

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 76633 / December 14, 2015**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3726 / December 14, 2015**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17001**

**In the Matter of**

**CHARLES LOVELESS, CPA,**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Charles Loveless, CPA (“Loveless” or “Respondent”).

**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, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, 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<sup>1</sup> that:

#### **Summary**

1. Respondent, a former employee of Diebold, Inc. ("Diebold"), entered into a cooperation agreement with the Division of Enforcement on March 23, 2010, in connection with the Commission's investigation of violations of the federal securities laws at Diebold, and related enforcement proceedings. That investigation and related enforcement proceedings against the company and certain of its former senior executives are now concluded. The Commission, having taken into consideration Respondent's substantial cooperation, enters this Order resolving the matter with respect to Respondent.

2. As described below, Respondent, at the direction of management, made improper accounting entries in Diebold's books, records, and accounts in 2003 and 2004, while he was a finance manager at the company. As a result of the conduct described herein, Respondent caused violations of Section 13(b)(2)(A) of the Exchange Act, and violated Rule 13b2-1 thereunder.

#### **Respondent**

3. Respondent Charles Loveless, 50, is a resident of Massillon, Ohio. He was a finance manager at Diebold from 2001 to 2006, and reported directly to Michael McKenna. From 2006 to 2008, Loveless was Diebold's Manager of External Reporting. In January 2008, Loveless separated from Diebold. Currently, Loveless is the Finance Director and Controller of a private company in North Canton, Ohio. Loveless is a certified public accountant in Ohio. His license is inactive. Loveless entered into a cooperation agreement with the Division on March 23, 2010.

#### **Other Relevant Individuals and Entity**

4. Diebold, Inc. is an Ohio corporation headquartered in North Canton, Ohio. Diebold manufactures and sells ATMs and bank security systems. Diebold's common stock is registered with the Commission pursuant to Exchange Act Section 12(b) and is listed on the New York Stock Exchange.

5. Walden O'Dell, 69, is a resident of Columbus, Ohio. O'Dell was the CEO and Chairman of Diebold from 1999 to 2005. He is retired.

6. Gregory Geswein, 60, is a resident of Toledo, Ohio. Geswein was the CFO of Diebold from 2000 to 2005. Subsequently, Geswein was the CFO of Reynolds & Reynolds, Co.

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<sup>1</sup> 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.

from 2005 to 2006, and the CFO of Libbey, Inc. from May 2007 through June 2010. Geswein currently operates a restaurant in Akron, Ohio. Geswein is not a certified public accountant.

7. Kevin Krakora, 59, is a resident of Canton, Ohio. Krakora was Diebold's Controller from 2001 through 2005, and the company's CFO from 2005 through March 2008. Krakora was removed as Diebold's CFO in March 2008, and later separated from the company in 2010. From December 2011 through May 2012, Krakora worked part-time as a business consultant. From July 2012 through September 2013, Krakora operated a handyman franchise. Krakora is currently unemployed. Krakora is a certified public accountant in Ohio. His license is inactive.

8. Sandra Miller, 47, is a resident of Houston, Texas. Miller was Diebold's Director of Corporate Accounting from 2002 to 2006. From 2006 through 2011, Miller was the Controller at JoAnn Stores, Inc. Currently Miller is a reporting and compliance director at a private company in Houston, Texas. Miller is a certified public accountant in Ohio.

9. Michael McKenna, 53, is a resident of New Hartford, New York. McKenna was Diebold's Vice President of Global Finance from 2002 to 2005, and the company's Vice President of North American Finance from 2005 through 2007. In July 2007, McKenna separated from Diebold. Since January 2010, McKenna has been the Finance Director and Controller of a private company in Utica, New York. McKenna is a certified public accountant in Ohio. His license is inactive. McKenna entered into a cooperation agreement with the Division of Enforcement on April 19, 2010.

### **Background**

10. Loveless is a former employee of Diebold, Inc., a public company based in North Canton, Ohio that manufactures and sells ATMs and bank security systems. Loveless was a finance manager at Diebold from 2001 to 2006, and the company's Manager of External Reporting from 2006 to 2008. In 2003 and 2004, Loveless, at the direction of management, made improper accounting entries in Diebold's books, records, and accounts. These improper entries assisted the company and its management in artificially inflating Diebold's reported earnings to meet forecasts.

11. Under generally accepted accounting principles ("GAAP"), an issuer is required to accrue for anticipated liabilities. Under GAAP, a liability should be released upon the occurrence of a specified event or when the estimate should be revised in response to new information. GAAP prohibits maintaining general or excess reserves (e.g., "cookie jar" reserves).

12. As a finance manager at Diebold, Loveless had certain accounting responsibilities for Diebold's North American sales commission accrual account. This account consolidated several sub-accounts maintained by accounting personnel in Diebold's North American business units. In 2003 and 2004, Loveless, and others, including management of Diebold, knew that this account was frequently underaccrued because the business units were not properly recording liabilities. At the direction of management, no action was taken to correct it. In 2003 and 2004, the account was understated by approximately \$2.7 million and \$300,000, respectively.

