

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70549 / September 27, 2013

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3496 / September 27, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15530

In the Matter of

SCOTT LONDON, 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 Scott London, CPA (“Respondent” or “London”) pursuant to Sections 4C¹ and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Rule 102(e)(1)(ii) and 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:

The 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, that:

The 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.

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, Respondent consents to the Commission’s jurisdiction over him and the subject matter of these proceedings and 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 finds that:

A. SUMMARY

These proceedings involve multiple auditor independence rule violations by an accountant, London, who accepted cash and other things of value as compensation for tips he provided to a friend concerning five audit clients. On at least 18 occasions between October 2010 and February 2013, Respondent, a partner at KPMG LLP (“KPMG”) disclosed material non-public information concerning five of KPMG’s corporate clients to Bryan Shaw (“Shaw”), who traded in the companies’ securities prior to several corporate announcements. KPMG issued audit reports to and reviewed quarterly financial statements for the five corporate clients in connection with and following these announcements. The clients filed with the Commission annual reports, quarterly reports, as well as proxy or information statements which incorporated financial statements. Respondent’s conduct caused KPMG to violate the independence rules with respect to the five clients. These violations in turn caused the five clients to make filings with the Commission that did not comply with the issuers’ reporting requirements. After KPMG learned of Respondent’s conduct, it resigned from two audit engagements, withdrew previously issued audit reports for these clients, and withdrew reports on the effectiveness of their internal control over financial reporting.

B. RESPONDENT

Scott London, age 50, of Agoura Hills, California, is a certified public accountant licensed to practice in the states of California and Nevada. London was employed at KPMG LLP and its predecessor, KPMG Peat Marwick LLP (“KPMG”) from 1984 until his termination on April 5, 2013. During the time period relevant to this proceeding, London was the Partner-in-Charge of KPMG’s Pacific Southwest business unit audit practice that served clients in California, Arizona and Nevada, and was the Lead Audit Engagement Partner on the Herbalife, Ltd. (“Herbalife”) and Skechers USA, Inc. (“Skechers”) engagements. London also served as the Account Executive for Deckers Outdoor Corp. (“Deckers”) from 2009 through the 2011 audit engagement period. Due to his position at the firm, London routinely had access to material non-public information regarding many of KPMG’s audit clients.

C. FACTS

1. Affected Issuers

a) Herbalife, Ltd. (“Herbalife”) is a Cayman Islands corporation headquartered in the Cayman Islands, with corporate offices in Los Angeles, California. During the time period relevant to this proceeding, Herbalife’s stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act, and traded on the New York Stock Exchange. KPMG was Herbalife’s auditor during the time period relevant to this proceeding. On April 9, 2013, Herbalife filed a Form 8-K announcing that KPMG resigned as its auditor on April 8, 2013. The Form 8-K stated that KPMG “concluded it was not independent because of alleged insider trading in [Herbalife’s] securities by one of KPMG’s former partners, who until April 5, 2013, was the KPMG engagement partner on [Herbalife’s] audit.” As a result, the Form 8-K disclosed, “KPMG notified [Herbalife] its independence has been impaired and [it] had no option but to withdraw its audit report on [Herbalife’s] financial statements for the fiscal years ended December 31, 2010, 2011 and 2012 and the effectiveness of internal control over financial reporting as of December 31, 2010, 2011 and 2012. . . .”

b) Skechers USA, Inc. (“Skechers”) is a Delaware corporation headquartered in Manhattan Beach, California. During the time period relevant to this proceeding, Skechers’ stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act, and traded on the New York Stock Exchange. KPMG was Skechers’ auditor during the time period relevant to this proceeding. On April 10, 2013, Skechers filed a Form 8-K announcing that KPMG resigned as its auditor on April 8, 2013. The Form 8-K stated that KPMG “concluded it was not independent because of alleged insider trading in [Skechers’] securities by one of KPMG’s former partners who was the KPMG engagement partner on [Skechers’] audit for the 2011 and 2012 fiscal years.” As a result, the Form 8-K disclosed, “KPMG notified [Skechers] its independence has been impaired and it had no option but to withdraw its audit report on [Skechers’] financial statements for the fiscal years ended December 31, 2011 and 2012 and the effectiveness of internal control over financial reporting as of December 31, 2011 and 2012. . . .”

