensation could conflict with the Proposed Rules. The exception applicable to clawbacks that would violate home country law applies only to laws in effect prior to effectiveness, potentially putting companies in the position of having to decide between complying with the listing standards by clawing back compensation in accordance with the rule or complying with a home country law that makes such clawbacks illegal. As a result, the Proposed Rules could potentially expose FPIs to delisting in their primary trading market. We believe the possibility of such a result would be inconsistent with long-established principles of comity and create the likelihood of harm to shareholders in the form of potential market disruption that would far outweigh any potential benefit to shareholders.

- C. The Proposed Rules remove from the board of listed issuers most discretion concerning whether and how much incentive compensation to seek to recover. For FPIs that are already subject to a comprehensive set of corporate governance and disclosure regulations in their home countries, the Proposed Rules may create requirements that are difficult to reconcile with their existing home country laws and governance requirements.

SAP is subject to extensive regulation in Germany by the German Federal Financial Supervisory Authority (BaFin). German corporate governance is covered by the German Corporate Governance Code and the German Stock Corporation Act, among other sources. ADRs representing SAP common shares are listed on the New York Stock Exchange but represent a small fraction of SAP's worldwide trading activity. Unlike some FPIs that conducted their IPO in the US and have their sole or principal listing in the US, SAP believes that FPIs like SAP that do not maintain their primary trading market in the US and that are regulated by a well-established and effective securities regulator as well as being subject to a home country corporate governance regime that has its own comprehensive scope and stringent set of disclosure requirements should not be covered by the Proposed Rules. There are other requirements in Germany that cover similar ground albeit in a different way. The extraterritorial application of the Proposed Rules without addressing elements such as the nature of board authority will likely result in unintended consequences as well as more predictable consequences such as uncertainty, distraction of senior management and board members and costs of legal analysis. For example, FPIs are not currently required to identify officers under Rule 16a-1(f). Imposing a new obligation of that kind on FPIs may seem inconsequential but given the differing nature of corporate governance in other jurisdictions, this could create a meaningful ongoing cost to FPIs.

As Commissioner Daniel M. Gallagher noted in his dissenting statement to the Proposed Rules, "injecting U.S. corporate governance theory into foreign countries via a U.S. listing standard is an overreach. The release does not explain how the benefits to be achieved by subjecting FPIs to this rule justify this derogation from international comity and from the goal of extending accommodations to FPIs



for the purpose of attracting them to list in the U.S., where investors will be better-protected overall.” The SEC has in the past, especially in rulemaking relating to executive compensation, determined with good reason to exempt FPIs from a number of US requirements. FPIs seeking to remain in the US in the absence of exemptive relief will need to consider the impact of the Proposed Rules and whether the benefit of a US listing justifies the burdens these provisions will impose on FPIs.

- 2. Would the proposed listing standards conflict with any home country laws, stock exchange requirements, or corporate governance arrangements that apply to foreign private issuers? If so, please explain the nature of those conflicts. Should the proposed rule and rule amendments allow exchanges to permit foreign private issuers to forego recovery of erroneously awarded compensation if recovery would violate the home country’s laws and certain conditions were met, as proposed? Is such an exception necessary or appropriate? If no, why not? If not, are there more appropriate or effective means to address such conflicts?**

As outlined above, the Proposed Rules could conflict with current or future German laws applicable in the context of an attempted recovery of erroneously awarded compensation. Because it is unclear under German labor laws to what extent an issuer has the ability to do this in the manner mandated by the Proposed Rules, it is not possible to satisfy the conditions in the Proposed Rules without potentially substantial expense.

If FPIs are not exempted from the final Rule 10D-1 under the Exchange Act (the “**Final Rule**”), the Final Rule should allow exchanges to permit FPIs to forego recovery of erroneously awarded compensation if (i) recovery of erroneously awarded compensation violates current or future home country laws or (ii) the board of the FPI determines that attempting to recover some or all of the erroneously awarded compensation determined in the manner mandated by the Proposed Rules is not in the board’s judgment prudent. In this case the Final Rules should also consider further the scope and application to FPIs, including for example, where recovery may violate the laws of a country where an executive is located if such country is not the home country of the issuer.

In conclusion, we encourage the SEC to exempt FPIs altogether from the Final Rule. If FPIs are not exempted as a class from the Final Rule, we encourage the SEC to limit the application of the Final Rule only to those FPIs whose primary trading market is in the United States. If the Final Rule does apply to any FPIs, we encourage the SEC to permit FPIs to forego recovery if to do so would violate applicable law regardless of when adopted and regardless of whether in the home country or the country where the executive officer or his or her assets are located. Finally, if the Final Rule does apply to any FPIs, to anticipate the uncertain nature of enforcing the prescriptive nature of the recovery included in the Proposed Rules (including individuals, time periods, amounts and types of compensation that may differ from what is viewed as sensibly recoverable in other jurisdictions), we encourage the SEC to permit FPIs in the Final Rule not to seek recovery of some or all erroneously awarded compensation otherwise mandated for recovery in instances in which the board determines that to do so would not be prudent in its business judgment.



If you have any questions about the foregoing, please do not hesitate to contact Wendy Boufford at

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Very truly yours,

/s/ Luka Mucic  
Luka Mucic  
Chief Financial Officer  
SAP SE

/s/ Michael Ploetner  
Michael Ploetner  
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