

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95051 / June 7, 2022

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4304 / June 7, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20885

In the Matter of

MARC BANDINI,

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 Marc Bandini (“Bandini” 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 (1) transactions for which SNCR, through "side letter" agreements, concealed that the revenue the Company recognized upfront was in fact contingent on future events and (2) transactions in which the Company sold software licenses together with multi-year related supporting services, and the Company improperly recognized the revenue for the licenses immediately, rather than recognizing it ratably over the term of the arrangements.

Bandini, the former Senior Director of Communications and Media at SNCR, was involved, along with other company officials, in negotiating and reviewing three of these problematic transactions, for which SNCR improperly recognized a combined total of approximately \$10 million in revenue. As a result, Bandini violated Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5(a) and (c) and 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, 13a-13, and 12b-20 thereunder.

Respondent

1. Bandini, age 52, resides in Frederick, Maryland. Bandini was the Chief Operating Officer of Razorsight, a private cloud analytics company that was acquired by SNCR in August 2015. Bandini served as Senior Director of Communications and Media at SNCR until September 2017, when he was terminated. In his role at SNCR, Bandini operated as a senior salesperson and interacted frequently with SNCR's senior management and finance department, including on the three transactions that are the subject of this order.

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

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.

stock was suspended from trading on NASDAQ from May 2018 to October 2018 because SNCR had become delinquent in its required filings.

FACTS

A. Background

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. Under GAAP, companies are required to take into account all material terms of an arrangement between two parties in recognizing revenue. If, for example, companies enter into “side letter” agreements that alter the material terms of other transactional documents (such as by providing that payments under the agreement are contingent on future events), companies must take such terms into account in determining whether it is appropriate to recognize revenue.

5. Similarly, when software companies such as SNCR sell software licenses to their customers together with related, ancillary services (such as hosting and maintenance), GAAP required that the sales be accounted for as “multiple-element arrangements” (“MLEs”). Under GAAP during the relevant period, if a contract or series of contracts was determined to be an MLE, the fee should be allocated to the various elements based on vendor-specific objective evidence (“VSOE”) of fair value.²

6. If certain components of MLEs have yet to be delivered (such as services that will be performed over the life of the agreement), GAAP required that companies defer revenue recognition of such elements until they have been performed. And if an MLE has undelivered components for which the company lacks VSOE of fair value, GAAP generally required that the revenue from the entire arrangement, including for delivered elements, be deferred until either all elements lacking VSOE have been delivered or VSOE is established for all undelivered elements, or in certain cases, be deferred and recognized over time, such as ratably over the term of the agreement or as remaining services are expected to be performed.³

7. While SNCR did have VSOE of fair value for certain components of MLEs such as professional services, critically, SNCR lacked VSOE of fair value for the hosting service it often provided for customers who utilized its software. Accordingly, the addition of hosting to an MLE would require that the revenue from the entire arrangement, including for delivered elements, be deferred and recognized over time, *i.e.* that revenue be recognized ratably over the term of the agreement.

² VSOE is, for example, the price established by the vendor for the separate sale of each element.

³ Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) 985-605-25-9 through 25-10.

8. As a result, Bandini and other employees at SNCR undertook efforts to make it appear as if the hosting services in the agreements described below were not part of the MLEs, so that SNCR could improperly recognize the license fees in these transactions as revenue upfront, rather than ratably over the term of the agreement.

B. Customer A Transaction

9. Before the relevant period, SNCR's software business was premised largely on a "software as a service" ("SaaS") model, in which SNCR agreed to provide customers with the use of its software, together with related support services such as hosting and maintenance, primarily through multi-year agreements. For SaaS arrangements, SNCR was required to recognize revenue ratably over the life of the agreements, as the services were provided.

10. In the second quarter of 2016, SNCR sought to accelerate the recognition of revenue on a number of existing customer relationships in order to generate the appearance of an improved financial performance in its publicly-filed financial reports. One way it sought to do so was by breaking a number of its SaaS arrangements with those customers into their component parts and selling "perpetual license agreements" ("PLA"s)⁴ to SNCR's software purportedly separately from, or without, the other ancillary elements of the previous SaaS agreements, such as hosting. SNCR then improperly recognized revenue from the entirety of the PLA fee upfront, instead of only ratably over the term of the agreement.

