PCAOB
PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

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# Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions

*In the Matter of Alison G. Yablonowitz, CPA, and Shawn C. Rogers, CPA,*

Respondents.

PCAOB Release No. 105-2021-010

September 22, 2021

By this Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions ("Order"), the Public Company Accounting Oversight Board ("Board" or "PCAOB") is:

(1) suspending Alison G. Yablonowitz, CPA, from being associated with a registered public accounting firm for one year, imposing on her a $25,000 civil money penalty, and requiring her to complete 20 additional hours of continuing professional education (CPE) within one year of the date of this Order; and

(2) censuring Shawn C. Rogers, CPA, imposing on him a $10,000 civil money penalty, and requiring him to complete 20 additional hours of CPE within one year of the date of this Order.

The Board is imposing these sanctions on the basis of its findings that Yablonowitz and Rogers (collectively, "Respondents") violated PCAOB rules and auditing standards by failing to perform adequate procedures and obtain sufficient evidence concerning certain significant unusual transactions.

## I.

The Board deems it necessary and appropriate, for the protection of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports, that disciplinary proceedings be, and hereby are, instituted pursuant to Section 105(c) of the Sarbanes-Oxley Act of 2002, as amended ("Act"), and PCAOB Rule 5200(a)(1) against Respondents.

II.

In anticipation of institution of these proceedings, and pursuant to PCAOB Rule 5205, Respondents have submitted Offers of Settlement ("Offers") that the Board has determined to accept. Solely for purposes of these proceedings and any other proceedings brought by or on behalf of the Board, or to which the Board is a party, and without admitting or denying the findings herein, except as to the Board's jurisdiction over Respondents and the subject matter of these proceedings, which is admitted, Respondents consent to the entry of this Order as set forth below.[1]

III.

On the basis of Respondents' Offers, the Board finds that:[2]

## A. Respondents

1. **Alison G. Yablonowitz** is a certified public accountant licensed by the New Jersey State Board of Accountancy (license number 20CC03376200) and registered with the New York State Education Department (license number 081347). At all relevant times, she was a partner of Ernst & Young LLP ("EY") in its Iselin, New Jersey office. Yablonowitz is, and at all relevant times was, an associated person of a registered public accounting firm as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i).

2. **Shawn C. Rogers** is a certified public accountant licensed by the New Jersey State Board of Accountancy (license number 20CC02392800) and registered with the New York State Education Department (license number 092690). Rogers is, and at all relevant times was, a partner of EY in its Iselin, New Jersey office and an associated person of a registered public accounting firm as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i).

## B. Relevant Entities

3. **Ernst & Young LLP** is a public accounting firm organized as a Delaware limited liability partnership and headquartered in New York, New York. EY is licensed in multiple

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[1] The findings herein are made pursuant to Respondents' Offers and are not binding on any other person or entity in this or any other proceeding.

[2] The Board finds that Yablonowitz's conduct described in this Order meets the conditions set out in Section 105(c)(5)(B) of the Act, 15 U.S.C. § 7215(c)(5)(B), which provides that certain sanctions may be imposed in the event of repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

jurisdictions, including New Jersey (license number 20CB00262400). EY at all relevant times was registered with the Board pursuant to Section 102 of the Act and PCAOB Rules.

4. **Synchronoss Technologies, Inc.** ("Synchronoss" or "Company") is a Delaware corporation headquartered in New Jersey. Its public filings disclose that, during the relevant period, Synchronoss was a software company that provided technologies and services including cloud solutions and software-based activation for mobile carriers, enterprises, retailers, and original equipment manufacturers. At all relevant times, its common stock was registered under Section 12(b) of the Securities Exchange Act of 1934. At all relevant times, Synchronoss was an issuer as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

## C. Summary

5. This matter concerns Respondents' failures to comply with PCAOB rules and auditing standards in connection with EY's audits of Synchronoss's financial statements as of and for the years ended December 31, 2014 ("2014 Audit"), December 31, 2015 ("2015 Audit"), and December 31, 2016 ("2016 Audit").

6. Synchronoss reported progressively increasing net revenues from approximately $349 million for the year ended December 31, 2013 to $622 million[3] for the year ended December 31, 2016—an increase of more than 78%.

7. Yablonowitz served as the engagement partner on the 2014 and 2015 Audits, and her violations took place in connection with audit procedures to test the accounting for three software license transactions. Rogers served as the engagement partner on the 2016 Audit, and his violations took place in connection with audit procedures to test the accounting for two software license transactions.

| Audit Year | Engagement Partner | Transaction Counterparty | License Fee |
|---|---|---|---|
| 2014 | Yablonowitz | (1) Counterparty A | $6 million |
| 2015 | Yablonowitz | (2) Counterparty B<br>(3) Counterparty C | $10 million<br>$23 million |
| 2016 | Rogers | (4) Counterparty D<br>(5) Counterparty E | $10 million<br>$9.2 million |

[3] This amount includes net revenues that Synchronoss reflected as income from discontinued operations, net of tax, in its Consolidated Statement of Income for the year ended December 31, 2016.

8. In each of the transactions, Synchronoss licensed software technology to an entity—in exchange for a license fee—around the same time it was negotiating a strategic transaction (i.e., an acquisition, business venture, or divestiture) with that same entity or one or more of its affiliates. In each instance, Synchronoss incorrectly accounted for the license transaction as separate from the strategic transaction and improperly recognized the license payment as revenue.

9. With respect to these transactions, Respondents failed to adequately evaluate (a) Synchronoss's accounting treatment of the license transaction as separate from the related strategic transaction and (b) the factors specified in the PCAOB's fraud consideration standard with respect to significant unusual transactions. Moreover, Respondents failed to adequately resolve inconsistencies in audit evidence and investigate instances in which evidence contradicted management representations, and instead relied on uncorroborated management representations. In doing so, Respondents failed, among other things, to exercise due care and professional skepticism, and to obtain sufficient appropriate audit evidence to support EY's audit opinions for the 2014-2016 Audits.

