

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95052 / June 7, 2022

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4305 / June 7, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20886

In the Matter of

DANIEL IVES,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Daniel Ives (“Ives” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease and Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that

Summary

These proceedings arise out of improper accounting at Synchronoss Technologies, Inc. ("SNCR" or the "Company"), a New Jersey-based technology company that primarily provides products, software, and services to telecommunications companies. In July 2018, SNCR announced a restatement of its 2013, 2014, 2015, and 2016 financial statements of approximately \$190 million in cumulative revenues. As part of this announcement, SNCR restated revenues related to a series of transactions for which SNCR had recognized revenue improperly and in a manner inconsistent with generally accepted accounting principles ("GAAP"). These included transactions for which SNCR, through "side letter" agreements, concealed that the revenue the Company recognized upfront was in fact contingent on future events.

Daniel Ives, the former Executive Vice President of Investor Relations at SNCR, was involved, along with other company officials, in negotiating one problematic transaction for which SNCR improperly recognized approximately \$3.6 million in revenue. As a result, Ives violated Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder, and caused SNCR's violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 13a-1, 13a-11, and 12b-20 thereunder.

Respondent

1. Ives, age 46, resides in Westfield, New Jersey. Ives was SNCR's Executive Vice President of Investor Relations from approximately February 2016 to mid-2017, when he was terminated.

Other Relevant Entity

2. SNCR is a Delaware corporation based in New Jersey whose securities are registered pursuant to Section 12(b) of the Exchange Act. Its securities are currently listed on NASDAQ and have been since its initial public offering in June 2006, although SNCR's common stock was suspended from trading on NASDAQ from May 2018 to October 2018 because SNCR had become delinquent in its required filings.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

FACTS

3. In 2015 and 2016 (the “relevant period”), SNCR’s software products and services included software-based activation, messaging, analytics, and cloud services for its telecommunications customers.

4. In late 2016, sales and finance personnel at SNCR forecasted internally that SNCR would close on the sale of a “perpetual license agreement” (“PLA”)² for several types of software³ to one of their customers (“Customer A”) for an estimated \$4 million in revenue.

5. As the close of the fourth quarter approached, however, Customer A informed the sales and finance personnel at SNCR that it would not close the deal until 2017.

6. In response, Ives, Marc Bandini (“Bandini”), then the Senior Director of Communications and Media at SNCR, and Clayton Thomas (“Thomas”), then the Senior Vice President of Analytics at SNCR, with the approval of senior SNCR executives, embarked on an effort to persuade one of SNCR’s subcontractors (“Subcontractor A”) to agree to acquire the software PLA originally intended for Customer A before the end of the year for \$3.6 million, and then resell it to Customer A in 2017 (the “Reseller Agreement”). Subcontractor A had never previously been a customer of SNCR, had never purchased any of its software, and had never been a reseller of software. Rather, Subcontractor A was a party to a consulting agreement with SNCR under which it performed services for licensees of SNCR’s software products in exchange for consulting fees.

7. In addition, Subcontractor A was not financially capable of paying SNCR \$3.6 million, a fact its president told Ives, Bandini, and Thomas before the end of the year.

8. To get around that obstacle, on December 28, 2016, Bandini and Thomas prepared, signed, and sent a side letter (“first side letter”) to Subcontractor A stipulating that (1) Subcontractor A did not need to pay SNCR under the Reseller Agreement until it had resold the software, and (2) SNCR would make Subcontractor A whole for any losses incurred in the resale by adjusting the sale price and awarding Subcontractor A additional consulting services.

9. By the morning of December 31, 2016, Subcontractor A had not yet agreed to sign the Reseller Agreement. In a last-ditch effort to close the deal in time for SNCR to include the \$3.6 million as revenue for the fourth quarter of 2016, that morning, Thomas met with a representative of Subcontractor A and proposed that SNCR pre-pay the fees it expected to owe Subcontractor A on the long-standing consulting agreement between them, so that Subcontractor A could use those funds to pay the \$3.6 million it would ostensibly owe SNCR under the Reseller Agreement. That

² A customer purchasing a PLA pays for the license upfront and has the right to use the software indefinitely.