11. In connection with this effort, SNCR sought to convert its pre-existing SaaS arrangement with Customer A for its payment processing software⁵ into a PLA. SNCR simultaneously negotiated separate agreements for the related, ancillary hosting and support services for the software that it had already been providing to Customer A under its SaaS arrangement.

12. The PLA with Customer A was signed on June 30, 2016. Negotiations for the three-year, related hosting and support services agreements were conducted contemporaneously with the PLA negotiations; however, SNCR postponed execution of them to January 2017 and made them retroactive to July 1, 2016. SNCR continued to provide hosting and support services to Customer A throughout the period, without interruption, just as SNCR had under its SaaS arrangement with Customer A.

13. At the same time it was conducting these negotiations, the same SNCR employees also negotiated an amendment to an existing audit services agreement with Customer A. The "audit services" in question consisted of the review of Customer A's invoices by SNCR and its

⁴ A customer purchasing a PLA pays for the license upfront and has the right to use the software indefinitely.

⁵ The software processed invoices, automated payments, and sought to improve margins by optimizing cost and revenue.

subcontractor to determine if Customer A had been overcharged by various vendors. Customer A would authorize SNCR and its subcontractor to seek reimbursement from the vendors on its behalf and, if successful, Customer A would pay SNCR and its subcontractor a percentage of the reimbursed payments as audit fees. No fee was payable to SNCR until Customer A had realized the savings identified by SNCR. At the time of these negotiations, SNCR had already identified potential overcharges, but had not yet negotiated reimbursement from Customer A's vendors. The amendment substituted an upfront fee applicable to a set amount of identified potential overcharges instead of the contingency fees.

14. Throughout June, as an inducement for Customer A to purchase the PLA, SNCR proposed an upfront fee that was significantly less than the amount SNCR estimated it would receive in contingency fees if SNCR achieved its historical success rate.

15. During the negotiations, SNCR attributed more than \$6 million in value to the audit services and a significantly smaller amount (\$750,000 in SNCR's final proposal) to the PLA. However, shortly before the agreements were finalized, a SNCR employee switched the dollar value between the two agreements. Although the total price to Customer A was the same, the amount allocated to the PLA was now \$6.15 million and the amount allocated to the audit services was now \$600,000.

16. The price in the final contract for the license was \$4.3 million, almost 6 times the price agreed to in the "final" proposal. SNCR added another license for software not even negotiated with Customer A, nominally for \$1.85 million, to reach the \$6.15 million total in the executed PLA.

17. Bandini was copied on the concurrent negotiations over the PLA, the hosting agreement, and the audit services agreement. Bandini received proposals showing the values SNCR originally attributed to the PLA and audit services and redlines showing the last-minute switch of those amounts that significantly and arbitrarily inflated the purported value of the PLA. He reviewed the PLA, the hosting agreement, the support services agreement, and audit services agreement, and included the purported revenue figures for each in an internally circulated revenue report.

18. Bandini knew or should have known that there was no factual basis for switching the price of the PLA and audit services (or for including the additional software license in the PLA). In fact, he and others negotiated an agreement to pay SNCR's subcontractor approximately \$4 million for its audit services to Customer A, a figure that was almost seven times the \$600,000 attributed to those services in the contracts, but which was consistent with the amount originally contemplated for those services.⁶

19. Bandini knew that that the objective of the transaction was to record monies otherwise payable for the audit services agreement as revenue from sale of the PLA. He provided

⁶ Because SNCR provided the audit services primarily through its subcontractor, the subcontractor was entitled to approximately 2/3 of the \$6.15 million audit services fee.

advice on structuring and negotiating the transaction. In addition, he drafted an agreement that required SNCR to pay Subcontractor A approximately the same fee as would be required if the \$6.15 million had been properly classified as the audit service fee, so that Subcontractor A would not suffer a loss from SNCR's erroneously recording the \$6.15 million audit services fee as the price of the PLA.