c) Deckers Outdoor Corp. (“Deckers”) is a Delaware corporation headquartered in Goleta, California. During the time period relevant to this proceeding, Deckers’ stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act, and traded on the Nasdaq Global Select Market. KPMG was Deckers’ auditor during the relevant time period.

d) RSC Holdings, Inc. (“RSC Holdings”) was a Delaware corporation headquartered in Scottsdale, Arizona. During the time period relevant to this proceeding, RSC Holdings’ stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its shares were traded on the New York Stock Exchange. On May 15, 2012, RSC Holdings filed a Form 15 terminating its securities registration with the Commission pursuant to Rules 12g-4(a)(1) and 12h-3(b)(1)(i) of the Exchange Act. KPMG was RSC Holdings’ auditor during the relevant time period.

e) Pacific Capital Bancorp. (“Pacific Capital”) was a Delaware corporation and a bank holding company headquartered in Santa Barbara, California. During the time period relevant to this proceeding, Pacific Capital’s stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its shares were traded on The Nasdaq Stock Market. On December 19, 2012, Pacific Capital filed a Form 15 terminating its securities registration with the Commission pursuant to Rules 12g-4(a)(1) and 12h-3(b)(1)(i) of the Exchange Act. KPMG was Pacific Capital’s auditor during the relevant time period.

2. **Lack of Independence**

a) KPMG is a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative, a Swiss entity. KPMG is registered with the Public Company Accounting Oversight Board (“PCAOB”). At all relevant times and continuing to the present, KPMG 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.

b) During the time period relevant to this proceeding, KPMG performed annual audits and quarterly reviews of financial statements for Herbalife, Skechers, Deckers, RSC Holdings, and Pacific Capital (collectively, the “Audit Clients”).

c) During the time period relevant to this proceeding, London was KPMG’s Lead Audit Engagement Partner on the Herbalife and Skechers engagements. London was also KPMG’s Partner-in-Charge of the firm’s Pacific Southwest business unit audit practice that served each of the above-referenced Audit Clients. As the Partner-in-Charge, London was responsible for the financial performance of the audit practice, and involved in the annual client continuance process with respect to all audit clients of the Pacific Southwest business unit. London was also responsible for assigning the Lead Audit Engagement Partners in the Pacific Southwest business unit (including the Lead Audit Engagement Partners for Deckers and RSC Holdings during the relevant period). London evaluated the performance of, and provided input into, the compensation decisions for most of the audit partners in the business unit. Specifically, he evaluated the Lead Audit Engagement Partners for audits and interim reviews of Deckers’ and RSC Holdings’ annual and quarterly financial statements during the relevant period. London further served as the Account Executive for Deckers from 2009 through the 2011 audit engagement period.

d) London provided Shaw with material non-public information that London received in the course of his employment with KPMG, concerning financial results, earnings, guidance and/or merger announcements by the Audit Clients, with the knowledge or belief that Shaw intended to use the information to trade in the companies’ securities in advance of the following public announcements:

Issuer	Date	Event
Deckers	10/28/10	Financial results for fiscal third quarter
Herbalife	11/1/10	Financial results for fiscal third quarter
Skechers	2/16/11	Financial results for fiscal fourth quarter and year end
Herbalife	2/22/11	Financial results for fiscal fourth quarter and year end
Skechers	4/27/11	Financial results for fiscal first quarter
Herbalife	5/2/11	Financial results for fiscal first quarter
Skechers	7/27/11	Financial results for fiscal second quarter
Herbalife	8/1/11	Financial results for fiscal second quarter
Skechers	10/26/11	Financial results for fiscal third quarter
Deckers	10/27/11	Financial results for fiscal third quarter
RSC Holdings	12/15/11	Agreement to be acquired by United Rentals, Inc.
Skechers	2/15/12	Financial results for fiscal fourth quarter and year end
Herbalife	2/21/12	Financial results for fiscal fourth quarter and year end
Deckers	2/23/12	Financial results for fiscal fourth quarter and year end
Pacific Capital	3/9/12	Agreement to be acquired by UnionBanCal Corporation
Deckers	4/26/12	Financial results for fiscal first quarter
Herbalife	2/19/13	Financial results for fiscal fourth quarter and year end
Deckers	2/28/13	Financial results for fiscal fourth quarter and year end

