

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 94426 / March 16, 2022**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 4289 / March 16, 2022**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20800**

**In the Matter of**  
  
**SHELBY L. LACKEY, CPA,**  
  
**Respondent.**

**ORDER INSTITUTING PUBLIC  
ADMINISTRATIVE PROCEEDINGS  
PURSUANT TO SECTION 4C OF THE  
SECURITIES EXCHANGE ACT OF 1934  
AND RULE 102(e) OF THE COMMISSION’S  
RULES OF PRACTICE, MAKING  
FINDINGS, AND IMPOSING REMEDIAL  
SANCTIONS**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative proceedings be, and hereby are, instituted against Shelby L. Lackey, CPA (“Lackey” or “Respondent”) pursuant to Sections 4C<sup>1</sup> of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.<sup>2</sup>

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<sup>1</sup> 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 issued thereunder.

<sup>2</sup> Rule 102(e)(1)(ii) provides, in pertinent part, that:

## 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 her and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative Proceedings Pursuant to Section 4C of the Securities Exchange Act of 1934 and 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<sup>3</sup> that:

### A. SUMMARY

1. In 2017, Crosby Independent School District and its then-CFO engaged in a fraudulent scheme to overstate the District’s General Fund reserves and understate payroll and construction liabilities totaling \$11.7 million. In January 2018, Crosby issued \$20 million of municipal bonds. The Official Statement attached Crosby’s fiscal year 2017 audited financial statements that misstated the payroll and construction liabilities. When this misconduct was discovered, Crosby declared financial exigency and the bonds were downgraded.

2. Lackey was the audit partner responsible for the audit of Crosby for the fiscal year 2017. In that capacity, Lackey failed to comply with Generally Accepted Auditing Standards (“GAAS”) during the planning and performance of Crosby’s fiscal year 2017 audit. Specifically, Lackey failed to perform critical audit procedures necessary to verify the accuracy of Crosby’s payroll and construction liability. She (1) failed to obtain sufficient appropriate audit evidence to support the audit opinion; (2) failed to properly supervise the audit; and (3) failed to exercise professional judgment and maintain professional skepticism. These numerous audit failures significantly reduced the audit team’s ability to detect Crosby’s fraud.

3. Notwithstanding these audit failures, Lackey approved and issued an audit report for fiscal year 2017 stating that the audit was performed in accordance with generally accepted

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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.

<sup>3</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.

auditing standards<sup>4</sup> (“GAAS”). This statement was false as the audit was not performed in accordance with GAAS.

4. As a result of this conduct, Lackey engaged in improper professional conduct within the meaning of Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice (“Rule 102(e)”).

## **B. RESPONDENT**

5. **Shelby L. Lackey**, age 48, of Conroe, Texas, is a Certified Public Accountant (“CPA”) licensed to practice in Texas. Lackey became a partner in a national audit firm (“Outside Audit Firm”) in 2017. Lackey served as the engagement partner on, and had final audit responsibility over, Crosby’s fiscal year 2017 audit engagement. In spring 2020, Lackey left the Outside Audit Firm to become CFO for another school district.

## **C. OTHER RELEVANT ENTITY AND INDIVIDUAL**

6. **Outside Audit Firm** is a certified public accounting firm registered with the Public Company Accounting Oversight Board. Outside Audit Firm was the auditor for Crosby’s fiscal year 2017 and 2018 financial statements.

7. **Crosby Independent School District** is a public school district based in Crosby, Texas, a suburb located northeast of Houston, Texas. Crosby operates seven schools and serves approximately 6,400 students. Crosby operates on a July 1 to June 30 fiscal year.

## **D. FACTS**

### **Crosby’s Deteriorating Financial Condition and Change to Fiscal Year End**

8. In 2013, Crosby issued \$86.5 million in municipal bonds (“2013 Bond”) to fund several capital projects. Various project enhancements beyond the original scope of work, however, inflated the total cost of the projects. Consequently, the 2013 Bond proceeds were prematurely exhausted in fiscal year 2016 leaving the General Fund as the only source of funding for approximately \$12 million of remaining construction commitments.