20. Switching these two amounts in the agreements provided the appearance that SNCR was entitled to recognize significantly more revenue upfront than it would have been entitled to had the prices in the contracts not been altered. Under GAAP, revenue for the audit services could not be recognized upfront in its entirety because the audit service fee had not been earned. SNCR, through its subcontractor, was still required to perform by negotiating the disputes with the vendors. Furthermore, if SNCR did not successfully negotiate and obtain a set amount of reimbursement from the covered claims by a given date, SNCR would be required to discount its audit services going forward until Customer A had realized the promised amount. In contrast, in certain circumstances, revenue from a PLA could properly be recognized upfront in its entirety.

21. In its Form 10-Q for the quarter ended June 30, 2016, SNCR recognized \$5.25 million in revenue for the PLA sold to Customer A, with approximately \$900,000 being allocated to maintenance. SNCR's recognition of \$5.25 million in revenue for the PLA was improper under GAAP because the PLA and the ancillary hosting and audit services agreements comprised an MLE, and SNCR had no VSOE for the fair value of hosting or audit services. According to GAAP, the fees from these agreements should therefore have been recognized ratably over the life of the agreement.

22. The improperly recorded revenue appeared in a press release announcing net revenues and net income for the second quarter 2016, which was included in a Form 8-K issued on August 3, 2016, and in SNCR's Form 10-K issued on February 27, 2017, which included net revenues and net income for 2016. The improperly recorded revenue from the Customer A transaction materially inflated SNCR's revenue in these periods.

23. SNCR reversed the PLA revenue for the Customer A transaction when it restated its 2016 financial results, reducing revenue by \$5,252,000 in the quarter ended June 30, 2016 and \$4,660,000 for the year ended December 31, 2016.

C. Reseller Transaction with Subcontractor A

24. In late 2016, sales and finance personnel at SNCR forecasted internally that SNCR would close on the sale of PLA for several types of software⁷ to Customer A, for an estimated \$4 million in revenue.

25. 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.

⁷ The software assisted telecommunications companies with managing invoices, including paying vendors, auditing invoice charges, managing invoice disputes, and analyzing billing data.

26. In response, Bandini, Clayton Thomas, then the General Manager of Communications and Media at SNCR, and Daniel Ives, then the Executive Vice President of Investor Relations 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.

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

28. 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.

29. Bandini was entitled to a bonus tied to certain revenue earned by SNCR, including for the Subcontractor A transaction and a transaction with Customer B.⁸ Bandini told Subcontractor A's president over email that Bandini needed the sale so that he could earn a bonus on the underlying software agreement.

30. 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. Subcontractor A agreed to that proposal.

31. Following the meeting on that same day, Subcontractor A emailed Bandini, Thomas, and Ives 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 SNCR⁹ and provided that SNCR would prepay \$4.05 million in fees to Subcontractor A by February 28, 2017.

⁸ The Customer B transaction is discussed *supra* at Section III.D, para. 38 – 45. Bandini ultimately did not receive his bonus for the Subcontractor A or Customer B transactions.

⁹ The previously signed Auditing and Consulting Services Agreement was executed between Subcontractor A and a company which SNCR acquired prior to the relevant period.

Bandini, Thomas, and Ives 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.

32. 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.

33. In February 2017, Bandini removed the draft line from the second side letter and sent it to Subcontractor A for signature. Bandini instructed Subcontractor A to sign, but not to date, the document. Subcontractor A did as directed.

34. In early 2017, SNCR's auditor asked Bandini whether he was aware of SNCR entering into any side letter agreements in connection with fiscal year 2016, and he replied that he was not.

35. 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.

36. SNCR's inclusion of this revenue was improper under GAAP because, as reflected in the first and second side letter and as Bandini 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).

37. 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.

D. Customer B Transaction

38. In the fourth quarter of 2016, Bandini and others at SNCR also sought to convert a pre-existing SaaS agreement with Customer B into a PLA and other component parts, in order to accelerate the recognition of revenue for financial reporting purposes. To obscure that these separate agreements were in fact component parts of an MLE arrangement (and, indeed, that they were merely a repackaging of an existing customer arrangement), Bandini arranged to have the agreements for the ancillary elements, such as hosting, be executed separately at a later date.

39. On December 12, 2016, Bandini informed Customer B that SNCR needed to recognize license revenue for the software that Customer B was using in the fourth quarter of 2016 and that to do so, it needed to exclude the hosting and service elements from the PLA.

40. Customer B refused to sign the PLA without knowing the cost and terms for the ancillary services that had, to that point, been provided under the SaaS agreement. In response, Bandini provided two draft statements of work (“SOWs”) to Customer B, one for hosting and one for services.

41. Customer B preferred to sign all three agreements together and objected to signing the PLA without a guarantee that the price and terms for hosting and services would not deviate from those presented in the draft SOWs. To assuage Customer B, Bandini sent Customer B by email, a side letter stating that the hosting and services SOWs that were negotiated contemporaneously with the PLA would remain unchanged until they were signed in the subsequent quarter. Bandini and Thomas both signed the side letter. The draft SOWs referenced in the side letter specified hosting and all the other services to be performed and the fees to be paid.

42. Customer B signed the PLA on December 29, 2016, which provided for payment of a fee for the PLA alone to SNCR in the amount of \$1.3 million. Several months later, the hosting and other services SOWs were executed and were unchanged from the previously agreed to drafts. SNCR continued to provide its hosting services to Customer B during this entire period, including from the time the software PLA was signed to the time the hosting SOW was executed.

43. SNCR included the \$1.3 million PLA fee as part of its net revenue and income for the quarter and year ended December 31, 2016, in a Form 8-K and press release issued on February 8, 2017 and in its Form 10-K for the year ended December 31, 2016, filed on February 27, 2017.

44. SNCR’s inclusion of this fee as revenue was improper under GAAP because the PLA and the ancillary hosting and services agreements comprised an MLE, and SNCR had no VSOE of fair value for hosting. According to GAAP, the fees from these agreements should therefore have been recognized ratably over the life of the agreement; however, as Bandini knew or recklessly disregarded, neither the side letter nor the ancillary hosting and services agreements were provided to SNCR’s accounting department at the time revenue was recognized. The improperly recorded revenue from the Customer B transaction materially inflated SNCR’s revenue in these periods.

45. SNCR reversed the revenue for the Customer B transaction when it restated its 2016 financial results.

E. The Above Transactions Resulted in a Material Overstatement of SNCR’s Financial Performance

46. The revenue from the foregoing transactions that SNCR improperly recorded for the quarters ended June 30, 2016 and December 31, 2016 materially inflated SNCR’s revenue for these periods. SNCR also understated its pre-tax loss for the quarter ended June 30, 2016 by approximately 57% by improperly including revenue from the Customer A transaction. SNCR understated its pre-tax loss from continuing operations for the quarter ended December 31, 2016 by approximately 14% by improperly including revenue from the Subcontractor A and Customer B transactions. Based on its improper inclusion of revenue from all of these transactions, SNCR

understated its 2016 pre-tax loss from continuing operations by approximately 11% in its Form 10-K for the year ended December 31, 2016.

VIOLATIONS

47. As a result of the conduct described above, Bandini violated Section 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

48. As a result of the conduct described above, Bandini 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.

49. As a result of the conduct described above, Bandini caused SNCR to violate Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 13a-1, 13a-11, 13a-13, 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 and quarterly 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.

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 10(b), 13(a), 13(b)(2)(A), and 13b(5) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13, and 13b2-1 thereunder.

B. Respondent shall pay a civil money penalty in the amount of \$75,000.00 to the Securities and Exchange Commission. Payment shall be made in the following installments:

- \$15,000.00 within thirty days of the entry of this Order;
- an additional \$15,000.00 every 75 days thereafter, with payments ending no later than one year from the entry of this Order.

Payments shall be applied first to post order interest, which accrues pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

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 Marc Bandini 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