e) London accepted cash and other valuable items, including jewelry, concert tickets and a Rolex Daytona Cosmograph, as compensation for the inside information he provided to Shaw.

f) London knew that passing material non-public information to Shaw was wrong and understood that KPMG explicitly prohibited employees from disclosing inside information regarding clients.

g) KPMG represented that it was independent and had conducted audits “in accordance with the standards of the Public Company Accounting Oversight Board (United States)” in each Report of Independent Registered Public Accounting Firm (“audit reports”) it provided to the Audit Clients, for the years listed below:

- (1) Herbalife for its fiscal years ended December 31, 2010, 2011 and 2012.
- (2) Deckers for its fiscal years ended December 31, 2010, 2011 and 2012.
- (3) Skechers for its fiscal years ended December 31, 2010, 2011 and 2012.
- (4) RSC Holdings for its fiscal year ended December 31, 2011.
- (5) Pacific Capital for its fiscal year ended December 31, 2011.

h) KPMG conducted interim reviews of financial statements for Herbalife and Deckers for the quarter ended September 30, 2010. KPMG also conducted interim reviews of financial statements for Herbalife, Deckers and Skechers for the quarters ended March 31, June 30, and September 30, in the fiscal years ended December 31, 2011 and 2012. Additionally, KPMG

conducted interim reviews of financial statements for Pacific Capital for the quarters ended March 31, June 30, and September 30, 2012.

i) KPMG represented to each of the Audit Clients during the affected periods 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 did not disclose London’s receipt of compensation in exchange for providing inside information to Shaw concerning the Audit Clients as detailed above.

j) The Audit Clients filed with the Commission annual financial statements that included KPMG’s audit reports on Forms 10-K. The Audit Clients, additionally, filed with the Commission quarterly financial statements that had been reviewed by KPMG on Forms 10-Q.

k) RSC Holdings also filed a proxy statement which incorporated by reference a Form 10-K filed for the fiscal year ended December 31, 2011, that contained KPMG’s audit report. Pacific Capital, similarly, filed a Schedule 14C information statement with the Commission that incorporated by reference a Form 10-K filed for the fiscal year ended December 31, 2011, that contained KPMG’s audit report.

3. **Violations**

a) Rule 2-01 of Regulation S-X codifies accountant qualification requirements, and Rule 2-01(b) articulates the general standard of auditor independence. Preliminary Note 3 to Rule 2-01 states that the Commission will consider all relevant facts and circumstances in determining whether an accountant is independent. Rule 2-01(b) provides that “[t]he Commission will not recognize an accountant as independent, with respect to an audit client, if the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant’s engagement.”

b) Rule 2-01(c)(1) of Regulation S-X provides in pertinent part that “[a]n 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. . .” Similarly, the professional independence standards for accountants and auditors, as set forth in AICPA ET Rule 101.02, and adopted by the PCAOB as its interim ethical standards under Rule 3600T, state, in part, that “[i]ndependence 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. . . .”

c) Rule 2-01(f)(11) of Regulation S-X defines covered persons to include partners, principals, shareholders, and employees of an accounting firm who are on the “audit engagement team” or in the “chain of command,” as well as any other partner, principal, or shareholder from an “office” of the accounting firm in which the lead audit engagement partner primarily practices in connection with the audit. Rule 2-01(f)(7)(i), in turn, defines the “audit engagement team” as including “all partners . . . participating in an audit, review, or attestation engagement of an audit client, including audit partners. . . .”; Rule 2-01(f)(7)(ii) defines the “audit

partner” as including the “lead or coordinating audit partner having primary responsibility for the audit or review”; and Rule 2-01(f)(8) provides that persons in the “chain of command” include individuals who “(i) [s]upervise or have direct management responsibility for the audit, including at all successive senior levels through the accounting firm’s chief executive; (ii) [e]valuate the performance or recommend the compensation of the audit engagement partner; or (iii) [p]rovide quality control or other oversight of the audit.”