9. As of August 31, 2016 (Crosby’s then fiscal year-end) the District’s General Fund lacked sufficient funds to cover the \$12 million of unanticipated construction expenses required to complete its capital projects. As a result, Crosby pursued two options to pay for the remaining construction costs: (1) Crosby changed its fiscal year-end date from August 31 to June 30, and (2) Crosby issued new municipal bonds.

10. Lackey, who had participated in the Crosby audits since fiscal year 2014, was the engagement partner for Crosby’s fiscal year 2017 audit. She knew that the General Fund was

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4 Generally accepted auditing standards for audits of entities not subject to the oversight authority of the Public Company Accounting Oversight Board (PCAOB) are promulgated by the AICPA.

liable for \$12 million of remaining construction commitments, that Crosby had changed its fiscal year-end date, and had planned to issue new municipal bonds to pay for the additional expenses. The District's inability to pay for its outstanding construction commitments and proposed remedies were unique issues during Crosby's fiscal year 2017 audit and, therefore, merited an elevated level of scrutiny, professional judgment, and professional skepticism. However, Lackey failed to perform appropriate audit procedures during the fiscal year 2017 to form a basis for the auditor's opinion that the financial statements were presented fairly, in all material respects, in accordance with Generally Accepted Accounting Principles ("GAAP").

### **Audit of Crosby's Fiscal Year 2017 Financial Statements**

11. Crosby's fiscal year 2017 financial statements materially understated liabilities and overstated the General Fund balance due to two significant failures: (1) failure to record construction expenses for completed capital projects, and (2) failure to record payroll expenses for unpaid teachers' salaries. During Crosby's fiscal year 2017 audit, Lackey failed to properly verify and corroborate Crosby's construction and payroll liability. Notwithstanding these audit deficiencies, Lackey approved the issuance of Crosby's fiscal year 2017 audit report which contained an unmodified opinion.

#### *Construction Expenses Understated by \$7.9 Million*

12. During Crosby's fiscal year 2017 audit, Lackey knew or should have known that the 2013 Bond proceeds had been completely consumed and Crosby would have to pay the remaining construction commitments from its General Fund. Lackey also knew or should have known that Crosby's capital projects had been substantially completed and that Crosby's General Fund lacked sufficient funds to pay the estimated \$8-\$10 million in unpaid construction invoices. On June 26, 2017, Lackey attended a call with Crosby and Crosby's bond counsel and financial advisor. On that call, Crosby and its financial advisor confirmed that the District could not pay for its unpaid construction liabilities without issuing new bonds.

13. Lackey's audit procedures on Crosby's fiscal year 2017 construction expenses were deficient. First, Lackey only obtained from Crosby one invoice indicating that Crosby owed \$727,000 to its construction vendor. Lackey, however, knew or should have known that Crosby's unpaid construction liabilities were significantly higher. Lackey also misinterpreted a critical line on the invoice titled "Previous Certificates for Payment" to mean total amounts paid. Consistent with its description, however, that line did not represent total amounts paid but rather the aggregate amount of previously submitted invoices (representing actual work completed) regardless of Crosby's payment history.

14. Additionally, Lackey's search for unrecorded liabilities was deficient and did not follow the Outside Audit Firm's firm-wide guidance. Lackey only reviewed a list of checks written, not a list of all disbursement types, such as wires and ACH payments. If the audit team had searched all disbursement types for unrecorded liabilities, Lackey would have discovered \$1.5 million of progress payments toward Crosby's outstanding construction payables in September 2017 alone. This amount exceeded the \$727,000 recorded in the fiscal year financial statements,

which should have alerted Lackey that the construction liability was recorded incorrectly. Lackey failed to corroborate and obtain an appropriate understanding of Crosby's outstanding construction liabilities. Finally, Lackey failed to verify any payments from Crosby to its construction contractors prior to the conclusion of fiscal year 2017. As a result, Lackey inaccurately concluded that Crosby only owed \$727,000 to its construction vendors as of June 30, 2017.

*Payroll Expenses Understated by \$3.8 million*

15. Crosby's teacher salaries represent a majority of the District's expenses. Teachers earn their salaries over a 10-month contract period corresponding with the start and end of the school year, though they are paid evenly over a 12-month period ending in mid-August. Crosby was not required to record a payroll liability for teacher salaries when its fiscal year-end was August 31 because all teacher contracts had been paid in full as of that date. When Crosby moved its fiscal year-end date from August 31 to June 30, however, Crosby concluded fiscal year 2017 with unpaid payroll liabilities related to the 2017 contract year (amounts paid in July 2017 and August 2017). Crosby failed to include these unpaid payroll liabilities in its fiscal year 2017 financial statements.

