

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 62636 / August 4, 2010

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3163 / August 4, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13993

In the Matter of

THOMAS P. FLANAGAN, CPA,

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS PURSUANT
TO SECTIONS 4C AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND RULE 102(e) OF THE
COMMISSION'S RULES OF PRACTICE,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Thomas P. Flanagan, CPA (“Respondent” or “Flanagan”) pursuant to Sections 4C¹ and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii) and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice.²

¹ Section 4C provides, in relevant part, that the Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

² Rule 102(e)(1)(ii) provides, in pertinent part, that “[t]he Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in unethical or improper professional conduct.” Rule 102(e)(1)(iii) provides, in pertinent part,

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which 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 him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds³ that:

A. SUMMARY

This matter involves dozens of violations of the auditor independence rules by an accountant who owned and controlled securities in nine audit clients. Between December 2003 and July 2008, Thomas P. Flanagan (“Flanagan”), a partner and a Vice Chairman at Deloitte & Touche LLP, made 71 trades in which he purchased stock or options in Deloitte audit clients, 62 of which were in the securities of audit clients for whom Flanagan was serving on Deloitte’s engagement team as the advisory partner. Flanagan concealed his ownership and control of these securities from Deloitte and the audit clients. During the time Flanagan owned or controlled these securities, Deloitte issued audit reports to these nine audit clients in which it stated that the financial statements contained in the reports had been audited by an independent auditor. These clients then filed with the Commission annual reports and proxy statements, which included these false audit reports.

B. RESPONDENT

1. **Thomas P. Flanagan**, CPA, age 62, of Chicago, Illinois, is a certified public accountant licensed to practice in the state of Illinois. He was a partner at Deloitte & Touche LLP (“Deloitte”)

that “[t]he Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.”

³ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

and its predecessor firms from 1978 until September 2008. At the time of his departure from Deloitte, Flanagan was a Vice Chairman in Deloitte's Chicago and had over 35 years of public-company audit experience.

C. RELEVANT ENTITIES

2. **Deloitte & Touche LLP** is a Delaware limited liability partnership. Deloitte is a subsidiary of Deloitte LLP, a US member firm of Deloitte Touche Tohmatsu, which is a Swiss Verein that is organized as an association of independent member firms worldwide which provides professional services under the "Deloitte" brand name. Deloitte is registered with the Public Company Accounting Oversight Board ("PCAOB"). At all relevant times and continuing to the present, Deloitte has provided auditing services to a variety of companies, including companies whose securities are registered with the Commission and traded in the U.S. markets.

3. **Allstate Corp. ("Allstate")** is a Delaware corporation based in Northbrook, Illinois. Its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act [15 U.S.C. §781(b)] and is traded on the New York Stock Exchange and Chicago Stock Exchange. Deloitte has served as Allstate's auditor since 1994.

4. **Berkshire Hathaway, Inc. ("Berkshire Hathaway")** is a Delaware corporation based in Omaha, Nebraska. Its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the New York Stock Exchange. Deloitte has served as Berkshire Hathaway's, or one of its predecessor's, auditor since 1985.

5. **Best Buy Co., Inc. ("Best Buy")** is a Minnesota corporation based in Richfield, Minnesota. Its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the New York Stock Exchange and the Chicago Stock Exchange. Deloitte has served as Best Buy's auditor since 2005.

6. **CBOT Holdings, Inc. ("CBOT")** was a Delaware corporation based in Chicago, Illinois. Its common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was traded on the New York Stock Exchange. CBOT merged with Chicago Mercantile Exchange Holdings, Inc. in July 2007 and is no longer a publicly traded company. Deloitte served as CBOT's auditor from at least 2001 until 2007.

7. **CNA Financial Corp. ("CNA")** is a Delaware corporation based in Chicago, Illinois. Its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the New York Stock Exchange and the Chicago Stock Exchange. Deloitte has served as CNA's auditor since at least 1994.

8. **Sears Holding Corporation** (collectively with its predecessor Sears, Roebuck & Co., "Sears") is a Delaware corporation based in Hoffman Estates, Illinois. Its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the NASDAQ. Deloitte has served as Sears' auditor for over 70 years.

9. **ServiceMaster Company (“ServiceMaster”)** is a Delaware corporation based in Memphis, Tennessee. In 2006 and 2007, its common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was traded on the New York Stock Exchange. ServiceMaster was purchased by a private equity firm in 2007 and is no longer a publicly traded company. Deloitte has served as ServiceMaster’s auditor since 2002.

10. **USG Corp. (“USG”)** is a Delaware corporation based in Chicago, Illinois. Its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the New York Stock Exchange and Chicago Stock Exchange. Deloitte has served as USG’s auditor since 2002.

11. **Walgreen Company (“Walgreens”)** is an Illinois corporation based in Deerfield, Illinois. Its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the New York Stock Exchange, NASDAQ, and the Chicago Stock Exchange. Deloitte has served as Walgreens’ auditor since 2002.

D. FACTS

Flanagan was Subject to the Commission’s Auditor Independence Rules

12. At all relevant times, Deloitte was the auditor responsible for the audits or reviews of the annual and quarterly financial statements for Allstate, Berkshire Hathaway, Best Buy, CBOT, CNA, Sears and its predecessor Sears, Roebuck and Co., ServiceMaster, USG, and Walgreens (“collectively, “the Audit Clients”) filed with the Commission.

13. Flanagan served as the Advisory Partner on Deloitte’s audit engagements with seven of the nine Audit Clients, including Allstate from 2003 to 2008; Berkshire Hathaway from 2002 to 2008; Best Buy from 2005 to 2008; Sears from 2002 to 2008; ServiceMaster from 2003 to 2006; USG from 2004 to 2008; and Walgreens from 2003 to 2008 (collectively, “the Flanagan Advisory Clients”).

14. Advisory Partners are assigned by Deloitte to certain clients and play an important role in these engagements. As the Advisory Partner for the Flanagan Advisory Clients, Flanagan, among other things, served as a liaison between management and the Deloitte audit engagement team, attended Audit Committee meetings, received and had access to nonpublic information regarding the Flanagan Advisory Clients’ earnings results and other information, and in some cases, participated in the evaluation of the performance of other partners serving that client.

15. Flanagan was required to comply with the Commission’s auditor independence rules with respect to the Flanagan Audit Clients because as the Advisory Partner, he was a “covered person” under those rules. Flanagan was also required to comply with the auditor independence rule with respect to CBOT and CNA because by working in the same office as the lead partner on those engagements, he was a covered person.

16. Under the Commission's auditor independence rules, accountants are not independent as to an audit client if, among other things, the accounting firm, or any covered person in the firm, or any of his or her immediate family members has a direct investment in the audit client, such as stocks, bonds, notes, options, or other securities, or if the accountant serves as the voting trustee of a trust containing securities of an audit client. Flanagan knew and understood this rule.

Flanagan Owned or Controlled the Audit Clients' Securities

17. Between 2003 and 2008, Flanagan made 71 purchases of stock and options in the securities of the Audit Clients. He made all of these purchases in accounts he owned, in accounts he controlled for the benefit of family members, or in a family trust account for which he served as trustee. Flanagan had the authority to make trades in all of these accounts.

18. Flanagan owned or controlled securities in AllState between July 18, 2006 and July 20, 2006.

19. Flanagan owned or controlled securities in Berkshire Hathaway between April 21, 2005 and June 9, 2006.

20. Flanagan owned or controlled securities in Best Buy on or between:

- A) September 9, 2005;
- B) December 9, 2005 and December 14, 2005;
- C) May 25, 2006 and September 21, 2006
- D) December 11, 2006 and December 12, 2006;
- E) May 1, 2007 and July 13, 2007;
- F) December 4, 2007 and December 21, 2007;
- G) February 13, 2008 and March 5, 2008;
- H) April 1, 2008 and May 19, 2008; and
- I) June 4, 2008 and July 18, 2008.

21. Flanagan owned or controlled securities in CBOT between September 28, 2006 and July 10, 2007.

22. Flanagan owned or controlled securities in CNA between November 17, 2003 and February 20, 2004.

23. Flanagan owned or controlled securities in Sears between:

- A) December 17, 2003 and April 18, 2004;
- B) June 1, 2004 and October 22, 2004;
- C) February 17, 2006 and March 23, 2006; and
- D) May 19, 2008 and May 30, 2008.

24. Flanagan owned or controlled securities in ServiceMaster between February 3, 2006 and January 19, 2007.
25. Flanagan owned or controlled securities in USG between April 12, 2004 and June 8, 2004, and between July 12, 2007 and July 26, 2007.
26. Flanagan owned or controlled securities in Walgreens between:
- A) December 21, 2003 and February 24, 2004;
 - B) September 22, 2005 and November 1, 2005;
 - C) March 21, 2006 and April 3, 2006;
 - D) December 18, 2006 and January 5, 2007;
 - E) March 16, 2007 and July 20, 2007; and
 - F) September 10, 2007 and October 5, 2007.