10. In July 2018, after an audit committee-led investigation into accounting issues that revealed information previously withheld from EY engagement teams, Synchronoss filed a Form 10-K restating its financial statements for the years ended December 31, 2015 and 2016, as well as selected financial data for the year ended December 31, 2014, and other periods. EY conducted an audit of those restated financial statements. Rogers authorized the issuance of EY's audit report. Synchronoss's restatement reversed revenue from all five software license transactions at issue.

## D. Respondents Violated PCAOB Rules and Standards

11. In connection with the preparation or issuance of an audit report, PCAOB rules require that the associated persons of a registered public accounting firm comply with the Board's auditing and related professional practice standards.[4] An auditor may express an

[4] *See* PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*; PCAOB Rule 3200, *Auditing Standards* (applicable to audits for the fiscal years ending on or after December 31, 2016); PCAOB Rule 3200T, *Interim Auditing Standards* (applicable to audits for the fiscal years ending before December 31, 2016). As of December 31, 2016, the PCAOB reorganized its auditing standards using a topical structure and a single, integrated numbering system. *See Reorganization of PCAOB Auditing Standards and Related Amendments to PCAOB Standards and Rules,* PCAOB Release No. 2015-002 (March 31, 2015); *see also PCAOB Auditing Standards Reorganized and Pre-Reorganized Numbering* (January 2017). The reorganization did not impose additional requirements on auditors or change substantively the requirements of PCAOB standards. While Respondents' conduct occurred both

unqualified opinion on an issuer's financial statements only when the auditor has formed such an opinion on the basis of an audit performed in accordance with PCAOB standards.[5]

12. PCAOB standards require that an auditor exercise due professional care in planning and performing an audit.[6] Due professional care requires that the auditor exercise professional skepticism—an attitude that includes a questioning mind and a critical assessment of audit evidence—throughout the audit process.[7] Professional skepticism requires "an ongoing questioning of whether the information and evidence obtained suggests that a material misstatement due to fraud has occurred."[8]

13. Auditors are required to plan and perform audit procedures to obtain sufficient appropriate audit evidence to provide a reasonable basis for the opinion expressed in the auditor's report, including obtaining reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud.[9] The higher the risk of material misstatement, the more evidence the auditor should obtain, and the more persuasive that evidence should be.[10]

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before and after the reorganization, the reorganized standards, where applicable, are cited herein for purposes of clarity.

[5] *See* AS 3101.07, *Reports on Audited Financial Statements* (applicable to audits for fiscal years ending before December 15, 2017) ("The auditor's standard report states that the financial statements present fairly, in all material respects, an entity's financial position, results of operations, and cash flows in conformity with generally accepted accounting principles. This conclusion may be expressed only when the auditor has formed such an opinion on the basis of an audit performed in accordance with the standards of the PCAOB.").

[6] AS 1015.02, *Due Professional Care in the Performance of Work*.

[7] *See* AS 1015.07, .08; AS 2301.07, *The Auditor's Responses to the Risks of Material Misstatement*; AS 2401.13, *Consideration of Fraud in a Financial Statement Audit*.

[8] AS 2401.13.

[9] AS 1001.02, *Responsibilities and Functions of the Independent Auditor*; AS 1105.04, *Audit Evidence*; AS 2401.01; AS 2810.33, *Evaluating Audit Results*.

[10] AS 1105.05; *see also* AS 2301.09 ("In designing the audit procedures to be performed, the auditor should: a. Obtain more persuasive audit evidence the higher the auditor's assessment of risk . . . ."); *id.* at .37 ("As the assessed risk of material misstatement increases, the evidence from substantive procedures that the auditor should obtain also increases.").

14. Audit evidence "consists of both information that supports and corroborates management's assertions regarding the financial statements" and "information that contradicts such assertions."[11] While an auditor may use inquiry to obtain information, "[i]nquiry alone does not provide sufficient appropriate evidence to support a conclusion about a relevant assertion."[12] Management representations "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."[13] The auditor "should obtain corroboration for management's explanations regarding significant unusual or unexpected transactions."[14]

15. If audit evidence obtained from one source is inconsistent with audit evidence obtained from another source, "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."[15] Moreover, if "a representation made by management is contradicted by other audit evidence, the auditor should investigate the circumstances," "consider the reliability of the representation made," and "consider whether his or her reliance on management's representations relating to other aspects of the financial statements is appropriate and justified."[16] In addition, if management's responses to the auditor's inquiries appear to be "inconsistent with other audit evidence, imprecise, or not at a sufficient level of detail to be useful, the auditor should perform procedures to address the matter."[17]

16. Auditors who have identified significant unusual transactions are required to comply with certain provisions in the PCAOB's auditing standard governing the auditor's consideration of fraud. During the 2014 Audit, that standard was AU § 316, *Consideration of Fraud in a Financial Statement Audit*. Paragraphs 66 and 67 of AU § 316 required an auditor to (a) understand the business rationale for such a transaction, (b) understand whether that

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[11] AS 1105.02.

[12] AS 2301.39; *see also* AS 1105.17, Note ("Inquiry of company personnel, by itself, does not provide sufficient audit evidence to reduce audit risk to an appropriately low level for a relevant assertion . . . .").

[13] AS 2805.02, *Management Representations*.

[14] AS 2810.08. PCAOB standards describe significant unusual transactions as "[s]ignificant transactions that are outside the normal course of business for the company or that otherwise appear to be unusual due to their timing, size, or nature." AS 2401.66.

[15] AS 1105.29.

[16] AS 2805.04.

