

August 17, 2018

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# **First Annual Report**

By the Independent Compliance Auditor  
for the VW Defendants

**Larry D. Thompson, LLC**

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**Appendix – Table of Consent Decree Obligations**

## **Independent Compliance Auditor for the VW Defendants**

### **First Annual Report**

#### **A. INTRODUCTION**

Larry D. Thompson, LLC submits this report pursuant to (1) the Third Partial Consent Decree between the United States and six Volkswagen entities, entered on April 13, 2017 (“U.S. Consent Decree” or “U.S. CD”) and (2) the Third California Partial Consent Decree between the State of California and the same Volkswagen entities, entered on July 21, 2017 (“California Consent Decree” or “Cal. CD”). Together, the U.S. Consent Decree and the California Consent Decree are referred to as the “Consent Decrees.” The Consent Decrees were entered by the United States District Court in San Francisco in the case *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Product Liability Litigation*, No. 3:15-md-02672-CRB (N.D. Cal.).

This is the first annual report (“First Annual Report”) by Mr. Thompson as part of his three-year assignment as Independent Compliance Auditor (“ICA”) under the Consent Decrees.

#### **B. THE U.S. CONSENT DECREE**

The U.S. Consent Decree imposed obligations on two sets of Volkswagen entities: (1) Volkswagen AG, AUDI AG, Volkswagen Group of America, Inc., and Volkswagen Group of America Chattanooga Operations, LLC (the “VW Defendants”); and (2) Dr. Ing. h.c. F. Porsche AG and Porsche Cars North America (the “Porsche Defendants”). It resolved the United States’ civil claims against the VW Defendants and Porsche Defendants for civil penalties and injunctive relief related to emissions cheating and Clean Air Act violations.

In addition to assessing a monetary penalty of \$1.45 billion, the U.S. Consent Decree imposed “injunctive relief” on both sets of defendants. The injunctive relief imposed on the VW Defendants consisted of a number of mandatory changes to the VW Defendants’ internal structures and processes, including internal structures and processes implicated in the VW Defendants’ emissions cheating and Clean Air Act violations. The injunctive relief also included obligations for reporting by the VW Defendants to the federal government and the public. The U.S. Consent Decree imposed separate injunctive relief on the Porsche Defendants.

For most of the obligations imposed on the VW Defendants, the U.S. Consent Decree provided a fixed period of time in which the obligation had to be fulfilled. These time periods began to run on an “Effective Date” of April 13, 2017, the day the U.S. Consent Decree was entered.

In the U.S. Consent Decree, the VW Defendants agreed to retain an ICA to oversee their compliance with their injunctive relief obligations. The term in which the

ICA would perform this work was set for the three years following the Effective Date. The U.S. Consent Decree required ICA oversight of the VW Defendants only; the ICA was not assigned oversight of the Porsche Defendants and the separate injunctive relief imposed on them.

The U.S. Consent Decree established that, during the ICA's term, the ICA would issue three annual reports to the United States Department of Justice ("DOJ") and the VW Defendants regarding the VW Defendants' compliance with their injunctive relief obligations. The due dates for the annual reports, along with other due dates, were modified by the parties to the U.S. Consent Decree and filed with the Court on June 1, 2018. A similar agreement in principle has been reached regarding the California Consent Decree.

This First Annual Report will be followed by two additional annual reports. The U.S. Consent Decree required that the final version of each of the ICA's three annual reports be published by the VW Defendants on the public website [www.VWCourtSettlement.com](http://www.VWCourtSettlement.com). The U.S. Consent Decree allowed for redactions of certain "Confidential Business Information" and personal information from the publicly posted reports. All redactions to this report were made by the VW Defendants pursuant to that provision.

On June 16, 2017, following DOJ approval, the VW Defendants retained Larry D. Thompson, LLC to serve as ICA.

### **C. THE CALIFORNIA CONSENT DECREE**

On July 21, 2017, the U.S. District Court entered the California Consent Decree. The California Consent Decree resolved civil claims by California against the Volkswagen entities for civil penalties and injunctive relief related to emissions cheating and state law violations.

Like the U.S. Consent Decree, the California Consent Decree imposed monetary penalties as well as injunctive relief on the six entities making up the VW Defendants and Porsche Defendants. (The California Consent Decree used the term "Volkswagen Parties" to refer to the four entities named "VW Defendants" in the U.S. Consent Decree, but for ease of reference and consistency only "VW Defendants" will be used in this report.)

The injunctive relief obligations of the VW Defendants in the California Consent Decree are substantially similar to those in the U.S. Consent Decree, while emphasizing requirements related to California's environmental laws. The California Consent Decree created this emphasis by adding the phrase "including California" wherever the U.S. Consent Decree spoke in terms of "U.S." laws, regulations, and requirements. In this report, unless otherwise stated, references to obligations in the Consent Decrees involving "U.S." laws, regulations, and requirements include California laws, regulations, and requirements.

The California Consent Decree also added California-specific obligations concerning the required emissions testing.

The California Consent Decree provided that the ICA would be responsible for evaluating the VW Defendants' compliance with the California Consent Decree as well as the U.S. Consent Decree. Like the U.S. Consent Decree, the California Consent Decree established a three-year term for the ICA, and required the ICA to issue annual reports. Instead of requiring a separate annual report from the ICA, the California Consent Decree authorized the ICA to submit a joint report to both DOJ and the authorities representing California: the California Attorney General and the California Air Resources Board ("CARB") (together, the "California authorities").

#### **D. THE MONITOR'S MANDATE AND REPORTING UNDER THE PLEA AGREEMENT**

In addition to serving as the ICA, Larry D. Thompson, LLC serves as the Independent Compliance Monitor ("Monitor") under the Plea Agreement in the criminal case *United States v. Volkswagen AG*, No. 16-cr-20394-SFC (E.D. Mich.) ("Plea Agreement"). The U.S. Consent Decree expressly provided for this dual role for the ICA.

The Plea Agreement required that the Monitor assess, oversee, and monitor Volkswagen AG's compliance with the terms of the Plea Agreement, and "evaluate [the] implementation and enforcement of [the company's] compliance and ethics program for the purpose of preventing future criminal fraud and environmental violations by the Company and its affiliates . . . ." The Monitor's mandate in the Plea Agreement also included "an assessment of the Board of Management's and senior management's commitment to, and effective implementation of, the Company's corporate compliance and ethics program." The Plea Agreement required in addition that, at the end of the Monitor's three-year term, the Monitor certify whether this ethics and compliance program "is reasonably designed and implemented to prevent and detect violations of the anti-fraud and environmental laws."

The Plea Agreement required that the Monitor issue a confidential written report related to its initial review, "setting forth the Monitor's assessment and, if necessary, making recommendations reasonably designed to improve the effectiveness of the Company's program for ensuring compliance with anti-fraud and environmental laws." The Plea Agreement also provided for additional regular, confidential reports from the Monitor to DOJ and Volkswagen AG. The Monitor submitted its first report under the Plea Agreement on March 30, 2018.

Because of the significant differences between the Monitor's responsibilities, including reporting obligations, under the Plea Agreement and those of the ICA under the Consent Decrees, the Monitor's Plea Agreement reports are not comparable to the ICA's annual reports. In the annual reports under the Consent Decrees, the ICA informs the government and the public about the ICA's understanding of actions taken by the VW Defendants to address the specific, enumerated obligations and tasks outlined in the Consent Decrees, as part of the ICA's ongoing verification of the VW Defendants'

compliance with the Consent Decrees. The Plea Agreement reports include a broader evaluation of the “effectiveness” of the overall compliance program of Volkswagen AG and its subsidiaries and affiliates.

The distinction between the annual reports under the Consent Decrees and the Plea Agreement reports is also reflected in the way the documents contemplate “findings” and “recommendations” in the reports. The Consent Decrees required that the annual reports include “findings that identify any noncompliance by the Volkswagen Parties with the requirements of Section V (Injunctive Relief for the Volkswagen Parties)” and “recommend[ations], as applicable, [for] actions for the Volkswagen Parties to take to achieve compliance.” On the other hand, the Plea Agreement contemplated “recommendations” in the Monitor’s Plea Agreement reports that are “reasonably designed to improve the effectiveness of [Volkswagen’s] program for ensuring compliance with anti-fraud and environmental laws.” The focus of the Consent Decree reports is on verifying compliance with the Consent Decrees, while the focus of the Plea Agreement reports is on assessing the design, implementation, and effectiveness of the compliance program as a whole, as well as assessing the commitment of senior leadership to that program, with a view towards prospective compliance with the universe of anti-fraud and environmental laws.

## **E. AUDIT PLANNING AND METHODOLOGY**

### **1. Audit Plan**

The U.S. Consent Decree required the ICA to submit a draft audit plan (“Audit Plan”) 30 days after retention, establishing a checklist of relevant compliance requirements, procedures to exchange necessary documents and information, and any other terms deemed necessary by the ICA. The ICA submitted this Audit Plan to DOJ on July 17, 2017, and submitted a supplemental appendix on December 22, 2017.

In order to effectively conduct the activities listed in the Audit Plan, the ICA devoted substantial effort during the first review period to developing an understanding of the VW Defendants’ complex organizational structures, operations, and efforts to comply with the injunctive relief identified in the Consent Decrees. The ICA continues to plan and conduct audit procedures, and will do so throughout the three-year audit term.

### **2. Audit Scope**

#### **a) VW Defendants**

As explained above, the ICA is tasked with overseeing the injunctive relief efforts of the four VW Defendants. The ICA’s duties – and this First Annual Report – relate only to these entities, and exclude the injunctive relief obligations of the Porsche Defendants. The four VW Defendants have different areas of responsibility. Volkswagen AG (“VW AG”) includes both parent company functions, referred to as “Group” functions, and functions for VW Passenger Cars, one of the Volkswagen “brands.” AUDI AG (“AUDI”) is a separate brand. Volkswagen Group of America, Inc. (“VW GOA”) houses the U.S.

operations of VW AG, including the VW GOA subsidiary Volkswagen Group of America Chattanooga Operations, LLC (“GOA Chattanooga”), a manufacturing facility in Chattanooga, Tennessee.

VW AG and AUDI use a shorthand system to identify specific departments and business units within their organizational structure. For example, departments within the Group function at VW AG are designated with the letter “K-” followed by additional designations. Department designations at AUDI begin with “I/” or “N/” corresponding with AUDI’s Ingolstadt and Neckarsulm locations in Germany. Where useful, this report provides the relevant designations in parentheses.

#### **b) Time Period**

This First Annual Report covers the time period April 14, 2017 through April 13, 2018. However, as provided in the modifications to the Consent Decrees, the ICA may exercise discretion to report events occurring outside of the designated time periods for each annual report. The ICA will submit two additional annual reports detailing the activities of the VW Defendants with respect to the injunctive relief imposed by the Consent Decrees. Work by the ICA commenced after the ICA was retained on June 16, 2017, and will continue through the ICA’s three-year term.

### **3. Approach**

The ICA conducts oversight of the VW Defendants’ compliance with the Consent Decrees through a wide range of activities. These activities include, but are not limited to, reviewing documents, including meeting minutes, organizational charts, policies, procedures, statistical data, training materials, and work papers; examining industry best-practices and procedures; meeting with key Volkswagen personnel involved in implementing and observing the VW Defendants’ obligations; shadowing audits and activities; observing meetings and operations; independently analyzing and reviewing relevant data; and reviewing U.S., California, and international environmental laws and regulations. Where applicable, these activities concern both the VW Defendants and third parties, such as the third-party emissions tester and EMS auditor required by the Consent Decrees. The ICA does not re-perform work conducted by third-parties.

In conducting his work, the ICA considers guidance concerning the maintenance of effective internal controls, including the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”) Internal Control Framework. In addition, throughout the course of the planning and execution of his work, the ICA considers guidance issued by the Public Company Accounting Oversight Board, the American Institute of Certified Public Accountants, and the International Auditing and Assurance Standards Board.

### **4. Limitations**

As noted above, the Consent Decrees established a three-year auditing term and annual reporting during that term. The ICA’s audit of the VW Defendants’ compliance

with the tasks assigned to it in the Consent Decrees is ongoing, and the results of the audit will be reflected in the three annual reports, considered together. The ICA is still in the process of planning and conducting audit procedures, building upon the work conducted during the first review period and reflected in this report. The ICA's ultimate conclusions regarding the VW Defendants' compliance with their obligations under the Consent Decrees will occur at the conclusion of the full three-year auditing term. However, any instances of non-compliance identified by the ICA at any point during the three-year term will be communicated to the VW Defendants, DOJ, and the California authorities, as appropriate. These discussions will be a part of the ICA's ongoing, continual dialogue with the VW Defendants regarding their obligations and compliance under the Consent Decrees.

Information required to complete the review was primarily obtained from the VW Defendants and, in certain circumstances, third parties. The ICA supplemented its review of that information with independent observation of the VW Defendants' activities, consideration of industry best-practices, and the exercise of professional judgment.

In addition, certain provisions of the Consent Decrees are subject to interpretation, since definitions were not provided for all terms within the documents. In instances where the VW Defendants provided an interpretation of a term, the ICA reports that interpretation, along with any representations by the VW Defendants concerning the completion of the respective obligation.

## **F. THE VW DEFENDANTS' REPORTING OF VIOLATIONS**

As of the date of this First Annual Report, the VW Defendants have identified and reported two violations of the injunctive relief provisions of the Consent Decrees.

### **1. Employee Survey Managers' Guides at VW GOA**

The Consent Decrees required VW GOA and the other VW Defendants to make changes to the companies' annual employee survey and related follow-up process. Specifically, the VW Defendants were required to: (1) add a question to the survey in order to monitor the progress of a new Integrity campaign; and (2) add questions to certain survey "managers' guides" in order to gauge compliance with U.S. laws and regulations relating to environmental compliance. The Consent Decrees set a deadline for this work of July 12, 2017.

The VW Defendants informed the ICA that, on March 27, 2018, as a result of an inquiry from the ICA, VW GOA discovered that it had inadvertently failed to include the questions required by the Consent Decrees in its survey managers' guides. After making this discovery, VW GOA drafted a list of questions for inclusion in its managers' guides in order to comply with the Consent Decrees.

The updated VW GOA managers' guides, including the questions, were distributed to VW GOA managers by e-mail on April 13, 2018. On April 16, 2018, the VW Defendants notified DOJ and California authorities of the non-compliance.

At this time, the ICA does not have additional corrective actions to recommend with respect to this violation. General recommendations regarding overall compliance with the Consent Decrees are listed below.

## **2. Notice to CARB of Commencement of PEMS Testing**

The Consent Decrees required that the VW Defendants have select model year 2017, 2018, and 2019 light-duty vehicles tested using a Portable Emissions Measurement System (“PEMS”). The Consent Decrees required the VW Defendants to retain an independent third-party emissions tester (“Third-Party Emissions Tester”) to conduct specific elements of the required PEMS testing. Under the California Consent Decree, the VW Defendants and the Third-Party Emissions Tester were required to “make best efforts to provide 10-days written notice to CARB before commencing testing.” The required model year 2017 PEMS testing was conducted by the Third-Party Emissions Tester between August 29, 2017 and October 12, 2017.

On April 25, 2018, the VW Defendants recognized they had overlooked this requirement of the California Consent Decree. On April 30, 2018, the VW Defendants notified the ICA that the VW Defendants had “been unable to locate any notice provided to CARB in accordance with [California Consent Decree] Paragraph 14(c)(iii).” On May 14, 2018, the VW Defendants notified CARB of the violation.