16. Lackey's audit procedures on Crosby's fiscal year 2017 payroll expenses were deficient. Crosby's change in fiscal year-end date merited a heightened sense of scrutiny, professional judgment and professional skepticism. However, Lackey failed to perform appropriate audit procedures over Crosby's outstanding payroll liabilities. First, Lackey failed to corroborate Crosby's then-CFO's alleged representation that a payroll liability for teachers' salaries was unnecessary because all teachers had been paid in full as of June 30, 2017. Second, Lackey failed to recognize that the CFO's alleged representation regarding teachers' salaries contradicted other audit evidence. For example, Crosby's payroll policies and procedures state that all employees' (10-month, 11-month, and 12-month) salaries are evenly spread over 12 months (a common practice in the Texas public school system and well-known to Lackey). Third, Lackey failed to detect the payroll liability error because of poorly designed subsequent disbursement testing that did not include all payment types.

**Crosby's Declaration of Financial Exigency, Rating Downgrades, and Restatement**

17. During spring 2018, Crosby continued to face cash flow shortages because of the additional construction expenses described above. In June 2018, Crosby's new CFO discovered the payroll liability and construction liability errors and confronted Lackey, who was overseeing the audit of Crosby's 2018 fiscal year. Lackey admitted to the new CFO that she missed the payroll liability during the fiscal year 2017 audit.

18. In August 2018, Crosby's leadership disclosed the financial issues to its Board and the public and began crafting a financial recovery plan with its financial advisor. Beginning in September 2018, ratings agencies downgraded Crosby's bonds.

19. On October 8, 2018, Crosby declared a financial exigency and implemented a mid-year reduction in force. In February 2019, the Outside Audit Firm issued its audit report for

Crosby's fiscal year 2018 financial statements, which included material restatements of the fiscal year 2017 ending balances.

### **Failure to Obtain Sufficient Appropriate Audit Evidence**

20. GAAS require the auditor to design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence (AU-C §500). Lackey failed to obtain sufficient appropriate audit evidence during Crosby's fiscal year 2017 audit in multiple areas.

21. First, Lackey failed to obtain sufficient appropriate audit evidence to confirm the completeness and accuracy of Crosby's fiscal year 2017 construction liabilities. Lackey only reviewed one pay application from Crosby's construction vendor and incorrectly interpreted a critical line item to represent the total amount due to that vendor. Lackey also failed to adequately perform a search for unrecorded liabilities by only reviewing checks written rather than all disbursement types such as wire and ACH payments. Finally, Lackey failed to corroborate and obtain an appropriate understanding of Crosby's outstanding construction liabilities.

22. Second, Lackey failed to obtain sufficient appropriate audit evidence to confirm the completeness and accuracy of Crosby's fiscal year 2017 payroll accrual. Crosby's payroll expenses represent a majority of its annual budget and, therefore, should have been a primary area of focus during the fiscal year 2017 audit. However, Lackey failed to corroborate Crosby's CFO's representations that contractual employees had been paid in full as of June 30, 2017. Lackey also failed to detect the payroll liability error because of poorly designed subsequent disbursement testing that did not include all payment types. Finally, Lackey failed to recognize and further investigate contradicting audit evidence between Crosby's documented payroll procedures affirming annualized pay for contractual employees and the CFO's representations that contractual employees had been paid in full.

### **Failure to Properly Supervise the Audit**

23. GAAS require the engagement partner to take responsibility for the overall quality of each audit. To comply with this requirement, the engagement partner is responsible for, among other things, directing, supervising and performing the audit in compliance with professional standards and ensuring that the auditor's report is appropriate in the circumstances (AU-C §220).

24. Lackey, in her role as engagement partner, failed to properly supervise Crosby's fiscal year 2017 audit. Lackey failed to ensure that the procedures performed by the audit team complied with GAAS. For example, Lackey failed to corroborate representations by Crosby's then-CFO related to Crosby's payroll and construction liabilities. Lackey also failed to ensure that the audit team properly tested Crosby's cash disbursements subsequent to year-end to confirm the completeness and accuracy of Crosby's payroll and construction liabilities.

