

ORDER

II.

In anticipation of institution of these proceedings, and pursuant to PCAOB Rule 5205, Respondents have each submitted an Offer of Settlement (collectively, "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 entry of this Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions ("Order") as set forth below.²

III.

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

A. Respondents

1. Scott and Company LLC is a limited liability company organized under the laws of the State of South Carolina, and is headquartered in Columbia, South Carolina. The Firm registered with the Board on October 8, 2003, pursuant to Section 102 of the Act and PCAOB rules.³ The Firm is licensed to practice public accountancy by the South Carolina Department of Labor, Licensing, and Regulation (License No. AFI 3038), and by the North Carolina State Board of Certified Public Accountant Examiners. At all relevant times, the Firm was the external auditor for AFS.⁴ At the time of the Audit, AFS was the Firm's only issuer audit client. Currently, the Firm has no issuer audit clients.

² The findings herein are made pursuant to Respondents' Offers and are not binding on any other persons or entities in this or any other proceeding.

³ Scott and Company LLP, which originally registered with the Board, is the predecessor firm to Scott and Company LLC. On November 12, 2013, Scott and Company LLC filed a Form 4 with the Board to succeed to the registration status of the predecessor firm.

⁴ At all relevant times, AFS was a Delaware corporation headquartered in Charlotte, North Carolina. AFS's public filings disclose that its business objective was to create a national financial services firm for small businesses providing services such as accounts receivable funding (factoring), purchase order finance, and outsourcing of accounts receivable management. At all relevant times, AFS's common stock was



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2. Michael J. Slapnik, age 39, of Lexington, South Carolina, is, and at all relevant times was, a partner in the Columbia, South Carolina office of the Firm and a certified public accountant licensed by the South Carolina Department of Labor, Licensing, and Regulation (License No. 6239). At all relevant times, Slapnik 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). Slapnik served as the engagement partner for the Audit.

B. Other Relevant Individual

3. Mark K. Nelson ("Nelson"), age 50, of Matthews, North Carolina, is a certified public accountant that Scott engaged to assist with the Audit.⁵ At the time of the Audit, Nelson was also a partner in another public accounting firm that was not registered with the PCAOB ("Nelson's non-PCAOB registered Firm"). In connection with the Audit, Nelson performed audit procedures in certain audit areas. Because of his role on the Audit, Nelson was, at all relevant times, 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).⁶

C. Summary

4. This matter concerns the Firm's violations of PCAOB rules and standards that require a registered public accounting firm and its associated persons to be independent of the firm's issuer audit clients throughout the audit, as well as the Firm's violations of Section 10A(g) of the Exchange Act and Exchange Act Rule 10A-2 concerning auditor independence. During the Audit, the Firm was not independent with respect to AFS because Nelson provided prohibited non-audit services to AFS, while at

registered under Section 12(g) of the Exchange Act, and the company was an issuer as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

⁵ At all relevant times, Nelson was a certified public accountant licensed by the North Carolina State Board of Certified Public Accountant Examiners (License No. 19066).

⁶ See Mark K. Nelson, CPA, PCAOB Release No. 105-2016-008 (Feb. 18, 2016).

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the same time serving on the Firm's audit engagement team.⁷ Specifically, Nelson prepared AFS's tax provision and the informational tables in AFS's financial statement tax footnote for the year under audit contemporaneous with his work on the Audit, which included performing audit procedures on the tax provision and footnote information that he had prepared.

5. This matter also concerns Slapnik's violation of PCAOB rules concerning the engagement partner's responsibility to determine compliance with independence requirements. During the Audit, Slapnik failed to respond properly to indications that Nelson, and thus the Firm, was not independent of AFS because Nelson had prepared AFS's tax provision and tax footnote for the year under audit.

D. The Firm Violated PCAOB Rules and Standards and the Exchange Act

6. In connection with the preparation or issuance of an audit report, PCAOB rules require that a registered public accounting firm and its associated persons comply with the Board's auditing and related professional practice standards.⁸ PCAOB rules and standards also require that a registered public accounting firm be independent of an issuer audit client throughout the audit and professional engagement period.⁹ A registered public accounting firm's independence obligation with respect to an audit client that is an issuer encompasses not only an obligation to satisfy the independence criteria set out in the rules and standards of the PCAOB, but also an obligation to satisfy all other independence criteria applicable to the engagement, including the independence criteria set out in the rules and regulations of the Securities and Exchange Commission ("Commission") under the federal securities laws.¹⁰

⁷ See Section 10A(g) of the Exchange Act; Exchange Act Rule 10A-2, *Auditor Independence*; PCAOB Rule 3520, *Auditor Independence*; and AU §§ 220.01-02, *Independence*.

⁸ PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*, and PCAOB Rule 3200T, *Interim Auditing Standards*. All references to PCAOB standards are to the versions of those standards in effect at the time of the Audit.

⁹ See PCAOB Rule 3520; see also AU §§ 220.01-.02.

¹⁰ See PCAOB Rule 3520, Note 1.

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7. Section 10A(g) of the Exchange Act provides that it shall be unlawful for a registered public accounting firm (and any associated person of that firm, to the extent determined appropriate by the Commission) that performs an audit for an issuer "to provide to that issuer, contemporaneously with the audit, any non-audit service, including . . . [b]ookkeeping or other services related to the accounting records or financial statements of the audit client."

8. Exchange Act Rule 10A-2 states that it shall be unlawful for an auditor not to be independent with respect to, among other requirements, the prohibited non-audit services provisions of Commission Regulation S-X. Rule 2-01 of Regulation S-X provides that an accountant is not independent if, at any point during the audit and professional engagement period, the accountant provides certain non-audit services for an audit client, including bookkeeping and financial statement preparation services.¹¹

9. As described below, the Firm failed to comply with PCAOB rules and auditing standards, the Exchange Act, and Exchange Act rules in connection with the Audit.

The Firm's Audit of AFS's 2012 Financial Statements

10. On or about February 11, 2013, AFS engaged the Firm as its auditor for the year ended December 31, 2012.¹² The Firm engaged Nelson to assist with the audit of AFS's 2012 financial statements. His work on the Audit was to include performing audit procedures concerning AFS's 2012 tax provision and the tax footnote for AFS's 2012 financial statements. During the Audit, Nelson provided the Firm with a signed letter representing that he was independent of AFS, and he also signed off on a Supervision, Review, and Approval work paper affirming that he had maintained his independence throughout the performance of the Audit.

11. During the Audit, the Firm received the AFS tax provision and source data for AFS's Form 10-K tax footnote in a document containing the header, "Tax provision has been provided by client by way of [Nelson's non-PCAOB-registered Firm]. All S+C [Scott and Company] comments in red." This document (the "Tax Support") was included as a work paper in the Firm's documentation for the Audit. The Tax Support work paper contained the informational tables that appear in the tax footnote for AFS's 2012 financial statements filed with the Commission, and contained source data as

¹¹ See 17 C.F.R. §§ 210.2-01(b), (c)(4)(i).

¹² In October 2013, AFS changed its name to FlexShopper, Inc.



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support for those tables.¹³ During the Audit, both Nelson and Slapnik signed off as having reviewed the Tax Support work paper.

12. Despite the header noting that Nelson's non-PCAOB-registered Firm had been involved in preparing the Tax Support document, neither the Firm nor Slapnik asked Nelson if he personally had any involvement in the preparation of the document.¹⁴ In fact, Nelson himself had prepared the Tax Support document on which he and Slapnik subsequently signed off as reviewers.

13. On March 27, 2013, Slapnik authorized the Firm's issuance of its unqualified audit report on AFS's financial statements for the fiscal year ended December 31, 2012. On that same day, AFS filed those financial statements and the Firm's audit report with the Commission.

14. As a result of Nelson's work in both preparing and performing audit work on AFS's tax provision and tax footnote, the Firm was not independent of AFS during the Audit, in violation of PCAOB rules and auditing standards, the Exchange Act, and Exchange Act rules.¹⁵

¹³ AFS disclosed in the tax footnote of its 2012 Form 10-K that its income tax provision was \$0 for the year, after applying net operating loss carryforwards to the current-year taxable income of \$161,000. The tax footnote also disclosed that AFS had recognized a valuation allowance in the full amount of the company's \$1,547,000 in gross deferred tax assets for 2012, to adjust the deferred tax assets to the amount of net operating losses that AFS expected to be realized.

¹⁴ During the prior year (2011) audit, Nelson had served on the engagement team and had offered either to prepare AFS's tax provision, or to get another firm to prepare it. Slapnik informed Nelson that he should get another firm to prepare the 2011 tax provision because Nelson was on the 2011 engagement team. Based on this interaction, and Nelson's written affirmations referenced above, Respondents assumed during the 2012 Audit that another member of Nelson's firm, rather than Nelson himself, had prepared the Tax Provision document. But even if that assumption had been correct, such circumstances would have resulted in the Firm not being independent of AFS during the 2012 Audit. See 17 C.F.R. §§ 210.2-01(b), (c)(4).

¹⁵ See Section 10A(g) of the Exchange Act; Exchange Act Rule 10A-2; PCAOB Rule 3520; and AU §§ 220.01-.02.

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E. Slapnik Violated PCAOB Rules and Standards Concerning Determining Compliance with Independence

15. PCAOB auditing standards provide that the engagement partner "is responsible for the engagement and its performance."¹⁶ That responsibility includes determining compliance with independence requirements at the beginning of the audit and reevaluating that determination with changes in circumstances during the audit.¹⁷

16. As described above, Slapnik failed to properly determine compliance with independence requirements in connection with the Audit. During the Audit, he became aware of circumstances indicating that Nelson's non-PCAOB registered Firm, and thus, perhaps Nelson, was involved in preparing the work on which Nelson was performing audit procedures. Nevertheless, Slapnik failed to take reasonable steps to reevaluate whether Nelson, and thus the Firm, complied with PCAOB standards requiring auditors to be independent of the audit client during the audit and professional engagement period. Accordingly, Slapnik violated AS 9 by failing to properly determine Nelson's, and the Firm's, compliance with independence requirements during the Audit.

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 the Firm's and Slapnik's Offers. Accordingly, it is hereby ORDERED that:

- A. Pursuant to Section 105(c)(4)(E) of the Act and PCAOB Rule 5300(a)(5), the Firm and Slapnik are hereby censured;
- B. Pursuant to Section 105(c)(4)(D) of the Act and PCAOB Rule 5300(a)(4), a civil money penalty is imposed in the amount of \$10,000 upon the Firm. All funds collected by the Board as a result of the assessment of this civil money penalty will be used in accordance with Section 109(c)(2) of the Act. The Firm shall pay the \$10,000 civil money penalty within ten (10) days of the issuance of this Order by (1) wire transfer pursuant to instructions provided by Board staff; or (2) United States Postal Service money order, bank money order, certified check, or bank cashier's check

¹⁶ Auditing Standard No. 9, *Audit Planning*, ("AS 9") ¶ 3.

¹⁷ Id. at ¶ 6(b) and Note.

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(a) made payable to the Public Company Accounting Oversight Board, (b) delivered to the Controller, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington, D.C. 20006, and (c) submitted under a cover letter which identifies the payor 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 W. Brown, Secretary, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington, D.C. 20006;

C. Pursuant to Section 105(c)(4)(G) of the Act and PCAOB Rule 5300(a)(9), the Firm, should the Board grant any future application of the Firm for registration, is required:

1. within ninety (90) days from the date the Board grants any future application of the Firm for registration ("Future Registration Date"), to establish policies and procedures, or revise and/or supplement existing policies and procedures, for the purpose of providing the Firm with reasonable assurance of compliance with applicable independence requirements, including the requirements of Rule 2-01 of Regulation S-X;

2. within ninety (90) days from the Future Registration Date, to establish a policy of ensuring training, whether internal or external, on an annual or more frequent regular basis, concerning applicable independence requirements, including the requirements of Rule 2-01 of Regulation S-X, of any Firm audit personnel who participate in any way in the planning or performing of any audit or interim review of an issuer or any SEC Registered Broker-Dealer Engagement (defined to mean an engagement to provide a report—whether an audit report, an examination report, or a review report—required under paragraph (d)(1)(i)(C) of Exchange Act Rule 17a-5, 17 C.F.R. § 240.17a-5, as amended);

3. within ninety (90) days from the Future Registration Date and before the Firm's commencement of any audit or interim review of an issuer or commencement of any SEC Registered Broker-Dealer Engagement, to ensure training pursuant to the policy described in paragraph IV.C.2. above on at least one occasion; and

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4. to certify in writing to the Director of the Division of Enforcement and Investigations, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington D.C. 20006, the Firm's compliance with paragraphs IV.C.1 through C.3 above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Firm shall submit such certification within one hundred twenty (120) days from the Future Registration Date. The Firm shall also submit such additional evidence of and information concerning compliance as the staff of the Division of Enforcement and Investigations may reasonably request.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

Phoebe W. Brown
Secretary

February 18, 2016