

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 74240 / February 10, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3636 / February 10, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16381

In the Matter of

WILLIAM SLATER, CPA and
PETER E. WILLIAMS, III

Respondents.

**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 William Slater and Peter E. Williams, III (“Respondents”).

II.

In anticipation of the institution of these proceedings, the Respondents have submitted Offers of Settlement (the “Offers”) that 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 each and over the subject matter of these proceedings, which are admitted, Respondents consent 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 Respondents' Offers, the Commission finds¹ that:

Summary

1. This matter involves misstated revenues in the professional services organization at Saba Software, Inc. ("Saba" or "the Company"), a Silicon Valley-based enterprise software company. The misstatements were the result of the falsification of time records over a period of more than four years by professional services managers in multiple geographies directing consultants in Saba's Indian subsidiary (the India Consulting Group or "ICG") to falsify time records by either recording time in advance of performance of work or failing to record time for hours worked in order to achieve their quarterly revenue and margin targets.

2. As a result, Saba reported materially false financial results in its financial statements filed with the Commission over the period from October 4, 2007 through January 6, 2012. As Saba announced on August 6, 2012 and November 5, 2012, management has determined that the Company is required to restate its financial statements for fiscal years 2008 through 2011, as well as the first two quarters of fiscal 2012, as a result of misconduct. The Company expects that the restatement will change the time period during which the affected revenues are recognized, generally shifting the timing of such revenues to later periods.

3. Saba's former Chief Financial Officers, William Slater and Peter E. Williams, III, realized Saba stock-sale profits and received bonuses during the 12-month periods following the filings containing financial results that Saba is required to restate. The Commission does not allege that Slater and Williams participated in the misconduct giving rise to the restatement. Slater and Williams have not, however, reimbursed Saba for stock-sale profits and bonuses they are required to reimburse the Company under Section 304(a) of the Sarbanes-Oxley Act.

Respondents

4. **William Slater**, age 63, is a resident of San Diego, California. He served as Chief Financial Officer and Principal Accounting Officer of Saba from December 9, 2008 through October 27, 2011. He served as Chief Financial Officer, Vice President and Treasurer of another public company from November 10, 2011 to February 15, 2013. Slater was licensed as a certified public accountant in New York from 1978 to 2003, when his license became inactive.

5. **Peter E. Williams III**, age 53, is a resident of Hillsborough, California. Prior to joining Saba as General Counsel in October 1999, Williams was a partner at an international law

¹ The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

firm. Williams has been Saba's Secretary from the time of the Company's inception in April 1997. Williams served as Saba's Chief Financial Officer and Principal Accounting Officer from March 2004 to July 2007 and then again, on an interim basis, from October 27, 2011 until January 7, 2012. Since July 2007, Williams has also served as Executive Vice President, Corporate Development. Williams has been licensed to practice law in California since 1987. He has never been licensed as a certified public accountant.

6. **Saba Software, Inc.** ("Saba" or "the Company") is a Delaware corporation headquartered in Redwood Shores, California. The software company provides cloud-based enterprise learning, talent management and social networking tools to businesses and large organizations. At all relevant times, Saba's common stock has been registered pursuant to Section 12 of the Exchange Act. From its IPO in April 2000 until July 31, 2006, its common stock was registered pursuant to Section 12(g). Thereafter, until June 2013, it was registered pursuant to Section 12(b). It traded on the Nasdaq Global Market until it was suspended on April 9, 2013, and then it was delisted effective June 17, 2013 for failure to remain compliant with its SEC reporting obligations. Upon its delisting and deregistration from Section 12(b), it reverted to its previous Section 12(g) registration. Its common stock is currently registered pursuant to Section 12(g) and traded on the OTC Markets. Saba has not filed any periodic reports since January 6, 2012, when it filed its Form 10-Q for the quarter ended November 30, 2011.

Facts

A. Saba's Falsification of Time Records

7. Saba's professional services historically have accounted for about one third of its approximately \$120 million in yearly revenues. Professional services have been delivered to customers worldwide by (1) customer-facing field consultants in North America and Europe ("Field Consultants") and (2) off-shore technical development services provided to the Field Consultants by the Company's India Consulting Group ("ICG Consultants"). ICG is an organization within Saba's Indian subsidiary designed to help the Company deliver professional services to its customers at a lower cost than comparable consultants in North America and Europe. By 2011, ICG employed 50-60 consultants who generated approximately 14,000 hours of billable work per quarter, which constituted about 17% of consulting revenue and 6% of total revenue per quarter.

8. Both Field Consultants and ICG Consultants were required to record time worked on customer projects in a timesheet database. Hours input into the system by Field or ICG Consultants were approved on a weekly basis by project managers in North America and Europe, and revenue for the professional services organization was then measured based on the approved number of hours in the timesheet database.

9. Saba disclosed in its public filings that it recognized revenue for both "time and materials" and "fixed fee" contracts as the services were performed. This revenue recognition treatment was consistent with GAAP only if Saba could demonstrate that (1) its customers have historically paid a consistent rate for its services (measured by Vendor Specific Objective Evidence

or “VSOE”) and (2) it could accurately estimate how many hours it took to complete projects (“ability to estimate”). Therefore, Saba’s finance personnel depended on accurate time records to ensure that Saba recognized revenue in accordance with GAAP.

10. From at least 2008 through the second quarter of Saba’s fiscal 2012, Saba professional services employees and managers engaged in two time-keeping practices that led to its false revenue recognition. First, there were multiple incidents of ICG Consultants recording hours and billing customers for the performance of professional services in advance of performing those services in order to accelerate revenue recognition and achieve quarterly revenue targets (“pre-booking”). Second, ICG and Field Consultants regularly failed to report professional services time worked in order to conceal budget overruns from management and finance, instead recording that time to non-billable project codes or not at all (“under-booking”).

11. These improper time-keeping practices precluded the time records from serving as reliable evidence under GAAP to recognize revenue in the manner that Saba did. As such, Saba management has concluded that Saba cannot demonstrate VSOE for the period from 2008 through the second quarter of fiscal 2012. Over that period, therefore, Saba was required to recognize professional services revenues on a completed contract basis, which would have required it to defer substantially all of its professional services revenue and much of its license revenue (where software licenses were bundled with professional services) until the contract was completed. Accordingly, virtually all of Saba’s professional services revenue was misstated over the relevant time period because revenue was recognized earlier than it should have been under the applicable accounting principles.

12. The practices of pre-booking and under-booking were directed by and known to numerous individuals in the professional services organization and ICG, including the two most senior Saba employees overseeing the professional services organization in North America over the relevant time period. Those senior Saba employees were told on multiple occasions by the finance department that the Company’s accountants and auditors needed to understand exactly how many hours were being worked and when (regardless of whether or not they were billed to the customer) in order to ensure that revenue was recognized accurately, and they understood that inaccurate time-keeping would lead to misstatements in Saba’s reported professional services revenue and violate the Company’s policies regarding financial reporting, including the Code of Business Conduct and the Revenue Recognition Policy.

B. Scope and Impact of the Fraud

13. Saba’s professional services revenues, gross margins and income were materially overstated in its periodic filings from October 4, 2007 through January 6, 2012 as a result of the time-reporting misconduct.

14. The practices of pre-booking and under-booking, and the fundamental inaccuracy in Saba’s time records revealed by these practices, have led Saba management to conclude that it can no longer rely on its calculation of VSOE of fair value for professional services. In this circumstance, ASC 985-605 (Certain Revenue Arrangements That Include Software Elements) and

ASC 605-35 (Revenue Recognition) require that the Company defer to the point where services are complete, rather than recognize over the period where services are performed, standalone services revenue and revenue on software license and cloud services agreements that contain bundled professional services. Accordingly, Saba has determined and announced that it is required to restate its financial statements for the years 2008, 2009, 2010 and 2011, and the first two quarters of 2012, due to its material non-compliance with GAAP. Although Saba has not yet filed its required restatement, the cumulative impact of this alternative revenue recognition treatment is approximately \$70 million over the period from 2008 through the second fiscal quarter of 2012. The Company expects that the restatement will change the time period during which the affected revenues are recognized, generally shifting the timing of such revenues to later periods.

15. These misstatements are material. First, based on the Company's own estimates, the restated financials will reflect overstatements of gross revenue and profit of more than 5% in each year for the period 2008 through 2011. Second, the effect of the inflated revenue was that Saba met analyst expectations for EPS in certain quarters and caused at least one year (2010) to reflect net income when, but for the inflated revenue, the Company should have reported a net loss.

C. Saba's Required Restatement

16. On August 6, 2012, Saba announced that, following an internal accounting review, management had determined that its annual financial results for fiscal years 2011 and 2010, as well as the first and second quarters of fiscal year 2012, should be restated as a result of instances of improper time-recording that it had identified in the Company's professional services business. On November 5, 2012, Saba announced that management had determined that the Company's annual financial results for fiscal years 2009 and 2008 would also need to be restated.

D. Compensation of CFOs Slater and Williams

17. During the 12-month periods that followed the filing of the periodic reports requiring restatement, Slater and Williams received bonuses and realized profits from sales of Saba stock.

18. Slater and Williams have not reimbursed those amounts to Saba.

Violations

19. Section 304 of the Sarbanes-Oxley Act of 2002 requires the chief financial officer of any issuer required to prepare an accounting restatement due to material noncompliance with the securities laws as a result of misconduct to reimburse the issuer for (i) any bonus or incentive-based or equity-based compensation received by that person from the issuer during the 12-month periods following the false filings, and (ii) any profits realized from the sale of securities of the issuer during those 12-month periods. Section 304 does not require that a chief financial officer engage in misconduct to trigger the reimbursement requirement. Slater and Williams both realized Saba stock-sale profits and received bonuses during the 12-month periods following the filings

containing financial results that Saba is required to restate. They have not, to date, reimbursed the Company for those amounts. Slater and Williams have, therefore, violated Sarbanes-Oxley Section 304.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED, pursuant to Section 21C of the Exchange Act, that:

A. Respondents Slater and Williams cease and desist from committing or causing any violations and any future violations of Section 304 of the Sarbanes-Oxley Act.

B. Respondent Slater shall, within 30 days of the entry of this Order, reimburse Saba for a total of \$337,375 pursuant to Section 304(a) of SOX. Respondent shall simultaneously deliver proof of satisfying this reimbursement obligation to Erin Schneider, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, California 94104.

C. Respondent Williams shall, within 30 days of the entry of this Order, reimburse Saba for a total of \$141,992 pursuant to Section 304(a) of SOX. Respondent shall simultaneously deliver proof of satisfying this reimbursement obligation to Erin Schneider, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, California 94104.

By the Commission.

Brent J. Fields
Secretary