

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 79395 / November 23, 2016

ACCOUNTING AND AUDITING ENFORCEMENT  
Release No. 3830 / November 23, 2016

ADMINISTRATIVE PROCEEDING  
File No. 3-13190

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In the Matter of \_\_\_\_\_ : ORDER GRANTING APPLICATION FOR  
Mark David Shapiro, 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

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On September 12, 2008, Mark David Shapiro, CPA (“Shapiro”) 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 Shapiro pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.<sup>1</sup> This order is issued in response to Shapiro’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 Shapiro had been permanently enjoined by a United States District Court from future violations of Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 and Rules 10b-5, 13b2-1, and 13b2-2 promulgated thereunder and from aiding and abetting violations of Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 13b2-1, 13b2-2, 12b-20, 13a-1, and 13a-13 promulgated thereunder. In its Complaint in the injunctive action, the Commission alleged, among other things, that Shapiro engaged in a fraudulent scheme that resulted in Fleming Companies, Inc. (“Fleming”) filing materially false and misleading financial statements in 2001 and 2002. The Complaint alleged that Shapiro engaged in a number of improper accounting practices that materially increased Fleming’s annual and quarterly revenue and net income in a departure from generally accepted accounting principles. These practices included, among other things, prematurely recognizing rebates as income. In addition, the complaint alleged that Shapiro made material

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<sup>1</sup> See Accounting and Auditing Enforcement Release No. 2876 dated September 12, 2008. Shapiro was permitted, pursuant to the order, to apply for reinstatement after three years upon making certain showings.

misrepresentations to Fleming's independent auditor about certain of the company's accounting practices.

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, Shapiro 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. Shapiro 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, Shapiro'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."<sup>2</sup> This "good cause" determination is necessarily highly fact specific.

On the basis of information supplied, representations made, and undertakings agreed to by Shapiro, it appears that he has complied with the terms of the September 12, 2008 order suspending him from appearing or practicing before the Commission as an accountant, that no information has come to the attention of the Commission relating to his character, integrity, professional conduct or qualifications to practice before the Commission that would be a basis for adverse action against him pursuant to Rule 102(e) of the Commission's Rules of Practice, and that Shapiro, by 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, has shown good cause for reinstatement. Therefore, it is accordingly,

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<sup>2</sup> 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).

ORDERED pursuant to Rule 102(e)(5)(i) of the Commission's Rules of Practice that Mark David Shapiro, 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