The VW Defendants have confirmed that those responsible for the PEMS testing are now aware of this notice requirement, and intend to ensure that CARB is provided 10-days written notice before commencing Model Year 2018 and 2019 PEMS testing.

At this time, the ICA does not have additional corrective actions to recommend with respect to this violation. General recommendations regarding overall compliance with the Consent Decrees are listed below.

## **3. Semi-Annual Reports of Violations**

The Consent Decrees required the VW Defendants to submit a periodic summary of any violations of their injunctive relief obligations to DOJ and the California authorities. These reports are due each year on January 31 and July 31, covering violations during the preceding six months. Also, if the VW Defendants “reasonably believe they have violated, or may violate” the Consent Decrees, they must report such violation to EPA or CARB, as appropriate, within 14 business days.

On July 31, 2017, the VW Defendants submitted their First Semi-Annual Report of Violations under the U.S. Consent Decree, covering the April 13, 2017 through July 31, 2017 reporting period. In that report, Volkswagen stated that it had “not identified any violations” of the U.S. Consent Decree during the reporting period, and had not submitted any notices of violation. The report did not address the California Consent Decree, which had been entered on July 21, 2017.

On January 31, 2018, the VW Defendants submitted their Second Semi-Annual Report of Violations under the U.S. Consent Decree, and First Semi-Annual Report of Violations under the California Consent Decree, covering a reporting period of July 1, 2017 through December 31, 2017. Those reports also stated that Volkswagen had not identified any violations, and had not submitted any notices of violation.

The VW Defendants submitted their third semi-annual report, covering the first six months of 2018, on July 27, 2018. The report described both violations identified above, as well as the steps taken to correct the violations. No other violations were identified.

## **G. GENERAL OBLIGATIONS UNDER THE CONSENT DECREES**

### **1. VW Defendants' Cooperation with the ICA (U.S. CD ¶ 28(b); Cal. CD ¶ 28(a))**

The Consent Decrees directed the VW Defendants to “cooperate fully” with the ICA in all matters relating to the ICA’s duties. The Volkswagen Project Management Office (“PMO”), which supports the ICA’s efforts in obtaining documents and scheduling meetings, has cooperated with the ICA.

The Consent Decrees provided that “[i]n the event that the VW Defendants seek to withhold from the Auditor access to information, documents, records, facilities, or current or former employees or contractors of the VW Defendants that may be subject to a claim of attorney-client privilege or to the attorney work product doctrine, or where the VW Defendants reasonably believe production or providing access would otherwise be inconsistent with applicable law, the VW Defendants shall work cooperatively with the Auditor to resolve the matter to the satisfaction of the Auditor consistent with applicable law.”

Occasionally, the ICA has contended with the VW Defendants’ reluctance to share certain information. This reluctance has included the VW Defendants’ use of redactions in documents provided to the ICA, based on claims of attorney-client privilege, attorney work-product, and data privacy. As noted above, the Consent Decrees require that the VW Defendants work cooperatively with the ICA in these circumstances.

The ICA has discussed this issue with VW Defendant personnel on numerous occasions throughout the reporting period, and has documented its concerns. With respect to the VW Defendants’ assertions of privilege and work-product, the ICA has disagreed with some of the VW Defendants’ assertions. The VW Defendants have promised further improvements in their provision of information, and increased the frequency of discussions with the ICA regarding this topic. The ICA is committed to working with the VW Defendants to resolve all redaction issues and other withholding of information.

This issue must be promptly resolved in the next reporting period for the ICA to effectively perform his duties. The ICA expects the VW Defendants to fulfill their obligations to provide the ICA with all information the ICA deems necessary in a timely

manner, so that the ICA is fully informed in performing his duties under the Consent Decrees.

**2. Environmental Compliance Officer (U.S. CD ¶ 28(b))**

The U.S. Consent Decree required that the Volkswagen Defendants “designate an Environmental Compliance Officer to liaise directly with the [ICA] regarding issues of information and access rights.” The VW Defendants appointed Thomas Meiers as Environmental Compliance Officer.

Dr. Meiers also serves as the head of Volkswagen’s PMO, created to assist the ICA in his role as ICA and Monitor. The PMO is staffed with approximately 80 employees in both Germany and the U.S. It facilitates the ICA’s requests for information from the VW Defendants, including requests for documents, requests for answers to specific questions about the VW Defendants’ organizations and procedures, requests to observe internal meetings and committees, and requests for meetings with VW Defendants’ personnel.

**3. Annual Report by VW Defendants (U.S. CD ¶ 28(c); Cal. CD ¶ 28(b))**

On April 13, 2018, the VW Defendants submitted their first annual report to DOJ and California authorities, as required by the Consent Decrees. Each annual report by the VW Defendants is referred to herein as an “Annual Report by VW Defendants.”

**H. RECOMMENDED ACTIONS TO ACHIEVE COMPLIANCE**

Pursuant to Paragraph 28(c) of the U.S. Consent Decree and Paragraph 28(b) of the California Consent Decree, the ICA recommends the following actions by the VW Defendants to achieve compliance with the Consent Decrees. These recommended actions do not indicate current violations of the Consent Decrees and are not intended to be final assessments of compliance; rather, they are intended to promote prospective compliance by the VW Defendants.

**1. Procedures to Assess Compliance with the Consent Decrees**

Design and implement additional, ongoing monitoring and auditing procedures to assess compliance by the VW Defendants with their obligations under the Consent Decrees.

**2. Analysis of Golden Rules Implementation**

Prepare and provide a comprehensive written analysis of the implementation of the Golden Rules. The analysis should list every business unit of the VW Defendants required to implement any aspect of the Golden Rules under the Consent Decrees. For each listed business unit, list the specific Golden Rules and minimum requirements applicable. For all applicable Golden Rules and minimum requirements listed, identify: (1) what specific activities constituted implementation under the

Consent Decrees; (2) the date by which the VW Defendants consider each activity to have been completed (or an explanation as to why the activity has not been completed); (3) whether any required documents related to the Golden Rules and/or minimum requirements were in draft form as of October 10, 2017; and (4) the documentation of each activity.

**3. Impact of Golden Rules Internal Audit Results**

Prepare and provide a written assessment of how the overall results reflected in the Golden Rules audit reports impact the determination of whether the VW Defendants complied with their obligation to implement the internal procedures in the Golden Rules Handbook, notwithstanding Internal Audit's assertion that the VW Defendants' obligations in Paragraphs 16 and 18 of the U.S. Consent Decree (Paragraphs 15 and 17 in the California Consent Decree) are independent of each other.

**4. New Employee Code of Conduct Training Statistics**

With respect to the required summary in the Annual Report by VW Defendants of training for all new employees on the Code of Conduct, provide uniform training statistics for the VW Defendants, covering the same time period.

Moreover, in light of the inaccuracies identified in the training statistics provided in the first Annual Report by VW Defendants, improve the process for calculating training statistics.

**5. Whistleblower Case-Tracking Report**

Confirm that the current process used by the VW Defendants to identify Whistleblower alerts for inclusion in the Annual Report by VW Defendants effectively identifies all alerts relating to violations of U.S. environmental protection laws or regulations.

**6. Documentation Concerning California Laws and Regulations**

Where the California Consent Decree required that obligations regarding "U.S." laws and regulations include California state laws and regulations, demonstrate that the VW Defendants' efforts to comply with their obligations under the Consent Decrees have used this inclusive definition.

**7. Distinguishing Between VW GOA and GOA Chattanooga**

When describing the VW Defendants' efforts to comply with their obligations under the Consent Decrees, distinguish between efforts by or involving VW GOA and efforts by or involving GOA Chattanooga.

## **I. INJUNCTIVE RELIEF RELATED TO THE PRODUCT DEVELOPMENT PROCESS**

The injunctive relief imposed on the VW Defendants by the Consent Decrees included a number of changes to the companies' product development process. As noted above, the ICA continues to plan and conduct audit procedures, and will do so with respect to these product development process obligations throughout the three-year audit term. Also, as noted above, the ICA did not re-perform work conducted by third parties.

### **1. Segregation of Duties Between Product Development and Certification Testing (U.S. CD ¶ 13; Cal. CD ¶ 12)**

#### **a) Description of Obligation**

The Consent Decrees required the VW Defendants to “implement measures to ensure that employees involved in certification testing and monitoring” for purposes of vehicle certification under the Clean Air Act and California law are “organizationally separate from product development.” As part of this obligation, the VW Defendants were specifically required to form and maintain an “organizationally separate certification group” to “manage, supervise and conduct certification testing.” The Consent Decrees provided a deadline for implementing these measures of October 10, 2017.

The Consent Decrees set forth specific responsibilities of this required certification group (“Certification Group”). The Certification Group had to:

- Ensure that the VW Defendants have policies, procedures, practices, or processes for vehicle development that include emissions control systems designed to comply with U.S. laws and regulations related to vehicle certification and emission standards;
- Conduct, or retain a qualified contractor to conduct, emissions certification testing of both production and in-use vehicles;
- Plan the testing program, obtain the vehicles, confirm that the configuration of the test vehicles is representative of the production vehicles, and test, or retain a qualified contractor to test, the vehicles to be certified, consistent with EPA and CARB regulations for certification and in-use performance testing; and
- Supervise all certification personnel, provide appropriate training, and control access to certification vehicles.

**b) Organizational Separation of Product Development from Certification Testing and Monitoring**

To implement the segregation of duties, the VW Defendants took a number of steps, including the creation of stand-alone Technical Conformity (ET) departments responsible for emission certification testing and monitoring.

The Technical Conformity departments at VW Passenger Cars and AUDI are organizationally separate from the brands' respective Powertrain and Whole Vehicle Development departments. In the past, the Powertrain Development (EA) departments were given the authority to both develop the vehicle's powertrain and validate its emissions compliance.

Now, employees involved in powertrain-related certification report to these newly-established brand Technical Conformity departments. These departments at both VW Passenger Cars and AUDI directly report to the respective heads of the brands' Development departments.

**c) Formation of the Certification Group**

The VW Defendants revised organizational documents related to the Certification Group's structures and responsibilities as of October 10, 2017. In addition, certain processes related to the group's operations were also revised as of October 10, 2017.

The Certification Group consists of five departments: Group Technical Conformity (K-GEG); VW Passenger Cars Technical Conformity (ET); AUDI Technical Conformity (I/ET); VW GOA Engineering and Environmental Office (EEO); and VW GOA Quality Assurance (VW GOA QA). These departments have the following areas of responsibility:

- Group Technical Conformity is responsible for ensuring that the Certification Group is separate from product development;
- VW Passenger Cars Technical Conformity and AUDI Technical Conformity are each responsible at the brand level for vehicle certification testing and for supervising and training certification personnel;
- EEO is responsible for evaluating and submitting certification test results, including In-Use Verification Program ("IUVP") results, to EPA and CARB. EEO is also responsible for reviewing any certification testing conducted in the U.S. (and for supervising and training those certification personnel); and
- VW GOA QA has primary responsibility for performing and supervising routine IUVP testing, and for supervising and training related personnel in coordination with EEO;

**d) Certification Group Responsibilities**

**(1) Vehicle Development Policies for Compliance with U.S. Laws and Regulations for Vehicle Certification and Emissions**

The Consent Decrees required the Certification Group to ensure that the VW Defendants “have policies, procedures, practices, or processes for vehicle development that include emission control systems designed to comply with U.S. laws and regulations related to vehicle certification and emission standards.”

The VW Defendants have implemented or changed a number of policies pursuant to this requirement. For example, EEO has responsibility for submitting U.S. emissions certification, and its authority in that regard is segregated both functionally and organizationally from product development. EEO has the authority to make final certification submission decisions, and to hire, train, and evaluate the job performance of its personnel. EEO, along with the Group Powertrain Development Legislation/Emissions Consumption (K-GEAG) and Technical Conformity departments in Germany, share responsibility for interpreting applicable U.S. legal requirements.

During vehicle development, emissions compliance is monitored and formally reviewed at various stages within the VW Defendants’ Product Emergence Process (“PEP”). The PEP is a program management structure that the VW Defendants use to govern the development, manufacture, and certification of vehicles (also referred to as “projects”) and their associated powertrains.

The PEP has been revised in several ways to achieve transparency and compliance with U.S. laws and regulations. First, brand-level departments now provide guidance on regulatory requirements and document status updates on regulatory targets throughout the PEP’s successive stages. Second, the newly-created Technical Conformity departments have been assigned responsibilities throughout the PEP, including responsibility for applicable legal and regulatory requirements. Third, the PEP now includes specific tasks that address vehicle certification requirements, including emissions, applicable to each vehicle project. Fourth, milestones in the PEP have been front-loaded in an effort to minimize changes late in the process.

The VW Defendants have also established a number of committees and processes (including escalation processes) to set emissions and CO<sub>2</sub> targets for individual vehicle projects, designed to achieve overall fleet and individual vehicle compliance. For example, steering committees at both the brand and Group levels, which are comprised of members from various departments, monitor and document emissions compliance and escalate issues using a documented and transparent process.

## **(2) Emissions Certification Testing of Both Production and In-Use Vehicles**

The Consent Decrees required the Certification Group to conduct – or retain a qualified contractor to conduct – emissions certification testing of both production and in-use vehicles. The Consent Decrees also required the Certification Group to complete a number of specific tasks regarding testing of certification vehicles pursuant to EPA regulations. Specifically, the Certification Group must plan the testing program, obtain the vehicles, confirm that the configuration of the test vehicles is representative of the production vehicles, and conduct the testing (or hire a qualified contractor to do so).

The brand Technical Conformity (ET) departments are responsible for certification testing. When such testing is conducted for U.S. certification purposes, the results are sent to EEO, which is responsible for emissions certification submissions.

As of October 1, 2017, AUDI created a new department for laboratory testing – Vehicle Test Rigs Emissions/Consumption (I/EW-5) – that reports to the head of Development. VW Passenger Cars, however, maintained an organizational structure in which the emissions laboratories, while functioning as independent testing entities, remain under the organizational framework of Powertrain Development (EA).

In-Use Verification Program responsibilities are currently split between VW GOA QA and EEO. VW GOA QA has primary responsibility over routine IUVP testing, while EEO is responsible for the following specific components of the IUVP testing program: (a) In-Use Confirmatory Program (“IUCP”) testing (which involves resolution of non-compliant IUVP testing results); (b) IUVP TDI testing; and (c) the VW Defendants’ EPA- and CARB-approved IUVP “catch-up” program (because VW Defendants’ annual IUVP testing regime is behind schedule).

The VW Defendants’ Test Center California (“TCC”) also plays a role in certification testing of both production and in-use vehicles. TCC is used for IUVP emissions testing (along with a contract lab in Michigan and another lab in Colorado for altitude testing). TCC also supports Consent Decree-mandated PEMS testing. TCC’s responsibilities do not extend beyond testing and reporting the data to the Certification Group. In addition, certification testing was performed at TCC for the new Atlas model, under the supervision of VW Passenger Cars’ Technical Conformity Department.

## **(3) Supervision and Training of Personnel**

The Certification Group must also “[s]upervise all certification personnel, provide appropriate training, and control access to certification vehicles.”

VW AG prepared “basic training for certification personnel for technical conformity in the Group.” Among other things, the training addresses compliance with U.S. requirements governing emissions, including potential penalties. The training is to be managed by HR and must be “annually repeated . . . by [a] supervisor with required attendance and employee signature as proof of training.” VW AG also developed a plan

for implementing mandatory and comprehensive training for VW Passenger Cars Technical Conformity (ET) personnel, and AUDI developed a similar plan for AUDI ET personnel. VW GOA has also developed a plan to ensure adequate IUVS supervision and training.

The VW Defendants took measures to control access to certification vehicles. Such measures include: (1) a so-called “work instruction” that requires a notice be placed in the windshield of a certification vehicle making clear that it is a “certification vehicle” and warning “Do not change any soft- or hardware without written approval of the ETA [Technical Conformity Homologation Powertrain] representative”; (2) rules prohibiting access to “approval vehicles without consulting the administrator responsible”; and (3) TCC reception and security process descriptions, including emission laboratory rules limiting access, and a certification vehicle labeling process description.

## **2. Group Steering Committees (U.S. CD ¶ 14; Cal. CD ¶ 13)**

### **a) Description of Obligation**

The Consent Decrees required the VW Defendants to establish and maintain entities for monitoring and complying with U.S. laws regarding vehicle certification and vehicle emissions by July 12, 2017. These entities were referred to as “Group Steering Committees” in the U.S. Consent Decree, and as “Project Management Offices” in the California Consent Decree. In practice, the VW Defendants call these bodies Group Steering Committees (“GSCs”), and therefore they are referred to as such in this report. The Consent Decrees required the VW Defendants to establish rules of procedure (“Rules of Procedure”) for the GSCs, setting forth specific “tasks, authorities, and responsibilities” (“TARs”), including:

- Documenting significant current U.S. laws, regulations, and legislation related to vehicle certification and automotive emissions;
- Tracking future developments in U.S. law related to vehicle certification and automotive emissions;
- Monitoring and assisting the VW Defendants’ compliance with U.S. requirements regarding exhaust emission standards and technology; and
- Establishing internal procedures and controls for the VW Defendants in order to achieve compliance with U.S. requirements regarding exhaust emission standards and technology.

### **b) Establishment of Group Steering Committees**

The VW Defendants have three GSCs. Two were established in an effort to comply with the Consent Decrees’ requirements: (1) the GSC on Emissions Legislation & Fleet Compliance, established in October 2016; and (2) the GSC on Vehicle Compliance, established in May 2017. A third committee, the GSC on CO<sub>2</sub>, was

established in 2009. On June 27, 2017, the Group Board of Management approved Rules of Procedure defining the TARs for each of the GSCs, making the respective Rules of Procedure effective that day.

The three GSCs coordinate vehicle compliance at the Group, brand, and regional levels with respect to the three principle regulatory regimes governing vehicle emissions: U.S. (EPA and CARB); Europe (Worldwide Harmonized Light Vehicle Test Procedure (WLTP)); and China. Each brand, in turn, has counterparts to the GSCs to monitor execution of the GSC policies and mission at the brand level. To the extent that compliance with any U.S. laws regarding vehicle certification and vehicle emissions does not fit squarely within the defined responsibilities of any GSC, responsibility falls to the GSC on Vehicle Compliance.

### c) **GSC Rules of Procedure**

The Rules of Procedure for each of these GSCs assigned the following TARs:

- GSC on Vehicle Compliance: This committee is responsible for establishing internal procedures and controls so that individual vehicles achieve compliance with applicable exhaust emission standards. The committee is also responsible for certification testing and monitoring issues.
- GSC on Emissions Legislation & Fleet Compliance: This committee is responsible for documenting significant current laws related to vehicle certification and automotive emissions, and for establishing internal procedures and controls in order to achieve compliance with fleet-wide exhaust emissions standards. In the event of any non-compliance with these fleet-wide emissions standards, this committee is further responsible for taking the necessary corrective actions. The committee is also responsible for establishing product development-related internal procedures and controls to achieve compliance with related requirements. The VW Defendants separated that function from the GSC on Vehicle Compliance, in order to maintain a segregation of duties between product development and certification testing.
- GSC on CO<sub>2</sub>: This committee is focused on CO<sub>2</sub>-related issues. The committee is responsible for monitoring and ensuring compliance with laws, regulations, and legislation related to fleet-wide CO<sub>2</sub> emissions laws, and for establishing internal procedures and controls to achieve such compliance.

The GSC Rules of Procedure also contain several provisions designed to achieve accountability, transparency, and compliance. First, the GSCs must prepare a written record for all meetings that identifies the place, date, attendees, agenda, and the essential content of discussions. The record must also provide an explanation for the adoption or rejection of any resolution. Second, each GSC must regularly report resolutions to the

Technical Conformity Committee, which in turn reports directly to the Group Board of Management. Third, a representative from VW GOA must “be present” at meetings that include “discussion related to U.S. laws, regulations, or legislation or to the certification of vehicles in the U.S.,” and the VW GOA representative must have voting rights. Fourth, decision-making must be unanimous; absent unanimity, the issue must be escalated to the Technical Conformity Committee “without delay.”

If a GSC “intends to adopt a resolution on an action that could involve an action for products already on the market,” the GSC “must consult with the [Product Safety Committee, in German *Ausschuss für Produktsicherheit* or “APS”] at the affected Brand(s) prior to taking the intended action.” If the Product Safety Committee of an affected brand and the GSC cannot agree on a course of action, the Technical Conformity Committee must be notified and the case must be escalated to the Group Committee Top Clearing Product Safety and Conformity.

### **3. Portable Emissions Measurement System Testing (U.S. CD ¶ 15; Cal. CD ¶ 14)**

#### **a) Description of Obligation**

The Consent Decrees required Portable Emissions Measurement System (“PEMS”) testing of two defined sets of model year 2017, 2018, and 2019 light-duty vehicles. The first set was identified as 33% of the VW Defendants’ EPA-certified test groups within each model year (“VW Test Groups”). EPA may select the VW Test Groups, but if EPA has not done so by the relevant deadline, CARB may make the selection. If neither EPA nor CARB makes the selection, the VW Defendants select the VW Test Groups.

The second set of model year 2017, 2018, and 2019 vehicles for PEMS testing was described in the Consent Decrees as a vehicle from each of the two VW Test Groups with highest projected sales at the time of certification.

The Consent Decrees required that the VW Defendants retain a Third-Party Emissions Tester to conduct testing on the second set of vehicles. The Consent Decrees also permitted the same Third-Party Emissions Tester to be used for the required testing on the first set of vehicles.

PEMS testing of both sets of vehicles must be conducted according to methods recorded before testing begins, and the Third-Party Emissions Tester must use test methods “independently from” the VW Defendants. Sample vehicles from each VW Test Group subject to testing must be randomly selected, and testing must be carried out on U.S. public roads under real-world driving conditions over a range of ambient temperatures and pressures. The driving conditions may include conditions not represented in the Federal Test Procedures or other test procedures designated by California authorities.

The VW Defendants were required to submit a test plan to EPA for review and approval, and to CARB for review, by August 11, 2017. The test plan was required to include a list of the VW Test Groups, a written statement of qualifications of the Third-Party Emissions Tester, a list of all emissions, vehicle, and engine parameters to be measured and recorded, a description of test methods to be used, a template for the PEMS testing summary report by the VW Defendants required by the Consent Decrees, and an explanation of how the VW Defendants intended to satisfy the Consent Decrees' requirements related to PEMS testing. Under the California Consent Decree, the VW Defendants and the Third-Party Emissions Tester were also required to "make best efforts to provide 10-days written notice to CARB before commencing testing."

For each of the three model years, the VW Defendants and Third-Party Emissions Tester were required to submit a PEMS testing summary report ("PEMS Summary Report") for both sets of vehicles to EPA and CARB. The reports must include the test data, a statement of all test methods used, and an executive summary of the data and methods. The VW Defendants must post the PEMS Summary Reports (redacted of Confidential Business Information ("CBI") or personal information, though no test methods and results may be claimed as CBI) in English and German to the public website [www.VWCourtSettlement.com](http://www.VWCourtSettlement.com). If any of the PEMS data suggests the potential presence of an undisclosed Auxiliary Emissions Control Device, or is otherwise anomalous or inconsistent with the certification application, the VW Defendants must comply with reasonable written requests from CARB to review and discuss the data.

For the 2017 model year, the deadline for completing PEMS testing was December 31, 2017; the deadline for submitting the PEMS Summary Report to EPA and CARB was March 1, 2018; and the deadline for publicly posting the PEMS Summary Reports was March 22, 2018.

#### **b) Independent Third-Party Emissions Tester**

As permitted by the Consent Decrees, and as approved by EPA on October 5, 2017, the VW Defendants elected to use a Third-Party Emissions Tester to conduct all PEMS testing set out in the Consent Decrees.

After reviewing six candidates' responses to a request for proposals, the VW Defendants retained the University of California, Riverside ("UC-R") for this role. UC-R is a public university in the University of California system and is wholly owned by the State of California.

UC-R in turn enlisted the services of AVL List GmbH (AVL), an Austria-based company specializing in vehicle testing and powertrain development, "to provide the PEMS units and to ensure the units are properly calibrated and maintained."

The VW Defendants disclosed prior financial relationships with UC-R and AVL in the test plan submitted to EPA and CARB on August 11, 2017. The financial relationships with UC-R disclosed by the VW Defendants were: (1) sponsorship by VW GOA in February 2017 of UC-R's 7th International PEMS Conference and Workshop;

and (2) hiring UC-R to conduct formaldehyde testing in August 2016. Prior financial relationships with AVL included 23 contracts since 2010 for emissions equipment and related maintenance, calibration, certification, repair, and support.

On April 27, 2018, the VW Defendants notified the ICA in writing of a third financial relationship with UC-R. The VW Defendants described the contractual relationship, commenced on July 5, 2017, as “confidential retention by Ramboll Environ US Corporation on behalf of VWGoA for purposes of conducting PEMS testing in connection with certain civil litigation matters.” The VW Defendants informed the ICA that they identified the issue for EPA during a teleconference on May 4, 2018, and for CARB during a teleconference on May 14, 2018. The VW Defendants said they informed both EPA and CARB that an updated disclosure would follow.

On May 15, 2018, the VW Defendants notified the ICA that they were working with UC-R to develop a “Two-Side Ethical Wall Agreement” that would require UC-R “to utilize different personnel to work on PEMS testing under the 3PCD/CA 3PCD and the litigation defense matter.” The VW Defendants also informed the ICA that they were working to confirm that no additional financial relationships exist between UC-R and the VW Defendants by: (1) requesting a revised disclosure from UC-R of all financial relationships involving the VW Defendants; (2) conducting additional internal inquiries at EEO and TCC; and (3) asking the VW Defendants’ outside counsel to confirm that they are not aware of any undisclosed financial relationships between the VW Defendants and UC-R.

On July 3, 2018, the VW Defendants submitted a supplement to the test plan to EPA and CARB that identified additional financial relationships with UC-R. The financial relationships were: (1) “[r]etention by University of California, Berkeley of UC Riverside Office of Research on behalf of Volkswagen of America, Inc. (‘VWGoA’) for development of Environmentally-Friendly Navigation (EFNav) techniques,” (2) “[r]etention by VWGoA of The Regents of the University of California on behalf of its Riverside campus for investigations into machine learning algorithms for the purpose of illumination-invariant feature detection and tracking,” (3) “[c]onfidential retention by Ramboll Environ US Corporation of ‘The Regents of the University of California on behalf of the University of California, Riverside CE-CERT’ on behalf of VWGoA for purposes of conducting PEMS testing in connection with certain civil litigation matters,” and (4) “[r]etention by UC Riverside, CE-CERT of the VWGoA Test Center in Oxnard, CA to conduct correlation emissions testing on 5 Porsche-branded vehicles over the Federal Test Procedure cycle and the SCO3.”

On July 16, 2018, the VW Defendants provided the ICA a signed copy of the “Two-Side Ethical Wall Agreement” between VW GOA, UC-R, and Ramboll Environ US Corporation. Among other requirements, the agreement required that no persons at UC-R “shall work on or otherwise be involved with efforts related to” both PEMS testing for the Consent Decrees and work for Ramboll Environ US Corporation. In the agreement, UC-R also “represents and warrants that at no time have engagements with the Volkswagen Entities or other entities during the PEMS [testing for the Consent

Decrees] . . . adversely affected UCR's ability to discharge its duties . . . with independence.”

**c) Test Plan**

As referenced above, the VW Defendants submitted the required test plan to EPA and CARB on August 11, 2017. On October 2, 2017, the VW Defendants supplemented their plan with several clarifications regarding the VW Test Groups. EPA approved the test plan on October 5, 2017.

EPA and CARB declined to use their authority to designate the VW Test Groups. Accordingly, following discussions with EPA, the VW Defendants selected the VW Test Groups.

The test plan identified a total of 23 EPA-certified test groups for model year 2017. Nine of these test groups were selected as VW Test Groups. Two additional test groups were added for purposes of testing the test groups with the highest projected sales for the model year at the time of certification. The test plan therefore provided for PEMS testing on 11 test groups (nine to represent 33% of the EPA-certified groups, and two to represent the models with the highest projected sales).

The VW Defendants reported in the test plan that the VW Test Groups selected covered the full range of configurations of emission control systems in the VW Defendants' light-duty vehicles for the 2017 model year, and did not include any VW Test Groups that were certified using carry-over emissions data.

**d) Testing**

In the PEMS Summary Report, UC-R reported that it conducted 2017 model year testing in accordance with the EPA-approved test plan. UC-R reported that it tested, configured, and operated all vehicles. For this testing, EEO randomly selected and procured nine vehicles at auction and two from customers. UC-R also reported that PEMS testing was conducted under real-world driving conditions over a range of ambient temperatures and pressures. The VW Defendants informed the ICA that, in accordance with the test plan, UC-R installed the PEMS units and AVL maintained and calibrated them. Model year 2017 testing was conducted between August 29, 2017 and October 12, 2017.

EEO conducted pre-test inspection and safety checks on the vehicles tested by UC-R. This procedure was consistent with the test plan, which had stated that the Certification Group would “assess these vehicles for condition, safety, and to ensure they reflect series production in that they have not undergone any after-market modification.” UC-R communicated to the VW Defendants that these procedures did not compromise UC-R's PEMS testing.

**e) PEMS Summary Report**

On March 1, 2018, the VW Defendants submitted a PEMS Summary Report by UC-R for model year 2017 to EPA and CARB. The report covered UC-R's testing of both required sets of vehicles. After sharing that version with the regulators, the VW Defendants revised the report to correct typographical errors. The corrected report was posted to the public website in English and German on March 21, 2018. The VW Defendants provided the agencies with a copy of the corrected report on April 23, 2018. The VW Test Groups in the PEMS Summary Report matched those listed in the EPA-approved test plan.

**f) Violation**

On April 25, 2018, the VW Defendants recognized they had not complied with the requirement in Paragraph 14(c)(iii) of the California Consent Decree to provide 10-days written notice to CARB before commencing Model Year 2017 PEMS testing, notice which should have been provided before commencing testing in August 2017. On April 30, 2018, VW Defendants notified the ICA that the VW Defendants had "been unable to locate any notice provided to CARB in accordance with [California Consent Decree] Paragraph 14(c)(iii)." On May 14, 2018, the VW Defendants notified CARB of the violation.

The VW Defendants have confirmed that those responsible for the PEMS testing are now aware of this notice requirement and intend to ensure that CARB is provided 10-days written notice before commencing Model Year 2018 and 2019 PEMS testing.

**g) Recommended Actions to Achieve Compliance**

The ICA is not recommending additional actions to achieve compliance at this time. The ICA will consider other measures if the VW Defendants fail to provide the required notice during the next review period. General recommendations regarding overall compliance with the Consent Decrees are listed above.

**4. Definition of Managers' Responsibilities (U.S. CD ¶ 17; Cal. CD ¶ 16)**

**a) Description of Obligation**

The Consent Decrees required the VW Defendants to "define the tasks, authorities, and responsibilities [TARs] of the managers involved in the Product Development Process with respect to compliance with U.S. environmental laws and regulations" by August 11, 2017.

**b) Definition of TARs for Managers**

The VW Defendants first completed a scoping exercise to identify relevant managers. Positions were considered in scope if they met three criteria: (1) involvement in the motor vehicle Product Development Process, as the term "Product Development Process" was defined in the Consent Decrees; (2) responsibility for compliance with

environmental laws and regulations in the Product Development Process; and (3) possession of a management contract and disciplinary authority over direct reports. VW Passenger Cars identified 493 positions that met these criteria; AUDI identified 516 positions; Group identified 43 positions; and VW GOA identified 23 positions.

The VW Defendants represented that they completed the scoping exercise by July 28, 2017, and that they finalized the TARs for the identified managers by August 11, 2017.

## **5. Implementation of the “Golden Rules” (U.S. CD ¶ 16; Cal. CD ¶ 15)**

### **a) Description of Obligation**

The Consent Decrees required the VW Defendants to implement the internal procedures set out in the VW Defendants’ “Golden Rules Handbook” by October 10, 2017. The VW Defendants were required to conduct this implementation “by establishing internal controls and rules of procedure, and by defining the tasks, authorities, and responsibilities for the business units, committees, and boards involved in the Product Development Process, including, but not limited to, the Product Safety Committee (also known as ‘APS’), the Change Control Board, and the Type Approval, Recyclability and Functional Safety Department (also known as ‘EGDT’).” The implementation of software and information technology was permitted to extend beyond October 10, 2017.

Additionally, the Consent Decrees required the VW Defendants to “conduct regular employee training regarding the internal procedures” and to “monitor implementation of these procedures through the VW Defendants’ Governance, Risk, and Compliance (‘GRC’) process.”

### **b) The Golden Rules**

The Golden Rules are a set of thirteen mandatory processes, each of which is supported by a series of “minimum requirements.” There are a total of 109 minimum requirements, and they prescribe the implementation of certain controls and best practices to optimize the operation of the Internal Control System in the VW Defendants’ product development process. The Golden Rules focus on three main areas: control unit software development (Rules 1-7); powertrain emissions type identification and series/field monitoring (Rules 8-10); and escalation management to the Product Safety Committee (Rules 11-13). The Golden Rules were designed to be implemented by the departments of the VW Defendants at the “business unit” level.

The Golden Rules are set out in the “Golden Rules Handbook,” defined by the Consent Decrees as “the specific internal procedures developed by” the VW Defendants “to optimize [their] operational internal control system, which focuses on control unit software development, testing and monitoring procedures for vehicle certification, and escalation management in the Product Safety Committee (also referred to as ‘APS’).” The Consent Decrees permitted “reasonable modification” to these internal procedures in consultation with DOJ and the California authorities.

## **c) Implementation**

### **(1) Definition of “Implementation”**

The VW Defendants took the position that the Golden Rules implementation requirement in the Consent Decrees had called for “[a]t a minimum, controls, rules of procedure, and tasks, authorities and responsibilities” which were “documented” by October 10, 2017. The VW Defendants further stated that “[i]n the majority of instances,” the documents that contained this information were “process standards, process descriptions (including swimlanes), work instructions, escalation rules, formal Rules of Procedure, and internal control matrices.” The business units were also responsible for preparing training materials and providing proof that the new processes had been communicated to the relevant employees.

To the extent any of these documents were in draft form as of October 10, 2017, the VW Defendants considered them implemented if the “necessary internal controls, rules of procedure, or TARs were made effective pursuant to the business units’, committees’, or boards’ normal procedures.” For example, even though “from a formal point of view . . . process standards are effective when signed and released . . . , it is common to use draft versions as a binding policy until the final version has been released.”

The VW Defendants only viewed the implementation of the Golden Rules with respect to engine control units (ECUs) as mandatory, explaining that the “Golden Rules applicable to control unit software development (Rules 1 to 7) apply directly only to ECU software development,” and the remaining Golden Rules are not control-unit specific. The VW Defendants, however, “voluntarily” applied the Golden Rules to transmission control units (TCUs) and other control units (OCUs), but “did not intend to modify” what the VW Defendants describe as the “more limited obligation” under the U.S. Consent Decree. The VW Defendants notified DOJ of their position “by October 10, 2017,” stating that “[a]lthough the control unit process described in the Golden Rules applies directly only to the ECU, VW [Defendants] have expanded the implementation to the software development process for the transmission (TCU) given its potential relevance to emissions.” The VW Defendants also informed DOJ that they “started evaluating the possibility of implementing the Golden Rules to control units other than the ECU and TCU, and expected that work to continue past October 2017.” The Consent Decrees did not specify the type of control unit subject to the Golden Rules. This First Annual Report generally discusses the implementation efforts where ECUs and TCUs are concerned.

### **(2) Identification of Affected Business Units**

The VW Defendants identified the business units affected by the Golden Rules, with respect to ECUs and TCUs, based on the original internal audit report that had first identified the process weaknesses giving rise to the Golden Rules. VW AG then directed each of those business units to develop procedures implementing the Golden Rules by October 10, 2017, and tasked the PMO with overseeing the project. The individual business units had primary responsibility for implementing applicable Rules of Procedure

and internal controls; approximately 120 business units were affected or considered to be in scope.

### **(3) VW Passenger Cars**

At VW Passenger Cars, the PMO provided central coordination of the implementation of the Golden Rules across the applicable business units, specifically Powertrain Development (EA), Electric/Electronics (EE), Chassis (EF), Body and Trim (EK), Technical Conformity (ET), and Whole Vehicle Development (EG). (The PMO also coordinated the implementation at the Group level in Group Quality Vehicles (K-GQF-P) and Group Quality Product Safety (K-GQP).) Each of the business units established its own team to execute the implementation within the business units. The PMO tasked the business units with designing, drafting, and implementing the processes and internal controls, along with developing the regular training on the processes, by September 27, 2017, with a final review to be conducted by the PMO by October 10, 2017.

The PMO “did not perform any content review” of the content created by the business units, “as the business units were responsible for their deliverables as well as their implementation process.” The business units regularly reported the implementation status to the PMO through regular meetings, one-page status updates, and periodic tables which tracked the implementation at the minimum-requirement level. Some of these process standards were in draft form as of October 10, 2017. A process standard for Golden Rules Nos. 8 and 9 for the North American Region still existed only in draft form at the end of 2017. The VW Defendants have stated that the relevant employees were adhering to the proper processes by October 10, 2017, and understood the draft to have been “binding on October 10, 2017.”

The VW Defendants reported to the ICA that the business units, to monitor their compliance, looked to the Internal Audit findings communicated to them prior to the issuance of the Internal Audit Golden Rules audit reports. As discussed below, the audit reports all indicated some level of criticality, with no report resulting in an overall “green” or low criticality score. Also, as discussed below, Internal Audit has represented that its findings do not provide information about whether the Golden Rules have been implemented in accordance with the Consent Decrees.

As previously noted, the ICA’s review of the VW Defendants’ compliance with their Golden Rules implementation obligation is ongoing, and the ICA continues to plan and conduct audit procedures regarding the implementation of the Golden Rules.

### **(4) AUDI**

At AUDI, the same business units were affected as at VW Passenger Cars: Powertrain (I/EA), Electric/Electronics (I/EE), Chassis (I/EF), Body/Trim (I/EK), Technical Conformity (I/ET), and Whole Vehicle Development (I/EG), with the addition of Automated Driving (I/EX), Audi Quality Assurance (I/GQ), and Technical Service (I/GS). At the business unit level, the heads selected experienced individuals with

appropriate technical expertise to implement the Golden Rules, and assembled special teams to carry out the implementation. For example, Powertrain Development (I/EA) dedicated a specific department, Powertrain Process Compliance (I/EA-C), to be responsible for Golden Rules implementation activities.

Through April 25, 2017, the business units reported weekly to Internal Audit on the implementation status of the minimum requirements. After that date, the business units reported to the PMO on a weekly basis, until October 10, 2017. The heads of the business units have confirmed the completion of their responsibilities by the deadlines.

#### **(5) VW GOA**

VW GOA assessed the scope of the Golden Rules and determined that only two minimum requirements, both associated with Golden Rule 9, were applicable to VW GOA's operations and processes. Those minimum requirements address the IT system used to store data, and the definition and implementation of a permissions and user roles system to ensure the integrity and protection of measurement data. The Senior Director of the TCC is primarily responsible for implementing those two minimum requirements. According to the VW Defendants, the "TCC worked closely with GOA's PMO and Legal Department, with specific assistance from data privacy and emissions lawyers," and also regularly consulted with TCC's Business Management Lead, in implementing those requirements. VW GOA represented that "TCC's implementation of Golden Rule 9 did not involve any other business units or brands; all work was done in TCC with consultation from VW GOA IT, VW GOA Legal, and GOA's PMO," as well as from VW AG.

To implement Golden Rule 9, VW GOA held IT workshops and drafted an Emissions Laboratory Data Security and Transfer Process to ensure data integrity and the prevention of data manipulation. These activities were completed by September 29, 2017. In addition, the VW Defendants have represented that "TCC's implementation of the IT-based solution is ongoing," and, as an "IT solution[]," it did "not necessarily need to be implemented by the 180-day deadline" found in the Consent Decrees.

#### **d) Employee Training**

As noted above, the business units were also responsible for preparing training materials and providing proof that the new processes had been communicated to the relevant employees. The Consent Decrees did not specify a deadline for completing this training.

Training methods have varied across VW Passenger Cars depending on the business unit and Golden Rule. For example, many business units have provided online, web-based training offering a general overview of the Golden Rules, and several (such as Powertrain Development (EA) and Whole Vehicle Development (EG)) have conducted training courses in a classroom setting, covering specific processes of several Golden Rules. For ECUs, the VW Defendants have represented that all training materials were "developed" by April 2017. The training materials were developed by the individual

business units, and Volkswagen Academy and AUDI Academy provided central coordination of the training.

At AUDI, the business units have delivered “[c]omprehensive training sessions for ECU/TCU processes” and developed a “Golden Rules’ online qualification program for the vast majority of technical development staff.” AUDI has mandatory online training regarding all Golden Rules across ECUs, TCUs, and OCUs for “all managers and indirect employees of the technical development department as well as executives and employees in the quality assurance [department].”

Both VW Passenger Cars and AUDI have conducted in-person and online training relating to each Golden Rule. Online training is still in the process of being implemented for several aspects of the Golden Rules, including training to understand the special features of ECUs and TCUs, and training relating to the APS reporting process.

VW GOA has conducted training for certain employees affected by the two “minimum requirements” associated with Golden Rule 9 that VW GOA determined apply to it.

**e) Monitoring Golden Rules Implementation Using the GRC Process**

The Consent Decrees required the VW Defendants to monitor their implementation of the Golden Rules through the companies’ Governance, Risk, and Compliance process. The companies’ GRC process is a risk assessment addressing the companies’ processes and systemic risk.

In 2017, Group Risk Management instituted a pilot program for monitoring the Golden Rules through the annual GRC (“Annual GRC”) process, whereby three of the thirteen Golden Rules were added to the GRC process for VW AG and AUDI, as follows:

- Golden Rule 3 – Changes relevant to certification;
- Golden Rule 4 – Change Control Board decision committee; and
- Golden Rule 13 – APS process.

As part of the Annual GRC process, the monitoring of these Golden Rules was documented in the RMS/ICS Compliance Reporting System (“RICORS”) database. Countermeasures and management controls related to the above Golden Rules were documented in RICORS by the relevant departments and underwent a plausibility check by the Risk Management departments at VW AG and AUDI. Management controls were then tested through self-assessments, peer reviews, and external review (VW AG) or external review alone (AUDI).

The Annual GRC process for these three pilot rules was completed in February 2018. The VW Defendants informed the ICA that Risk Management is not planning on

re-testing any of the management controls, but that the VW Defendants do intend for all relevant management controls to be tested through external review as part of the Annual GRC process for 2018. Group Risk Management is now in the process of adding the monitoring of all 13 Golden Rules to the 2018 Annual GRC.

**f) Definition of TARs for Business Units, Committees, and Boards**

The VW Defendants were also required to “defin[e] the tasks, authorities, and responsibilities for the business units, committees, and boards involved in the Product Development Process, including, but not limited to, the Product Safety Committee, the Change Control Board, and the Type Approval, Recyclability and Functional Safety Department (EGDT).” These TARs were often included in the Rules of Procedure developed for specific product development processes for ECUs, TCUs, and OCUs.

Business units responsible for control units developed TARs for the head of the business unit, such as the head of AUDI’s Powertrain Development (I/EA). Other business units with responsibility for OCUs, such as the VW Passenger Cars departments for Electric/Electronics (EE), Chassis (EF), and Body and Trim (EK), also established TARs. In addition to the business units, the VW Defendants established TARs for the three Group Steering Committees described previously.

For the Product Safety Committees at VW Passenger Cars and AUDI, responsible for addressing safety defects and related compliance issues for vehicles that have been brought onto the market, revised Rules of Procedure established the TARs. The revised Group APS Policy took effect July 1, 2017, after which each brand was responsible for establishing its own Rules of Procedure consistent with that policy. AUDI’s current APS Rules of Procedure had an effective date of August 1, 2017, and VW Passenger Cars’ current APS Rules of Procedure had an effective date of July 1, 2017.

For the Change Control Boards, the VW Defendants’ process standards for ECUs, TCUs, and OCUs specify the TARs.

**J. WHISTLEBLOWER SYSTEM (U.S. CD ¶¶ 20 & 21; Cal. CD ¶¶ 19 & 20)**

This section of the First Annual Report describes the VW Defendants’ efforts to comply with obligations regarding a Whistleblower system. The ICA continues to plan and conduct audit procedures related to these obligations, and will do so throughout the three-year audit term.

**a) Description of Obligation**

Under the Consent Decrees, the VW Defendants were required to implement and maintain the Volkswagen Group Whistleblower system, which had been approved in September 2016 by the Group Board of Management, by October 10, 2017. The Consent Decrees required that the Whistleblower system be administered by professionally educated and trained employees. Also, violations of U.S. environmental laws or

regulations were to be designated as “serious violations” within the meaning of the VW Defendants’ Whistleblower policy. Finally, the Consent Decrees required that the Annual Report by VW Defendants include a certified report regarding case tracking of all Whistleblower alerts regarding violations of U.S. environmental protection laws or regulations.

**b) Efforts by VW Defendants**

**(1) Implementation and Maintenance of the Group Whistleblower System**

The Volkswagen Group Whistleblower system approved by the Group Board of Management on September 12, 2016 (the “Initial Whistleblower Policy”) had an effective date at VW AG of January 1, 2017. The Initial Whistleblower Policy established 25 contact points for receiving and processing reports of alleged misconduct. It required the brands and companies with contact points to ensure that the standards contained in the Initial Whistleblower Policy were implemented at their respective entities, which could be accomplished by adopting their own policies. The AUDI Whistleblower system, based on the Initial Whistleblower Policy, was approved by the AUDI Board of Management in writing without a formal meeting on August 25, 2017, and carried an effective date of October 1, 2017.

VW GOA’s Board of Directors tentatively approved the Initial Whistleblower Policy on September 6, 2017, and formal Board approval occurred on September 21, 2017. VW GOA maintains the Whistleblower system used by GOA Chattanooga.

The VW Defendants undertook other activities to implement the Group Whistleblower system by October 10, 2017. VW AG had established additional channels for reporting alleged misconduct, including an e-mail inbox, a toll-free international telephone number, and an online Business Keeper Monitoring System tool, available both internally and externally. VW AG indicated that it had also begun processing reports of alleged misconduct according to the procedures established in the Initial Whistleblower Policy.