[17] AS 2810.08.

rationale or lack thereof suggested the transaction may have been entered into to engage in fraudulent financial reporting, and (c) consider certain factors including (i) whether the form of the transaction was overly complex and (ii) whether management was placing more emphasis on the need for a particular accounting treatment than on the transaction's underlying economics.[18]

17. By the time of the 2015 Audit, the PCAOB's fraud consideration standard—AU § 316—had been amended. By the time of the 2016 Audit, that amended standard had also been reorganized as AS 2401, *Consideration of Fraud in a Financial Statement Audit*. Paragraphs 66A, 67, and 67A of amended AU § 316 and AS 2401 require an auditor to (a) evaluate the business purpose of a significant unusual transaction, (b) evaluate whether that business purpose (or lack thereof) indicates the transaction may have been entered into to engage in fraudulent financial reporting, (c) take into account the potential misstatements that could result from significant unusual transactions in designing and performing further audit procedures, and (d) evaluate certain factors. Those factors include whether the form of the transaction is overly complex; whether the transaction involves other parties that do not appear to have the financial capability to support the transaction without assistance from the company; whether the transaction is part of a larger series of connected, linked, or otherwise interdependent arrangements that lack commercial or economic substance individually or in the aggregate; whether the transaction enables the company to achieve certain financial targets; and whether management is placing more emphasis on the need for a particular accounting treatment than on the underlying economic substance of the transaction (e.g., accounting-motivated structured transaction).[19]

18. An auditor at the time of the 2015-2016 Audits was also required to "evaluate whether significant unusual transactions that the auditor has identified have been properly accounted for and disclosed in the financial statements."[20]

19. PCAOB standards require an auditor to consider whether the substance of transactions or events differs materially from their form,[21] and to evaluate the results of the

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18 AU § 316.66, .67 (effective for audits of fiscal years beginning before December 15, 2014).

19 AU § 316.66A, .67, .67A (effective for audits of fiscal years beginning on or after December 15, 2014); AS 2401.66A, .67, .67A (reorganized, effective for audits of fiscal years beginning on or after December 15, 2014).

20 AU § 316.67A; AS 2401.67A.

21 AS 2815.06, *The Meaning of "Present Fairly in Conformity with Generally Accepted Accounting Principles."*

audit to determine whether the audit evidence obtained is sufficient and appropriate to support the opinion to be expressed in the auditor's report.[22] PCAOB standards also require an auditor to evaluate whether the financial statements are presented fairly, in all material respects, in conformity with GAAP.[23]

### i. Yablonowitz Violated PCAOB Rules and Standards in the 2014 Audit with Respect to Counterparty A Transactions

a. Background

20. Synchronoss sued Counterparty A, an affiliate of Counterparty A, and Counterparty A's parent company in 2011, alleging that these entities were infringing certain Synchronoss software patents. In late January 2014, while the infringement lawsuit was pending, Synchronoss signed a letter of intent to acquire Counterparty A.

21. By the end of March 2014, and while the acquisition discussions were ongoing, Synchronoss and Counterparty A substantially completed negotiations to settle the infringement lawsuit through a software licensing arrangement. That negotiation culminated in the execution of two software license agreements. In the first, entered into by Synchronoss, Counterparty A and its parent, and a Counterparty A affiliate on March 28, 2014 ("First Counterparty A License Agreement"), Synchronoss dismissed its patent infringement lawsuit and granted Counterparty A a perpetual license to use the software at issue in exchange for $3 million. Synchronoss recorded the $3 million fee as revenue on March 31, 2014, the last day of Q1 2014.

22. Three weeks later, on April 18, 2014, Synchronoss and Counterparty A, along with its parent and its affiliates, entered into a second software license agreement ("Second Counterparty A License Agreement" and, collectively with the First Counterparty A License Agreement, "Counterparty A License Agreements") by which Synchronoss granted Counterparty A's parent and affiliates a license for a second $3 million fee—but due only if within 135 days Counterparty A's stock or assets were acquired by another company, referred to as a "change in control." If there was no such change in control, Counterparty A's parent would not have to pay the second $3 million but would keep the software license.

23. Two weeks later, on May 3, 2014, Synchronoss and Counterparty A along with Counterparty A's parent entered into a third agreement, whereby Synchronoss acquired all of Counterparty A's stock for approximately $26.6 million ("Share Purchase Agreement"). That

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[22] *See* AS 2810.33-.35.

[23] AS 2810.30; AS 2815.01.

acquisition closed on July 11, 2014. As a result of the acquisition and upon receipt of the second license fee, Synchronoss recorded $3 million in revenue during Q3 2014.

24. Yablonowitz and the 2014 Audit engagement team identified the acquisition of Counterparty A as a significant unusual transaction.

25. In addition, Yablonowitz and the 2014 Audit engagement team identified revenue recognition and purchase accounting as "areas of audit emphasis." EY defined "areas of audit emphasis" as "those processes, accounts, contracts or transactions where we believe there is the greatest risk of material misstatement to the consolidated financial statements, whether due to error or fraud." Under PCAOB auditing standards, that increased risk required Yablonowitz to obtain greater and more persuasive audit evidence to support her conclusions.[24]

b. Yablonowitz Failed to Adequately Perform Procedures Concerning Counterparty A Transactions

26. GAAP includes ASC 805, *Business Combinations*. ASC 805 provides guidance to determine what is part of a business combination and requires the acquirer to identify any amounts that are not part of what the acquirer and acquiree exchanged in the business combination. ASC 805-10-25-20 ("25-20") states:

> The acquirer and the acquiree may have a preexisting relationship or other arrangement before negotiations for the business combination began, or they may enter into an arrangement during the negotiations that is separate from the business combination. In either situation, the acquirer shall identify any amounts that are not part of what the acquirer and the acquiree (or its former owners) exchanged in the business combinations, that is, amounts that are not part of the exchange for the acquiree. The acquirer shall recognize as part of applying the acquisition method only the consideration transferred for the acquiree and the assets acquired, and liabilities assumed in the exchange for the acquiree.

