

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99638 / February 29, 2024

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4491 / February 29, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-21876

In the Matter of

Clark Schaefer Hackett & Co.,

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 Clark Schaefer Hackett & Co., (“Respondent” or “CSH”) pursuant to Sections 4C¹ and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Rule 102(e)(1)(ii) of the

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 issued 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, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it 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

These proceedings arise from violations of the Commission's auditor independence rules by CSH, a public accounting firm. In early 2020, when Lordstown Motors Corp. ("Lordstown") was a private company, CSH audited Lordstown's 2019 financial statements under Generally Accepted Audit Standards ("GAAS"), and during the same engagement, provided the company with non-audit services by assisting management in preparing the financial statements and performing bookkeeping services. Later in 2020, in connection with Lordstown's anticipated merger with DiamondPeak Holdings Corp. ("DiamondPeak"), CSH conducted an audit of the same 2019 financial statements under PCAOB standards. CSH represented that it was "independent" in the auditor's report it issued to Lordstown under PCAOB standards, and the report was included in public filings with the Commission by DiamondPeak, and later, Lordstown.

Rule 2-01 of Regulation S-X requires that auditors be independent of their audit clients both in fact and appearance. Rule 2-01(c) of Regulation S-X provides that an auditor is not independent if, at any point during the audit and professional engagement period, the audit firm provides certain non-audit services to the client. CSH however, violated those independence

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.

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.

standards because it audited and prepared the financial statements and provided bookkeeping services to Lordstown during the audit and professional engagement period. By doing so, CSH violated Rule 2-02(b) of Regulation S-X and caused Lordstown's violations of Sections 13(a) and 14(a) of the Exchange Act, and Rules 13a-1 and 14a-3 thereunder. CSH's conduct also constituted improper professional conduct pursuant to Section 4C of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

B. RESPONDENT

CSH, headquartered in Cincinnati, Ohio, is an accounting and advisory firm. CSH is registered with the Public Company Accounting Oversight Board ("PCAOB").

C. RELEVANT ENTITY

Lordstown Motors Corp. is a Delaware corporation with its principal place of business in Lordstown, Ohio. Lordstown's common stock was registered with the Commission under Exchange Act Section 12(b), and at all relevant times it was required to file periodic reports with the Commission pursuant to Section 13(a).

D. FACTS

1. On January 17, 2020, Lordstown, then a private company, engaged CSH to audit Lordstown's 2019 financial statements under GAAS and to provide financial statement preparation services. During the course of the work that took place from January 17 to May 14, 2020, CSH also calculated Lordstown's stock compensation expense and prepared notes to the financial statements.

2. At the conclusion of the audit, on May 14, 2020, CSH issued an audit report containing an opinion under GAAS for Lordstown's 2019 financial statements.

3. On July 1, 2020, in connection with Lordstown's anticipated merger transaction with DiamondPeak, CSH and Lordstown entered into a new engagement letter to audit Lordstown's 2019 financial statements under PCAOB standards. During the course of the PCAOB audit, Lordstown identified and corrected errors in the financial statements, including a \$271,103 understatement of stock compensation expense that was previously both prepared and audited by CSH during the GAAS audit.

4. On August 24, 2020, CSH issued an audit report containing an opinion on the revised 2019 financial statements under PCAOB standards. DiamondPeak's August 24, 2020 proxy statement included CSH's August 24, 2020 audit opinion.

5. From 2020 through 2023, CSH consented for its August 24, 2020 audit opinion of Lordstown's 2019 financial statements to be used in connection with Lordstown's registration statements and periodic reports filed with the Commission.

6. The facts and circumstances in which an auditor will—and will not—be deemed independent are set forth in Rule 2-01 of Regulation S-X. Rule 2-01(c) provides a non-exclusive

list of specific relationships that render an accountant not independent. Rule 2-01(c)(4) states that an auditor will not be considered independent if it provides certain bookkeeping services for its audit client or if it prepares financial statements “that are filed with the Commission or that form the basis of financial statements filed with the Commission.” Further, PCAOB Rule 3520, Auditor Independence, requires an auditor to be independent of its client throughout the audit and professional engagement period and to comply with independence criteria established by the rules and regulations of the Commission. When CSH performed the audit of Lordstown’s 2019 financial statements under PCAOB standards, CSH audited its own work and consequently lacked independence.

