

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 74613 / March 31, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3645 / March 31, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16464

In the Matter of

POLYCOM, INC.,

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 Polycom, Inc. (“Polycom” 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 it and the subject matter of these proceedings, which are admitted, and except as provided herein in Section IV, 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:

1. **Polycom, Inc.**, a Delaware corporation with its principal place of business in San Jose, California, sells communications and collaboration technology. Polycom's stock is registered under Section 12(b) of the Exchange Act and is quoted on the Nasdaq Global Select Market under the ticker symbol "PLCM."

2. Andrew M. Miller ("Miller") was Polycom's CEO from approximately May 2010 and a Polycom Director from approximately June 2010, positions which he held until July 19, 2013, when he resigned both positions.

3. From approximately May 2010 until July 2013, Polycom paid for at least approximately \$190,000 worth of Miller's personal expenses without disclosing the expenses as compensation to Miller on the company's definitive proxy statements. Among others, these expenses included reimbursement for personal meals, clothing, entertainment and travel.

4. Miller charged some of those personal expenses to his credit card and then, in order to obtain reimbursement from Polycom, submitted expense reports with false business descriptions.

5. Miller directed his administrative assistants to pay for certain other of his personal expenses with their company purchasing cards ("P-Cards"), and he provided them with false business descriptions that were recorded as support for the charges. Polycom policy permitted Miller to review and approve the P-Card charges incurred by his administrative assistants, even though they had been incurred at his direction and on his behalf, allowing him to dispose of company assets without supervision.

6. Miller also charged Polycom for certain of his personal air travel, which cost Polycom at least approximately \$16,000. Polycom permitted Miller to book and charge flights without providing any description of their purpose, allowing him to improperly use company funds without supervision.

7. At least approximately \$80,000 of Miller's personal expenses were incurred and paid for by Polycom in connection with the company's "CEO Circle" program, an annual incentive trip offered to Polycom's top-performing sales people. More than \$65,000 in Polycom

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.

funds were used to pay for Miller's travel to Indonesia and South Africa with a friend and girlfriend, respectively, to purportedly conduct "site inspections" for the CEO Circle program. Polycom paid for Miller and his guests to enjoy luxury accommodations, food, entertainment and activities during these purported "site inspections." In addition, during the actual CEO Circle events, Polycom paid for more than \$13,000 worth of personal side-trips, spa treatments, and other "incidentals" for Miller and his girlfriend, who attended as his guest. Miller hid certain of his personal CEO-Circle-related costs by directing a Polycom vendor to falsify invoices and bury the charges in fake event budget line items.

8. Polycom thus omitted from its compensation disclosures at least the following amounts of Miller's personal expenses, by year: \$15,345 in 2010; \$28,478 in 2011; \$115,683 in 2012; and \$30,474 in 2013. Polycom also omitted from its compensation disclosures any description of the nature of the personal expenses that Miller had obtained.

9. In its 2013 proxy statement, which disclosed 2012 compensation, Polycom highlighted perquisites as a metric of its corporate governance and pay-for-performance goals and stated that it provided "no excessive perquisites" to its executives.

10. Polycom incorporated its definitive proxy statements into its annual reports by reference.

11. As a result of the conduct described above, Polycom violated Section 14(a) of the Exchange Act and Rules 14a-3 and 14a-9 thereunder. Rule 14a-3 prohibits issuers with securities registered pursuant to Section 12 of the Exchange Act from soliciting proxies without furnishing proxy statements containing the information specified in Schedule 14A, including executive compensation disclosures pursuant to Item 402 of Regulation S-K. Item 402 of Regulation S-K requires disclosure of the total value of all perquisites provided to Named Executive Officers (including CEOs) who receive more than \$10,000 in perquisites in a given year. Item 402 of Regulation S-K also requires disclosure of all perquisites by type, and specific identification of any perquisite greater than \$25,000 or 10% of total perquisites. Rule 14a-9 prohibits the use of proxy statements containing materially false or misleading statements or materially misleading omissions.

12. Also as a result of the conduct described above, Polycom violated Section 13(a) of the Exchange Act and Rules 13a-1 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 annual reports as the Commission may require, and mandate that the reports contain such further material information as may be necessary to make the required statements not misleading.

13. Because Polycom incorrectly recorded Miller's personal charges as business expenses, and not compensation, its books, records and accounts did not, in reasonable detail, accurately and fairly reflect its dispositions of assets.

14. In addition, Polycom failed to implement adequate internal accounting controls relating to its company-issued P-Cards and air travel booking that were sufficient to maintain the accountability of its assets.

15. As a result of the conduct described above, Polycom violated Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

16. Lastly, as a result of the conduct described above, Polycom violated Section 13(b)(2)(B), which requires reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are executed in accordance with management's general or specific authorization and are recorded as necessary to maintain accountability for assets, and that access to assets is permitted only in accordance with management's general or specific authorization.

Undertakings

17. Respondent undertakes to cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, Respondent undertakes:

a. To produce, without service of a notice or subpoena, any and all documents and other information reasonably requested by the Commission's staff, with a custodian declaration as to their authenticity, if requested;

b. To use its best efforts to cause Respondent's current and former employees, officers and directors to be interviewed by the Commission's staff at such times and places as the staff reasonably may direct;

c. To use its best efforts to cause Respondent's current and former employees, officers and directors to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be reasonably requested by the Commission's staff; and

d. In connection with any interviews of Respondent's current and former employees, officers and directors to be conducted pursuant to this undertaking, requests for such interviews may be provided by the Commission's staff by regular or electronic mail to: Caz Hashemi, Esq.; Wilson, Sonsini, Goodrich & Rosati; 650 Page Mill Road, Palo Alto, CA 94304; chashemi@wsgr.com, or such other counsel that may be substituted by Respondent.

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

Polycom's Remedial Efforts

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

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Polycom cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B) and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, 14a-3 and 14a-9 thereunder.

B. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$750,000 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 Polycom 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 Jina Choi, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.

By the Commission.

Brent J. Fields
Secretary