Flanagan Concealed His Trading in the Clients' Securities and Circumvented Deloitte's Independence Compliance System

27. At all relevant times, Deloitte had policies and quality control procedures in place to ensure that its professional personnel maintained their independence relative to Deloitte's audit clients. Deloitte's independence policies were primarily contained in Deloitte's Independence Manual. Deloitte's Independence Compliance system included the use of computer databases to monitor the financial interests of its partners.
28. Flanagan knew and understood these policies and procedures.
29. Deloitte's independence procedures required, among other things, that its professional personnel, including partners, self-report all of their securities holdings and trading activities. These professionals were also required to report all securities trades that they made as a trustee for accounts they controlled. Deloitte created the Deloitte Entity Search and Compliance system ("DESC") and the Tracking and Trading system ("Tracking and Trading") for the employees to use to report these transactions.
30. The DESC contained a "Restricted Entity List," which contained the names of all companies, banks, brokerage firms, and other institutions that Deloitte prohibited employees from, among other things, having a financial interest in or maintaining an account. All of Deloitte's audit clients within the United States, including the Audit Clients at issue here, were included in the Restricted Entity List, which Deloitte updated daily. Prior to making a securities trade, Deloitte required employees to access the DESC and Restricted Entity List to verify that the company, brokerage firm, or other entity involved in the transaction was not restricted. After completing the transaction, employees had 10 calendar days to report it to Deloitte via Tracking and Trading.

31. Deloitte also required its employees to file annual Independence Representations in which the employees were to affirm between 30 and 50 specific statements. These statements concerned the employee's financial transactions during the previous year, the employee's understanding of, and compliance with, Deloitte's independence policies, and other topics. If the employee responded to a statement with anything other than "Agree," the employee had to provide a written explanation, which Deloitte's Independence and Ethics Compliance Group then reviewed.

32. Flanagan concealed from Deloitte his trades in the Audit Clients' securities by failing to report these trades in the Tracking and Trading System, and thereby circumvented Deloitte's Independence Compliance system.

33. Flanagan lied to Deloitte about his compliance with Deloitte's independence policies. In the Independence Representations he filed in 2004, 2005, 2006, and 2007, Flanagan falsely affirmed that:

- A) Tracking and Trading accurately reflected the brokerage accounts and financial interests held or controlled by Flanagan;
- B) at no time during the representation period did he have a financial interest in a Restricted Entity; and
- C) he had not served as a trustee, executor, or administrator of an estate that had a financial interest in a Restricted Entity.

34. In fact, Flanagan owned or controlled several brokerage accounts, as well as stocks and options that he had not reported in Tracking and Trading. He also owned or controlled stocks and options in Restricted Entities, including the Audit Clients for whom he served as an Advisory Partner. In addition, Flanagan served as the trustee for a family trust and controlled brokerage accounts in the name of that trust and in the name of other family members. Flanagan traded in the securities of the Audit Clients in several of these accounts.

35. Flanagan's efforts to conceal from Deloitte his trades in the Audit Clients' securities extended to the furnishing of false information in the preparation of his personal income tax returns. He utilized Deloitte Tax LLP ("Deloitte Tax") to prepare his tax returns. Flanagan provided Deloitte Tax personnel with the names of the securities he purportedly traded during the tax year, the trade dates, and his gains or losses. For the tax years 2004 through 2007, Flanagan substituted the names of Deloitte audit clients whose securities he traded in with the names of other entities for which he had no trading restrictions. Between 2004 and 2007, Flanagan substituted unrestricted company names for 13 trades that he made in the securities of seven of the Audit Clients including Best Buy, CBOT, CNA, Sears, USG, and Walgreens.

Deloitte Represented that it was Independent from the Clients

36. Deloitte represented that it was independent in the Report of Independent Registered Public Accounting Firm ("audit reports") it provided to these Audit Clients for the audit years

listed below. In these reports, Deloitte stated that it had performed the audits in accordance with the standards of the PCAOB.

- A) Allstate for its fiscal year 2006;
- B) Berkshire Hathaway for its fiscal years 2005 and 2006;
- C) Best Buy for its fiscal years 2006, 2007, 2008, and 2009;
- D) CBOT for its fiscal year 2007;
- E) CNA for its fiscal years 2003 and 2004;
- F) Sears for its fiscal years 2003, 2004, and 2008;
- G) ServiceMaster for its fiscal years 2006 and 2007;
- H) USG for its fiscal years 2004 and 2007; and
- I) Walgreens for its fiscal years 2004, 2005, 2006, and 2007.

37. The Audit Clients then filed annual reports and proxy statements with the Commission that included Deloitte's audit reports. The Audit Clients also filed quarterly reports with the Commission that had been reviewed by Deloitte.

38. Deloitte also represented to each of the Audit Clients at the end of each affected fiscal year that it was "independent" within the meaning of the federal securities laws and therefore able to serve as each client's external auditor. These written confirmations – commonly called ISB(1) Letters (for Independence Standards Board Standard No. 1, *Independence Discussions With Audit Committees*) – did not disclose Flanagan's ownership or control of securities in the client. Standard No. 1 was carried forward as part of the PCAOB's interim standards when the ISB ceased operations.

