

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95055 / June 7, 2022

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4308 / June 7, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20889

In the Matter of

RONALD PRAGUE, ESQ.

Respondent.

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

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Ronald Prague (“Prague” or “Respondent”) pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(3) of the Commission’s Rules of Practice.¹

¹ Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any attorney . . . who has been by name . . . (B) found by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party or found by the Commission in any administrative proceeding to which he or she is a party to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

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 Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease and Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds² 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. On July 2, 2018, SNCR filed a Form 10-K with the Commission that restated its FY 2015 and 2016 financial statements and certain financial data for FY 2013 and 2014. The restatements applied to approximately \$190 million in cumulative revenues for the four year period. 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 there was not persuasive evidence of an arrangement and an acquisition in which SNCR recognized revenue on a license agreement instead of combining the amount of that license agreement with the acquisition purchase price.

As the then-General Counsel (“GC”) at SNCR, Prague was involved, along with others, in misleading auditors regarding two transactions and was a cause of SNCR’s violations of certain reporting provisions. As a result, Prague violated Rule 13b2-2(a) of the Exchange Act and was a cause of SNCR’s violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

² 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.

Respondent

1. Prague, age 59, resides in Livingston, New Jersey. After graduating from law school in 1988, Prague worked in private practice for a number of years and also was in-house counsel at several public companies. Prague served as SNCR's GC and Chief Legal Officer from 2006 until 2021. Prague is a licensed attorney in New York and has no disciplinary history.

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.

Facts

A. Transaction 1

3. In Q3 2015, SNCR's sales team unsuccessfully sought to finalize an agreement for the sale of a license to Customer A, one of its largest telecommunications customers. Despite that, it booked \$4.35 million in revenue related to the transaction.

4. In February 2016, senior Customer A personnel attended a meeting with a SNCR salesperson at which the Customer A personnel conveyed it was unhappy with SNCR's efforts to go outside normal procurement channels. Customer A personnel further told the SNCR salesperson that the email on which SNCR had relied in booking the \$4.35 million of revenue for Transaction 1 did not reflect a "commitment by [Customer A] to acquire the software," and that SNCR "certainly should not have booked revenue on the basis of an email exchange."

5. Senior personnel from Customer A then followed up the meeting with two letters in February: one to SNCR's COO that warned SNCR that Customer A needed a written agreement to consider a deal complete, and another to SNCR sales personnel stating that Customer A had not committed to purchase the software.

6. Prague reviewed these letters and reviewed a response that did not dispute the above assertions by Customer A.

7. In June 2016, Customer A emailed certain sales personnel at SNCR that SNCR "was not selected as a finalist" against products offered by its competitors. The email was forwarded later that day to Prague and other executives at SNCR.

8. SNCR nonetheless improperly continued to include this revenue as an unbilled receivable – *i.e.*, revenue that was not billed to the customer – from Customer A in its Forms 10-Q for Q1 through Q3 2016 as well as Forms 8-K.

9. In July 2016, Prague attended a meeting of SNCR’s audit committee as SNCR’s Secretary. At the meeting, SNCR’s CFO explained to the audit committee and the auditor that SNCR was having issues with certain unbilled receivables related to Transaction 1 due to “management changes” at Customer A. Neither the CFO nor Prague shared with the auditor the fact or substance of the February and June communications from Customer A. These communications were contrary to representations made by the CFO to the auditor that, in accordance with GAAP, the receivable was collectible, which was material to the accuracy of SNCR’s financial statements. The auditor would have found these communications important in evaluating whether the receivable was collectible.

10. As SNCR’s Secretary, Prague memorialized and signed the minutes of the meeting, which, as he knew or should have known, would be and were provided to the auditor in connection with its quarterly reviews and audits.

B. Acquisition

11. ASC 805-10-25-20 provides that if a separate transaction is entered into concurrently with an acquisition of a business, it should be accounted for in accordance with the relevant GAAP for that type of transaction. In determining whether it is a separate transaction, ASC 805-10-55-18 states that a company should consider certain factors including the reason for the transaction, who initiated the transaction, and the timing of the transaction. If the transaction is not a separate transaction, GAAP requires that the transaction be considered as part of the consideration for the acquisition, rather than accounted for separately.

12. In March 2016, SNCR entered into an agreement to acquire a certain business from a private equity firm (the “Acquisition”). On the same day, SNCR entered into a transaction to sell a license for \$10 million to both the business unit it was acquiring, as well as an affiliate of the business unit still owned by the private equity firm. The license sale was purportedly to settle claims that the business was infringing on certain SNCR patents. SNCR had not asserted any infringement claims to the business or the private equity firm until after SNCR had contacted the private equity firm and began negotiating the Acquisition.

13. SNCR included this \$10 million fee as revenue in its Form 10-Q for Q1 2016 and in its Form 10-K for FY 2016 as well as Forms 8-K.

14. As Prague knew or should have known from his role in the transaction, the Acquisition and license were negotiated together, and the Acquisition was contingent upon the sale of the license.

15. In addition, as Prague knew or should have known from his role in the transaction, SNCR did not identify potential patent infringement claims against the acquisition target until after

negotiations for the acquisition had begun. Under GAAP, these facts would have been material to the proper accounting treatment of the \$10 million license fee under GAAP, and required SNCR to treat the \$10 million license fee not as revenue, but rather as an adjustment to the purchase price of the acquisition.

16. Prague nevertheless made representations to the auditor regarding these foregoing facts that were misleading because they created the false impression that the license and acquisition were separate transactions for purposes of accounting under GAAP.