d) London was a covered person as to all of the Audit Clients during the relevant period. London was the Lead Audit Engagement Partner on the Herbalife and Skechers engagements, and in the chain of command with respect to each of the Audit Clients as a result of his role as the partner in charge of KPMG’s Pacific Southwest business unit audit practice.

e) London had prohibited financial interests in the Audit Clients, as a result of his receipt of cash and other valuable consideration in exchange for the material non-public information he provided Shaw concerning financial results, earnings, guidance and/or merger announcements that London either knew or believed Shaw intended to use to trade in the companies’ securities prior to public announcements. London therefore lacked independence with respect to the Audit Clients under Rules 2-01(b) and (c)(1) of Regulation S-X, PCAOB Rule 3600T, and AICPA ET Rule 101.02.

f) 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 plus any applicable rules of the Commission.” 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.

g) As a result of London’s conduct described above, KPMG violated Rule 2-02(b)(1) of Regulation S-X. KPMG’s audits and interim reviews of the Audit Clients’ financial statements were not conducted in accordance with PCAOB standards because London, a covered person in KPMG, lacked independence as to the Audit Clients. As a result of his conduct, London willfully aided and abetted and caused KPMG’s violation of Rule 2-02(b)(1) of Regulation S-X.

h) KPMG’s failure to comply with Rule 2-02(b)(1) of Regulation S-X in turn caused the Audit Clients to file annual reports with the Commission on Forms 10-K that failed to include independently audited financial statements as required by Exchange Act Section 13(a) and Rule 13a-1 thereunder. KPMG’s lack of independence, additionally, caused the Audit Clients to file interim financial statements on Forms 10-Q, pursuant to Rule 13a-13 under the Exchange Act, that had not been reviewed by an independent public accountant prior to filing, as required under Rule 10-01(d) of Regulation S-X. As a result of his conduct, London 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 during the aforementioned fiscal years.

i) KPMG’s failure to comply with Rule 2-02(b)(1) of Regulation S-X also caused the Audit Clients to file proxy or information statements on Schedules 14A and 14C that

failed to comply with the requirements of Sections 14(a) and 14(c) of the Exchange Act and Rules 14a-3 and 14c-2 thereunder. Specifically, the proxy statements filed by the Audit Clients in connection with annual meetings of shareholders were neither accompanied nor preceded by audited financial statements prepared in accordance with Regulation S-X, as required pursuant to Rules 14a-3 and 14c-2. Furthermore, the proxy statement filed by RSC Holdings and the information statement filed by Pacific Capital in connection with the announced acquisitions incorporated each company's Form 10-K containing KPMG's improperly issued audit report. As a result of his conduct, London willfully aided and abetted and caused the Audit Clients' violations of Section 14(a) and 14(c) of the Exchange Act and Rules 14a-3 and 14c-2 thereunder.

j) As a result of the conduct described above, London 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). London intentionally and knowingly violated a duty of trust and confidence owed to KPMG and the Audit Clients when he tipped Shaw while a covered person and thus failed to comply with Rules 2-01(b) and (c)(1) of Regulation S-X, and violated PCAOB Rule 3600T and AICPA ET Rule 101.02.

4. **Findings**

a) Based on the foregoing, the Commission finds that London (a) willfully aided and abetted and caused KPMG'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), 14(a) and 14(c) of the Exchange Act, and Rules 13a-1, 13a-13, 14a-3 and 14c-2 promulgated thereunder.

b) Based on the foregoing, the Commission finds that London engaged in improper professional conduct pursuant to Rules 102(e)(1)(ii) and 102(e)(1)(iii) of the Commission's Rules of Practice.

IV.

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

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

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

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

By the Commission.

Elizabeth M. Murphy
Secretary