13. Loveless also had accounting responsibilities for Diebold's Shipped Not Installed accrual account, which the company at times used as a cookie jar reserve. At the direction of management, on October 4, 2003, Loveless made an improper out-of-period entry increasing the accrual in this account by \$250,000, effective as of September 2003 (the third-quarter 2003). On October 7, 2003, Loveless improperly reversed this accrual in the fourth-quarter 2003. There was no legitimate accounting justification for these entries. The improper entries assisted management in artificially inflating the company's reported earnings for the fourth-quarter of 2003.

14. As a result of the conduct described above, Respondent Loveless caused Diebold's violations of Section 13(b)(2)(A) of the Exchange Act, which requires Commission registrants to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the registrant.

15. As a result of the conduct described above, Loveless violated Rule 13b2-1 of the Exchange Act, which states that no person shall, directly or indirectly, falsify or cause to be falsified, any book, record or account subject to section 13(b)(2)(A) of the Exchange Act.

### Cooperation

16. Loveless entered into a cooperation agreement with the Division of Enforcement on March 23, 2010, in connection with the Commission's investigation of violations of the federal securities laws at Diebold and related enforcement proceedings. As a result of the investigation, the Commission filed the following enforcement actions, all of which are now concluded:

17. On June 2, 2010, the Commission filed a settled enforcement action against Diebold in which it consented to a final judgment ordering injunctive relief and a \$25 million civil penalty. *See SEC v. Diebold, Inc.*, Civ. Action No. 1:10-CV-00908 (D.D.C.) / Lit. Rel. No. 21543.

18. On June 2, 2010, the Commission filed a settled compensation claw-back action against Walden O'Dell, Diebold's former CEO and Chairman, pursuant to Section 304 of the Sarbanes-Oxley Act of 2002, in which he consented to a final judgment ordering him to reimburse \$470,016 in cash bonuses, 30,000 shares of Diebold stock, and stock options for 85,000 shares of Diebold stock. *See SEC v. O'Dell*, Civ. Action No. 1:10-CV-00909 (D.D.C.) / Lit. Rel. No. 21543.

19. On June 2, 2010, the Commission filed a contested enforcement action against Gregory Geswein, Diebold's former CFO. On May 26, 2015, pursuant to a settlement, the court entered a final consent decree against Geswein ordering him to pay \$680,000 in disgorgement, a \$170,000 civil penalty, and prohibiting him for three years from acting as an officer or director of a public company. *See SEC v. Geswein, et al.*, Civ. Action No. 5:10-CV-01235 (N.D. Ohio) / Lit. Rel. Nos. 21543 and 23268.

20. On June 2, 2010, the Commission filed a contested enforcement action against Kevin Krakora, Diebold's former Controller and later CFO. On May 26, 2015, pursuant to a settlement, the court entered a final consent decree against Krakora ordering him to pay \$400,000 in

disgorgement, a \$100,000 civil penalty, prohibiting him for three years from acting as an officer or director of a public company, and prohibiting him from appearing or practicing before the Commission as an accountant, with a right to apply for reinstatement after three years. *See SEC v. Geswein, et al.*, Civ. Action No. 5:10-CV-01235 (N.D. Ohio) / Lit. Rel. Nos. 21543 and 23268.

21. On June 2, 2010, the Commission filed a contested enforcement action against Sandra Miller, Diebold's former Director of Corporate Accounting. On May 26, 2015, pursuant to a settlement, the court entered a final consent decree against Miller that permanently enjoins her from aiding and abetting any violation of Section 13(a), Section 13(b)(2)(A), and Section 13(b)(2)(B) of the Exchange Act, and Rules 13a-1, 13a-11, 13a-13, and 12b-20 thereunder, and ordered disgorgement of \$29,057, which was waived, and no penalty imposed, based on her financial condition. *See SEC v. Geswein, et al.*, Civ. Action No. 5:10-CV-01235 (N.D. Ohio) / Lit. Rel. Nos. 21543 and 23268.

22. Loveless provided significant cooperation in connection with the Commission's investigation of this matter and the related enforcement actions.

#### IV.

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

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Loveless cease and desist from committing or causing any violations and any future violations of Section 13(b)(2)(A) of the Exchange Act, and Rule 13b2-1 thereunder.

B. Respondent shall, within ten (10) days of the entry of this Order, pay disgorgement of \$7,724 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch

HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Charles Loveless as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Brian O. Quinn, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

C. Respondent acknowledges that the Commission is not imposing a civil penalty based upon his cooperation in a Commission investigation and related enforcement actions. If at any time following the entry of the Order, the Division of Enforcement (“Division”) obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay a civil money penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

## V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Brent J. Fields  
Secretary