### **Failure to Exercise Professional Judgment and Maintain Professional Skepticism**

25. GAAS require the auditor to exercise professional judgment and maintain professional skepticism during the planning and performance of an audit (AU-C §200). Professional skepticism is an attitude that includes a questioning mind, being alert to conditions that may indicate possible misstatement due to fraud or error, and a critical assessment of audit evidence.

26. Lackey failed to exercise professional judgment and maintain professional skepticism during the planning and performance of Crosby's fiscal year 2017 audit. As previously discussed, Lackey failed to exercise professional judgment and maintain professional skepticism with respect to Crosby's change in fiscal year-end date and deteriorating financial condition. All of these issues merited a heightened sense of due professional care and professional skepticism. However, Lackey failed to acknowledge these areas in need of additional oversight, and she also failed to sufficiently perform required audit procedures. Additionally, Lackey failed to exercise professional judgment and maintain professional skepticism by failing to address contradictions between the District's documented payroll procedures and representations from its then-CFO that all contractual employees had been paid in full.

## **E. VIOLATIONS**

27. Section 4C of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice provide, in pertinent part, that the Commission may censure or deny, temporarily or permanently, the privilege of appearing or practicing before the Commission to any person who is found by the Commission to have engaged in improper professional conduct. Section 4C(b)(2) and Rule 102(e)(1)(iv)(B) define improper professional conduct to include the following two types of negligent conduct: (1) a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant, a registered public accounting firm, or associated person knows, or should know, that heightened scrutiny is warranted; or (2) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.

28. Based on the foregoing, the Commission finds that Lackey engaged in improper professional conduct pursuant to Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

## **F. UNDERTAKING**

29. Lackey undertakes that she shall not serve as the engagement manager, engagement partner, or engagement quality control reviewer in connection with any audit expected to be posted in the MSRB's Electronic Municipal Market Access system ("EMMA") until reinstated to appear before the Commission as an independent accountant.

30. In determining whether to accept the Offer, the Commission has considered Lackey's undertaking.

#### IV.

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

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

A. Lackey is denied the privilege of appearing or practicing before the Commission as an accountant.

B. After three years from the date of the Order, Lackey may request that the Commission consider her reinstatement by submitting an application to the attention of the Office of the Chief Accountant.

C. In support of any application for reinstatement to appear and practice before the Commission as a preparer or reviewer, or a person responsible for the preparation or review, of financial statements of a public company to be filed with the Commission, other than as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Exchange Act, Lackey shall submit a written statement attesting to an undertaking to have Lackey's work reviewed by the independent audit committee of any public company for which Lackey works or in some other manner acceptable to the Commission, as long as Lackey practices before the Commission in this capacity and will comply with any Commission or other requirements related to the appearance and practice before the Commission as an accountant.

D. In support of any application for reinstatement to appear and practice before the Commission as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Exchange Act, as a preparer or reviewer, or as a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission, Lackey shall submit a statement prepared by the audit committee(s) with which Lackey will be associated, including the following information:

1. A summary of the responsibilities and duties of the specific audit committee(s) with which Lackey will be associated;
2. A description of Lackey's role on the specific audit committee(s) with which Lackey will be associated;
3. A description of any policies, procedures, or controls designed to mitigate any potential risk to the Commission by such service;
4. A description relating to the necessity of Lackey's service on the specific audit committee; and
5. A statement noting whether Lackey will be able to act unilaterally on behalf of the Audit Committee as a whole.

E. In support of any application for reinstatement to appear and practice before the Commission as an independent accountant (auditor) before the Commission, Lackey must be associated with a public accounting firm registered with the Public Company Accounting Oversight Board (the “PCAOB”) and Lackey shall submit the following additional information:

1. A statement from the public accounting firm (the “Firm”) with which Lackey is associated, stating that the firm is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002;
2. A statement from the Firm with which the Lackey is associated that the Firm has been inspected by the PCAOB and that the PCAOB did not identify any criticisms of or potential defects in the Firm’s quality control system that would indicate that Lackey will not receive appropriate supervision; and
3. A statement from Lackey indicating that the PCAOB has taken no disciplinary actions against Lackey since seven (7) years prior to the date of the Order other than for the conduct that was the basis for the Order.

