

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 78395 / July 22, 2016

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3791 / July 22, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-14171

In the Matter of _____ : ORDER GRANTING APPLICATION FOR
James M. Schneider, CPA : REINSTATEMENT TO APPEAR AND PRACTICE
: BEFORE THE COMMISSION AS AN ACCOUNTANT
: RESPONSIBLE FOR THE PREPARATION OR
: REVIEW OF FINANCIAL STATEMENTS REQUIRED
: TO BE FILED WITH THE COMMISSION

On December 22, 2010, James M. Schneider, CPA (“Schneider”) was suspended from appearing or practicing before the Commission as an accountant as a result of settled public administrative proceedings instituted by the Commission against Schneider pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.¹ This order is issued in response to Schneider’s application for reinstatement to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission.

The Commission found that Schneider had been permanently enjoined by a United States District Court from future violations of Section 17(a)(2) and Section 17(a)(3) of the Securities Act of 1933 (“Securities Act”), Exchange Act Section 13(b)(5) and Rules 13a-14, 13b21, and 13b2-2 thereunder, and from aiding and abetting violations of Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) and Rules 12b-20, 13a-1, and 13a-13 thereunder. In its Complaint in the injunctive action, the Commission alleged, among other things, Dell Inc. (“Dell”) fraudulently committed various disclosure and accounting violations through the conduct of Schneider and others. The Complaint alleged that Schneider made or was involved in making material misrepresentations in earnings calls and material misrepresentations and omissions in Dell’s annual reports on Form 10-K for the fiscal years 2003 through 2006 and in the company’s quarterly reports on Form 10-Q for the first three quarters of fiscal years 2003 through 2006 and the first quarter of fiscal 2007 relating to the impacts on Dell’s operating results from payments

¹ See Accounting and Auditing Enforcement Release No. 3222 dated December 22, 2010. Schneider was permitted, pursuant to the order, to apply for reinstatement after five years upon making certain showings.

from Intel Corp. The material misrepresentations during earnings calls misled investors as to the bases for Dell's success in meeting or exceeding analyst consensus EPS estimates and the reasons for Dell's sharp drop in operating results in its second quarter of fiscal year 2007. The disclosure violations misrepresented to investors the basis for Dell's increasing profitability and failed to disclose information required by Item 303 of Regulation S-K. The Commission's complaint also alleged, among other things, that Schneider directed and engaged in improper accounting that resulted in Dell filing materially false and misleading financial statements in the company's annual reports on Form 10-K for the fiscal years 2002 through 2004, and in the company's quarterly reports on Form 10-Q for the first three quarters of fiscal years 2002 through 2004 and the first two quarters of fiscal 2005. The Complaint alleged that Schneider directed and engaged in a number of improper accounting practices in contravention of generally accepted accounting principles that materially misstated Dell's financial results and enabled the company to report lower operating expense as a percentage of revenue. These practices included improperly manipulating excess reserve balances and improperly accounting for certain restructuring costs.

In his capacity as a preparer or reviewer, or as a person responsible for the preparation or review, of financial statements of a public company to be filed with the Commission, Schneider attests that he will undertake to have his work reviewed by the independent audit committee of any company for which he works, or in some other manner acceptable to the Commission, while practicing before the Commission in this capacity. Further, Schneider attests that while serving on an audit committee, he will undertake to (i) have any action taken as a member of the audit committee subject to the scrutiny of the full audit committee, with no function or responsibility independent of the audit committee as a whole; (ii) not accept any delegation of authority to act on behalf of the chair of the audit committee or the audit committee as a whole; and (iii) not serve as chair of an audit committee, absent review by the Office of the Chief Accountant in good faith of whether any future offer to serve as chair complies with the requirement that Schneider will have his work reviewed by the independent audit committee for which he works or in some other acceptable manner. Schneider is not, at this time, seeking to appear or practice before the Commission as an independent accountant. If he should wish to resume appearing and practicing before the Commission as an independent accountant, he will be required to submit an application to the Commission showing that he has complied and will comply with the terms of the original suspension order in this regard. Therefore, Schneider's suspension from practice before the Commission as an independent accountant continues in effect until the Commission determines that a sufficient showing has been made in this regard in accordance with the terms of the original suspension order.

Rule 102(e)(5) of the Commission's Rules of Practice governs applications for reinstatement, and provides that the Commission may reinstate the privilege to appear and practice before the Commission "for good cause shown."² This "good cause" determination is necessarily highly fact specific.

² Rule 102(e)(5)(i) provides:

"An application for reinstatement of a person permanently suspended or disqualified under paragraph (e)(1) or (e)(3) of this rule may be made at any time, and the applicant may, in the Commission's discretion, be afforded a hearing; however, the suspension or disqualification shall continue unless and until the applicant has been reinstated by the Commission for good cause shown." 17 C.F.R. § 201.102(e)(5)(i).

On the basis of information supplied, representations made, and undertakings agreed to by Schneider, including undertaking to have his work reviewed by the independent audit committee of any company for which he works, or in some other manner acceptable to the Commission, in his practice before the Commission as a preparer or reviewer of financial statements required to be filed with the Commission, and, as to serving on an audit committee, including undertaking to (i) have any action taken as a member of the audit committee subject to the scrutiny of the full audit committee, with no function or responsibility independent of the audit committee as a whole; (ii) not accept any delegation of authority to act on behalf of the chair of the audit committee or the audit committee as a whole; and (iii) not serve as chair of an audit committee, absent review by the Office of the Chief Accountant in good faith of whether any future offer to serve as chair complies with the requirement that Schneider will have his work reviewed by the independent audit committee for which he works or in some other acceptable manner, Schneider has shown good cause for reinstatement. Therefore, it is accordingly,

ORDERED pursuant to Rule 102(e)(5)(i) of the Commission's Rules of Practice that James M. Schneider, CPA is hereby reinstated to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission.

By the Commission.

Brent J. Fields
Secretary