Violations

39. Rule 2-01(c)(1) of Regulation S-X states, in part, that:

An accountant is not independent if, at any point during the audit and professional engagement period, the accountant has a direct financial interest or a material indirect financial interest in the accountant's audit client, such as:

(i) Investment in audit clients. *An accountant is not independent when:*

A) ... *any* covered person in the firm, or any of his or her immediate family members, has any direct investment in an audit client, such as stocks, [or] options ...;

...

C) ... any covered person in the firm ... serves as voting trustee of a trust, ... containing the securities of an audit client, unless the ... covered person in the firm, ... has no authority to make investment decisions for the trust or estate.

40. Professional independence standards for accountants and auditors, as set forth in AICPA ET Rule 101.02, and adopted by PCAOB as its interim ethical standards under Rule 3600T, state, in part, that:

Independence shall be considered to be impaired if during the period of the professional engagement a covered member had ... any direct or material indirect financial interest in the client [or] was a trustee ... if such trust ... had ... any direct or material indirect financial interest in the client and the covered member ...had the authority to make investment decisions for the trust

41. Flanagan was a covered person as to all of the Audit Clients during the relevant periods.

42. Flanagan lacked independence under Rule 2-01(c)(1) of Regulation S-X, PCAOB Rule 3600T, and AICPA ET Rule 101.02 when he owned securities in the Audit Clients in accounts he owned, in accounts he controlled for the benefit of family members, and in a family trust account for which he served as trustee.

43. Rule 2-02(b)(1) of Regulation S-X requires accountants' reports to state "whether the audit was made in accordance with generally accepted auditing standards." "[R]eferences in Commission rules and staff guidance and in the federal securities laws to GAAS or to specific standards under GAAS, as they relate to issuers, should be understood to mean the standards of the PCAOB" SEC Release No. 34-49708. Thus, an auditor violates Rule 2-02(b)(1) of Regulation S-X if it issues a report stating that it had conducted its audit in accordance with PCAOB standards when it had not.

44. As a result of Flanagan's conduct described above, Deloitte violated Rule 2-02(b)(1) of Regulation S-X. Deloitte's audits and interim reviews of the Audit Clients were not conducted in accordance with PCAOB standards because Flanagan, a covered person in Deloitte, lacked independence as to those Audit Clients. Flanagan willfully aided and abetted and caused Deloitte's violations of Rule 2-02(b)(1) of Regulation S-X.

45. Flanagan willfully aided and abetted and caused the Audit Clients' violations of Section 13(a) of the Exchange Act, and Rules 13a-1 and 13a-13 thereunder, which require issuers to file annual reports containing financial statements certified by independent public accountants, and violations of Section 14(a) of the Exchange Act, and Rule 14a-3 thereunder, which require that proxy statements contain financial statements certified by independent public accountants.

46. As a result of the conduct described above, Flanagan engaged in improper professional conduct. For accountants, improper professional conduct includes "intentional or knowing conduct, including reckless conduct that results in a violation of applicable professional standards." Rule 102(e)(1)(iv)(A). Flanagan intentionally and knowingly owned and controlled securities of

Deloitte audit clients while a covered person and thus failed to comply with Rule 2-01(c)(1) of Regulation S-X, and violated PCAOB Rule 3600T and AICPA ET Rule 101.02.

Findings

47. Based on the foregoing, the Commission finds that Flanagan engaged in improper professional conduct within the meaning of Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

48. Based on the foregoing, the Commission finds that Flanagan (a) willfully aided and abetted and caused Deloitte's violations of Rule 2-02(b)(1) of Regulation S-X; and (b) willfully aided and abetted and caused the Audit Clients' violations of Sections 13(a) and 14(a) of the Exchange Act, and Rules 13a-1, 13a-13, and 14a-3 promulgated thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Flanagan's Offer.

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

A. Flanagan shall cease and desist from causing any violations and any future violations of Sections 13(a) and 14(a) of the Exchange Act, and Rules 13a-1, 13a-13, and 14a-3 promulgated thereunder and of Rule 2-02(b)(1) of Regulation S-X.

B. Flanagan is denied the privilege of appearing or practicing before the Commission as an accountant.

By the Commission.

Elizabeth M. Murphy
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), on the Respondent and his legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

James G. O'Keefe, Esq.
Chicago Regional Office
Securities and Exchange Commission
175 W. Jackson Boulevard, Suite 900
Chicago, IL 60604

Thomas P. Flanagan, CPA
c/o Chris C. Gair, Esq.
Jenner & Block LLP
353 N. Clark Street
Chicago, IL 60654-3456

Chris C. Gair, Esq.
Jenner & Block LLP
353 N. Clark Street
Chicago, IL 60654-3456
(Counsel for Thomas P. Flanagan)