7. CSH’s audit report contained an unqualified opinion in which it represented that it had conducted an audit in accordance with PCAOB standards. By violating PCAOB independence standards, that representation was inaccurate.

Violations

8. Rule 2-02(b) of Regulation S-X prohibits auditors from falsely certifying that an audit report was conducted in accordance with PCAOB standards. PCAOB Rule 3520 requires that an auditor be independent of its client throughout the audit and professional engagement period and that an auditor comply with independence criteria established by the rules and regulations of the Commission.

9. Section 13(a) of the Exchange Act and Rule 13a-1 thereunder require issuers with securities registered under Section 12 of the Exchange Act to file annual reports with the Commission. Annual Reports on Form 10-K must include financial statements meeting the requirements of Regulation S-X, which require an audit of the financial statements by an independent accountant in accordance with PCAOB standards. *See* Rule 1-02(d) of Regulation S-X. The obligation to file such reports embodies the requirement that they be true and complete. *See, e.g., SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978), *cert. denied*, 440 U.S. 913 (1979).

10. Section 14(a) of the Exchange Act and Rule 14a-3 set forth the information to be provided by issuers of securities registered pursuant to Section 12 of the Exchange Act in proxy solicitations. Item 13 of Exchange Act Rule 14a-101 requires that financial statements meeting the requirements of Regulation S-X be furnished with Schedule 14. Proxy material disclosure is required to be accurate and complete. *Lichtenberg v. Besicorp*, 43 F. Supp. 2d 376, 393 (S.D.N.Y. 1999).

Findings

11. Based on the foregoing, the Commission finds that CSH 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.

12. Based on the foregoing, the Commission finds that CSH committed violations of Rule 2-02(b) of Regulation S-X.

13. Based on the foregoing, the Commission finds that CSH caused Lordstown's violations of Section 13(a) of the Exchange Act and Rule 13a-1 thereunder, and Section 14(a) of the Exchange Act and Rule 14a-3 thereunder.

Disgorgement

The disgorgement and prejudgment interest ordered in paragraph IV.D. are consistent with equitable principles, do not exceed CSH's net profits from its violations, and returning the money to Respondent would be inconsistent with equitable principles. Therefore, in these circumstances, distributing disgorged funds to the United States Treasury is the most equitable alternative. The disgorgement and prejudgment interest ordered in paragraph IV.D shall be transferred to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Exchange Act.

Undertakings

CSH has undertaken to:

14. Retain, at its own expense, an independent consultant (the "Independent Consultant"), not unacceptable to the staff of the Commission, within 120 days after the entry of this Order. Within the time periods specified below, the Independent Consultant will review and evaluate (the "Review") CSH's audit, review, and quality control policies and procedures as to, among other aspects, their sufficiency, adequacy, design, implementation, and effectiveness applicable to the subjects set forth below. The Independent Consultant's purpose for this Review will be to make recommendations for improvements to policies and procedures relating to the sufficiency, adequacy, design, implementation, and effectiveness of CSH's current quality controls ("CSH's Policies") relating to educating and monitoring for compliance by its personnel with the independence requirements under PCAOB standards and Commission rules that prohibit the performance of certain non-audit services by CSH or its associated entities to CSH audit clients or their affiliates.

15. The Review shall be completed within 120 days of the retention of the Independent Consultant, and shall assess the following areas to determine whether the sufficiency, adequacy, design, implementation, and effectiveness of CSH's Policies provide reasonable assurance of compliance with PCAOB and SEC independence rules concerning the provision of prohibited non-audit services by CSH or its associated entities to CSH audit clients or their affiliates:

(a) personnel and expertise within CSH, including with respect to independence issues;

(b) CSH's independence quality controls to prevent and detect prohibited non-audit services, including monitoring systems designed to check conflicts and preventively consider independence issues across all CSH engagements;

(c) CSH's independence guidance and training of personnel, including education regarding independence issues related all CSH clients; and

(d) CSH's policies, procedures, and controls regarding the issuance of consent letters to registrants for use of CSH's audit opinions in SEC filings.