AUDI had begun receiving reports of alleged misconduct and processing them according to the Initial Whistleblower Policy in January 2017, prior to formally adopting its own version of the Initial Whistleblower Policy and creating its own investigation office by October 1, 2017.

VW GOA had continued to advertise its Ethics Hotline, which existed prior to the Group Whistleblower system, making information relating to the Ethics Hotline more prominent on the VW GOA intranet. (VW GOA continues to use the Ethics Hotline as a tool for receiving reports of alleged misconduct.) VW GOA had also distributed its Code of Conduct (which advertises the VW AG Whistleblower toll-free number) through the intranet, internet, internal e-mail, and hard copies. Additionally, prior to October 10, 2017, VW AG, AUDI, and VW GOA had discussions regarding the Whistleblower system through conference calls and in-person meetings.

During 2017, Group revised the Initial Whistleblower Policy to create a more centralized system, reducing the number of contact points for receiving reports of alleged misconduct to four, among other changes. This revised Group Whistleblower policy (the “Revised Whistleblower Policy”) was approved by the Group Board of Management in August 2017, with an effective date for VW AG of November 1, 2017.

AUDI revised its Whistleblower system in accordance with the Revised Whistleblower Policy, and the revised system was approved by AUDI’s Steering Committee Regulations (having been delegated this authority by the AUDI Board of Management) on October 27, 2017. The effective date for the revised Whistleblower system at AUDI was November 1, 2017. Other brands and companies, including VW GOA, are still in the process of implementing a revised Whistleblower system.

From November 2017 into 2018, the VW Defendants continued to advertise to and communicate with employees concerning the existence of the Group Whistleblower system in a number of ways, such as by including information on the Group Whistleblower system in training sessions for employees, and communicating information to employees via e-mail, the intranet, and posters.

## **(2) Professionally Educated and Trained Employees**

The employees responsible for administering the Whistleblower system at VW AG and AUDI are all trained as attorneys and/or compliance professionals. The majority of the Compliance personnel responsible for administering the Whistleblower system for both VW AG and AUDI were hired in 2017. VW GOA’s Chief Compliance Officer, who started on May 1, 2017 and has the primary role in the VW GOA Whistleblower system, is also an experienced compliance professional.

## **(3) Designation of Violations of U.S. Environmental Laws as “Serious” Under the Whistleblower Policy**

Both the Initial Whistleblower Policy and the Revised Whistleblower Policy designate violations of any environmental protection law or regulation a “serious” violation. Reports of “serious” violations, if determined to be plausible, are assigned to an investigating unit, and the investigation results are reported to Compliance personnel.

## **(4) Report on Case Tracking**

As noted above, in the Annual Report by VW Defendants, the VW Defendants are required to report Whistleblower alerts relating to violations of U.S. environmental protection laws or regulations. Each VW Defendant has a different process for determining which hints should be included in the report. At VW AG, the Compliance personnel responsible for administering the Whistleblower system first determine whether the hint relates to vehicle certification or emissions fuel consumption. If it does, they determine whether the vehicles at issue are either meant to be exported to the United States or are manufactured in the United States.

It was initially reported to the ICA that the next step, if the vehicles have one of these connections to the United States, was for VW AG Compliance personnel to conduct the normal plausibility check under the Whistleblower policy to determine whether the hint can be substantiated. If the hint is plausible, it is reported to the Group PMO, where a final determination is made on whether it should be included in the Annual Report by VW Defendants.

VW AG subsequently reported that they follow a broader approach when reporting hints to the PMO. The ICA plans on reviewing this process during the next review period.

The Compliance personnel responsible for administering the Whistleblower system at AUDI initially reported to the ICA that they assess whether hints received at AUDI have a connection to the United States and are emissions-relevant. If the answer to both of these two questions is yes, without conducting a plausibility check, the hint is reported to the PMO at AUDI, who consults with external counsel to determine if a potential reporting obligation exists. If the answer to that question is yes, it is reported to the Group PMO for a determination on whether it should be included in the Annual Report by VW Defendants.

AUDI subsequently reported that they follow a broader “Case Tracking Reporting” process. The ICA plans on reviewing this process during the next review period.

At VW GOA, the Chief Compliance Officer reviews all hints received through VW GOA’s Ethics Hotline to determine whether there is a potential reporting obligation based on a potential violation of U.S. environmental laws or regulations.

The Annual Report by VW Defendants filed on April 13, 2018 includes descriptions of “relevant hints” for purposes of the VW Defendants’ reporting obligation under the Consent Decrees.

## **K. ADDITIONS TO THE EMPLOYEE SURVEY (U.S. CD ¶ 22; Cal. CD ¶ 21)**

### **1. Description of Obligation**

The Consent Decrees required that, by July 12, 2017, the VW Defendants “create for inclusion in their annual employee survey a question to monitor progress of the VW Defendants’ integrity campaign.” They also required, for “teams whose work includes matters related to compliance with U.S. environmental laws,” the inclusion of “questions in appropriate managers’ guides to the annual employee survey to gauge compliance with U.S. laws or regulations relating to environmental compliance.” Additionally, the “VW Defendants shall establish a centralized process to monitor and address employee survey responses relating to the integrity campaign.” In each Annual Report by VW Defendants, the VW Defendants were required “to provide a summary of survey results relating to the integrity campaign.”

## **2. Efforts by VW Defendants**

### **a) Employee Survey and Integrity Question**

Since 2008, the VW Defendants have conducted an annual employee survey called the *StiBa*, short for *Stimmungsbarometer* or “mood barometer.” The *StiBa* is sent to all employees in all participating brands, companies, and regions, but taking the survey is voluntary and anonymous. Under the Consent Decrees, the VW Defendants were required to include in the *StiBa* a question to monitor progress of the VW Defendants’ Integrity campaign.

The *StiBa* presents employees with declarative statements and asks whether the employee strongly agrees, agrees, has a mixed opinion, disagrees, or strongly disagrees with the statement.

The VW Defendants developed a question (“Integrity Question”) using the following statement: “In our OU [Organizational Unit], everyone can act with integrity.” The Integrity Question was approved by the Group Board of Management on June 20, 2017. The Integrity Question was included in the 2017 *StiBa*, which was conducted during September – November 2017.

### **b) Centralized Process to Monitor and Address Employee Survey Responses**

The VW Defendants supplemented their usual *StiBa* follow-up processes to incorporate follow-up related to the new Integrity Question. The *StiBa* results were used to develop follow-up activities that support the Integrity Question mandate. Specifically, using a centralized process, the VW Defendants created special activities, called Centers of Excellence (for certain organizational units) and Best Practice Workshops (for certain managers), to follow up on the Integrity Question. The VW Defendants also supplemented the standard *StiBa* follow-up processes, which cover all of VW’s businesses and geographies, with activities and materials consistent with the Integrity campaign.

### **c) *StiBa* Managers’ Guides**

The Consent Decrees required the VW Defendants to include questions in their *StiBa* guide for certain managers (“*StiBa* Guide”) that would gauge compliance with U.S. environmental laws and regulations. The *StiBa* Guide is a written manual that aids managers in all aspects of the *StiBa* process, including follow-up activities linked to the survey results.

The VW Defendants developed a list of five questions for the *StiBa* Guide. The purpose of the questions was to raise awareness and promote continuous dialogue about the importance of compliance. The questions were designed to first identify which types of laws and regulations, if any, the manager’s team encounters during the course of their work. Then, more detailed questions assist the manager in determining whether any

employee answers raise potential concerns with respect to compliance with environmental laws and regulations, and include steps for dealing with any potentially concerning answers and identifying other resources that can be used by the manager to assist in the process.

*StiBa* Guides that included the added questions were distributed to the *StiBa* coordinators responsible for *StiBa* implementation and follow-up at VW AG, AUDI, and GOA Chattanooga. Some brands and entities had modified the questions to ensure they were applicable. For example, AUDI had developed additional content based on feedback it received from different departments. GOA Chattanooga had not modified the questions. As described below, VW GOA recently discovered that it had failed to include any version of the questions in its *StiBa* Guide.

#### **d) Annual Report by VW Defendants**

In the Annual Report by VW Defendants dated April 13, 2018, the VW Defendants provided a summary of survey results related to the new Integrity Question.

### **3. Violation**

The VW Defendants informed the ICA that, as a result of an inquiry from the ICA, on March 27, 2018, VW GOA discovered it had inadvertently failed to include the required questions in its *StiBa* Guides. After making this discovery, VW GOA drafted its own questions for inclusion in its *StiBa* Guides. The updated VW GOA *StiBa* Guides, including the questions, were distributed to VW GOA managers by internal e-mail on April 13, 2018. The VW Defendants notified DOJ and California authorities of this non-compliance on April 16, 2018.

### **4. Recommended Actions to Achieve Compliance**

In light of the steps taken by VW GOA after discovering its non-compliance, the ICA is not recommending additional actions to achieve compliance related to this specific obligation at this time. General recommendations regarding overall compliance with the Consent Decrees are listed above.

## **L. ADDITIONS TO THE CODE OF CONDUCT (U.S. CD ¶ 23; Cal. CD ¶ 22)**

This section describes the VW Defendants' efforts to comply with their Consent Decree obligations regarding the Code of Conduct. The ICA continues to plan and conduct audit procedures related to the Code of Conduct obligations, and will do so throughout the three-year audit term.

### **1. Description of Obligation**

Under the Consent Decrees, the VW Defendants were required to ensure by October 10, 2017 that their respective corporate Codes of Conduct included provisions regarding both environmental protection and responsibility for compliance. The VW Defendants also had to require all new employees to attend training regarding the Code of

Conduct. Finally, the VW Defendants were required to include a summary of training provided to employees regarding the Code of Conduct in each Annual Report by VW Defendants.

**2. Revision of the Code of Conduct to Include Environmental Protection and Responsibility for Compliance**

A cooperative project among Volkswagen AG and its subsidiaries and affiliates, led by Group Compliance, was carried out in 2017 to create Codes of Conduct with uniform content across all brands. The new Code of Conduct for each VW Defendant was published on or before October 10, 2017.

The current Codes of Conduct at VW AG, AUDI, and VW GOA (whose Code also applies to GOA Chattanooga) contain new uniform content for the “Our Responsibility for Compliance” and “Environmental Protection” provisions. The provision regarding responsibility for compliance sets forth a statement that all employees must act with honesty, integrity, and in an ethical manner, and highlights the importance of adhering to the Code of Conduct. The environmental protection provision describes a responsibility for the environmental compatibility and sustainability of Volkswagen’s products, locations, and services.

**3. Requirement that All New Employees Attend Training Regarding the Code of Conduct**

As of October 10, 2017, new employees at VW AG and AUDI were required to attend Code of Conduct training, which began in December 2017. At VW AG, training is available online and in-person. The training requirement is noted in a new employee’s “welcome folder,” wherein the employee is required to sign an acknowledgement form asserting, among other things, his or her awareness of mandatory training. Information regarding a newly hired employee’s obligation to participate in Code of Conduct training also appears on an internal website.

Generally, at VW AG, for in-person training, a list of new employees is generated monthly from Human Resources and provided to Volkswagen Academy, who, in turn, sends invitations to the employees. Volkswagen Academy notes each employee’s participation in the training portal, and Human Resources notes the participation in the employee’s training history. Similarly, for the web-based training, a list of new employees is generated on a monthly basis. The Volkswagen Academy then e-mails the new employees with a link to the training portal. The employee’s participation in the web-based training is logged in the portal, and Human Resources notes the participation in the employee’s training history. In the instance of an employee’s failure to participate in training, an escalation process is utilized.

VW AG reported to the ICA that, of the 3,546 new employees it hired from October 10, 2017 through March 31, 2018, 41% completed training on the VW AG Code of Conduct during this time period.

At AUDI, information on mandatory training is part of the employment contract. Prior to May 2018, only in-person training was available. In May, AUDI began offering a new web-based training program. Each month the HR Policy/Key Issues group generates a list of all new hires from the previous month. AUDI Academy pre-registers the employees for in-person training and sends an e-mail to the employee, requesting that they schedule a training appointment. (Alternatively, a supervisor may book the employee's appointment.) The personnel file of each participating employee documents attendance.

For the web-based training, self-registration is necessary. AUDI reported that digital confirmation of attendance will be maintained and documented in the employee's personnel file. If an employee fails to participate in Code of Conduct training, the supervisor is notified. If the failure continues, notice is sent to the relevant AUDI Board of Management member.

AUDI reported to the ICA that, of the 788 new employees it hired from October 10, 2017 through March 31, 2018, 19% completed training on the AUDI Code of Conduct during this time period.

VW GOA began its Code of Conduct Training program on October 9, 2017, and required all new employees as of that date and forward to participate in training. VW GOA only offers training online. When a new employee is hired, he or she receives a welcome e-mail that sets forth the trainings they must complete within 30 days of their start date. When an employee completes the training by receiving an 80% achievement score, a message is sent to the training team in the Human Resource Department, which maintains training records. The employee receives an e-mail from the Chief Compliance Officer on the 20th day after the employee's start date if they have not taken the training, and another e-mail from the Chief Compliance Officer, as well as an e-mail from the Executive Vice President of Human Resources, on the 30th day after the employee's start date if they have not taken training by then. To further encourage participation, managers receive a monthly list of employees who have not completed training.

VW GOA reported to the ICA that, of the 555 new employees hired from October 10, 2017 through March 31, 2018, 83% completed training on the VW GOA Code of Conduct during this time period.

GOA Chattanooga began its on-line training on March 26, 2018, after it upgraded its online learning management system.

GOA Chattanooga reported to the ICA that, of the 110 new employees hired from October 10, 2017 through March 31, 2018, 23% completed VW GOA Code of Conduct training during this time period.

The ICA will continue to review training of new employees and, as noted in Recommended Actions to Achieve Compliance, suggests that the VW Defendants maintain and report uniform training statistics.

#### **4. Inclusion of a Summary of Code of Conduct Training in the Annual Report by VW Defendants**

In the Annual Report by VW Defendants, the VW Defendants included an “Overview of Code of Conduct Training program(s).” This overview contained detailed information about Code of Conduct training efforts undertaken by the VW Defendants. Only VW AG, however, provided the total number of new employees trained, and none of the VW Defendants provided the percentage of new employees trained.

In the Annual Report by VW Defendants, submitted on April 13, 2018, VW AG reported that the total number of new and existing employees who had received Code of Conduct training was 2,260 and 36,854, respectively.

On July 11, 2018, VW AG reported to the ICA that there were inaccuracies in the calculation of the previously reported numbers. It was reported at that time that the correct number of new and existing employees who had received Code of Conduct training was 1,439 new employees and 1,523 existing employees. During the next audit period, the ICA will conduct additional reviews of the process used by the VW Defendants to calculate these numbers.

#### **M. THIRD-PARTY AND INTERNAL AUDITS**

This section describes the VW Defendants’ efforts to comply with their Consent Decree obligations regarding Environmental Management System (“EMS”) and Golden Rules audits. The ICA continues to plan and conduct audit procedures related to these obligations, and will do so throughout the three-year audit term. Also, as noted above, the ICA did not re-perform work conducted by third parties.

##### **1. Environmental Management System Audits (U.S. CD ¶ 24; Cal. CD ¶ 23)**

###### **a) Description of Obligation**

The Consent Decrees required the VW Defendants to “contract with and retain an independent third party” by July 12, 2017 to conduct certain EMS audits. These audits were to be conducted “pursuant to an industry-recognized standard for product development processes for vehicles to be certified for sale in the United States for each year for calendar years 2017, 2018, and 2019.” The EMS audits were required to include an assessment of the VW Defendants’ processes to comply with U.S. environmental laws and regulations, and recommendations for corrective actions.