F. In support of any application for reinstatement, Lackey shall provide documentation showing that Lackey is currently licensed as a certified public accountant (“CPA”) and that Lackey has resolved all other disciplinary issues with any applicable state boards of accountancy. If Lackey is not currently licensed as a CPA, Lackey shall provide documentation showing that Lackey’s licensure is dependent upon reinstatement by the Commission.

G. In support of any application for reinstatement, Lackey shall also submit a signed affidavit truthfully stating, under penalty of perjury:

1. That Lackey has complied with the Commission suspension Order, and with any related orders and undertakings, including any orders in this proceeding, or any related Commission proceedings, including any orders requiring payment of disgorgement or penalties;
2. That Lackey undertakes to notify the Commission immediately in writing if any information submitted in support of the application for reinstatement becomes materially false or misleading or otherwise changes in any material way while the application is pending;
3. That Lackey, since the entry of the Order, has not been convicted of a felony or a misdemeanor involving moral turpitude that would constitute a basis for a forthwith suspension from appearing or practicing before the Commission pursuant to Rule 102(e)(2);
4. That Lackey, since the entry of the Order:

- (a) has not been charged with a felony or a misdemeanor involving moral turpitude as set forth in Rule 102(e)(2) of the Commission's Rules of Practice, except for any charge concerning the conduct that was the basis for the Order;
- (b) has not been found by the Commission or a court of the United States to have committed a violation of the federal securities laws, and has not been enjoined from violating the federal securities laws, except for any finding or injunction concerning the conduct that was the basis for the Order;
- (c) has not been charged by the Commission or the United States with a violation of the federal securities laws, except for any charge concerning the conduct that was the basis for the Order;
- (d) has not been found by a court of the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, or any bar thereof to have committed an offense (civil or criminal) involving moral turpitude, except for any finding concerning the conduct that was the basis for the Order; and
- (e) has not been charged by the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, civilly or criminally, with having committed an act of moral turpitude, except for any charge concerning the conduct that was the basis for the Order.

- 5. That Lackey's conduct is not at issue in any pending investigation of the Commission's Division of Enforcement, the PCAOB's Division of Enforcement and Investigations, any criminal law enforcement investigation, or any pending proceeding of a State Board of Accountancy, except to the extent that such conduct concerns that which was the basis for the Order.
- 6. That Lackey has complied with any and all orders, undertakings, or other remedial, disciplinary, or punitive sanctions resulting from any action taken by any State Board of Accountancy, or other regulatory body.

H. Lackey shall also provide a detailed description of:

- 1. Lackey's professional history since the imposition of the Order, including
  - (a) all job titles, responsibilities and role at any employer;

(b) the identification and description of any work performed for entities regulated by the Commission, and the persons to whom Lackey reported for such work; and

2. Lackey's plans for any future appearance or practice before the Commission.

I. The Commission may conduct its own investigation to determine if the foregoing attestations are accurate.

J. If Lackey provides the documentation and attestations required in this Order and the Commission (1) discovers no contrary information therein, and (2) determines that Lackey truthfully and accurately attested to each of the items required in Lackey's affidavit, and the Commission discovers no information, including under Paragraph I, indicating that Lackey has violated a federal securities law, rule or regulation or rule of professional conduct applicable to Lackey since entry of the Order (other than by conduct underlying Lackey's original Rule 102(e) suspension), then, unless the Commission determines that reinstatement would not be in the public interest, the Commission shall reinstate Lackey for cause shown.

K. If Lackey is not able to provide the documentation and truthful and accurate attestations required in this Order or if the Commission has discovered contrary information, including under Paragraph I, the burden shall be on Lackey to provide an explanation as to the facts and circumstances pertaining to the matter setting forth why Lackey believes cause for reinstatement nonetheless exists and reinstatement would not be contrary to the public interest. The Commission may then, in its discretion, reinstate the Lackey for cause shown.

L. If the Commission declines to reinstate Lackey pursuant to Paragraphs J and K, it may, at Lackey's request, hold a hearing to determine whether cause has been shown to permit Lackey to resume appearing and practicing before the Commission as an accountant.

By the Commission.

Vanessa A. Countryman  
Secretary