

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 78393 / July 22, 2016

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3790 / July 22, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17356

In the Matter of

EFP ROTENBERG, LLP and
NICHOLAS BOTTINI, CPA,

Respondents.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-AND-DESIST
PROCEEDINGS PURSUANT TO SECTIONS 4C
AND 21C OF THE SECURITIES EXCHANGE
ACT OF 1934, AND RULE 102(e) OF THE
COMMISSION’S RULES OF PRACTICE,
MAKING FINDINGS, IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER.**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 4C¹ and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Rules 102(e)(1)(ii) and (iii) of the Commission’s Rules of Practice² against Nicholas Bottini (“Bottini”) and EFP Rotenberg, LLP (“EFP Rotenberg”).

¹ Section 4C provides, in relevant part, that: “The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.”

² Rule 102(e)(1)(ii) provides, in pertinent part, that: “The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in unethical or improper professional conduct.” Rule 102(e)(1)(iii) provides, in pertinent part, that: “The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it to any person who is found . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules or regulations thereunder.”

II.

In anticipation of the institution of these proceedings, EFP Rotenberg and Bottini have submitted Offers of Settlement (the “Offers”) 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 them and the subject matter of these proceedings, which are admitted, EFP Rotenberg and Bottini, except as provided herein in Section V, consent to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and EFP Rotenberg’s and Bottini’s Offers, the Commission finds³ that

Summary

1. This matter concerns violations of the federal securities laws and improper professional conduct by EFP Rotenberg and Bottini in connection with the audit of the financial statements of ContinuityX Solutions, Inc. (“ContinuityX”). After incorporating, ContinuityX filed one Form 10-K with the Commission, which was its Form 10-K for the fiscal year ending June 30, 2012 (“2012 Form 10-K”). EFP Rotenberg acted as the auditor of the financial statements included in the 2012 Form 10-K (the “ContinuityX Audit”). Bottini was the engagement partner for the ContinuityX Audit.
2. EFP Rotenberg willfully⁴ violated and Bottini willfully aided and abetted and caused EFP Rotenberg’s violations of Section 10A(a) of the Exchange Act when it conducted the ContinuityX Audit without including procedures which were designed to: (1) provide reasonable assurance of detecting illegal acts; and (2) identify related party transactions.
3. Additionally, EFP Rotenberg and Bottini failed to comply with the standards of the Public Company Accounting Oversight Board⁵ (“PCAOB”). EFP Rotenberg and Bottini repeatedly engaged in improper professional conduct that resulted in violations of professional standards and demonstrated a lack of competence to practice before the Commission. Specifically, during the ContinuityX Audit, EFP Rotenberg and Bottini failed to: (1) appropriately respond to risks of material misstatement; (2) identify related party transactions; (3) obtain sufficient audit evidence; (4) perform procedures to resolve and properly document inconsistencies; (5) investigate management representations that contradicted other audit evidence; and (6) exercise due professional care.

³ The findings herein are made pursuant to EFP Rotenberg’s and Bottini’s Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

⁴ A willful violation of the securities laws means “no more than that the person charged with the duty knows what he is doing.” Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)).

⁵ All references in this Order to standards issued by the PCAOB are to those standards that were in effect at the time of the relevant conduct.

Additionally, EFP Rotenberg failed to maintain adequate policies and procedures regarding documentation.

4. Finally, EFP Rotenberg willfully violated and Bottini willfully aided and abetted and caused EFP Rotenberg's violations of Rule 2-02(b)(1) of Regulation S-X when it stated that the ContinuityX Audit had been conducted in accordance with PCAOB standards, when it was not. Bottini caused this violation by approving the issuance of the ContinuityX audit report, the audit of which he failed to conduct in accordance with PCAOB standards.

Respondents

5. **EFP Rotenberg, LLP** is a PCAOB registered accounting firm based in Rochester, NY. On July 1, 2014, the Commission censured and fined EFP Rotenberg for its part in the audit of Universal Travel Group. See In the Matter of EFP Rotenberg, LLP and Nicholas R. Bottini, Exchange Act Rel. No. 72503 (July 1, 2014).

6. **Nicholas Bottini**, age 54, was the engagement partner on the ContinuityX Audit. Bottini was a partner in EFP Rotenberg's public company auditing group, and also served on various committees within the firm. Bottini was dismissed for cause from EFP Rotenberg on March 5, 2014. On July 1, 2014, Bottini was suspended from appearing or practicing before the Commission as an accountant with the right to apply for reinstatement after two years and ordered to pay a \$25,000 civil penalty for his actions as part of EFP Rotenberg's audit of Universal Travel Group. See Exchange Act Rel. No. 72503 (July 1, 2014).

Relevant Party

7. **ContinuityX Solutions, Inc.** was a Delaware corporation headquartered in Metamora, IL. ContinuityX was formed in March 2011 and filed for bankruptcy in February 2013. It is currently under the control of a chapter 7 bankruptcy trustee. Its common stock was registered with the Commission under Section 12(g) of the Exchange Act and was quoted on the OTC Link operated by OTC Markets Group, Inc. under the symbol "CUSXQ."⁶ On June 5, 2014, an indictment was filed in the U.S. District Court for the Northern District of Illinois, United States of America v. David Godwin, et al., No 1:14-cr-00326 (N.D. Ill), for violation of Title 18, USC, Section 1343, alleging multiple counts of fraud against David P. Godwin ("Godwin"), the former CEO, president, and chairman of ContinuityX, and John Coletti ("Coletti"), a former sales representative of ContinuityX. On September 30, 2015, the Commission charged Godwin and Anthony G. Roth ("Roth"), ContinuityX's former Chief Financial Officer, with engineering a fraudulent scheme to inflate the company's revenues. See U.S. Securities and Exchange Commission v. David P. Godwin and Anthony G. Roth, No. 25-cv-1414 (C.D. Ill. September 30, 2015). On December 10, 2015, a grand jury convened in the Northern District of Illinois returned a superseding indictment charging Roth with multiple counts of wire fraud in violation of Title 18, USC, Section 1343. Additional wire fraud counts against Godwin were also included in the superseding indictment.

⁶ On September 30, 2015, the Commission issued an order revoking ContinuityX's securities pursuant to Section 12(j) of the Exchange Act. In the Matter of ContinuityX Solutions, Inc., Exchange Act Rel. No. 76028 (Sept. 30, 2015).

Background

8. ContinuityX's business was primarily to serve as a commission-based sales agent, selling enterprise internet services provided by "Internet Provider A" and "Internet Provider B" (collectively "Internet Providers"). Pursuant to agreements with ContinuityX, the Internet Providers would pay a commission to ContinuityX each time ContinuityX arranged for a customer to purchase internet services from the Internet Providers.

9. ContinuityX filed its 2012 Form 10-K on September 28, 2012. In its 2012 Form 10-K, ContinuityX reported revenue of \$18.6 million. Nearly all of this revenue was derived from purported commissions from the Internet Providers.

10. EFP Rotenberg acted as ContinuityX's auditor and issued an audit report containing an unqualified opinion. Bottini was the engagement partner. Bottini supervised several employees of EFP Rotenberg as part of the ContinuityX Audit. Included in the 2012 Form 10-K was EFP Rotenberg's audit report in which it stated that it conducted the ContinuityX Audit in accordance with the auditing standards of the PCAOB.

11. On December 13, 2012, ContinuityX filed a Form 8-K that stated it had been sued by Internet Provider A to recoup commissions associated with the sale of internet services to certain customers who failed to make payments for the services and stated that previously issued financial statements and audit reports could no longer be relied upon.

12. On January 31, 2013, ContinuityX filed a Form 8-K that stated its Board of Directors had removed the company's chief executive officer and the company had recently become aware of "the existence of substantial financial irregularities including, but not limited to, potential forgeries of purchase orders, emails and other documents."

13. On February 13, 2013, ContinuityX filed for chapter 11 bankruptcy in the Southern District of New York. Later, ContinuityX's bankruptcy proceeding was involuntarily converted to a chapter 7 proceeding, and the company was placed under the control of a chapter 7 trustee.

14. ContinuityX's 2012 Form 10-K contained several material misstatements and omissions of material fact, including: (1) grossly overstating revenue by improperly recognizing commissions from fraudulent transactions; (2) failing to disclose related party transactions; (3) overstating assets by recognizing third party assets as its own; (3) falsely stating that Internet Provider A was not able to charge back previously paid commissions; and (4) failing to recognize revenue from the Internet Providers in accordance with their contractual agreements.

EFP Rotenberg and Bottini Did Not Plan or Perform Procedures Designed to Detect Illegal Acts Including Fraud

15. Section 10A(a)(1) of the Exchange Act requires that the audit of the financial statements of an issuer by a registered public accounting firm shall include procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts. No showing of *scienter* is necessary to establish a violation of Section 10A. See SEC v. Solucorp Indus., Ltd., 197 F. Supp. 2d 4 (S.D.N.Y. 2002).

16. PCAOB Auditing Standard No. 13, *The Auditor's Responses to the Risks of Material Misstatement* ("AS No. 13"), states "the auditor should design and perform audit procedures in a manner that addresses the assessed risks of material misstatement for each relevant assertion of each significant account and disclosure" (§ 8). AS No.13 also states that "[f]or significant risks, the auditor should perform substantive procedures, including tests of details, that are specifically responsive to the assessed risks" (§ 11). PCAOB Auditing Standard No. 12, *Identifying and Assessing Risks of Material Misstatement*, states that a fraud risk is a significant risk (§ 71). Thus, PCAOB Audit Standards required EFP Rotenberg and Bottini to perform substantive audit procedures specifically designed to be responsive to fraud risk.

17. During the planning of the ContinuityX Audit, EFP Rotenberg and Bottini deemed accounts receivable, revenue, and security deposits as areas of the audit with a significant risk of fraud. In response to this identified risk, to comply with Section 10A(a)(1) and AS No. 13, EFP Rotenberg and Bottini should have included as part of the ContinuityX Audit procedures designed to address the risk of material misstatement due to fraud on the determination of the amounts in these accounts.

18. In addition to deeming certain areas of the ContinuityX Audit as a significant risk, EFP Rotenberg and Bottini were also on notice of potential irregularities in ContinuityX's accounting. During the ContinuityX Audit, ContinuityX's management attempted to limit the scope of EFP Rotenberg's procedures to obtain sufficient audit evidence on accounts receivable. Specifically, EFP Rotenberg and Bottini requested that ContinuityX's management prepare accounts receivable confirmations for the Internet Providers. ContinuityX's management refused to prepare and sign the confirmations. EFP Rotenberg and Bottini acquiesced to ContinuityX's management's scope limitation and instead spoke to people purporting to be employees of the Internet Providers. However, the engagement team failed to obtain sufficient audit evidence over the existence of accounts receivable.

19. EFP Rotenberg and Bottini did not plan or perform procedures to obtain sufficient appropriate audit evidence that ContinuityX's revenue was legitimate or that it was being recognized correctly. During the ContinuityX Audit, EFP Rotenberg and Bottini obtained signed agreements between ContinuityX and the Internet Providers' customers that showed that the customers who purchased internet services via ContinuityX did not intend to use or pay for the internet services. These agreements stated that the customers: (1) were not responsible for paying for the internet services they purchased from the Internet Providers; (2) ContinuityX was responsible for paying the Internet Providers for the customers' monthly internet service bills; and (3) Continuity X would pay the customers a one-time commission. In short, these agreements, when read in light of the agreements between ContinuityX and the Internet Providers, showed that ContinuityX would pay the customers a kick-back for purchasing internet services so that ContinuityX could earn a commission from the Internet Providers.

20. ContinuityX received commission payments from the Internet Providers based on the fraudulent sales. Under Generally Accepted Accounting Principles ("GAAP"), revenue is recognized when it is realized or realizable and earned. There must be persuasive evidence that an actual arrangement exists and that the parties are committed to performing their respective obligations.⁷ Here, these agreements clearly showed that the customers had no intention of performing their obligations to

⁷ See, A.S.C. 605-10-25-1, See, also, FASB Statement of Concepts No. 5, Recognition and Measurement in Financial Statements of Business Enterprises; Staff Accounting Bulletin No. 104.

the Internet Providers. EFP Rotenberg and Bottini failed to perform sufficient procedures to detect these fraudulent sales despite possessing all of the documents necessary to identify them. Furthermore, EFP Rotenberg and Bottini failed to design or perform sufficient substantive procedures to determine if ContinuityX's revenue was legitimately earned.

21. Internet Provider A required that its customers pay security deposits. ContinuityX paid the security deposits on behalf of its customers and the deposits were held by Internet Provider A in the name of the customers. When the customers did not pay their bills, Internet Provider A applied the security deposits to the past due account balance. ContinuityX recorded the security deposits as its own assets. In its 2012 Form 10-K ContinuityX reported \$2.1 million of security deposits as an asset. ContinuityX should not have recorded the security deposits as an asset.

22. EFP Rotenberg and Bottini did not plan or perform procedures to evaluate whether ContinuityX had the rights to or ownership of the security deposits. During the ContinuityX Audit, ContinuityX's management represented to EFP Rotenberg and Bottini that the security deposits held by Internet Provider A were ContinuityX's assets. To support this assertion ContinuityX's management provided EFP Rotenberg and Bottini with cashier's checks drawn from ContinuityX's bank account. However, the cashier's checks had the customer listed as the remitter. EFP Rotenberg and Bottini accepted the cashier's checks as evidence of ContinuityX's ownership of the security deposits and did not question why ContinuityX was using cashier's checks to pay security deposits or why a check drawn from ContinuityX's bank would list the customer as the remitter. Furthermore, in an email correspondence with Internet Provider A, Bottini was told that Internet Provider A held the security deposits for the customers. EFP Rotenberg and Bottini failed to take further steps or perform additional procedures after being told by Internet Provider A that the security deposits were ContinuityX customers' deposits, and not ContinuityX's. EFP Rotenberg and Bottini failed to resolve inconsistencies in the audit evidence obtained to become reasonably assured that ContinuityX was properly recording the security deposits as assets.

23. Based on the foregoing, EFP Rotenberg and Bottini's did not plan or perform sufficient procedures to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of ContinuityX's financial statement amounts, as required by Section 10A(a)(1) of the Exchange Act. This was demonstrated by EFP Rotenberg and Bottini's failure to obtain sufficient appropriate audit evidence that was responsive to the significant risks identified by the engagement team. Specifically, EFP Rotenberg and Bottini failed to perform sufficient alternative procedures after management refused to prepare accounts receivable confirmations. Furthermore, despite possessing information that contradicted management's assertions, EFP Rotenberg and Bottini failed to resolve inconsistencies in the audit evidence. As a result, EFP Rotenberg and Bottini failed to identify ContinuityX's improper revenue recognition and the inclusion of customer security deposits as company assets.

EFP Rotenberg and Bottini Failed to Perform Procedures to Identify Related Party Transactions

24. Section 10A(a)(2) of the Exchange Act requires that the audit of the financial statements of an issuer by a registered public accounting firm shall include procedures designed to identify related party transactions that are material to the financial statements or otherwise require disclosure therein.

25. PCAOB Standard AU Section 334, *Related Parties* (“AU Section 334”), provides guidance on procedures to identify related party relationships and transactions and to satisfy the auditor concerning the required disclosure of related party transactions. The guidance in AU Section 334 for identifying material transactions that may be indicative of the existence of previously undetermined relationships includes that the auditor “[r]eview the extent and nature of business transacted with major customers, suppliers, borrowers, and lenders for indications of previously undisclosed relationships” (at .08 (e)). Additionally, AU Section 334 requires that an “auditor should view related party transactions within the framework of existing [accounting] pronouncements, placing primary emphasis on the adequacy of disclosure” (at .02), and the auditor should satisfy himself on the basis of his professional judgement that the transaction has been adequately disclosed in the financial statements (at .11).

26. EFP Rotenberg and Bottini did not perform sufficient procedures designed to identify related party transactions. ContinuityX was involved in transactions with certain customers that should have been disclosed as related party transactions. However, in its financial statements included in its 2012 Form 10-K, ContinuityX did not disclose these related party transactions.

27. EFP Rotenberg and Bottini possessed documents in which the CFO of ContinuityX signed internet service agreements and a security deposit agreement on behalf of a customer named AARMG, LLC. During the ContinuityX Audit, the audit manager sent an email to ContinuityX management and Bottini that noted the CFO signed an internet service contract on behalf of AARMG and inquired if AARMG was a related party. EFP Rotenberg and Bottini failed to obtain an answer from ContinuityX management and to conduct additional procedures to determine if AARMG was a related party. ContinuityX recognized \$695,000 in commission revenue purportedly earned from sales to AARMG. However, the AARMG transactions were not disclosed in the financial statements included in its 2012 Form 10-K as related party transactions.

28. In April 2012, ContinuityX hired the owners and principals of two of ContinuityX’s customers (“Customer A and Customer B”), and then later purchased Customer A and Customer B outright. EFP Rotenberg and Bottini documented in the ContinuityX Audit preliminary analytical review workpaper that ContinuityX hired Customer A’s and Customer B’s owners. However, EFP Rotenberg and Bottini failed to identify the sales to Customer A and Customer B as related party transactions during revenue testing even though sales to Customer A and Customer B were selected for testing. ContinuityX recognized more than \$8 million in commission revenue (43% of total revenue) purportedly earned from sales to Customer A and Customer B. However, the transactions with Customer A or Customer B were not disclosed in the financial statements included in its 2012 Form 10-K as related party transactions.

29. EFP Rotenberg willfully violated and Bottini willfully aided and abetted and caused EFP Rotenberg’s violations of Section 10A(a)(2) of the Exchange Act and failed to comply with AU Section 334 because it did not conduct procedures after it identified possible related party transactions to “obtain satisfaction concerning the purpose, nature, and extent of these transactions and their effect on the financial statements” (AU Section 334 at .09). The related party transactions with AARMG, Customer A, and Customer B were not disclosed in the financial statements included in its ContinuityX’s 2012 Form 10-K.

EFP Rotenberg and Bottini Failed to Obtain Sufficient Appropriate Audit Evidence to Support the Audit Opinion

30. PCAOB Auditing Standard No. 15, *Audit Evidence* (“AS No. 15”), requires the auditor to “plan and perform audit procedures to obtain sufficient appropriate audit evidence to provide a reasonable basis for his or her opinion” (§ 4).

31. EFP Rotenberg issued an audit report containing an unqualified opinion and Bottini approved the issuance of the audit report. However, EFP Rotenberg and Bottini failed to obtain sufficient appropriate audit evidence to provide a reasonable basis for this opinion. Specifically, EFP Rotenberg and Bottini did not obtain sufficient appropriate audit evidence to support management’s assertions regarding ContinuityX’s recognition of revenue and security deposits. Additionally, EFP Rotenberg and Bottini failed to obtain sufficient audit evidence that ContinuityX’s revenue recognition policy was consistent with the terms and conditions of ContinuityX’s agreements with the Internet Providers.

32. ContinuityX reported \$18.6 million in commission revenue purportedly earned from the Internet Providers. However, EFP Rotenberg and Bottini did not obtain sufficient evidence to support the revenue recognized. In fact, the evidence that EFP Rotenberg and Bottini obtained supported a conclusion that ContinuityX should not have recognized any of these commission payments. Specifically, EFP Rotenberg and Bottini obtained agreements which showed that ContinuityX’s customers had no intention of paying for or using the internet services. Thus, under GAAP, the revenue from these transactions should not have been recognized. EFP Rotenberg and Bottini failed to properly evaluate these customer agreements despite the fact that accounts receivable and revenue were deemed significant risk areas. They recalculated the commission payments paid to the customers and failed to appreciate the significance of the terms of the agreements. ContinuityX recognized \$18.6 million in revenue (over 99.8% of ContinuityX’s total revenue) that it had not earned.

33. In the 2012 Form 10-K, ContinuityX reported \$2.1 million in security deposits as assets. These security deposits were not an asset of ContinuityX and should not have been recorded as such. EFP Rotenberg and Bottini did not obtain any evidence, other than ContinuityX management’s representations, that ContinuityX had the rights to or ownership of the security deposits.

34. ContinuityX entered into an agreement with Internet Provider A which specifically outlined how and when ContinuityX would earn its commission. EFP Rotenberg and Bottini were provided a copy of this agreement and maintained it in the workpapers. This agreement stated that Internet Provider A could charge back ContinuityX when customers failed to pay for their internet services. However, ContinuityX’s management told Bottini that Internet Provider A could not charge back commissions. Despite possessing the agreement with Internet Provider A that directly contradicted ContinuityX’s management’s representation, EFP Rotenberg and Bottini did not perform sufficient additional procedures to resolve the inconsistent evidence. As a result of EFP Rotenberg and Bottini’s failure to obtain sufficient appropriate audit evidence, they failed to detect that the statement that “in these lump-sum compensation arrangements, the customer may not claw back – unreasonably withhold – or transfer these orders and must pay the Company per agreement” in the ContinuityX Form 10-K for 2012 was false.

35. ContinuityX’s revenue recognition policy for sales to Internet Provider A was based on the erroneous premise that Internet Provider A was not able to charge back commissions. Internet Provider A’s ability to charge back commissions was not consistent with ContinuityX’s policy of recognizing 100% of its commission revenue upfront. Instead, ContinuityX should have recognized the revenue over the life of the contract as it was earned, or set up a reserve account to offset potential chargebacks. EFP Rotenberg and Bottini failed to obtain sufficient appropriate audit evidence to support management’s assertion that ContinuityX could recognize 100% of the commission revenue upfront. In fact, the agreement included in the audit documentation stated that Internet Provider A could charge back commissions.

36. ContinuityX and Internet Provider B also entered into an agreement which outlined how and when ContinuityX would earn commissions. EFP Rotenberg and Bottini received a copy of this agreement and maintained it in the workpapers. The agreement with Internet Provider B stated that Internet Provider B would pay ContinuityX a commission on a monthly pro rata basis after the customer had paid Internet Provider B for the internet services. ContinuityX’s revenue recognition policy was consistent with the terms of the agreement with Internet Provider B. However, ContinuityX did not recognize revenue in accordance with its agreement with Internet Provider B or its own revenue recognition policy. Instead of recognizing the commissions monthly on a pro rata basis, ContinuityX recognized 100% of the commission after the customer had signed the sales contract. When EFP Rotenberg and Bottini inquired about the discrepancy, ContinuityX’s management stated that the terms of the agreement with Internet Provider B had changed. In fact, ContinuityX and Internet Provider B never changed the terms of their agreement. EFP Rotenberg and Bottini never requested nor received documentation to support this purported change. Despite possessing the agreement that contradicted ContinuityX management’s representation, EFP Rotenberg and Bottini failed to obtain sufficient appropriate evidence to support the revenue recognized from Internet Provider B.

EFP Rotenberg and Bottini Failed to Perform Procedures to Resolve Inconsistencies and Failed to Document Findings that Contradicted its Conclusions

37. AS No. 15 states that “[i]f audit evidence obtained from one source is inconsistent with that obtained from another, or if the auditor has doubts about the reliability of information to be used as audit evidence, the auditor should perform the audit procedures necessary to resolve the matter and should determine the effect, if any, on other aspects of the audit” (¶ 29). PCAOB Auditing Standard No. 3, *Audit Documentation* (“AS No. 3”), states that “audit documentation must include information the auditor has identified relating to significant findings or issues that is inconsistent with or contradicts the auditor’s final conclusions. The relevant records to be retained include, but are not limited to, procedures performed in response to the information...” (¶ 8).

38. EFP Rotenberg and Bottini failed to comply with AS No. 15 and AS No. 3 because they failed to perform sufficient audit procedures necessary to resolve inconsistencies between ContinuityX management’s representations and the terms in ContinuityX’s agreements with the Internet Providers. Additionally, EFP Rotenberg and Bottini failed to document the inconsistencies or the procedures performed in response to the inconsistent information and how the inconsistencies were resolved.

39. ContinuityX’s management told EFP Rotenberg and Bottini that Internet Provider A was not able to charge back commissions purportedly earned by ContinuityX. ContinuityX management’s representation was false and EFP Rotenberg and Bottini obtained documents that were inconsistent with

management's representation. However, EFP Rotenberg and Bottini did not sufficiently resolve the inconsistency between management's representation and the underlying documents or document this inconsistency.

40. ContinuityX's management also told EFP Rotenberg and Bottini that Internet Provider B paid ContinuityX 100% of its commission when Internet Provider B approved a customer's contract. ContinuityX recognized 100% of the commission revenue from Internet Provider B upfront, instead of monthly over the life of the internet service contract as required by GAAP.⁸ ContinuityX's management's representation was false. During the ContinuityX Audit, EFP Rotenberg and Bottini obtained ContinuityX's agreement with Internet Provider B that stated commissions were paid monthly and only after the customer had paid for the internet services. EFP Rotenberg and Bottini did not sufficiently resolve the inconsistency between management's representation and the underlying agreement or document this inconsistency.

41. ContinuityX's management also represented to EFP Rotenberg and Bottini that certain customers resold the internet services. If EFP Rotenberg and Bottini would have reviewed the agreements between ContinuityX and the Internet Providers in any detail, it would have learned that ContinuityX was required to receive authorization from the Internet Providers prior to selling to companies that resold the internet services. ContinuityX never received authorization to sell to companies that resold internet services. Furthermore, during the ContinuityX Audit, an employee from Internet Provider A informed Bottini that ContinuityX's customer base did not include any companies authorized to resell the internet services. However, EFP Rotenberg and Bottini never sufficiently resolved the inconsistency between representations from management and the employee of Internet Provider A or documented this contradiction.

42. ContinuityX's management also told EFP Rotenberg and Bottini that the security deposits held by the Internet Providers were an asset of ContinuityX. However, an employee of Internet Provider A told Bottini that the security deposits were held in the customers' names, and not ContinuityX's. EFP Rotenberg and Bottini never documented or sufficiently resolved these inconsistent statements.

EFP Rotenberg and Bottini Improperly Relied on Management's Representations

43. PCAOB Standard AU Section 333, *Management Representations*, ("AU Section 333") states that representations from a company's management "are part of the evidential matter the independent auditor obtains, but they are not a substitute for the application of those auditing procedures necessary to afford a reasonable basis for an opinion regarding the financial statements under audit" (at .02). AU Section 333 also states that "[i]f a representation made by management is contradicted by other audit evidence, the auditor should investigate the circumstances and consider the reliability of the representation made. Based on the circumstances, the auditor should consider whether his or her reliance on management's representations relating to other aspects of the financial statements is appropriate and justified" (at .04).

44. EFP Rotenberg and Bottini violated AU Section 333 because they improperly relied on ContinuityX management's representations. ContinuityX's agreements with the Internet Providers

⁸ A.S.C. 605-10-25

contradicted management's representations regarding chargebacks, security deposits, revenue recognition, and ContinuityX's sales of internet services to companies that supposedly resold those services. AU Section 333 requires conflicts between management representations and other audit evidence to be investigated. However, EFP Rotenberg and Bottini did not perform the audit procedures necessary to resolve these conflicts.

EFP Rotenberg and Bottini Failed to Exercise Due Professional Care

45. PCAOB Standard AU Section 230, *Due Professional Care in the Performance of Work* ("AU Section 230"), states that auditors are required to exercise due professional care throughout the audit. Due professional care requires that the auditor exercise professional skepticism. Under this standard, "[p]rofessional skepticism is an attitude that includes a questioning mind and a critical assessment of audit evidence" (at .07), and auditors "consider the competency and sufficiency of the evidence" (at .08) and "neither assume[] that management is dishonest nor assume[] unquestioned honesty" (at .09).

46. For the reasons outlined above, EFP Rotenberg and Bottini failed to meet AU Section 230 by violating AS No. 3, AS No. 13, AS No. 15, AU Section 333, and AU Section 334.

EFP Rotenberg's Policies and Procedures were Deficient

47. PCAOB Quality Control Section 20, *System of Quality Control for a CPA Firm's Accounting and Auditing Practice*, ("QC Section 20") requires that, "Policies and procedures should be established to provide the firm with reasonable assurance that the work performed by engagement personnel meets applicable professional standards, regulatory requirements, and the firm's standards of quality" (at .17).

48. EFP Rotenberg failed to comply with QC Section 20 because its inadequate policies and procedures did not provide reasonable assurance that the work it performed during the ContinuityX Audit met professional standards. Specifically, EFP Rotenberg's policies and procedures regarding the documentation of the review of material contracts were inadequate. EFP Rotenberg required that material contracts were to be obtained, reviewed by a manager or partner of the engagement team, maintained in the workpapers, and signed off as "reviewed" on the Supervision, Review and Approval Form. However, the manager or partner who reviewed the documents was not required to document their review of the individual documents in the workpapers.

49. EFP Rotenberg's policies and procedures also failed to comply with AS No. 3. The documentation was not sufficient "to determine who performed the work and the date such work was complete as well as the person who reviewed the work and the date of such review" (§ 6b).

50. EFP Rotenberg's deficient policies and procedures contributed to EFP Rotenberg and Bottini's failures during the audit. During the ContinuityX Audit, the lack of sign-offs caused the audit team members to wrongly believe that other individuals had properly reviewed the agreements with the Internet Providers and the customers. As a result, the manager and Bottini documented that all material contracts had been properly reviewed when they had not. The engagement quality reviewer relied on this documentation to satisfy herself that all of the material contracts had been reviewed by the proper personnel.

EFP Rotenberg Violated Rule 2-02(b)(1) of Regulation S-X

51. Rule 2-02(b)(1) of Regulation S-X requires that an accountant's audit report "state whether the audit was made in accordance with generally accepted auditing standards. . . ." 17 C.F.R. 210.2-02(b)(1). As used in Commission regulations, the phrase "generally accepted auditing standards" includes the standards issued by the PCAOB.

52. After performing the ContinuityX Audit, EFP Rotenberg issued a report that stated it had conducted the audit in accordance with PCAOB auditing standards. Bottini approved the issuance of the ContinuityX audit report. Based on the foregoing, that representation was false.

53. As a result of this misrepresentation EFP Rotenberg willfully violated and Bottini willfully aided and abetted and caused EFP Rotenberg's violations of Rule 2-02(b)(1) of Regulation S-X.

Violations

54. **Sections 10A(a)(1) and 10A(a)(2) of the Exchange Act:** An auditor violates Section 10A(a) of the Exchange Act by failing to include audit procedures that, in accordance with generally accepted auditing standards, are: (1) designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts, and; (2) designed to identify related party transactions that are material to the financial statements or otherwise require disclosure therein.

55. **Rule 102(e)(1)(ii):** Rule 102(e)(1)(ii) of the Commission's Rules of Practice provides that the Commission may deny the privilege of appearing or practicing before the Commission to any person who is found to have engaged in improper professional conduct. Specifically, EFP Rotenberg and Bottini engaged in improper professional conduct as defined in Rule 102(e)(1)(iv)(B)(2), i.e., negligent conduct consisting of repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.

56. **Rule 102(e)(1)(iii):** Rule 102(e)(1)(iii) of the Commission's Rules of Practice provides that the Commission may deny the privilege of appearing or practicing before the Commission to any person found "[t]o have willfully violated, or willfully aided and abetted the violation of, any provision of the Federal securities laws or the rules and regulations thereunder."

57. **Rule 2-02(b)(1):** An auditor violates Rule 2-02(b)(1) of Regulation S-X by issuing a report stating that an audit was conducted in accordance with PCAOB standards, when it was not.

Findings

58. Based on the foregoing, the Commission finds that EFP Rotenberg and Bottini engaged in improper professional conduct pursuant to Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) and (iii) of the Commission's Rules of Practice.

59. Based on the foregoing, the Commission finds that EFP Rotenberg willfully violated and Bottini willfully aided and abetted and caused EFP Rotenberg's violations of Sections 10A(a)(1) and 10A(a)(2) of the Exchange Act.

60. Based on the foregoing, the Commission finds that EFP Rotenberg willfully violated and Bottini willfully aided and abetted and caused EFP Rotenberg's violations of Rule 2-02(b)(1) of Regulation S-X.

EFP Rotenberg's Remedial Efforts

61. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by EFP Rotenberg and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in EFP Rotenberg's and Bottini's Offers.

Accordingly, pursuant to Sections 4C and 21C of the Exchange Act, and Rules 102(e)(1)(ii) and (iii) of the Commission's Rules of Practice, it is hereby ORDERED that:

A. EFP Rotenberg and Bottini shall cease and desist from committing or causing any violations and any future violations of Sections 10A(a)(1) and 10A(a)(2) of the Exchange Act and Rule 2-02(b)(1) under Regulation S-X (17 C.F.R. §210.2-02).

B. EFP Rotenberg is censured.

C. EFP Rotenberg will not accept an audit engagement from any new client (i) registered with the Commission or (ii) seeking an audit for the purpose of registering securities with the Commission (together, "New Clients") between the date of entry of this Order and the later of twelve months or the date that an independent consultant, described in paragraph C.1. below, certifies in writing that the undertakings discussed herein have been completed to the satisfaction of the independent consultant, as described in paragraph C.e.3. below:

1. **Independent Consultant.**

- a. EFP Rotenberg will retain an independent consultant ("Independent Consultant"), not unacceptable to the Commission staff. EFP Rotenberg shall provide to the Commission staff a copy of the engagement letter detailing the scope of the Independent Consultant's responsibilities. The Independent Consultant's compensation and expenses shall be borne exclusively by EFP Rotenberg.
- b. To ensure the independence of the Independent Consultant, EFP Rotenberg: (1) shall not have the authority to terminate the Independent Consultant or substitute another independent compliance consultant for the initial Independent Consultant, without the prior written approval of the Commission staff; and (2) shall compensate the Independent Consultant

and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

- c. EFP Rotenberg will require the Independent Consultant to enter into an agreement that provides that, for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with EFP Rotenberg, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division of Enforcement, enter into any employment, consultant, attorney-client, auditing or other professional relationship with EFP Rotenberg, or any of its present or former affiliates, directors, officers, partners, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

2. Areas Independent Consultant Is To Review. Within the periods specified in paragraph C.3. below, the Independent Consultant will review and evaluate EFP Rotenberg's audit and interim review policies and procedures regarding:
 - a. the exercise of due professional care and professional skepticism;
 - b. obtaining sufficient appropriate audit evidence;
 - c. third-party confirmations;
 - d. detecting and reporting misstatements resulting from illegal acts that have a direct and material effect on the determination of financial statement amounts, including fraud;
 - e. the identification and consideration of the adequacy of disclosures of related parties and related party transactions;
 - f. evaluation of and reliance upon management representations;
 - g. supervision of individuals working on audits; and
 - h. adequate audit documentation, including work paper sign-off, archiving, and dating.

EFP Rotenberg shall cooperate fully with the Independent Consultant and shall provide reasonable access to firm personnel, information, and records as the Independent Consultant may reasonably request for the Independent Consultant's review and evaluation described herein and the reports specified in paragraph C.3. below.

3. Independent Consultant Reports and Certifications.

- a. Within five months of the Independent Consultant being retained, EFP Rotenberg shall require the Independent Consultant to issue a detailed written report (“Report”) to EFP Rotenberg: (a) summarizing the Independent Consultant’s review and evaluation of the areas identified in paragraph C.2 above; and (b) making recommendations, where appropriate, reasonably designed to ensure that audits conducted by EFP Rotenberg comply with Commission regulations and with PCAOB standards and rules. EFP Rotenberg shall require the Independent Consultant to provide a copy of the Report to the Commission staff when the Report is issued.
- b. EFP Rotenberg will adopt all recommendations of the Independent Consultant in the Report. Provided, however, that within thirty days of issuance of the Report, EFP Rotenberg may advise the Independent Consultant in writing of any recommendation that it considers to be unnecessary, unduly burdensome, or impractical. EFP Rotenberg need not adopt any such recommendation at that time, but instead may propose in writing to the Independent Consultant and the Commission Staff an alternative policy or procedure designed to achieve the same objective or purpose. EFP Rotenberg and the Independent Consultant will engage in good-faith negotiations in an effort to reach agreement on any recommendations objected to by EFP Rotenberg.
- c. In the event that the Independent Consultant and EFP Rotenberg are unable to agree on an alternative proposal within thirty days, EFP Rotenberg either will abide by the determinations of the Independent Consultant or seek approval from the Commission staff pursuant to paragraph C.1.b above to engage, at EFP Rotenberg’s expense, a qualified third party acceptable to the Commission staff to promptly resolve the issue(s).
- d. Within sixty days of issuance of the Report, but not sooner than thirty days after a copy of the Report is provided to the Commission staff, EFP Rotenberg will certify to the Commission staff in writing that it has adopted and has implemented or will implement all recommendations of the Independent Consultant (“Certification of Compliance”). EFP Rotenberg will provide a copy of the Certification of Compliance to the Commission staff.
- e. Within six months of the issuance of the Report, EFP Rotenberg shall require the Independent Consultant to test whether EFP Rotenberg has implemented and enforced its written policies and procedures concerning the areas specified in paragraph C.2. above and assess the effectiveness of those policies and procedures. EFP Rotenberg shall require the Independent Consultant to issue a written final report summarizing the

results of the Independent Consultant's test and assessment ("Final Report") and to provide a copy of the Final Report to the Commission Staff. At this time, if the Independent Consultant determines that the undertakings discussed herein have been completed to the satisfaction of the Independent Consultant, EFP Rotenberg shall require the Independent Consultant to certify in writing that the undertakings have been so completed ("Independent Consultant Certification") and provide a copy of this certification to the Commission staff. EFP Rotenberg's undertaking to not accept any New Clients, as described in paragraph A above, shall continue until the Independent Consultant has issued the Independent Consultant Certification.

4. The Report, Final Report, Certification of Compliance, Independent Consultant Certification, and any related correspondence or other documents shall be submitted to Steven Klawans, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Chicago, IL 60604, with a copy to the Office of Chief Counsel of the Enforcement Division.
5. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.
6. EFP Rotenberg agrees that if the Division of Enforcement believes that EFP Rotenberg has not satisfied these undertakings, it may petition the Commission to reopen the matter to determine whether additional sanctions are appropriate.

D. EFP Rotenberg shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$100,000 to the United States Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717.

E. Bottini shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$25,000 to the United States Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717.

F. Payment must be made in one of the following ways:

1. Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
2. Respondents 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. Respondents 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 EFP Rotenberg LLP or Nicolas Bottini, 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 Steven L. Klawans, Chicago Regional Office, Securities and Exchange Commission, 175 West Jackson Blvd, Suite 900, Chicago, IL 60604.

G. 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payments of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 Respondents 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.

H. Bottini is denied the privilege of appearing or practicing before the Commission as an accountant.

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 Bottini, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Bottini 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 Bottini 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.

Brent J. Fields
Secretary