The Consent Decrees did not define the term “product development processes,” used to describe the required standard for the audits, but did define the term “Product Development Process” as the “process to manage the development of motor vehicles, including research and development, quality assurance, and compliance with U.S. environmental laws for vehicles marketed and sold by Defendants in the United States[.]”

### **b) Selection of Independent Third-Party Auditor**

VW AG, AUDI, and VW GOA worked together to select a third party to conduct the EMS audits required by the Consent Decrees. Because the VW Defendants selected ISO 14001 as the applicable audit standard, as discussed below, they developed a list of accredited, experienced ISO 14001 auditors with offices in both the U.S. and Germany, based on publicly available information from the German accreditation body DAkkS. After soliciting and reviewing proposals from multiple auditors, the VW Defendants selected Bureau Veritas (“BV”).

The VW Defendants disclosed to the ICA the following prior financial relationships between the VW Defendants and BV subsidiaries: (1) BV subsidiary JR-WP Ausbildung und Dienstleistungs GmbH has approximately ten contracts with VW AG; (2) BV subsidiary BVQI Mexicana has two contracts with AUDI Mexico; and (3) BV subsidiary Inspectorate America Corp. has several contracts with VW GOA. In its EMS audit reports, BV stated that the individual EMS audit team members were “not previously involved in any business with Volkswagen defendants.”

### **c) EMS Design**

In soliciting offers from potential auditors and detailing performance needs, the VW Defendants defined the EMS to be audited as “the management system established by the VW Defendants to provide a structure to carry out specific activities related to environmental protection and compliance with U.S. environmental laws for vehicles marketed and sold by the VW Defendants in the United States.”

VW AG stated that its EMS was designed according to the international standard ISO 14001, which “covers environmental aspects of activities, products and services.” VW AG also stated that operational execution of homologation, certification, emission tests, and quality assurance is “covered by Technical Conformity, and not by EMS.” AUDI’s EMS was also designed according to ISO 14001, and excludes the same functions identified as excluded from VW AG’s EMS. In preparation for compliance with the Consent Decrees, VW GOA developed an EMS for the product development process or “PDP.”

### **d) Selection of “Industry-Recognized Standard”**

The VW Defendants chose ISO 14001:2015 as the “industry-recognized standard” necessary to fulfill their EMS audit obligations under the Consent Decrees.

The International Organization for Standardization (“ISO”) is a global federation of national governmental and non-governmental auditing and accreditation organizations. The membership of the ISO committee that developed the 14001:2015 standard included ISO member bodies from 82 nations, including the American National Standards Institute from the United States. Over 300,000 EMSs within the automotive industry and other industrial sectors have achieved ISO 14001 certification.

In the VW Defendants' request for proposals for the Consent Decree audits, the VW Defendants explained their selection of the ISO 14001:2015 standard on the grounds that: (1) ISO standards have worldwide applicability; (2) ISO 14001:2015 applies to environmental management systems; and (3) ISO 14001:2015 section 8.1 "covers the product development process (PDP) as part of its lifecycle perspective." The VW Defendants explained that "ISO 14001 is the only world-wide applicable industry-recognized standard that addresses environmental management system requirements." No other standards or frameworks were considered.

ISO 14001 lists the intended outcomes of an EMS as including "enhancement of environmental performance; fulfillment of compliance obligations; [and] achievement of environmental objectives." The standard defines an "audit" as the process to obtain statements, facts, or records relevant to the audit criteria, and evaluating that information "to determine the extent to which the audit criteria are fulfilled."

The ISO standard has ten clauses with multiple sub-clauses describing various elements of a possible EMS. For an audit, the standard can be used "in whole or in part." BV's final audit reports list the specific ISO 14001 clauses and sub-clauses that were included and excluded from the audit.

#### **e) Audit of the Product Development Process**

The VW Defendants' Request for Quotation ("RFQ") required the audit to "cover processes to ensure the compliance with U.S. environmental laws and regulations regarding the product development process of vehicles." The RFQ identified the two processes of "vehicle PDP" and "engine PDP" as covered by the EMS audit. The RFQ further noted that production and site issues are excluded from the scope because they are "already covered by external (and internal) audits." Accordingly, in its response to the RFQ, BV excluded production and site issues from the audit scope.

BV defined the scope of each Consent Decree audit as "the product development process for vehicles sold in the US (currently only passenger vehicles are sold in the US)." The objective of the Consent Decree audit, according to BV, was to evaluate "whether the product development process is able to ensure compliance with applicable US laws and regulations for vehicles," excluding legal requirements related to on-site activities (for example, emission test benches).

BV had to determine which sites and functions were carrying out PDP activities within this scope. Both VW AG and AUDI are involved in the PDP, and "the whole product development process was audited" at both. VW GOA, however, "only has limited involvement in the product development process," and therefore the relevant departments had to be identified. At a kick-off meeting in May 2017, the PMO and VW GOA determined that EEO in Auburn Hills, MI, TCC in Oxnard, CA, the Engineering and Planning Center ("EPC-E") in Chattanooga, TN, and GOA Chattanooga (the production plant in Chattanooga) would be "potentially relevant locations in the EMS audit." BV audited all four locations, although the audits of EPC-E and GOA Chattanooga were conducted "so that [it] could make its own final and independent

determination as to the EMS audit scope at VWGoA.” BV determined which of these four entities had PDP responsibilities, and therefore was in scope for the EMS audit required by the Consent Decrees, as follows:

- EEO conducts vehicle homologation activities, and therefore was deemed in scope.
- Test Center California was deemed in scope for the 2017 audit. Some VW personnel expressed the position that TCC should not be considered in scope because it is a blind test center which deals with clients, rather than a portion of the PDP process which would require awareness of the product being tested and having some end goal. However, BV found that TCC was in scope. BV stated in its final EMS audit report for VW GOA that the TCC “was also audited due to their emissions testing responsibilities.” BV explained that TCC is “not part of the PDP” but TCC “does have an indirect connection [to the PDP] because [TCC] provid[es] vehicle emissions testing services and vehicle workshop services for other entities within VWGoA and as well as for external customers.”
- EPC-E was deemed out-of-scope. EPC-E is located in Chattanooga, approximately one half-mile from the Chattanooga manufacturing plant, a completely separate facility. The head of EPC-E explained that although it is part of “technical development,” EPC-E is not involved in the VW Defendants’ PDP. VW GOA stated that the facility neither designs nor develops engines or software; it has no responsibility for release sovereignty, software development, or engine development. Representatives of EPC-E explained that it provides launch support for the manufacturing plant, supplier support, technical media analysis, and other tasks unrelated to PDP. After a site visit and process overview were conducted, BV’s final audit report for VW GOA concluded that EPC-E “is an engineering center that provides support for technical project management, vehicle integration, and product optimization but is not involved in the vehicle development or design activities.”
- GOA Chattanooga was deemed out-of-scope. VW GOA representatives noted that no PDP activities occur at the Chattanooga manufacturing plant, and that instead it is a manufacturing plant that assembles cars for sale in the U.S. after PDP has occurred in Germany. After conducting a facility tour, BV concluded that the facility was “clearly not within the PDP scope” and that there were “no interfaces with the PDP process.”

**f) Relevant Vehicles**

In the RFQ process, the VW Defendants defined the scope of the audit to cover the PDP for “vehicles to be certified for sale in the United States for calendar years 2017, 2018, and 2019.” As noted above, BV indicated that only passenger vehicles are sold in the U.S., limiting the applicable scope of the audits of the PDP to that subset of vehicles.

BV noted in its final reports that, given the “timeline of the PDP (several years)” and “the recent implementation of the revised version,” some vehicles “approved for sale in the USA could have been partly developed under a former version of the PDP, which was not required to be assessed under the Third Partial Consent Decree.”

**g) Assessment of “Processes to Comply with U.S. Environmental Laws and Regulations”**

BV stated in its audit reports that the “objective of the [EMS audit] was to conduct an EMS audit to an industry-recognized EMS standard for the PDP and evaluate the EMS effectiveness to validate compliance with applicable U.S. environmental laws and regulations for vehicles certified for sale in the United States.” This involved assessment of efforts to: (1) enhance environmental performance; (2) fulfill compliance obligations for U.S. environmental laws and regulations for vehicles certified for sale in the U.S.; and (3) achieve environmental objectives.

For each audit location, the PDP was evaluated against those three factors to determine whether appropriate and effective measures were in place to “assure compliance against environmental regulatory requirements for vehicles certified for sale in the U.S. market.” BV stated in its final EMS audit reports for VW AG and AUDI that, to make this assessment, it conducted “an on-site visit, [attended] process overview presentations for selected functional departments associated with the PDP, [conducted] interviews and question-and-answer sessions with process managers,” and “[reviewed] corresponding documentation for verification/confirmation of management system implementation.”

In reviewing the VW Defendants’ “processes to comply with U.S. environmental laws and regulations,” the VW Defendants informed the ICA that BV generally considered: (1) the PDP overall; (2) the VKO and VEX (regulation coordinators and experts, respectively) process, including use of the GETEX regulatory database; (3) the software change management process; and (4) the processes for vehicle emission testing and homologation. The VW Defendants indicated that, during the audits, examples of U.S. environmental laws and regulations were discussed, but BV’s focus was more on the overall processes. BV made “no warranty or guarantee that all Volkswagen vehicles meet all applicable U.S. emissions laws or regulations.”

**h) EMS Auditor’s Recommendations for Corrective Actions**

The Consent Decrees required the EMS audits to include recommendations for corrective actions. BV included these recommendations in its final audit reports. The audit reports described two types of deviations that can lead to a recommendation for corrective actions: (1) major deviations; and (2) minor deviations. Major deviations would be those where BV observed, “[b]ased on objective evidence, the absence or significant failure to implement and/or maintain conformance to the requirements of the applicable clauses of ISO 14001:2015 or Volkswagen’s internal EMS.” No major deviations were identified.

Minor deviations are classified as those where a “management system weakness is detected, but . . . does not affect the capability of the EMS to achieve its intended outcomes.” BV identified minor deviations for each VW Defendant subject to the EMS auditing obligations. For each minor deviation, the VW Defendants developed a corrective action plan, and BV reviewed and approved each proposed corrective action.

The public EMS audit report for VW AG lists three minor deviations and related corrective action:

**Table3: Environmental Management System Deviations and Corrective Actions**

Finding #	Rank	Clause	Description	Corrective Action/Recommendation
W-EMS-01	Minor	5.2 Environmental Policy	The environmental policy has been updated strengthening the responsibility for environmental compliance. This policy had not been finalized or formally published at the time of the audit.	The updated version of the Environmental Policy was updated and approved on 12/1/2017.
W-EMS-02	Minor	9.1 Monitoring, Measurement, Analysis and Evaluation	Defined key process indicators related to the Environmental Management System do not consider the performance evaluation.	The following process indicators have been defined to assess the environmental management system: <ul style="list-style-type: none"> <li>• Number of planned vs conducted audits</li> <li>• Number of major and minor deviations (per audit)</li> <li>• Number of improvements (per audit)</li> <li>• Review of open measures</li> </ul>
W-EMS-03	Minor	9.2 Internal Audit	The independence of internal environmental auditors was not documented in the description of the work instruction for internal environmental audits so the independence of the internal audit completed in 2016 could not be fully ensured.	The independence for the execution of the internal audits is now formally defined in a work instruction/process standard 2018.

The public EMS audit report for AUDI lists one minor deviation and related corrective action:

**Table3: Environmental Management System Deviations and Corrective Actions**

<b>Finding #</b>	<b>Rank</b>	<b>Clause</b>	<b>Description</b>	<b>Corrective Action/Recommendation</b>
A-EMS-01	Minor	Internal specification for key process indicators	It was not yet possible to fully evaluate the effectiveness of the management system, because most processes have only recently been implemented. There is no integral evaluation of the processes on the basis of the key process indicators.	Definition of Key performance indicators (KPI's) for processes in the different action levels in the R&D department. All processes will include KPI's in conjunction with the Quality management handbook. This will be implemented no later than CW 42 in 2018.

The public EMS audit report for VW GOA lists two minor deviations and related corrective action:

**Table 3: Environmental Management System Deviations and Corrective Actions**

<b>Finding #</b>	<b>Rank</b>	<b>Clause</b>	<b>Description</b>	<b>Corrective Action/Recommendation</b>
EEO-EMS-01	Minor	4.3 Scope of EMS	An Environmental Management Manual at EEO has been developed but had not been finalized or approved yet at the time of the audit.	The EMS Manual was finalized and approved by EEO's management on February 5, 2018.
EEO-EMS-02	Minor	9.2 Internal Audit	An internal audit at EEO specific to the elements of the newly developed EMS had not yet occurred at the time of the audit but was scheduled for Q1 of 2018.	The internal audit was conducted March 27-28, 2018. Audit plans will be developed for all future internal audits at VWGoA.

In the next review period, the ICA will continue to review the actions taken by the VW Defendants to complete these recommendations for corrective actions.

**2. EMS Audit Reports (U.S. CD ¶ 25; Cal. CD ¶ 24)**

**a) Description of Obligation**

Upon completion of each EMS audit report, the VW Defendants must provide DOJ and CARB with a copy of the report. To the extent that the report contains CBI, the VW Defendants must also simultaneously provide DOJ and CARB with a version that can be made publicly available. No emissions method may be designated as CBI.

In addition, within 21 days after a copy is provided to the government authorities, the VW Defendants must post a copy of the annual EMS audit report, redacting any CBI or personal information, in English and German versions on the public website required under the Consent Decrees.

**b) EMS Audit Report Distribution and Posting**

BV prepared separate EMS audit reports for VW AG, AUDI, and VW GOA. BV completed its report for VW AG in March 2018, following its audit of the Wolfsburg facility on November 13-16, 2017 and December 4, 2017. VW AG disclosed the completed report to DOJ and CARB on March 21, 2018. VW AG publicly posted the audit report on the public website, [www.VWCourtSettlement.com](http://www.VWCourtSettlement.com), in German and English, on April 10, 2018. There are no redactions in the report.

BV completed its EMS audit report for AUDI in March 2018, following its audit of the Ingolstadt facility on November 17 and 20-21, and December 18, 2017. VW AG disclosed this report to DOJ and CARB on March 21, 2018. AUDI posted the report on the public website, [www.VWCourtSettlement.com](http://www.VWCourtSettlement.com), in German and English, on April 10, 2018. As with the VW AG report, there are no redactions in the report.

BV completed its report for VW GOA in April 2018, following its audits of the Chattanooga, TN (EPC-E) facilities (February 9, 2018), Auburn Hills, MI (EEO) facilities (December 6-7, 2017), Oxnard, CA (TCC) facilities (February 6-7, 2018), and GOA Chattanooga facilities (February 9, 2018). VW GOA disclosed this report to DOJ on April 18, 2018, and posted it on the public website [www.VWCourtSettlement.com](http://www.VWCourtSettlement.com) on or before May 8, 2018. The report does not contain redactions.

**3. Internal Audit of Golden Rules Implementation (U.S. CD ¶ 18; Cal. CD ¶ 17)**

**a) Description of Obligation**

Pursuant to the Consent Decrees, by April 13, 2018, the VW Defendants were required to “conduct an internal audit to track the implementation of the internal procedures in the ‘Golden Rules’ Handbook . . . .” This audit was required to “assess the effectiveness of those internal procedures and propose any corrective actions to improve their effectiveness.”

**b) Internal Audit**

To address the VW Defendants’ obligations under the Consent Decrees, the Internal Audit Departments of VW Passenger Cars and AUDI conducted a total of 17 audits at VW Passenger Cars, AUDI, and VW GOA (including GOA Chattanooga). Nine of these internal audits were completed during the third and fourth quarters of 2017:

1. VW GOA (including GOA Chattanooga): APS and Emissions Type Identification;

2. VW Passenger Cars: ECU Diesel and Gasoline Engines;
3. VW Passenger Cars: TCU;
4. VW Passenger Cars: APS;
5. VW Passenger Cars: Emissions Type Identification;
6. AUDI: Escalation Management within the Product Safety Committee;
7. AUDI: Control Unit Software Development – ECU;
8. AUDI: Control Unit Software Development – TCU; and
9. AUDI: Emissions Type Identification.

All of the corresponding audit reports for these audits were issued in November and December 2017. The audited business units had the opportunity to provide documentation to address (and rectify) internal audit findings after the conclusion of the audit field work, but before issuance of the final audit reports. As a result, the audit reports' findings were current as of the report issuance dates in November and December 2017.

An additional eight audits were completed in the first quarter of 2018. The reports for those audits were issued in early April 2018.

1. VW Passenger Cars: Electronic Stability Control and Electric Brake Booster;
2. VW Passenger Cars: HV-Inverter, HV-DC/DC-Converter and 48V Belt Starter Generator;
3. AUDI: Control Unit Software Development at I/EA-A;
4. AUDI: Control Unit Software Development at I/EA-T;
5. AUDI: Control Unit Software Development at I/EF;
6. AUDI: Control Unit Software Development at I/EK;
7. AUDI: Control Unit Software Development at I/EE-8; and
8. VW Passenger Cars: Battery Management System HV, Battery Management System 48V, Ob-board Charger, and DC/DC Converter 48V.

The Internal Audit departments informed the ICA that they did not intend these audits to evaluate whether the Golden Rules had been “implement[ed]” for purposes of Paragraph 16 of the U.S. Consent Decree and Paragraph 15 of the California Consent Decree. The VW Defendants explained this approach with their conclusion that

Paragraph 18 of the U.S. Consent Decree did not correspond to Paragraph 16. Based on this conclusion, the VW Defendants explained that the Consent Decrees did not require Internal Audit to audit the implementation of the Golden Rules required by Paragraph 16. As a result, the Golden Rules audit reports did not contain evaluations of whether the Golden Rules had been implemented by October 10, 2017.

The VW Defendants represented to the ICA that “Internal Audit looked beyond the limits and scope of the Golden Rules audits required by the [Consent Decrees].” For example, the VW Defendants stated that the scope was “expanded by applying processes outside the requirements of the Golden Rules, such as the application of the organizational guideline for risk management systems and internal control systems (ORL 53).” The audits also expanded the “geographical scope” by auditing the “implementation of rules in non-U.S. markets.” The VW Defendants informed the ICA that, accordingly, “the final audit results are influenced by findings relating to the implementation of Golden Rules, but also by requirements that add to or are unrelated to the Golden Rules.”

**c) Tracking the “Implementation of the Internal Procedures”**

The Consent Decrees required the VW Defendants’ Golden Rules audits to “track the implementation” of the Golden Rules to the extent they relate to “vehicle approval procedures with respect to U.S. environmental laws and regulations, ECM Software development in the Product Development Process, and escalation management in the Product Safety Committee.”

The VW Defendants utilize a “traffic light” scoring system as a standard audit assessment approach. Each of the audit reports scored the results of the entire audit, as well as each of the Golden Rules, with a “traffic light” score. The scores indicate the criticality of the internal audit conclusions: green (low criticality); yellow (medium criticality); red-yellow (high criticality); and red (very high criticality).

Most of the audits assigned a high or very high criticality score to Golden Rules implementation across companies, control units, and business units. The “red” and “red/yellow” findings typically indicated that various processes were either not documented, not effective, or not auditable at the time the audit report was issued. Certain processes had been in place for a very short time before the commencement of the audit field work, resulting in the absence of any documentation to be audited. In such instances, when the Internal Audit department had no audit evidence to assess, the process was assigned a rating of either red or red/yellow.

**d) Assessing Effectiveness**

The Consent Decrees further required that the Golden Rules audits “assess the effectiveness” of the audited internal procedures.

The overall ratings within the audit reports were determined by aggregating the results in three categories used by Internal Audit: (1) design of processes; (2) effectiveness; and (3) management controls. The “design of processes” component

assessed the establishment of processes and objectives, external and internal requirements, definitions of responsibilities, and process and management controls. “Effectiveness” analyzed whether the process steps and related internal controls were performed as defined and intended, whether they fulfilled the objectives of the processes, and whether they were able to comply with the related external and internal requirements. Finally, “management controls” considered the control activities, defined and performed by management, to assess operational effectiveness of the processes and their internal controls.

The following charts provide an overview of results for each of the audit reports described above, including the date of issue of each. According to the VW Defendants, “the audit reports comprise the core elements design, effectiveness and management controls for each control unit (where applicable) and each Golden Rule. Internal Audit uses a number of factors such as economic damage, non-compliance, reputational damage, and the impact on the risk management system and internal control system for the assessment.” According to this approach, “in general, the most critical finding is used to determine the status of the traffic light for an audit. As a result, an audit could contain one or more additional findings that are not critical or less critical than the overall traffic light reported for the audit.” The “n/a” finding for “Control Unit Software Development at I/EE-8” at AUDI occurred because Internal Audit concluded that the Golden Rules were not applicable to the “48V DC/DC Converter” for I/EE-8.

Audited Company	Year	Report Issue Date	Audit Title	Golden Rules Audited	Traffic Light
AUDI	2017	12/20/2017	Control Unit Software Development ECU	1 – 7	
		12/20/2017	Control Unit Software Development TCU	1 – 7	
		12/20/2017	Emissions Type Identification	8 – 10	
		12/20/2017	Escalation Management within the Product Safety Committee or APS	11 – 13	
	2018	04/04/2018	Control Unit Software Development at I/EA-A	1, 3 – 7	
		04/04/2018	Control Unit Software Development at I/EA-T	1 – 7	
		04/04/2018	Control Unit Software Development at I/EF	1 – 7	
		04/04/2018	Control Unit Software Development at I/EK	1 – 7	
		04/04/2018	Control Unit Software Development at I/EE-8	1 – 7	n/a

Audited Company	Year	Report Issue Date	Audit Title	Golden Rules Audited	Traffic Light
Group/VW Passenger Cars	2017	12/05/2017	ECU Diesel and Gasoline Engines	1 – 7	●
		12/15/2017	TCU	1 – 7	●
		12/21/2017	Emissions Type Identification	8 – 10	●
		12/08/2017	APS	11 – 13	●
	2018	04/09/2018	Battery Management System HV, Battery Management System 48V, Ob-board Charger, and DC/DC Converter 48V	1 – 7	●
		04/09/2018	Electronic Stability Control and Electric Brake Booster	1 – 7	●
		04/09/2018	HV-Inverter, HV-DC/DC-Converter and 48V Belt Starter Generator	1 – 7	●
VW GOA (including GOA Chattanooga)	2017	11/09/2017	APS and Emission Type Identification	9 – 11	●

Traffic light: Criticality of the internal audit conclusions

- low
- medium
- high
- very high

### e) Corrective Actions

The Consent Decrees required that the internal audits “propose any corrective actions to improve [the Golden Rules’] effectiveness.” The audit reports contained follow-up corrective actions to improve the effectiveness of the internal procedures provided in the Golden Rules Handbook. All findings resulted in corrective actions (also referred to as “remediation proposals”), with specific due dates for implementation. The 2017 and 2018 audits identified 176 and 240 corrective actions, respectively. Of these corrective actions, 83 action items from the 2017 audits were due by March 31, 2018. As of April 9, 2018, these 83 action items were still under examination by the Internal Audit departments for the purpose of closing them. The due date for the remainder of the corrective actions from the 2017 and 2018 audits are outside of the time period covered by this Report. The ICA notes that the implementation of the corrective actions is the responsibility of the departments and business units in question. The ICA will continue to review the VW Defendant’s implementation of these corrective actions during the next review period.

## **N. NEXT STEPS**

The ICA's next annual report will incorporate the time period from April 14, 2018 through April 13, 2019. During that review period, the ICA will continue to assess the VW Defendants' ongoing compliance with the Consent Decrees' requirements, as well as the VW Defendants' implementation of the Recommended Actions to Achieve Compliance set forth by the ICA in this First Annual Report.

## Appendix

Paragraph(s) in Consent Decrees	Injunctive Relief for the VW Defendants <i>[Volkswagen Parties]</i> *
<p>¶¶ 13 – 19 (U.S. CD) ¶¶ 12 – 18 (Cal. CD)</p>	<p><b>Product Development Process</b></p>
<p>¶ 13 (U.S. CD) ¶ 12 (Cal. CD)</p>	<p><u>Segregation of Duties between Product Development and Certification Testing/Monitoring for the VW Defendants.</u>            Within 180 Days after the Effective Date, the VW Defendants shall implement measures to ensure that employees involved in certification testing and monitoring for purposes of vehicle certification under the Clean Air Act <i>[and California law]</i> are organizationally separate from product development. The VW Defendants shall form and maintain an organizationally separate certification group (“Certification Group”) to manage, supervise, and conduct certification testing and monitoring. The Certification Group shall:</p> <ol style="list-style-type: none"> <li>a. Ensure that the VW Defendants have policies, procedures, practices, or processes for vehicle development that include emission control systems designed to comply with U.S. laws and regulations <i>[including California laws and regulations]</i> related to vehicle certification and emission standards;</li> <li>b. Conduct, or retain a qualified contractor to conduct, emissions certification testing of both production and in-use vehicles;</li> <li>c. Plan the testing program, obtain the vehicles, confirm that the configuration of the test vehicles is representative of the production vehicles, and test or retain a qualified contractor to test the certification vehicles consistent with EPA’s <i>[and CARB’s]</i> regulations for certification and in-use performance testing. The Certification Group may utilize testing facilities and technicians assigned to other units within the VW Defendants’ organization provided that the Certification Group controls the certification testing; and</li> <li>d. Supervise all certification personnel, provide appropriate training, and control access to certification vehicles.</li> </ol>
<p>¶ 14 (U.S. CD) ¶ 13 (Cal. CD)</p>	<p><u>Establishment of VW Defendants’ Group Steering Committee(s) <i>[Project Management Office(s)]</i>.</u>            Within 90 Days after the Effective Date, the VW Defendants shall establish and maintain one or more Group Steering Committees <i>[Project Management Office(s)]</i>, for monitoring and complying with current and future U.S. laws <i>[including California laws]</i> regarding vehicle certification and vehicle emissions. The VW Defendants shall establish rules of procedure for the Group Steering Committee(s) <i>[Project Management Office(s)]</i> and shall define its tasks, authorities, and responsibilities, which shall include: (1) to document significant</p>

\* Places where the California Consent Decree differs from the U.S. Consent Decree are *[bracketed in italics with blue font]*. The California Consent Decree uses “Volkswagen Parties” to refer to the same four entities named “VW Defendants” in the U.S. Consent Decree, and “Porsche Parties” to refer to the “Porsche Defendants” in the U.S. Consent Decree. Except for here, this Appendix does not note that difference or other differences that are stylistic only.

	<p>current U.S. laws, regulations, and legislation <i>[(including California laws, regulations, and legislation)]</i> related to vehicle certification and automotive emissions, and track future developments in U.S. law <i>[(including California law)]</i> related to vehicle certification and automotive emissions; (2) to monitor and assist the VW Defendants’ compliance with U.S. requirements <i>[(including California requirements)]</i> regarding exhaust emission standards and technology; and (3) to establish internal procedures and controls for the VW Defendants in order to achieve compliance with U.S. requirements <i>[(including California requirements)]</i> regarding exhaust emission standards and technology.</p>
<p>¶ 15 (U.S. CD) ¶ 14 (Cal. CD)</p>	<p><u>PEMS Testing by the VW Defendants.</u> <i>[The testing required by this paragraph is the same testing required by paragraph 15 of the US Third Partial Consent Decree, subject to certain additional terms applicable to the Volkswagen Parties and CARB.]</i></p> <p>a. The VW Defendants (under the supervision of the Certification Group) shall test certain model year 2017, 2018, and 2019 light-duty motor vehicles using portable emissions measurement system (“PEMS”) testing. For each model year, the VW Defendants shall perform PEMS testing on 33% of VW Defendants’ EPA-certified test groups within that model year (“VW Test Groups”). For purposes of determining the number of VW Test Groups composing 33%, the VW Defendants shall round up or down to the nearest whole VW Test Group number closest to 33%. EPA may select the VW Test Groups for testing under this Paragraph 15.a pursuant to the following schedule: for model year 2017, by no later than February 1, 2017; for model year 2018, by no later than December 31, 2017, or at the annual certification meeting with EPA, whichever is earlier; and for model year 2019, by no later than December 31, 2018, or at the annual certification meeting with EPA, whichever is earlier. If EPA does not select the VW Test Groups pursuant to the schedule set forth in this Paragraph 15.a, then the VW Defendants shall select the VW Test Groups for PEMS testing. The VW Defendants shall select the VW Test Groups for model year 2017, model year 2018, and model year 2019 that will cover, in the aggregate, the full range of configurations of emission control systems on their light-duty vehicles for those model years, and shall not select a VW Test Group that was certified using carryover emissions data from another VW Test Group that has already been tested pursuant to this Paragraph (unless necessary to meet the 33% requirement). All testing under Paragraph 15.a for model year 2017 shall be completed by December 31, 2017. All testing under Paragraph 15.a for model years 2018 and 2019 shall be completed by September 30 of the calendar year for which the applicable model year is named, except that the VW Defendants and the United States may agree to a later date (but in no case later than December 31 of the applicable model year) sufficient to enable the VW Defendants to complete PEMS testing of the selected model year. The VW Defendants may, but are not required to, use the Third-Party Emissions Tester required by Paragraph 15.b to conduct the testing required by this Paragraph 15.a.</p> <p><i>[The corresponding sub-paragraph of the California Consent Decree, 14.a, reads as follows: The Volkswagen Parties (under the supervision of the Certification Group) shall test certain model year 2017, 2018, and 2019 light-duty motor vehicles using portable emissions measurement system (“PEMS”) testing. For each</i></p>

*model year, the Volkswagen Parties shall perform PEMS testing on 33% of Volkswagen Parties' EPA-certified test groups within that model year ("Volkswagen Test Groups"). For purposes of determining the number of Volkswagen Test Groups composing 33%, the Volkswagen Parties shall round up or down to the nearest whole Volkswagen Test Group number closest to 33%. Volkswagen shall test those Volkswagen Test Groups selected by EPA pursuant to Paragraph 15(a) of the Third Partial Consent Decree between Defendants and the United States, lodged with the Court on January 11, 2017 (Dkt. #2758 in 15-MD-2672) (the "US Third Partial Consent Decree"). If EPA does not select the Volkswagen Test Groups pursuant to the schedule set forth in Paragraph 15(a) of the US Third Partial Consent Decree, CARB will attempt to confer with EPA in an effort to arrive at a common list of test groups to be tested by the Volkswagen Defendants, and, if EPA fails to select the Volkswagen Test Groups for any given year by the applicable deadline, CARB will have 10 business days following the applicable EPA selection deadline to designate the Volkswagen Test Groups for that model year. If CARB also fails to select the Volkswagen Test Groups for any given year by the applicable deadline, Volkswagen will designate the Volkswagen Test Groups for that model year. The Volkswagen Parties shall select the Volkswagen Test Groups for model year 2017, model year 2018, and model year 2019 that will cover, in the aggregate, the full range of configurations of emission control systems on their light-duty vehicles for those model years, and shall not select a Volkswagen Test Group that was certified using carryover emissions data from another Volkswagen Test Group that has already been tested pursuant to this Paragraph (unless necessary to meet the 33% requirement). All testing under this Paragraph 14.a for model year 2017 shall be completed by December 31, 2017. All testing under Paragraph 14.a for model years 2018 and 2019 shall be completed by September 30 of the calendar year for which the applicable model year is named, except that the Volkswagen Parties and EPA may agree, under the US Third Partial Consent Decree, to a later date (but in no case later than December 31 of the applicable model year) sufficient to enable the Volkswagen Parties to complete PEMS testing of the selected model year. The Volkswagen Parties may, but are not required to, use the Third-Party Emissions Tester required by Paragraph 14.b to conduct the testing required by this Paragraph 14.a.]*

- b. In addition to the requirements of Paragraph 15.a, [14.a] the VW Defendants shall retain an independent third-party emissions tester ("Third-Party Emissions Tester"). (The VW Defendants and Porsche Defendants may hire the same Third-Party Emissions Tester.) No attorney-client relationship shall exist or be formed between any VW Defendant and the Third-Party Emissions Tester. For each of model year 2017, 2018, and 2019, the VW Defendants shall ensure that the Third-Party Emissions Tester conducts PEMS testing on a vehicle from each of two VW Test Groups. Testing under this Paragraph 15.b [14.b] does not count toward the testing required under Paragraph 15.a [14.a]. These VW Test Groups selected for testing under this Paragraph 15.b [14.b] shall be the VW Test Groups with the highest projected sales for the model year at the time of certification, or if applicable those VW Test Groups selected by EPA [(or, if EPA fails to make a selection pursuant to Paragraph 15(a)) of the US Third Partial Consent Decree, those test groups

*selected by CARB*) by letter to the VW Defendants, pursuant to Section XV *[XIV]* (Notices). Any such letters shall be provided no later than June 30 of the year for which the model year is named. All testing under this Paragraph 15.b *[14.b]* shall be completed by December 31 of the calendar year for which the applicable model year is named.

- c. The VW Defendants shall satisfy the testing required by Paragraph 15.a *[14.a]* as follows, and shall ensure that the Third-Party Emissions Tester satisfies the testing required by Paragraph 15.a and b *[14.a and b]* as follows:
  - i. Test a VW Test Group by testing one sample vehicle procured at random from the series production vehicles from that selected VW Test Group;
  - ii. Perform the required third-party PEMS testing on public roads in the United States, and perform all PEMS testing under real-world driving conditions over a range of ambient temperatures and pressures (including conditions not represented on the Federal Test Procedure *[or any other test procedure designated by CARB]*) to measure emissions that are detectable on a serial vehicle via PEMS of the vehicle's regulated criteria air pollutants and CO<sub>2</sub>; and
  - iii. Conduct the required PEMS testing according to test methods recorded before the testing commences. The Third-Party Emissions Tester shall use test methods independently from the VW Defendants. *[The Volkswagen Parties and Third-Party Emissions Testers will make best efforts to provide 10 days written notice to CARB before commencing testing.]*
- d. Within 120 Days after the Effective Date, the VW Defendants shall submit to EPA *[CARB]* for review and approval *[(for CARB approval, if EPA fails to approve or disapprove a plan for PEMS testing submitted by the Volkswagen Parties to EPA)]* in accordance with Section VII (Approval of Submissions) a plan for PEMS testing under this Paragraph. Such plan shall include:
  - i. A list of those test groups the VW Defendants will test for model year 2017;
  - ii. A written statement of qualifications for the proposed Third-Party Emissions Tester including its name, affiliation, and address, its experience in conducting PEMS testing, and a description of previous contracts or financial relationships of the proposed Third-Party Emissions Tester with the VW Defendants;
  - iii. A list of all emissions and vehicle and engine parameters the VW Defendants will measure and record during each PEMS test they perform under this Paragraph *[14]*;
  - iv. A description of the test methods the VW Defendants propose to use including the routes and ambient conditions over which the vehicles shall be tested;
  - v. A template for the VW Defendants' summary report as described below; and
  - vi. A description of how the VW Defendants intend to satisfy all requirements of this Paragraph *[14]*.
- e. For each model year, for the PEMS testing required by Paragraph 15.a *[14.a]*, the VW Defendants shall provide the test data, a detailed statement of all test methods used, and an executive summary of the data and methods (that includes the

measured emissions of the vehicle's regulated criteria air pollutants and CO<sub>2</sub>) for all tests the VW Defendants performed under this Paragraph for that model year ("VW Defendants' Summary Report") to EPA [CARB] as specified in Section XV [XIV] (Notices). The VW Defendants' Summary Report for model year 2017 shall be due no later than March 1, 2018. The VW Defendants' Summary Report for model years 2018 and 2019 shall be due no later than November 30 of the calendar year for which the model year is named, unless the VW Defendants and the United States [EPA] agree to a later date *[that is no later than January 15 of the following calendar year, unless also agreed to by CARB]*. Within 21 Days following submission of the VW Defendants' Summary Report to EPA [CARB], the VW Defendants shall post their Summary Report (redacted of any Confidential Business Information ("CBI") or personal information the disclosure of which is restricted by applicable law; however no emissions test methods and results may be claimed as CBI) in English and German at the public website required by Paragraph 51 [50].

- f. For each model year, for the PEMS testing required by Paragraph 15.b [14.b], the VW Defendants shall ensure that the Third-Party Emissions Tester prepares one or more "Third-Party Emissions Tester Summary Report" including the test data, a detailed statement of all test methods used, and an executive summary of the data and methods (that includes the measured emissions of the vehicle's regulated criteria air pollutants and CO<sub>2</sub>) for all testing the Third-Party Emissions Tester performed under this Paragraph for that model year. The VW Defendants shall provide the Third-Party Emissions Tester Summary Report to EPA [CARB] as specified in Section XV [XIV] (Notices) by no later than March 1 of the calendar year immediately after the calendar year for which the model year is named. Within 30 Days following submission of the Third-Party Emissions Tester Summary Report to EPA [CARB], the VW Defendants shall post the Third-Party Emissions Tester Summary Report (redacted of any CBI or personal information the disclosure of which is restricted by applicable law; however no emissions test methods and results may be claimed as CBI) in English and German at the public website required by Paragraph 51 [50].
- g. The Parties agree and acknowledge that U.S. law does not set forth a standard by which PEMS testing can be used to determine compliance for purposes of certification under Title II of the Clean Air Act.

*[Sub-paragraph 14.g of the California Consent Decree reads as follows: If any of the PEMS data produced pursuant to the testing in Paragraph 14.a or Paragraph 14.b suggest the potential presence of an undisclosed AECD or defeat device, or are otherwise anomalous or inconsistent with the certification application for the Volkswagen Test Groups being tested, the Volkswagen Parties shall, upon CARB's reasonable written request: meet and confer with CARB to discuss the PEMS data; work collaboratively with CARB to determine why the PEMS data suggest the potential presence of an undisclosed AECD or defeat device, or are otherwise anomalous or inconsistent with the certification application for the Volkswagen Test Groups being tested; provide relevant information and documents to CARB; and provide CARB with vehicles and vehicle components (including without limitation hardware and software) for PEMS or other testing by CARB.]*

	<p>h. <i>[The Parties agree and acknowledge that neither U.S. law nor California law set forth a standard by which PEMS testing can be used to determine compliance for purposes of certification under California law.]</i></p>
<p>¶ 16 (U.S. CD) ¶ 15 (Cal. CD)</p>	<p><u>Business Units within the Product Development Process.</u> Within 180 Days after the Effective Date, the VW Defendants shall implement the internal procedures set out in the “Golden Rules” Handbook by establishing internal controls and rules of procedure, and by defining the tasks, authorities, and responsibilities for the business units, committees, and boards involved in the Product Development Process, including, but not limited to, the Product Safety Committee (also known as “APS”), the Change Control Board, and the Type Approval, Recyclability and Functional Safety Department (also known as “EGDT”); provided however, that implementation of software and information technology may extend beyond 180 Days after the Effective Date, and that these additional Days shall not count in determining the three-year period set forth in Paragraph 26 [25]. The “Golden Rules” Handbook and the internal controls and internal rules of procedure developed by the VW Defendants may be subject to reasonable modification, in consultation with the Department of Justice <i>[and California]</i>. The VW Defendants shall conduct regular employee training regarding the internal procedures, and shall monitor implementation of these procedures through the VW Defendants’ Governance, Risk, and Compliance (“GRC”) process.</p>
<p>¶ 17 (U.S. CD) ¶ 16 (Cal. CD)</p>	<p><u>Definition of Managers’ Responsibilities.</u> Within 120 Days after the Effective Date, the VW Defendants shall define the tasks, authorities, and responsibilities of the managers involved in the Product Development Process with respect to compliance with U.S. <i>[California]</i> environmental laws and regulations.</p>
<p>¶ 18 (U.S. CD) ¶ 17 (Cal. CD)</p>	<p><u>Internal Audit.</u> Within one year after the Effective Date, the VW Defendants shall conduct and complete an internal audit to track the implementation of the internal procedures in the “Golden Rules” Handbook relating to vehicle approval procedures with respect to U.S. <i>[California]</i> environmental laws and regulations, ECM Software development in the Product Development Process, and escalation management in the Product Safety Committee (“APS”). The audit shall assess the effectiveness of those internal procedures and propose any corrective actions to improve their effectiveness.</p>
<p>¶ 19 (U.S. CD) ¶ 18 (Cal. CD)</p>	<p><u>Reporting on Injunctive Relief Measures.</u> The first annual report provided to the Department of Justice <i>[California]</i> pursuant to Paragraph 47 <i>[VIII.46]</i> shall include the information required by Paragraphs 18, 21, 22, and 23 <i>[17, 20, 21, and 22]</i>. In the second and third annual reports provided to the Department of Justice <i>[California]</i> pursuant to Paragraph 47 <i>[46]</i>, the VW Defendants shall describe the measures that they have implemented to promote compliance with the requirements of Paragraphs 13, 14, 15, 16, 17, 21, 22, and 23 <i>[12, 13, 14, 15, 16, 20, 21, and 22]</i> of this Section V (Injunctive Relief for the VW Defendants), together with an assessment of the effectiveness of those measures in promoting compliance with U.S. environmental law <i>[including California law]</i> and any corrective actions the VW Defendants have undertaken to improve their effectiveness in promoting compliance with</p>

	U.S. environmental law <i>[including California law]</i> . In the second and third annual reports provided to the Department of Justice <i>[California]</i> pursuant to this Paragraph 19 <i>[18]</i> , Defendants shall also address: (1) all risks assessed and recorded as part of the annual GRC process relating to either compliance with U.S. <i>[California]</i> environmental laws and regulations or risks of rule violations in the Product Development Process; (2) countermeasures taken by the VW Defendants’ business units in response to those risks; and (3) management controls implemented by the VW Defendants’ business units relating to those risks. The information required to be provided in the annual reports pursuant to this Paragraph 19 <i>[18]</i> shall be certified in accordance with Paragraph 52 <i>[51]</i> . <i>[The Volkswagen Parties may elect to fulfill their reporting obligations under this Paragraph 18 by submitting the required information in a single joint report to the Department of Justice and California.]</i>
¶¶ 20 & 21 (U.S. CD) ¶¶ 19 & 20 (Cal. CD)	<b>Whistleblower System</b>
¶ 20 (U.S. CD) ¶ 19 (Cal. CD)	<u>Implementation of Whistleblower System.</u> Within 180 Days of the Effective Date, the VW Defendants shall implement and maintain the Volkswagen Group whistleblower system that was approved by the Board in September 2016. The VW Defendants shall retain professionally educated and trained employees to administer the system. Any whistleblower policy that applies to individuals whose work the VW Defendants reasonably anticipate may involve or relate to vehicles to be certified for sale in the United States <i>[California]</i> shall designate violations of U.S. environmental laws or regulations <i>[including California laws or regulations]</i> as “serious violations” within the meaning of the policy.
¶ 21 (U.S. CD) ¶ 20 (Cal. CD)	<u>Report on case tracking.</u> In each annual report provided to the Department of Justice <i>[CARB]</i> pursuant to Paragraph 47 <i>[VIII.46]</i> , the VW Defendants shall submit a report, with a certification in accordance with Paragraph 52 <i>[51]</i> of the Consent Decree, regarding case tracking under the Volkswagen Group whistleblower system of all whistleblower alerts relating to violations of U.S. environmental protection laws or regulations <i>[including California laws or regulations]</i> .
¶¶ 22 & 23 (U.S. CD) ¶¶ 21 & 22 (Cal. CD)	<b>Employee Survey and Code of Conduct</b>
¶ 22 (U.S. CD) ¶ 21 (Cal. CD)	<u>Annual Employee Survey.</u> Within 90 Days after the Effective Date, the VW Defendants shall create for inclusion in their annual employee survey a question to monitor progress of the VW Defendants’ integrity campaign as introduced on June 16, 2016, and, for teams whose work includes matters related to compliance with U.S. environmental laws, <i>[including California laws]</i> questions in appropriate managers’ guides to the annual employee survey to gauge compliance with U.S. laws or regulations <i>[(including California laws or regulations)]</i> relating to environmental compliance. The VW Defendants shall establish a centralized

	process to monitor and address employee survey responses relating to the integrity campaign. In each annual report to the Department of Justice [CARB] pursuant to Paragraph 47 [46], the VW Defendants shall provide a summary of survey results relating to the integrity campaign.
¶ 23 (U.S. CD) ¶ 22 (Cal. CD)	<u>Code of Conduct.</u> Within 180 Days after the Effective Date, the VW Defendants shall ensure that the VW Defendants’ corporate Code of Conduct includes provisions regarding (1) environmental protection and (2) responsibility for compliance. The VW Defendants shall require all new employees to attend training regarding the Code of Conduct. In each annual report to the Department of Justice [CARB] pursuant to Paragraph 47 [46], the VW Defendants shall provide a summary of training provided to employees regarding the Code of Conduct.
¶¶ 24 & 25 (U.S. CD) ¶¶ 23 & 24 (Cal. CD)	<b>Environmental Management System (“EMS”) Audits</b>
¶ 24 (U.S. CD) ¶ 23 (Cal. CD)	<u>EMS Audit.</u> Within 90 Days after the Effective Date, the VW Defendants shall contract with and retain an independent third party to conduct an EMS audit pursuant to an industry-recognized standard for product development processes for vehicles to be certified for sale in the United States for each year for calendar years 2017, 2018, and 2019. Beginning with the EMS audit covering calendar year 2017, the EMS audit shall include: (1) an assessment of the VW Defendants’ processes to comply with U.S. environmental laws and regulations [(including California laws and regulations)]; and (2) a recommendation for corrective actions.
¶ 25 (U.S. CD) ¶ 24 (Cal. CD)	<u>Annual EMS Audit Report.</u> Upon completion of each annual EMS audit report, the VW Defendants shall provide to the Department of Justice [CARB] a copy of their annual EMS audit report covering calendar year 2017, 2018, and 2019. To the extent that any such report contains CBI, the VW Defendants shall simultaneously submit to Department of Justice [CARB] for its review a summary version that can be made publicly available. Within 21 Days after a copy is provided to the Department of Justice [CARB], the VW Defendants shall post a copy of the annual EMS audit report (redacted of any CBI or personal information the disclosure of which is restricted by applicable law; however no emissions test methods and results may be claimed as CBI) in English and German on the public website required by Paragraph 51 [50].