24 *See* AS 1105.05 ("Sufficiency is the measure of the quantity of audit evidence. The quantity of audit evidence needed is affected by the following: Risk of material misstatement (in the audit of financial statements) . . . . As the risk increases, the amount of evidence that the auditor should obtain also increases."); AS 2301.09.a ("In designing the audit procedures to be performed, the auditor should: . . . Obtain more persuasive audit evidence the higher the auditor's assessment of risk . . . ."); *id.* at .37 ("As the assessed risk of material misstatement increases, the evidence from substantive procedures that the auditor should obtain also increases.").

> Separate transactions shall be accounted for in accordance with the relevant generally accepted accounting principles (GAAP).

27. Yablonowitz understood that the Counterparty A License Agreements and business combination were entered into around the same time, and that Synchronoss had to consider, and she had to evaluate, whether those license agreements were separate transactions from the acquisition within the meaning of 25-20. If they were not separate transactions under GAAP, then the license fees could not be appropriately recorded as revenue and, instead, the $6 million in payments would need to be deducted from the cost to acquire Counterparty A.

28. In addition, to determine whether the Counterparty A transactions were "separate," Synchronoss had to consider the criteria set out in ASC 805's implementation guidance, specifically ASC 805-10-55-18 ("55-18"). 55-18 sets out three factors for determining "whether a transaction is part of the exchange for the acquiree or whether the transaction is separate from the business combination." Those factors are: the reasons for the transaction, who initiated the transaction, and the timing of the transaction.[25] Yablonowitz neither received nor reviewed any documentation of Synchronoss's consideration of 25-20 or 55-18 related to the Counterparty A transactions during the 2014 Audit.

29. Further, Synchronoss routinely documented its selection and application of accounting principles—such as the provisions in ASC 805—in accounting memoranda prepared by its Finance personnel. For the First Counterparty A License Agreement, the engagement team obtained, and Yablonowitz reviewed, a draft of such an accounting memorandum. However, that memorandum did not refer to 25-20 or 55-18, and contained no analysis of why Synchronoss had concluded the first license agreement was separate from the acquisition under 25-20. Nor was there any documentation that management considered the factors in 55-18.

30. Discussing the Second Counterparty A License Agreement, Yablonowitz observed in an email to her audit manager, "I don't think it's that straight forward [sic] given they acquired [Counterparty A], subsidiary of [Counterparty A's parent] at the same time. One could challenge whether it should be reduction in purchase price." Despite her observation, neither Yablonowitz nor others on the engagement team obtained an accounting memorandum, draft or otherwise, from Synchronoss in connection with the second license agreement.

31. Moreover, the 2014 Audit work papers do not reflect that Yablonowitz or the engagement team evaluated under 25-20 and 55-18 Synchronoss's treatment of the

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25 *See* ASC 805-10-55-18.a, .b, .c.

Counterparty A License Agreements as separate. For example, though the second factor in 55-18 is "who initiated the transaction," Yablonowitz did not know during the 2014 Audit, and failed to take steps to find out, which party (a) approached the other about settling the patent litigation between Synchronoss and Counterparty A or (b) raised with the other, or with any intermediary banker or broker, the possibility of an acquisition.

32. Yablonowitz also failed to perform an adequate evaluation of separateness during the 2014 Audit even though she was aware of evidence suggesting the Counterparty A License Agreements were not separate transactions from the acquisition of Counterparty A under 25-20 and 55-18 and indicating the need to exercise heightened professional skepticism in evaluating whether they were. For example, Yablonowitz was aware that the minutes of a January 2014 Synchronoss board meeting reflected that management told the board that Synchronoss would enter into the Counterparty A License Agreements "as part of" the acquisition, and that the 135-day change-in-control provision directly linked the Second Counterparty A License Agreement to the acquisition and was not "usual" for Synchronoss.

33. Moreover, the identification of the Counterparty A acquisition as a significant unusual transaction required Yablonowitz, among other things, to obtain an understanding of whether the business rationale for the acquisition or lack of rationale suggested the transaction may have been entered into to engage in fraudulent financial reporting[26] and to consider the factors specified in paragraph 67 of the PCAOB's fraud consideration standard with respect to significant unusual transactions ("SUT factors").[27]

34. However, there is no documentation, in the 2014 Audit work papers or elsewhere, indicating that Yablonowitz performed that evaluation or obtained evidence for the purpose of performing that evaluation.

35. In particular, Yablonowitz failed to adequately: (a) gain an understanding of the business rationale for entering into the Counterparty A acquisition separately from the Counterparty A License Agreements; (b) gain an understanding of whether the rationale for the Counterparty A acquisition suggested the Share Purchase Agreement was entered into separately from the license agreements in order to engage in fraudulent financial reporting; (c) consider whether the form of the Counterparty A acquisition as one of multiple transactions between Synchronoss and Counterparty A and its parent was "overly complex"; and (d) consider whether, by entering into the license agreements separate from the acquisition,

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[26] AU § 316.66.

[27] AU § 316.*67*; *see supra* ¶ 16.

management was placing more emphasis on the need for revenue treatment than on the underlying economics of the transaction.

36. Furthermore, though the evidence described above in paragraph 32 contradicted a representation by Synchronoss's chief financial officer (CFO) to Yablonowitz that the Counterparty A License Agreements and the acquisition were not negotiated together, Yablonowitz failed to adequately investigate the circumstances of those contradictions[28] or otherwise perform procedures to resolve those inconsistencies.[29]

### ii. Yablonowitz Violated PCAOB Rules and Standards in the 2015 Audit with Respect to Counterparty B Transactions

a. Background

37. Synchronoss sued Counterparty B in October 2014, alleging that Counterparty B was infringing certain of its software patents. At some point in 2014, Counterparty B approached Synchronoss to discuss a potential acquisition of Counterparty B's cloud business.

38. In November 2014, Counterparty B's chief executive officer ("CEO") met with Synchronoss's CEO to discuss both the settlement of the lawsuit and the sale of Counterparty B's cloud business to Synchronoss. Minutes of a December 2014 board meeting reviewed by Yablonowitz state that the two CEOs met "to discuss the patent litigation, the potential acquisition and a strategic partnership to cross-sell and market each other's products" and that the "Board agreed that the Company should continue negotiations with" Counterparty B.

39. On February 4, 2015, Synchronoss entered into an asset purchase agreement with Counterparty B to acquire its cloud assets for $60 million. The acquisition closed on February 23, 2015. That same day, Synchronoss entered into another agreement with Counterparty B to dismiss its patent infringement lawsuit and grant Counterparty B a perpetual license ("Counterparty B License Agreement") to use the patented software at issue in exchange for a $10 million license fee. Synchronoss accounted for the software license agreement with Counterparty B separately from the acquisition and recorded the $10 million license fee as revenue in Q1 2015.

40. In addition to identifying both the license agreement and acquisition agreement with Counterparty B (collectively, "Counterparty B Transactions") as significant unusual

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[28] AS 2805.04.

[29] AS 1105.29.

transactions, Yablonowitz and the 2015 Audit engagement team identified revenue recognition and business combinations, as well as significant unusual transactions in general, as areas of audit emphasis that presented the greatest risk of material misstatement to the financial statements. Yablonowitz and the engagement team thus were required to obtain greater and more persuasive audit evidence to support their conclusions.[30]

b. Yablonowitz Failed to Adequately Perform Procedures Concerning Counterparty B Transactions

41. Yablonowitz understood that the Counterparty B License Agreement and business combination were entered into around the same time, and that Synchronoss had to consider, and she had to evaluate, whether the license agreement was a separate transaction from the acquisition within the meaning of 25-20. If it was not a separate transaction, the $10 million payment would need to be deducted from the cost to acquire Counterparty B's cloud business.

42. In addition, Yablonowitz understood that, to determine whether the Counterparty B Transactions were "separate," Synchronoss had to consider the criteria set out in the implementation guidance at 55-18. Yet Synchronoss's accounting memoranda reviewed by Yablonowitz for the Counterparty B Transactions contained no reference to 55-18 nor any analysis of why Synchronoss had concluded the license agreement with Counterparty B was separate from the acquisition. The accounting memoranda stated that the "settlement was not a negotiating factor" during the acquisition discussions, but that assertion constituted neither sufficient appropriate audit evidence nor an analysis of the factors in 55-18.

43. Yablonowitz also failed to perform an adequate evaluation of the Counterparty B License Agreement during the 2015 Audit even though she was aware of evidence suggesting the license agreement with Counterparty B was not a separate transaction from the acquisition under 25-20 and 55-18 and indicating the need to exercise heightened professional skepticism in evaluating whether it was. For example, among other things, Yablonowitz was aware that management had communicated to the engagement team that the Counterparty B Transactions were negotiated in connection with each other.

44. Moreover, identification of the Counterparty B Transactions as significant unusual transactions required Yablonowitz, among other things, to evaluate whether the business purpose or lack of business purpose indicated that the transactions may have been

[30] *See* AS 1105.05; AS 2301.09, .37.

entered into to engage in fraudulent financial reporting[31] and to evaluate the SUT factors[32] presented by the transactions.[33] However, there is no documentation in EY's work papers reflecting an adequate evaluation.

45. Furthermore, though the evidence described above in paragraph 43 was inconsistent with and contradicted management's statements in accounting memoranda that the purchase consideration was "unrelated to the license agreement settlement" and that the "settlement agreement was separate and distinct from the asset purchase agreement," Yablonowitz failed to adequately investigate the circumstances of those contradictions[34] or otherwise perform procedures to resolve those inconsistencies.[35]

### iii. Yablonowitz Violated PCAOB Rules and Standards in the 2015 Audit with Respect to Counterparty C Transactions

a. Background

46. On December 31, 2015, Synchronoss executed two agreements and recognized $20 million of revenue on the last day of its fiscal year. One agreement provided for the formation of a business venture ("Business Venture") in which Synchronoss and two companies affiliated with each other (collectively, "Counterparty C") were investors ("BV Transaction"). The purpose of the Business Venture was to develop and market a new version of Counterparty C's then-existing software platform.

47. Pursuant to the BV Transaction, Synchronoss contributed $48 million of cash to the Business Venture in exchange for a two-thirds ownership interest in it. Counterparty C contributed to the Business Venture its ownership of its software platform and related assets (altogether valued at $72 million), in exchange for an immediate payout of $48 million of cash from the Business Venture and a one-third ownership interest in it. As a result of the BV Transaction (1) the Business Venture owned Counterparty C's software platform, including the related software; (2) Counterparty C had the $48 million of cash that Synchronoss initially contributed to the Business Venture; and (3) Counterparty C no longer had the right to use the software platform or the related software.

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31 *See* AU § 316.67.

32 *See supra* ¶ 17.

33 *See* AU § 316.67.

34 *See* AS 2805.04.

35 *See* AS 1105.29.

48. However, Counterparty C needed to continue using the software. Consequently, on the same day that the BV Transaction was entered into, December 31, 2015, the Business Venture and an affiliate of Counterparty C entered into a license agreement ("Counterparty C License Agreement") by which the Business Venture granted Counterparty C and its affiliates a license to use the software for a $23 million fee and agreed to provide maintenance services for $1 million.

49. Synchronoss concluded that the Business Venture's financial statements should be consolidated with Synchronoss's consolidated financial statements. Thus, Synchronoss consolidated the Business Venture's 2015 financial statements (which included only one day of operations) into its 2015 financial statements, accounted for the license agreement relating to Counterparty C separately from the BV Transaction, and recorded approximately $20 million of the license fee as revenue on December 31, 2015, deferring revenue recognition for the remaining fee, approximately $4 million, to later periods.

50. Yablonowitz and the engagement team identified the BV Transaction and the license agreement (collectively, "Counterparty C Transactions") as significant unusual transactions in the 2015 Audit. Yablonowitz and her team also identified significant unusual transactions, revenue recognition, business combinations, and investments in other affiliates as areas of audit emphasis with increased risk, and thus were required to obtain greater and more persuasive audit evidence to support their conclusions.[36]

b. Yablonowitz Failed to Adequately Perform Procedures Concerning Counterparty C Transactions

51. The Company's draft accounting memorandum for the license agreement obtained by the engagement team and reviewed by Yablonowitz was incorrect in two respects. First, it incorrectly concluded that 25-20 did not apply. Second, it incorrectly stated that, in order for Synchronoss to account for the license fee separately from the BV Transaction under ASC 805, Synchronoss needed to "show that the consideration exchanged for the license was at fair value and was not a bargain purchase resulting in a substantial benefit for either party." Although Yablonowitz knew that 25-20 and 55-18 should have been considered by Synchronoss in its accounting for the license agreement and BV Transaction and that assessing fair value alone was not a proper basis for determining that the license agreement was a separate

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36 *See* AS 1105.05; AS 2301.09, .37; *see also* AS 2310.27, *The Confirmation Process* ("[T]here may be circumstances (such as for significant, unusual year-end transactions that have a material effect on the financial statements . . . ) in which the auditor should exercise a heightened degree of professional skepticism . . . .").

transaction, Yablonowitz did not inquire about or challenge these statements nor request that the memorandum be revised or supplemented.

52. Moreover, notwithstanding that Yablonowitz had to evaluate Synchronoss's treatment of the license agreement as separate under 25-20 and 55-18, EY's work papers do not reference such an evaluation.

53. Yablonowitz failed to perform an adequate evaluation of the Counterparty C License Agreement during the 2015 Audit even though she was aware of evidence suggesting the license agreement was not a separate transaction from the BV Transaction under 25-20 and 55-18 and indicating the need to exercise heightened professional skepticism in evaluating whether it was. For example, Yablonowitz understood that the Counterparty C Transactions involved round trip transfers of cash and software rights, and that Counterparty C needed to retain a right to continue using the software for its business. Moreover, Yablonowitz was aware that the Counterparty C Transactions were originally structured without a license agreement—that is, as an acquisition by Synchronoss with Counterparty C retaining software rights.

54. Instead of performing an adequate evaluation, Yablonowitz relied on management representations, including a statement in Synchronoss's draft revenue recognition memorandum that "[t]his license agreement was not a negotiating factor in the [B]V agreement and has a stand-alone value" and a verbal representation by the CFO that the license agreement was being "separately negotiated" from the BV Transaction. Those assertions, however, did not constitute sufficient appropriate audit evidence.

55. Moreover, Yablonowitz understood that the identification of the Counterparty C Transactions as significant unusual transactions required her, among other things, to evaluate whether the business purpose or lack of business purpose indicated that the transactions may have been entered into to engage in fraudulent financial reporting[37] and to evaluate the SUT factors[38] presented by the transactions.[39]

56. However, there is no documentation reflecting such an evaluation even though Yablonowitz was aware of evidence indicating that the license agreement was not a separate transaction, and did not have separate economic substance, from the BV Transaction, and

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[37] AU § 316.67.

[38] *See supra* ¶ 17.

[39] *See* AU § 316.67.

might have been entered into separately in order to allow Synchronoss to improperly record revenue and potentially engage in fraudulent financial reporting.

### iv. Rogers Violated PCAOB Rules and Standards in the 2016 Audit with Respect to Counterparty D Transactions

a. Background

57. In February 2016, shortly after Rogers had taken on responsibilities as engagement partner for the 2016 Audit, he received an email from Synchronoss's controller concerning a potential acquisition of and license agreement with Counterparty D and attaching a draft of that license agreement. The draft agreement released software patent infringement claims Synchronoss purportedly had against Counterparty D and granted a perpetual license to use the patented software to Counterparty D.

58. On March 1, 2016, Synchronoss entered into an agreement to acquire for approximately $125 million all of the stock of Counterparty D from its parent company.

59. On the same day, March 1, 2016, Synchronoss entered into a license agreement with both Counterparty D and its affiliate ("Counterparty D License Agreement") to release software patent infringement claims Synchronoss purportedly had against Counterparty D and to grant, for a $10 million license fee, a perpetual license to use the patented software at issue to Counterparty D and its affiliate.

60. Synchronoss accounted for the license agreement separately from the acquisition of Counterparty D and recorded the $10 million as revenue during Q1 2016.

61. Rogers and the 2016 Audit engagement team identified the Counterparty D acquisition and the license agreement with Counterparty D (collectively, "Counterparty D Transactions") as significant unusual transactions. Rogers and the team also identified revenue recognition and business combinations as areas of audit emphasis and thus were required to obtain greater and more persuasive evidence.[40]

b. Rogers Failed to Adequately Perform Procedures Concerning Counterparty D Transactions

62. Rogers understood that the Counterparty D License Agreement and business combination were entered into around the same time, and that Synchronoss had to consider, and he had to evaluate, whether the license agreement with Counterparty D was a separate

[40] *See* AS 1105.05; AS 2301.09, .37.

transaction under 25-20. Rogers also understood that if it was not a separate transaction under GAAP, then the license fee could not be appropriately recorded as revenue and instead the $10 million payment would need to be deducted from the cost to acquire Counterparty D from its parent company.

63. To determine whether the Counterparty D License Agreement was "separate" under 25-20, Synchronoss had to consider the implementation guidance under 55-18 to assert that the $10 million license fee was properly recorded as revenue, and Rogers had to evaluate whether Synchronoss had properly implemented 55-18 to the license agreement.

64. The engagement team obtained from Synchronoss, and Rogers reviewed, two accounting memoranda for the Counterparty D Transactions. Neither specifically mentioned 55-18 nor contained an analysis of why Synchronoss had concluded the license agreement was separate from the acquisition. Rogers failed to obtain an understanding of why the Company accounting memoranda omitted discussion of the factors in 55-18 or to request that the Company accounting memoranda be revised or supplemented.

65. Moreover, the 2016 Audit work papers do not reflect an analysis of 25-20 or 55-18. Rogers failed to perform an adequate evaluation of separateness during the 2016 Audit even though he was aware of evidence suggesting the license agreement was not a separate transaction from the acquisition of Counterparty D under 25-20 and 55-18 and indicating the need to exercise heightened professional skepticism in evaluating whether it was. For example, Synchronoss's controller communicated to Rogers that the Company intended to sue Counterparty D for patent infringement if the acquisition fell through. In addition, Rogers reviewed the engagement team's purchase accounting memorandum for the Counterparty D acquisition, which concluded that Synchronoss was able to pay a higher price for Counterparty D than any other potential buyer because, unlike any other buyer, Synchronoss would not be impacted by the intellectual property infringement of its own patents.

66. In evaluating separateness, Rogers and the engagement team relied on statements in the Company's accounting memoranda that the "settlement was not a negotiating factor" in the acquisition of Counterparty D and that "[n]one of the two transactional amounts were negotiated together and the acquisition was not contingent on entering into the license agreement." They also relied on oral representations from the CFO and the Company's general counsel that the license agreement and Counterparty D acquisition were negotiated separately and not on a net basis. That reliance on written and oral representations was insufficient to properly evaluate separateness.

67. In addition, Rogers failed to obtain sufficient evidence that Synchronoss and Counterparty D had a preexisting relationship—that is, "a relationship that existed before they

contemplated the business combination."[41] Rogers understood that Synchronoss first contemplated the business combination when it was initially contacted by an investment banker about a potential acquisition of Counterparty D. But Rogers also knew that Synchronoss had never filed a patent infringement lawsuit against Counterparty D. Rogers never otherwise obtained an understanding of what facts Synchronoss was relying on to determine that a "relationship" had existed before the investment banker's contact, nor came to any conclusion himself of what, in the absence of a lawsuit, that "relationship" was.

68. Though Rogers had conversations with the Company's CFO and general counsel about Synchronoss's potential patent infringement claims, he failed to obtain evidence that Synchronoss communicated potential claims to Counterparty D before the investment banker contact. Moreover, he failed to corroborate the representations made during those conversations.

69. Furthermore, though Rogers knew the identification of the Counterparty D Transactions as significant unusual transactions required him to perform the procedures specified in AS 2401.66A and .67*,* the 2016 Audit work papers do not reflect an evaluation of SUT factors[42] beyond the conclusory statement: "There are no indications that the transaction was entered into to engage in fraud."

70. Rogers failed to adequately perform that evaluation even though he was aware of evidence indicating that the license agreement was not a separate transaction, and did not have separate economic substance, from the acquisition of Counterparty D, and might have been entered into separately in order to allow Synchronoss to improperly record revenue and potentially engage in fraudulent financial reporting.

71. Moreover, though the evidence described above in paragraph 65 was inconsistent with the management representation that the license agreement and Counterparty D acquisition were negotiated separately, Rogers failed to investigate the circumstances of those contradictions[43] or otherwise perform procedures to resolve those inconsistencies.[44]

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[41] ASC 805-10-55-20.

[42] *See supra* ¶ 17.

[43] *See* AS 2805.04.

[44] *See* AS 1105.29.

### v. Rogers Violated PCAOB Rules and Standards in the 2016 Audit with Respect to Counterparty E Transactions

a. Background

72. On December 16, 2016, Synchronoss sold to Counterparty E a 70% ownership interest in the business process outsourcing ("BPO") segment of its carrier activation business for $146 million ("BPO Sale"). The BPO Sale was documented in an operating agreement ("Operating Agreement").

73. In order to help finance the BPO Sale, Synchronoss loaned Counterparty E $83 million through a subordinated seller's promissory note, and guaranteed $30 million of a total of $40 million in unsubordinated debt that Counterparty E owed a third party. As a result of the BPO Sale, Synchronoss and Counterparty E jointly owned the BPO business and became related parties.

74. Synchronoss accounted for the BPO Sale as part of net income from discontinued operations net of taxes in the Consolidated Statement of Income.

75. Six days after the BPO Sale, on December 22, 2016, Synchronoss entered into a license agreement with Counterparty E, which allowed Counterparty E to use Synchronoss's Razorsight software in connection with operating the BPO business. Counterparty E paid Synchronoss a $10 million fee in connection with the license agreement.

76. Synchronoss accounted for the license agreement separately from the BPO Sale and recorded $9.2 million of the $10 million license fee as revenue in Q4 2016, because $9.2 million was the Company's fair value estimate of the license agreement. Rogers testified that Synchronoss treated the remaining $800,000 as additional consideration paid by Counterparty E to purchase the BPO business, and recorded the $800,000 as an element of the gain on the sale of the discontinued operations.

77. Rogers and the 2016 Audit engagement team identified the BPO Sale and the license agreement with Counterparty E (collectively, "Counterparty E Transactions") as significant unusual transactions. Rogers and the team also identified revenue recognition and business combination as areas of audit emphasis, and identified the Counterparty E Transactions as part of two other areas of audit emphasis—discontinued operations including

divestiture and related parties—and thus were required to obtain greater and more persuasive evidence.[45]

b. Rogers Failed to Adequately Perform Procedures Concerning Counterparty E Transactions

78. The Company's accounting memorandum, which Rogers reviewed, identified ASC 805 as the authoritative guidance for accounting for the license agreement with Counterparty E. Rogers understood that ASC 805 applied by analogy to the accounting for the license agreement with Counterparty E and the BPO Sale, which was a divestiture.[46]

79. Rogers understood that Synchronoss had to evaluate the license agreement and divestiture under 25-20 and 55-18 to determine whether it was proper to record $9.2 million of the license fee as revenue. The Company's accounting memorandum reviewed by Rogers during the 2016 Audit incorrectly stated that Synchronoss needed to "show that the consideration exchanged for the license was at fair value and was not a bargain purchase resulting in a substantial benefit for either party" in order to treat the license fee as separate. Yet Rogers never understood the basis for that statement, inquired why it had been included, or asked that the memorandum be revised.

80. Rogers failed to perform an adequate evaluation of the Counterparty E License Agreement during the 2016 Audit even though he was aware of evidence suggesting the license agreement with Counterparty E was not a separate transaction from the BPO Sale and indicating the need to exercise heightened professional skepticism. For example, Rogers reviewed minutes of a November 5, 2016 Synchronoss board meeting indicating that a draft of the Operating Agreement included the license agreement as one of its ancillary agreements.

81. Instead, Rogers relied on representations from the CFO and other members of management that the two agreements with Counterparty E were separately negotiated and the negotiations were led by separate members of management. However, Rogers failed to corroborate those representations. The statement in Synchronoss's accounting memorandum

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45 *See* AS 1105.05; AS 2301.09, .37; *see also* AS 2310.27 ("[T]here may be circumstances (such as for significant, unusual year-end transactions that have a material effect on the financial statements . . . ) in which the auditor should exercise a heightened degree of professional skepticism . . . .").

46 *See* ASC 105-10-05-2 ("If the guidance for a transaction or event is not specified within a source of authoritative GAAP for that entity, an entity shall first consider accounting principles for similar transactions or events within a source of authoritative GAAP for that entity and then consider nonauthoritative guidance from other sources.").

for the license agreement—that the "license agreement was not a negotiating factor in the divestiture"—did not provide sufficient evidence as to whether management's representations were true.

82. Furthermore, though the identification of the Counterparty E Transactions as significant unusual transactions required Rogers to perform the procedures specified in AS 2401.66A and .67*,* the 2016 Audit work papers do not reflect an evaluation of SUT factors[47] beyond the conclusory statement: "There are no indications that the transaction was entered into to engage in fraud."

83. Rogers failed to adequately perform that evaluation even though he was aware of evidence indicating that the license agreement with Counterparty E was not a separate transaction, and did not have separate economic substance, from the BPO Sale, and might have been entered into separately in order to allow Synchronoss to improperly record revenue and potentially engage in fraudulent financial reporting.

84. Moreover, though the evidence described above in paragraph 80 contradicted, and was inconsistent with, the management representation that the license agreement and BPO Sale were negotiated separately, Rogers failed to sufficiently investigate the circumstances of those contradictions[48] or otherwise perform procedures to resolve those inconsistencies.[49]

## IV.

In view of the foregoing, and to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports, the Board determines it appropriate to impose the sanctions agreed to in Respondents' Offers.[50] Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 105(c)(4)(B) of the Act and PCAOB Rule 5300(a)(2), Alison G. Yablonowitz is suspended for a period of one year from the date of this Order

47 *See supra* ¶ 17.

48 *See* AS 2805.04.

49 *See* AS 1105.29.

50 In determining to accept Rogers's Offer, the Board considered efforts undertaken by Rogers in relation to the audit committee-led investigation and restatement.

from being an associated person of a registered public accounting firm, as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i);[51]

B. Pursuant to Section 105(c)(4)(E) of the Act and PCAOB Rule 5300(a)(5), Shawn C. Rogers is hereby censured;

C. Pursuant to Section 105(c)(4)(D) of the Act and PCAOB Rule 5300(a)(4), the Board imposes the following civil money penalties:

1. Alison G. Yablonowitz, $25,000; and

2. Shawn C. Rogers, $10,000.

All funds collected by the Board as a result of the assessment of these civil money penalties will be used in accordance with Section 109(c)(2) of the Act. Respondents shall pay these civil money penalties within 10 days of the issuance of this Order by (1) wire transfer in accordance with instructions furnished by Board staff; or (2) United States Postal Service money order, bank money order, certified check, or bank cashier’s check (a) made payable to the Public Company Accounting Oversight Board, (b) delivered to the Office of Finance, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington, D.C. 20006; and (c) submitted under a cover letter which identifies Yablonowitz or Rogers as a respondent in these proceedings, sets forth the title and PCAOB release number of these proceedings, and states that payment is made pursuant to this Order, a copy of which cover letter and money order or check shall be sent to the Office of the Secretary, Attention: Phoebe Brown, Secretary, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington, D.C. 20006. ***Respondents understand that failure to pay the civil money penalty described above may alone be grounds for a summary suspension or bar pursuant to PCAOB Rule 5304.***

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[51] As a consequence of the suspension, the provisions of Section 105(c)(7)(B) of the Act will apply with respect to Yablonowitz. Section 105(c)(7)(B) provides: “It shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any issuer, broker, or dealer in an accountancy or a financial management capacity, and for any issuer, broker or dealer that knew, or in the exercise of reasonable care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission.”

D. Pursuant to Section 105(c)(4)(F) of the Act and PCAOB Rule 5300(a)(6), Yablonowitz and Rogers are each required to complete, within one year of the date of this Order, 20 hours of professional education and training directly related to the audits of issuer financial statements under PCAOB standards, covering, among other topics, significant unusual transactions and management representations. Such hours shall be in addition to, and shall not be counted in, the continuing professional education Yablonowitz and Rogers are each required to obtain in connection with any professional license.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

Phoebe W. Brown
Secretary

September 22, 2021