VIOLATIONS

17. As a result of the conduct described above, Prague violated Rule 13b2-2(a) of the Exchange Act which prohibits an officer or director of an issuer from, directly or indirectly, making or causing to be made a materially false or misleading statement, or omitting to state, or causing another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with (1) any audit or examination of the financial statements of the issuer required to be made or (2) the preparation or filing of any document or report required to be filed with the Commission.

18. As a result of the conduct described above, Prague was a cause of SNCR's violation 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, 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 and current 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 and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly it is hereby ORDERED effective immediately 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) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, 13a-13, and 13b2-2 thereunder.

B. Respondent, within 30 days of entry of this Order, pay a civil money penalty in the amount of \$25,000 to the Securities and Exchange Commission. If timely payment is not made, additional 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 Ronald Prague as 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 S. 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.

D. Pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice, effective immediately, Prague is suspended from appearing or practicing before the Commission as an attorney for 18 months from the date of the Order.

E. After 18 months from the date of the Order, Respondent may request that the Commission consider Respondent's reinstatement by submitting an application to the attention of the Office of the General Counsel.

F. In support of any application for reinstatement to appear and practice before the Commission as an attorney, Respondent shall provide a certificate of good standing from each state bar where Respondent is a member.

G. In support of any application for reinstatement, Respondent shall also submit a signed affidavit truthfully stating, under penalty of perjury:

1. That Respondent has complied with the Commission suspension Order, and with any related orders and undertakings including any orders in this proceeding or any related Commission proceedings, including any orders requiring payment of disgorgement or penalties;
2. That Respondent is not currently suspended or disbarred as an attorney by a court of the United States (or any agency of the United States) or the bar or court of any state, territory, district, commonwealth, or possession;
3. That Respondent, since the entry of the Order, has not been convicted of a felony or a misdemeanor involving moral turpitude that would constitute a basis for a forthwith suspension from appearing or practicing before the Commission pursuant to Rule 102(e)(2);
4. That Respondent, since the entry of the Order:
 - a. has not been charged with a felony or a misdemeanor involving moral turpitude as set forth in Rule 102(e)(2) of the Commission's Rules of Practice, except for any charge concerning the conduct that was the basis for the Order;
 - b. has not been found by the Commission or a court of the United States to have committed a violation of the federal securities laws, and has not been enjoined from violating the federal securities laws, except for any finding or injunction concerning the conduct that was the basis for the Order;

- c. has not been charged by the Commission or the United States with a violation of the federal securities laws, except for any charge concerning the conduct that was the basis for the Order;
 - d. has not been found by a court of the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, or any bar thereof to have committed an offense (civil or criminal) involving moral turpitude, except for any finding concerning the conduct that was the basis for the Order;
 - e. has not been charged by the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, civilly or criminally, with having committed an act of moral turpitude, except for any charge concerning the conduct that was the basis for the Order; and
 - f. has not been subject to disciplinary action by a bar, court or agency of any state for violations of applicable rules of professional conduct, except for any charge concerning the conduct that was the basis for the Order;
- 5. That Respondent's conduct is not at issue in any pending investigation of the Commission's Division of Enforcement or any criminal law enforcement investigation.
 - 6. That Respondent is not the subject of any complaints to, or investigations by, the bar or court of any state, territory, district, commonwealth, or possession, except to the extent that such complaints concern the conduct that was the basis for the Order;
 - 7. That Respondent has complied with any and all orders, undertakings, or other remedial, disciplinary, or punitive sanctions resulting from any action taken by the bar or court of any state, territory, district, commonwealth, or possession, or other regulatory body; and
 - 8. That Respondent undertakes to notify the Office of General Counsel immediately in writing if any information submitted in support of the application for reinstatement becomes materially false or misleading or otherwise changes in any material way while the application is pending.

H. Respondent shall also provide a detailed description of:

- 1. Respondent's professional history since the imposition of the Order, including

(a) all job titles, responsibilities and role at any employer;

(b) the identification and description of any work performed for entities regulated by the Commission, and the persons to whom Respondent reported for such work;

2. The circumstances under which Respondent's membership in a state bar or any court for which Respondent was a member has lapsed or otherwise is no longer active and an explanation of why for each; and
3. Respondent's plans for any future appearance or practice before the Commission.

I. The Commission may conduct its own investigation to determine if the foregoing attestations are accurate.

J. If Respondent provides the documentation and attestations required in this Order and the Commission (1) discovers no contrary information therein, and (2) determines that Respondent truthfully and accurately attested to each of the items required in Respondent's affidavit, and the Commission discovers no information, including under Paragraph I, indicating that Respondent has violated a federal securities law, rule or regulation or rule of professional conduct applicable to Respondent since entry of the Order (other than by conduct underlying Respondent's original Rule 102(e) suspension), then, unless the Commission determines that reinstatement would not be in the public interest, the Commission shall reinstate the respondent for cause shown.

K. If Respondent is not able to provide the documentation and truthful and accurate attestations required in this Order or if the Commission has discovered contrary information, including under Paragraph I, the burden shall be on the Respondent to provide an explanation as to the facts and circumstances pertaining to the matter setting forth why Respondent believes cause for reinstatement nonetheless exists and reinstatement would not be contrary to the public interest. The Commission may then, in its discretion, reinstate the Respondent for cause shown.

L. If the Commission declines to reinstate Respondent pursuant to Paragraphs J and K, it may, at Respondent's request, hold a hearing to determine whether cause has been shown to permit Respondent to resume appearing and practicing before the Commission as an attorney.

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