³ The software assisted telecommunications companies with managing invoices, including paying vendors, auditing invoice charges, managing invoice disputes, and analyzing billing data.

same morning, Ives called Subcontractor A's CEO and reiterated that SNCR would pre-pay fees to Subcontractor A in order to finance Subcontractor A's obligation to SNCR under the Reseller Agreement. Ives further promised that Subcontractor A would not suffer a loss from the deal under any circumstances, including assuring Subcontractor A that in the event that Customer A did not ultimately purchase the license, Subcontractor A would not be held responsible for the \$3.6 million payment to SNCR. Subcontractor A agreed to the proposal outlined by Ives and Thomas.

10. Following the meeting on that same day, Subcontractor A emailed Ives, Bandini, and Thomas to confirm that they were working on memorializing the terms of the proposal in a draft agreement ("second side letter"). This second side letter, which was drafted with the assistance of others at SNCR, amended a previously signed agreement between Subcontractor A and SNCR⁴ and provided that SNCR would prepay \$4.05 million in fees to Subcontractor A by February 28, 2017. Ives reviewed a draft of the second side letter and emailed others at SNCR to let them know that the document would be finalized and executed in early 2017.

11. Ives, Bandini, and Thomas negotiated the second side letter with Subcontractor A throughout the day on December 31, 2016, and the parties agreed to formally sign the document in early 2017.

12. In the meantime, on the afternoon of December 31, 2016, SNCR and Subcontractor A signed the Reseller Agreement, which ostensibly provided that Subcontractor A would pay SNCR \$3.6 million for a PLA for three types of SNCR software that it could then resell to other companies. The Reseller Agreement on its face did not contain any contingencies, made no mention of the first or second side letter, and purported to require Subcontractor A to pay for the software PLA by March 31, 2017.

13. In February 2017, Subcontractor A signed the second side letter.

14. SNCR included the \$3.6 million fee under the Reseller Agreement as revenue for the quarter and year ended December 31, 2016, in a press release and Form 8-K issued on February 8, 2017, and in its Form 10-K for the year ended December 31, 2016, filed on February 27, 2017.

15. SNCR's inclusion of this revenue was improper under GAAP because, as reflected in the first and second side letter and as Ives knew or recklessly disregarded, the fee was contingent on Subcontractor A reselling the software. Because of this contingency, the Reseller Agreement was in substance a consignment agreement, revenue which, according to GAAP, can be recognized only when the sale to an end customer is complete (provided all other revenue recognition criteria have been met).

16. The improperly recorded revenue from the Subcontractor A transaction materially inflated SNCR's revenue for the quarter and year ended December 31, 2016 and was reversed when SNCR restated its 2016 financial results. SNCR understated its pre-tax loss from continuing

⁴ The previously signed Auditing and Consulting Services Agreement was executed between Subcontractor A and a company which SNCR acquired prior to the relevant period.

operations for the quarter ended December 31, 2016 by approximately 10.7% by improperly including revenue from the Subcontractor A transaction.

VIOLATIONS

17. As a result of the conduct described above, Ives violated Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder, which prohibit any person from knowingly circumventing or failing to implement a system of internal accounting controls; knowingly falsifying any book, record, or account, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and directly or indirectly, falsifying or causing to be falsified, any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act.

18. As a result of the conduct described above, Ives caused SNCR to violate Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 13a-1, 13a-11, and 12b-20 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission accurate information, documents, and annual reports as the Commission may require, mandate that periodic reports contain such further material information as may be necessary to make the required statements not misleading, and require issuers to make and keep books, records, and accounts that accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

UNDERTAKINGS

Respondent has undertaken to:

A. For a period of three years from the entry of the Order, refrain from participating as a salesperson in transactions, contracts, or agreements involving (1) side or supplemental contracts, agreements, or letters and (2) the sale of goods or services valued at or over \$10,000. This includes communicating with counterparties, structuring transactions, negotiating with counterparties, drafting or revising contracts, drafting and sending invoices, and participating in any aspect of revenue recognition, but does not include engaging in these activities with respect to any purchases or sales that are or would be in a personal capacity.

B. Complete thirty (30) hours of compliance training relating to revenue recognition and/or accounting fraud within one year from the entry of the Order.

In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(5) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13b2-1 thereunder.

B. Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$15,000.00 to the Securities and Exchange Commission. Post-Order interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Daniel Ives as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Lara Mehraban, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, New York 10004.

C. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for any penalties referenced in paragraph IV(B) above. The Fair Fund may be added to or combined with any other fair fund created in a related district court action or administrative proceeding arising out of the same violations. The Fair Fund will be distributed to harmed investors in accordance with a Commission-approved plan of distribution. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the

Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary