

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 him and the subject matter of these proceedings, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Shapiro, age 48, has been a certified public accountant licensed to practice in the State of New York. He served as Chief Accounting Officer and Senior Vice President of Finance for Fleming Companies, Inc. ("Fleming"), from 2001 until 2003.

2. Fleming was, at all relevant times, an Oklahoma corporation with its principal place of business in Lewisville, Texas. Fleming was engaged in the business of wholesale grocery distribution. At all relevant times, Fleming's common stock was registered with the Commission pursuant to the Securities Exchange Act of 1934 ("Exchange Act"), and traded on the New York Stock Exchange.

3. On September 15, 2005, the Commission filed a complaint against Shapiro in SEC v. Mark Shapiro, et al. (Civil Action No. 4:05-CV-0364). On August 15, 2008, the court entered an order permanently enjoining Shapiro, by consent, from future violations of Sections 10(b) and 13(b)(5) of the Securities Exchange Act 1934 ("Exchange Act") and Rules 10b-5, 13b2-1 and 13b-2-2 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, and promulgated thereunder. Shapiro was also ordered to pay a \$135,000 civil money penalty.

4. The Commission's complaint alleged, among other things, that Shapiro, engaged in a fraudulent scheme that resulted in 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 misrepresentations to Fleming's independent auditor about certain of the company's accounting practices.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Shapiro is suspended from appearing or practicing before the Commission as an accountant.

B. After three years from the date of this order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in his/her practice before the Commission will be reviewed either by the independent audit committee of the public company for which he/she works or in some other acceptable manner, as long as he/she practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent, or the public accounting firm with which he/she is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent, or the registered public accounting firm with which he/she is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;

(c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent acknowledges his/her responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his/her state CPA license is current and he/she has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to

Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Florence E. Harmon
Acting Secretary