16. Require the Independent Consultant to make recommendations for any necessary changes or improvements to CSH's Policies.

17. Provide a copy of the engagement letter within 14 days of the date of retention of the Independent Consultant detailing the Independent Consultant's responsibilities to the Commission staff.

18. Cooperate fully with the Independent Consultant and provide the Independent Consultant with access to its own files, books, records, and personnel as reasonably requested for the Review. CSH shall require the Independent Consultant to report to the Commission staff on their activities as the staff may request.

19. Require that the Independent Consultant issue a report (the "Report"), within 60 days of completing the Review, summarizing the Review and reporting on the findings and any recommendations regarding CSH's Policies. Simultaneously with providing the Report to CSH, the Independent Consultant shall transmit a copy to Jeff Leasure, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street N.E., Washington, DC 20549.

20. CSH will adopt all recommendations in the Report within 120 days from the date the Report is issued; however, within 30 days after the Independent Consultant serves the Report, CSH shall advise the Independent Consultant and the Commission, in writing of any recommendations that it considers unnecessary, unduly burdensome, impractical, or unjustifiably costly. With respect to any recommendation that CSH considers unnecessary, unduly burdensome, impractical, or unjustifiably costly, CSH need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose. As to any recommendation on which CSH and the Independent Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 30 days after CSH serves the written advice. In the event that CSH and the Independent Consultant are unable to agree on an alternative proposal, CSH will either abide by the determinations of the Independent Consultant or seek approval from the Commission staff pursuant to paragraph 24 below to engage, at CSH's expense, a qualified third party acceptable to the Commission staff to promptly resolve the issue(s).

21. For the period of engagement and for a period of two years from completion of the engagement, CSH shall not (i) retain the Independent Consultant for any other professional services outside of the services described in this Order; (ii) enter into any other professional relationship with the Independent Consultant, including any employment, consultant, attorney-client, auditing, or other professional relationship; or (iii) enter, without prior written consent of the Commission staff, into any such professional relationship with any of the Independent Consultant's present or former affiliates, employers, directors, officers, employees, or agents

acting in their capacity as such.

22. To ensure the independence of the Independent Consultant, CSH: (1) shall not have the authority to terminate the Independent Consultant or substitute another independent consultant for the initial Independent Consultant without the prior written approval of the Commission staff; and (2) shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

23. CSH shall certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and CSH agrees to provide such evidence. The certification and supporting material shall be submitted to Jeff Leasure, Assistant Director, Division of Enforcement at the address provided above, with a copy to the Office of Chief Counsel of the Division of Enforcement, no later than sixty (60) days from the date of the completion of the undertakings.

24. The reports by the Independent Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations, or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) as otherwise required by law.

25. For good cause shown, the Commission staff may extend any of the dates set forth above. Deadlines for dates shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

26. CSH agrees that if the Division of Enforcement believes that CSH has not satisfied these undertakings, it may petition the Commission to reopen the matter to determine whether additional sanctions are appropriate.

IV.

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

Accordingly, it is hereby ORDERED that:

A. CSH is censured.

B. CSH shall cease and desist from committing or causing any violations and any future violations of Rule 2-02(b) of Regulation S-X, Section 13(a) of the Exchange Act and Rule 13a-1 thereunder; and Section 14(a) of the Exchange Act and Rule 14a-3 thereunder.

C. CSH shall comply with the undertakings enumerated in paragraphs 14-26 above.

D. CSH shall, within ten (10) days of the entry of this Order, pay disgorgement of \$27,822 and prejudgment interest of \$3,059 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.

E. CSH shall, within ten (10) days of the entry of this Order, pay a civil money penalty, in the amount of \$50,000.00, 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 31 U.S.C. § 3717.

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 CSH 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 D. Mark Cave, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, DC 20549-6011.

F. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil

penalty imposed in this proceeding. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary