Lessons From Recent SEC Municipal Enforcement Actions

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11039 / March 16, 2022

SECURITIES EXCHANGE ACT OF 1934
Release No. 94425 / March 16, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20799

In the Matter of **CROSBY INDEPENDENT SCHOOL DISTRICT,** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING 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 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Crosby Independent School District ("Crosby," the "District," 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

A. SUMMARY

1. In January 2018, Crosby Independent School District raised $20 million through the sale of municipal bonds (the "January 2018 Bonds"). Crosby's Official Statement for the January 2018 Bonds, which was used to solicit interest from prospective investors, contained Crosby's fiscal year 2017 audited financial statements. Unknown to investors at the time, Crosby had failed to report payroll and construction liabilities totaling $11.7 million. Consequently, Crosby's audited financial statements falsely reported General Fund reserves of $5.4 million. When these misstatements were discovered, Crosby declared financial exigency and the bonds were downgraded.

2. Crosby knew that its payroll and construction liabilities were higher than the amounts recorded in its fiscal year 2017 audited financial statements. Crosby, however, failed to determine the true amount of the liabilities and never informed its auditor that the fiscal year 2017 payroll and construction liabilities were understated. Nonetheless, Crosby submitted its fiscal year 2017 audited financial statements to the bond financing team to be included in relevant offering documents, which were provided to prospective investors.

3. Through this conduct and its misstatements, Crosby violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Section 17(a) of the Securities Act.

B. RESPONDENT

4. **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. It is governed by a seven-member elected Board of Trustees. Crosby operates on a July 1 to June 30 fiscal year.

C. OTHER RELEVANT INDIVIDUAL

5. **Carla Merka** age 57, is a resident of Dayton, Texas. Merka served as Crosby's Chief Financial Officer ("CFO") from approximately March 2014 through May 2018. As CFO, Merka had primary responsibility over Crosby's bond, business, and finance programs, as well as its financial statements. In approximately June 2018, Merka left Crosby for other employment.

[1] 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.

D. FACTS

Crosby's Deteriorating Financial Condition and Change to Fiscal Year End

6. In 2013, Crosby issued $86.5 million in municipal bonds ("2013 Bond") to fund several capital projects. Crosby knew that various project enhancements beyond the original scope of work 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.

7. As of August 31, 2016 (Crosby's then fiscal year-end), Crosby and Merka knew that 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.

Crosby's Fiscal Year 2017 Financial Statements Were Materially Misstated

8. 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.

Crosby Understated Construction Expenses by $7.9 Million

9. During the fiscal year 2017 audit, Crosby and Merka knew that the 2013 Bond proceeds had been completely consumed and Crosby would have to pay the remaining construction commitments from its General Fund. Crosby and Merka also knew 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. In early June 2017, officers from Crosby discussed with its municipal advisor that it did not have enough funds to cover its normal operating expenses and the unpaid construction expenses. On June 26, 2017, Crosby's municipal advisor convened a call with officers from Crosby, including Merka, Crosby's bond counsel, and Crosby's auditor. On that call, Crosby and its municipal advisor concluded that the District could not pay for its outstanding construction commitments without issuing new bonds.

10. Crosby failed to accurately record its unpaid construction liability in the fiscal year 2017 financial statements. Crosby only recorded a construction liability of $727,000 despite knowing that the outstanding construction liability was much greater. Merka failed to provide accurate information regarding Crosby's construction expenses to the district's auditor. Merka reviewed and approved the fiscal year 2017 financial statements and signed a management representation letter falsely asserting that, among other things, the fiscal year 2017 financial statements were presented in accordance with GAAP and that the District's net position and fund balance had been properly reported.

Crosby Understated Payroll Expenses by $3.8 million

11. Crosby's teacher salaries represented 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 were 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. Crosby changed its fiscal year-end date from August 31 to June 30 for multiple reasons, including a failed attempt to increase General Fund reserves and pay for the 2013 Bond construction projects. When Crosby moved its fiscal year-end date, however, Crosby concluded fiscal year 2017 with unpaid payroll obligations 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.

12. Crosby knew that the change in fiscal year-end date would result in a payroll liability for teacher salaries, but did not properly account for it. Crosby and Merka also knew that Crosby's auditor incorrectly believed that all contractual employees had been paid in full as of June 30, 2017. Merka never corrected this misunderstanding, nor did Merka calculate her own payroll liability. Instead, Crosby recorded only a $30,000 payroll liability related to hourly employees. Merka knew that the payroll liability was understated, but still signed a management representation letter falsely asserting that, among other things, the fiscal year 2017 financial statements were presented in accordance with GAAP and that the District's net position and fund balance had been properly reported.

Crosby's January 2018 Bond Documents Contained Material Misstatements and Omissions

13. On January 18, 2018, Crosby issued $20 million of Unlimited Tax School Building Bonds to pay its outstanding construction liabilities and to fund new capital projects. Crosby's false and misleading fiscal year 2017 financial statements were appended to the official statement used to market the bonds to investors. Crosby's fiscal year 2017 audited financial statements understated payroll and construction liabilities by $3.8 million and $7.9 million, respectively. These errors resulted in an overstatement of Crosby's General Fund reserves by $11.7 million. Most importantly, Crosby's fiscal year 2017 financials reported a positive General Fund balance when it should have reported a negative one. Crosby's official statement also disclosed information concerning the District's fiscal year 2017 deficit. The disclosures in this section of the official statement were false and misleading because they did not include the appropriate payroll and construction liabilities.

14. As CFO, Merka had ultimate responsibility over Crosby's fiscal year 2017 financial statements. She was responsible for reporting on financial issues to Crosby's Board and was Crosby's primary contact during the bond financing process. Merka and other officers from Crosby reviewed Crosby's official statement prior to its release to prospective investors. Crosby's then Board President signed Crosby's official statement used to market the bonds to investors.

15. Crosby knew that its fiscal year 2017 financial statements were false and misleading, yet submitted them to the bond financing team for inclusion in the offering documents.

In fact, Merka did not invite its external auditor to meetings with the bond financing team despite Crosby's municipal advisor making such a request. Nor did Merka reveal in communications with ratings agencies the District's true financial condition.

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

16. During spring 2018, Crosby continued to face cash flow shortages because of the additional construction expenses. In June 2018, Crosby's new CFO discovered the payroll and construction liability errors. 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 municipal advisor. Beginning in September 2018, ratings agencies downgraded Crosby's bonds.

17. On October 8, 2018, Crosby declared a financial exigency and implemented a mid-year reduction in force. Crosby's declaration of financial exigency required that a monitor from the Texas Education Agency oversee the District's finances and efforts to achieve financial solvency; the monitor is still in place. In February 2019, Crosby's auditor issued its audit report for Crosby's fiscal year 2018 financial statements, which included material restatements of the fiscal year 2017 ending balances and raised doubts about Crosby's ability to continue as a going concern.

18. Throughout the fall of 2018 and into 2019, the District's new CFO and Superintendent executed on a short and long-term plan to help the District solve its financial problems. These actions included budget cuts, a hiring freeze, reductions in force, examination of all expenses, and investigation of the previous conduct.

E. VIOLATIONS

19. A statement or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988).

20. As a result of the conduct described above, Crosby violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Section 17(a) of the Securities Act. Crosby, through the January 2018 Bond documents that appended the District's false and misleading fiscal year 2017 financial statements, made untrue statements of material fact or misleading omissions in connection with the purchase or sale of securities and in the offer or sale of such securities. Crosby further engaged in transactions, practices, and a course of business that operated as a fraud or deceit on the investors in the January 2018 Bonds. Crosby allowed the dissemination of the false and misleading financial statements and engaged in other actions that concealed the District's financial distress at the time of the January 2018 bond sale.

F. CROSBY'S REMEDIAL EFFORTS AND COOPERATION

21. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent and cooperation afforded the Commission staff.

IV.

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

Accordingly, it is hereby ORDERED that**:**

Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act that Respondent Crosby cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

By the Commission.

Vanessa A. Countryman
Secretary

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[1] of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.[2]

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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.

2 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[3] 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

> 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.

auditing standards[4] ("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

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 liabilityduring 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

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SECURITIES AND EXCHANGE COMMISSION,	)	
Plaintiff,	)	Civil Action No.: 4:22-cv-841
v.	)	
CARLA MERKA,	)	
Defendant.	)	

COMPLAINT

Plaintiff United States Securities and Exchange Commission (the "SEC") alleges:

SUMMARY OF ALLEGATIONS

1. In January 2018, Crosby Independent School District ("Crosby" or the "District") issued $20 million in municipal bonds using audited financial statements from Crosby's fiscal year 2017 ("FY17"). Crosby's FY17 financial statements failed to report $11.7 million in payroll and construction liabilities for the District and falsely reported $5.4 million in reserves in the District's General Fund. Crosby disclosed its depletion of General Fund reserves to the public in August 2018 and the District declared a financial exigency and instituted mid-year layoffs. Additionally, S&P downgraded Crosby's bonds to A- from AA- as a result of the restatement and "rapid deterioration" of the District's reserves. In February 2019, the District restated its FY17 General Fund reserves to negative ($6.3) million.

2. Prior to the issuance of the bonds, Crosby's Chief Financial Officer, Carla Merka, knew that Crosby's payroll and construction liabilities were significantly higher than the amounts recorded in the FY17 audited financial statements. Merka, however, failed to determine the true amount of the liabilities, and never informed Crosby's auditors that she knew that the FY17 payroll

and construction liabilities were substantially understated. Merka nonetheless submitted Crosby's FY17 audited financial statements to the bond financing team to be included in the offering documents, which Merka knew were disclosed to prospective investors.

3. As a result of this conduct, Merka violated Sections 17(a)(1) and 17(a)(3) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder.

DEFENDANT

4. **Carla Merka**, age 57, is a resident of Dayton, Texas. Merka has over twenty years of accounting experience, but has never been a CPA or held any professional accounting license. From March 2014 through May 2018, she served as Crosby's CFO. As Crosby's CFO, Merka supervised at least eight accounting employees and had primary responsibility over the preparation of Crosby's financial statements and interaction with Crosby's external auditor. In June 2018, Merka left Crosby to become CFO of another independent school district in Texas, a position she continues to hold.

OTHER RELEVANT ENTITY

5. **Crosby Independent School District** is a public school district based in Crosby, Texas, a suburb northeast of Houston, Texas. Crosby operates seven schools and serves approximately 6,400 students.

JURISDICTION AND VENUE

6. The SEC brings this action pursuant to authority conferred upon it by Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78(u)(e)].

7. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

8. Venue is proper in this District, because Crosby is located within this District and the acts constituting violations of the federal securities laws alleged in this Complaint occurred within this District.

9. In connection with the conduct described in this Complaint, Defendant directly or indirectly made use of the mails or the means or instruments of transportation or communication in interstate commerce.

FACTUAL ALLEGATIONS

A. Crosby Lacked Funds to Complete Capital Projects

10. In 2013, Crosby issued $86.5 million in municipal bonds ("2013 Bond") to fund various capital projects, including the construction of a baseball and softball complex and renovations to its football stadium. The District hired a general contractor and a project and risk manager to undertake these projects, which were expected to be completed by May 2017. Crosby's then-Superintendent was actively involved in the construction projects, and personally directed contractors to perform project enhancements outside the original scope of work, which inflated the total cost of the projects.

11. In part because of the project enhancements, the District exhausted the 2013 Bond proceeds prematurely, leaving the General Fund as the only available source of funding for approximately $12 million of future construction commitments.

12. Merka knew of the inflated costs and the exhaustion of the 2013 Bond proceeds. Accordingly, she was concerned that the District did not have enough funds to complete the construction projects, and was actively pursuing alternative sources of funding.

13. By August 31, 2016, Crosby's then fiscal year-end, the District's General Fund lacked sufficient funds to cover the $12 million of future construction expenses required to complete its capital projects. For multiple reasons, including to increase General Fund reserves and pay for the 2013 Bond construction projects, Merka suggested, and Crosby's Board approved, changing the District's fiscal year-end date from August 31 to June 30. Merka incorrectly believed that shifting the fiscal year-end would create "a one-time savings" of approximately $10 million. While the change shortened Crosby's FY17 to 10 months – from September 1, 2016 to June 30, 2017 – it did not generate the savings needed to cover the construction commitments, and the District concluded its FY17 with a decrease in General Fund reserves of $5.2 million.

B. Crosby's FY17 Financial Reporting Failures

14. Merka prepared FY17 financial statements for Crosby that materially understated liabilities and overstated the General Fund balance. In particular, the FY17 financial statements (1) failed to report construction expenses for completed capital projects, and (2) failed to report unpaid payroll expenses due to the change in fiscal year-end. Merka knew that Crosby had incurred (but had not paid) these expenses as of June 30, 2017, but failed to record those liabilities in the financial statements and failed to communicate to the District's auditor the magnitude of the unpaid liabilities.

i. Merka Understated Construction Expenses

15. Beginning in FY16, Merka knew that the 2013 Bond proceeds had been completely consumed and Crosby would need to use the General Fund to pay all remaining construction commitments. By May 2017, the capital projects were substantially completed, but Crosby lacked

sufficient funds in its General Fund to pay the estimated $8 million to $10 million in outstanding, unpaid construction invoices.

16. In early June 2017, Merka began sending concerned emails to Crosby's superintendent and the District's municipal financial advisor, indicating that Crosby did not have enough funds to cover its normal operational expenses and the unpaid construction expenses. Because Crosby could not pay for its outstanding construction commitments without raising new bond proceeds, the District persuaded its primary construction contractor to defer Crosby's outstanding payment obligations until the District received proceeds from a new bond issuance.

17. Instead of accurately recording Crosby's unpaid construction liability of more than $8 million, the District's FY17 financial statements showed a construction liability of only $727,000. Merka reviewed and approved the FY17 financial statements and signed a management representation letter sent to Crosby's auditor falsely asserting that, among other things, the FY17 financial statements were presented in accordance with GAAP and that the District's net position and General Fund balance had been properly reported.

ii. Merka Understated Payroll Expenses

18. Crosby's teachers are considered "contractual" employees and represent the vast majority of the District's payroll expenses. Their term begins at the start of each school year, typically in mid-August. Most Crosby teachers earn their salaries over a 10-month "contract" period corresponding with the start and end of the school year. All contractual employees, however, are paid evenly over a 12-month period. As a result, Crosby's teachers are not fully compensated for their 10-month earnings until the 12-month term expires.

19. Prior to FY17, Crosby did not need to record a payroll liability for its teachers at the end of a fiscal year, because the contractual commitments for the preceding school year had

been paid in full by the end of the fiscal year, August 31. By changing its fiscal year-end date from August 31 to June 30, Crosby concluded FY17 with unpaid payroll obligations related to the 2017 *contract* year. In other words, Crosby still had to pay its teachers for two more months – July and August 2017. Crosby, however, failed to include these unpaid payroll liabilities, which amounted to $3.8 million, in its FY17 financial statements. Merka knew that Crosby's auditor incorrectly believed that all contractual employees had been paid in full as of June 30, 2017 and did not correct this misunderstanding.

20. While knowing that Crosby's payroll liability was understated, Merka reviewed and approved the FY17 financial statements and signed a management representation letter sent to the auditor that falsely asserted that, among other things, the FY17 financial statements were presented in accordance with GAAP and that the District's net position and fund balance had been properly reported.

C. Crosby's Offering Documents for the 2018 Bonds Contained Material Misstatements and Omission

21. On January 18, 2018, Crosby issued $20 million of Unlimited Tax School Building Bonds to pay its outstanding construction payables and to fund new capital projects. Crosby's erroneous FY17 financial statements were appended to the Official Statement, a document disclosed to prospective investors describing the essential terms of the bonds.

22. As discussed in paragraphs 15-20 above, Crosby's FY17 audited financial statements understated payroll and construction liabilities by $3.8 million and $7.9 million, respectively. These errors resulted in an overstatement of Crosby's General Fund reserves by $11.7 million. Notably, Crosby's FY17 financials reported a *positive* General Fund balance when it should have reported a *negative* one. Crosby's Official Statement disclosed information concerning the District's FY17 fiscal year deficit, but the disclosures in this section were false and

misleading because they did not include the payroll and construction expenses discussed in paragraphs 15-20 above.

23. The misrepresentations and omissions in Crosby's FY17 financial statements were material to bond investors, significantly altering the total mix of information available to them in determining whether to purchase the bonds.

24. As CFO, Merka had the ultimate authority over Crosby's FY17 financial statements. She was Crosby's highest-ranking executive with any financial or accounting experience. Merka was responsible for reporting on financial issues to Crosby's Board and often made presentations on those subjects. The leadership of the District relied on Merka to ensure the financial statements were complete and accurate. Merka was also the District's representative in multiple meetings and calls with the District's financial advisor leading up to the bond offering, including discussions related to "cash flow forecasts, FYE 2017 ending numbers, required disclosures, bond ratings, Plan of Finance, and Board presentations." Additionally, Merka was the main point of contact for the District's disclosure counsel, who sent her questionnaires to complete for purposes of drafting the Official Statement disclosures. Merka reviewed Crosby's Official Statement prior to its release to prospective investors.

25. Merka knew that Crosby's FY17 financial statements were false and misleading, yet submitted them to the bond financing team for inclusion in the package of offering documents. Merka did not invite the District's external auditor to meetings with the bond financing team despite Crosby's municipal advisor making such a request. Similarly, Merka did not reveal in communications with ratings agencies the District's true financial condition.

D. Discovery of Crosby's Financial Issues and Aftermath

26. Crosby's superintendent resigned in January 2018. Merka resigned at the end of May 2018 and accepted a CFO position at another independent school district in Texas. Crosby hired a new CFO and Superintendent, who assumed their positions in June and July 2018, respectively.

27. During spring 2018, Crosby continued to face cash flow shortages due, in part, to the construction expenses described above. Shortly after arriving in June 2018, Crosby's new CFO discovered the payroll and construction liability errors and confronted the District's auditor about the significant financial shortfalls.

28. 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. On September 25, 2018, Moody's downgraded Crosby's bonds from A1 to A3 and placed the rating under review for further possible downgrade. In December 2018, Moody's changed its outlook on the 2018 Crosby bonds to "negative."

29. On October 8, 2018, Crosby's Board declared a financial exigency with the Texas Education Agency (TEA), which allowed the District to implement a mid-year reduction in force. On December 6, 2018, S&P downgraded Crosby's bonds to A- from AA- due to "the district's rapid deterioration of reserves stemming from overspending, overestimating revenues, and a mistake in the audit that led to a negative prior period adjustment and the depletion of reserves." S&P also changed its outlook on Crosby bonds from "stable" to "negative." In February 2019, the District's auditor issued its audit report for Crosby's FY18 financial statements, which included material restatements of the FY17 ending balances.

FIRST CLAIM FOR RELIEF
Fraud in the Offer or Sale of Securities
Sections 17(a)(1) and 17(a)(3) of the Securities Act

30. The SEC incorporates the allegations in paragraphs 1 through 29 as if fully set forth herein.

31. By engaging in the acts and conduct alleged herein, Defendant, directly or indirectly, in the offer or sale of securities, by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, has:

a. knowingly or with severe recklessness employed a device, scheme, or artifice to defraud; and

b. knowingly, recklessly, or negligently engaged in a transaction, practice, or course of business which operated or would operate as a fraud or deceit upon the purchaser.

32. Defendant violated and, unless restrained and enjoined, will continue to violate Sections 17(a)(1) and 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(1) and (3)].

SECOND CLAIM FOR RELIEF
Fraud in Connection with the Purchase or Sale of Securities
Section 10(b) of the Exchange Act and Rule 10b-5 thereunder

33. The SEC incorporates the allegations in paragraphs 1 through 29 as if fully set forth herein.

34. By engaging in the acts and conduct alleged herein, Defendant, directly or indirectly, in connection with the purchase or sale of securities, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange, knowingly or with severe recklessness:

a. employed a device, scheme, or artifice to defraud;

b. made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

c. engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit upon any person.

35. Defendant violated and, unless restrained and enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

RELIEF REQUESTED

WHEREFORE, the SEC respectfully requests that this Court enter a judgment:

I.

Finding that the Defendant committed the violations alleged in this Complaint.

II.

Permanently enjoining, pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, the Defendant from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

III.

Ordering Defendant to pay a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

IV.

Permanently barring Defendant from participating in any offering of municipal securities, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or

inducing or attempting to induce the purchase or sale of any municipal security, provided however, that such injunction shall not prevent Defendant from purchasing or selling municipal securities for her own personal account.

V.

Retaining jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VI.

Granting such other and further relief as this Court deems just and appropriate.

Dated: March 16, 2022

Respectfully submitted,

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Attorney for Plaintiff United States Securities and Exchange Commission

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **vs.** **CITY OF ROCHESTER, NEW YORK, ROSILAND BROOKS-HARRIS, CAPITAL MARKETS ADVISORS, LLC, RICHARD GANCI, AND RICHARD TORTORA,** **Defendants.**	**Case No. 22-cv-6273** **COMPLAINT** **Jury Trial Demanded**

Plaintiff Securities and Exchange Commission ("the Commission") alleges as follows:

SUMMARY OF ALLEGATIONS

1. On August 7, 2019, the City of Rochester, New York ("Rochester" or the "City"), led by its former finance director Rosiland Brooks-Harris ("Brooks-Harris"), sold approximately $119 million in municipal bonds to investors on behalf of the Rochester City School District (the "District").

2. The City and Brooks-Harris told investors that $50 million of the amount raised would "be used to offset the effects of timing differences between cash receipts and disbursements," as the District awaited anticipated funding from the State of New York. The remaining $69 million was to provide financing for the District, as well as other City projects.

3. The District is the largest component of the City's budget, and the District was expected to repay the $50 million. Thus, the offering documents,

prepared by Brooks-Harris and the City's long-time municipal advisor, Capital Markets Advisors, LLC ("CMA") and Richard Ganci ("Ganci"), included financial information about the District. Accordingly, the District's finances were important to investors.

4. The City's offering documents were materially misleading. They contained outdated financial statements for the District and failed to disclose that the District was experiencing unusual financial distress. Indeed, in a July 2019 call with a credit rating agency, the District's then-CFO stated that the District's spending was within the budget for fiscal year 2019 that had just ended on June 30, 2019. With respect to the District's finances, the Defendants' message to the rating agency and to investors was "there's nothing to see here."

5. On September 18, 2019, only 42 days after the offering, the District's auditors revealed what was obvious to Brooks-Harris and Ganci before the offering—that the District was experiencing extreme financial distress due to rampant overspending on teacher salaries. In fact, the District overspent its budget for fiscal year 2019 by $27.6 million, resulting in a downgrade of the City's debt rating and requiring the intervention of the State of New York in the form of a $35 million loan and the appointment of a monitor for the District.

6. Prior to the bond offering, the City and Brooks-Harris knew that the District was overspending its fiscal year 2019 budget on salaries. CMA and Ganci knew the District was spending more than it brought in each year and Ganci had specifically identified the risk that the District's overspending could get worse. Further, the City, Brooks-Harris, CMA and Ganci all knew that the District had an enormous and unusual cash decline of $63 million as of the end of fiscal year 2019 that was due, in part, to increased spending on salaries. Despite this, they made no effort to investigate the extent of the overspending and made no effort to inform

investors of the risks the overspending posed to the District's finances or the City's finances.

7. As a result of the misleading statements and omissions discussed herein, the City's offering documents concealed from investors the District's true financial condition at the time of the offering. When the District's budget shortfall was finally revealed, the City's long-term credit rating declined from "Aa3" to "A2" and received a "negative outlook."

8. Separately, CMA, Ganci, and CMA's other principal Richard Tortora ("Tortora") also failed to disclose to nearly 200 CMA clients (including the City) that CMA had material conflicts of interest arising from its compensation arrangements. In many cases, CMA, Ganci and Tortora falsely stated that CMA had no undisclosed material conflicts of interest.

9. By their conduct, Defendants Rochester, Brooks-Harris, CMA and Ganci violated, and/or aided and abetted violations of, the antifraud provisions of the federal securities laws, and Defendants CMA, Ganci and Tortora breached their fiduciary duty under the federal securities laws and violated, and/or aided and abetted violations of, the rules of the Municipal Securities Rulemaking Board ("MSRB").

JURISDICTION AND VENUE

10. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, Sections 20(b), 20(d), and 22(a) of the Securities Act of 1933 ("Securities") [15 U.S.C. §§ 77t(b), 77t(d), 77v(a)], and Sections 21(d), 21(e), 21(f) and 27 of the Securities Exchange Act of 1934 ("Exchange") [15 U.S.C. §§ 78u(d), 78u(e), 78u(f), 78aa].

11. Defendants have, directly or indirectly, made use of the means or instrumentalities of interstate commerce or of the mails, in connection with the transactions, acts, practices, and courses of business alleged in this Complaint. For

example, as part of the acts described herein, the Defendants sent numerous emails and other electronic communications to each other.

12. Venue is proper in this district pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because the transactions, acts, practices, and courses of conduct constituting violations of the federal securities laws occurred within this district. Specifically, the City is located within this district, Brooks-Harris is a resident of this district, and CMA, Ganci and Tortora engage in municipal advisory activity within this district.

DEFENDANTS

13. **City of Rochester, New York** is a municipality located in Monroe County. It is governed by an elected Mayor and nine-member City Council. It is both a "municipal entity" and an "obligated person" as those terms are defined in Section 15B(e)(8) and 15B(e)(10) of the Exchange Act [15 U.S.C. §§ 78o-4(e)(8) and (10)].

14. **Rosiland Brooks-Harris** resides in Rochester, New York. She served as the Director of Finance of the City from June 30, 2018 to December 31, 2021.

15. **Capital Markets Advisors, LLC** is a New York limited liability company with its principal place of business in Great Neck, New York. CMA has been registered as a municipal advisor with the Commission since September 2014 and with the MSRB since 2014.

16. **Richard Ganci** resides in Buffalo, New York. He has served as an Executive Vice President and Principal at CMA since March 2005. Ganci works from CMA's Orchard Park, New York office, where he engages in municipal advisory activities. He is a municipal advisor and an associated person of CMA, as

those terms are defined by Section 15B(e)(4)(A) and 15B(e)(7) of the Exchange Act [15 U.S.C. §§ 78o-4(e)(4)(A) and (e)(7)] and MSRB Rule D-11.

17. **Richard Tortora** resides in Manhasset, New York. He has served as President and Principal at CMA since 2002. He is a municipal advisor and an associated person of CMA, as those terms are defined by Section 15B(e)(4)(A) and 15B(e)(7) of the Exchange Act [15 U.S.C. §§ 78o-4(e)(4)(A) and (e)(7)] and MSRB Rule D-11.

RELEVANT ENTITY

18. **The District** is a New York public school district located in the City of Rochester that serves approximately 30,000 students. It is governed by a seven-member elected Board of Education (the "Board"). The District is dependent upon the City to issue debt and to levy taxes on its behalf. The District operates on a July 1 to June 30 fiscal year.

FACTS

I. The City Sold the Notes in August 2019

19. In August 2019, the City sold a $68,905,000 bond anticipation note ("BAN") and a $50,000,000 revenue anticipation note ("RAN"). Both notes were general obligations of the City, the payment of which was secured by the City's faith and credit.

20. The stated purpose of the BAN was to provide financing for the District, as well as other City projects, and the stated purpose of the RAN was to provide cash flow financing for the District for fiscal year 2020. Because the District was the expected source of the repayment of the RAN and because the District is the largest component of the City's overall budget, the District's financial condition was important to investors in both the RAN and the BAN.

21. Brooks-Harris managed the City's bond program and oversaw the offering of the notes and the preparation of offering documents, including a

Preliminary Official Statement ("POS"), a Supplemented Preliminary Official Statement ("Supplemented POS"), and a Final Official Statement ("Final OS") (collectively, the "Offering Documents").

22. Brooks-Harris reviewed, edited and ultimately signed the Offering Documents on behalf of the City. She also reviewed and signed two closing certificates attesting to the accuracy of the Offering Documents.

23. CMA and Ganci facilitated the bond offering process for the City. Among other things, they prepared the Offering Documents. Under CMA's municipal advisory contract with the City, CMA was required to prepare the Offering Documents and to participate in all working group meetings and conference calls to "help ensure compliance with the legal requirements" of a note issuance. CMA's contract also required CMA to "advise on and coordinate the credit rating process," including addressing any questions the rating analyst may have.

24. CMA was paid a fee for each note issue under its contract with the City. CMA's compensation was dependent on the issuance of the note, and the City paid for CMA's compensation with proceeds raised from the note issuance.

II. The District's Financial Condition Was Deteriorating

25. The District's fund balances (differences between assets and liabilities) indicate its ability to address future unexpected financial challenges and are a primary metric used to analyze the District's financial health. Between 2014 and 2018, total fund balance in the District's General Fund declined by over $27 million (from $77,139,826 to $49,636,366) due to recurring operating deficits.

26. The District also had an internal "reserve policy" which required it to preserve a portion of its fund balance to address future unexpected financial challenges. According to its policy, the General Fund was required to maintain committed, assigned and unassigned fund balances (subcategories of total fund

balance) between 5% and 15% of operating expenses. Notwithstanding the decline in total fund balance between 2014 and 2018, the District remained within its reserve policy as of the end of fiscal year 2018, and in February 2019, a credit rating agency stated that "fiscal 2019 [wa]s trending positively for both the city and the [District]."

27. For fiscal year 2019, the District's adopted budget included the use of $15 million in fund balance to cover operating deficits. However, by November 2018, the District's overspending was accelerating. The bulk of the overspending was to cover teacher salaries. The District experienced a $63 million cash decline during fiscal year 2019 due, in part, to the District's overspending. This was an unusually large decline in cash compared to prior years. To pay expenses, the District increasingly began to rely on the City for short-term loans.

A. By July 2019, the City and Brooks-Harris Had Knowledge of the District's Financial Problems

28. Because the District was requesting short-term loans from the City on a more frequent basis, Brooks-Harris and other City executives began meeting weekly with the District's finance staff to discuss the District's cash flow issues. Through those meetings and through weekly cash flow statements which District staff provided to her, Brooks-Harris became aware of the District's overspending in fiscal year 2019, and that the overspending was due to increases in teacher salaries. Prior to the note offering, Brooks-Harris was also aware of the District's $63 million decline in cash in fiscal year 2019.

29. Through her position as City Finance Director and her role as head of the City's bond program, Brooks-Harris had the ability to request from the District any other financial information necessary to facilitate the City's bond offering on the District's behalf.

30. In or around the spring of 2019, Brooks-Harris and the City decided that, instead of continuing to provide the District with short-term loans, the City would issue a RAN for the District to cover its cash flow deficits in fiscal year 2020. The City had not issued a RAN on behalf of the District since 2004.

B. Ganci and CMA Had Knowledge of the District's Financial Problems Prior to the Offering

31. At the time of the bond offering, Ganci and CMA had served as the City's municipal advisor for over 10 years (since 2008), and Ganci was personally familiar with the City and the District's finances.

32. Beginning in November 2018, Ganci began discussing the District's cash flow problems with Brooks-Harris and the possibility of issuing a RAN. Ganci knew the District's fund balance was decreasing over the most recent fiscal years due to its overspending, and was aware that a RAN issuance by the City on behalf of the District would be considered unusual and was likely to generate questions about the need for a RAN at this time. As a result of his conversations with the City and Brooks-Harris, Ganci understood that the reason the City was issuing the RAN was, in substantial part, because of the District's overspending.

33. Ganci was also aware of the District's unusual $63 million decline in cash. On July 23, 2019, a potential investor who received the POS requested information about the District's 2019 fiscal year cash flow. The POS at that time only contained the District's projected fiscal year 2020 cash flow statement.

34. In response, Ganci advised the City to amend the POS to include the District's actual cash flow statement for fiscal year 2019. That cash flow statement in the Supplemented POS showed the $63 million decline, which was significant compared to prior years.

35. The City told Ganci that the $63 million decline was partly due to the addition of staff at the District. Despite this additional knowledge of financial

distress, Ganci did not seek, or advise the City to seek, any additional information about the District's finances prior to the offering.

III. Defendants' Materially Misleading Statements and Omissions to Credit Rating Analyst About the District's Financial Distress

36. Prior to the bond offering, the City requested credit ratings for the notes, as it typically did with its bond offerings. Credit ratings provide investors with an assessment of the creditworthiness of an issuer or financial instrument. The credit rating analyst typically reviews the financial statements and other relevant information to determine what rating to assign.

37. The rating analyst for the City's bonds relied on the City and the District to provide accurate estimates for how their 2019 fiscal years would end. An important factor in the analyst's rating of the City's debt was whether the City and the District would end the 2019 fiscal year with a decrease in their fund balances or their liquidity.

38. On the eve of a ratings call with the rating analyst, Ganci told Brooks-Harris that he suspected the District's structural cash issue might get worse "absent drastic changes." Despite this, and his knowledge that the RAN was, in substantial part, prompted by the District's overspending and not merely timing differences, and his knowledge of the $63 million decline in cash at the District, Ganci made no effort to investigate, or advise the City to investigate, the extent of the District's financial problems.

39. On July 11, 2019, Brooks-Harris, Ganci and other representatives from the City and the District met with the rating analyst to provide financial information about the District.

40. In response to the rating analyst's questions regarding the purpose of the bond offering, Brooks-Harris and others from the District staff stated that the purpose of the RAN was merely to address a timing issue in the receipt of aid from

the State of New York. They did not disclose the District's increased overspending on teacher salaries.

41. In response to the rating analyst's questions regarding the District's expected use of $15 million in fund balance for fiscal year 2019 in light of the $63 million decline in cash, the District's then-CFO falsely represented that the District expected to use only $15 million in fund balance, which was substantially in line with its adopted budget. He also falsely represented that the $63 million decline was due to accounting treatment and timing issues in the receipt of cash. He failed to disclose that the District's actual expenses were trending significantly higher than the adopted budget, due in part to overspending on teacher salaries. Brooks-Harris and Ganci heard the false representation to the rating analyst about the cash decline but did not correct it. Brooks-Harris and Ganci also did not disclose the District's overspending on teacher salaries.

42. Based in part on the misleading information provided by Brooks-Harris and District staff, on July 16, 2019, the credit rating agency assigned its highest short-term rating, "MIG 1," to the BAN and the RAN, and maintained its "Aa3" rating for the City's general obligation debt.

IV. Defendants' Materially Misleading Statements and Omissions in the Offering Documents

43. On July 17, 2019 and July 24, 2019, the City disseminated the POS and the Supplemented POS, respectively, to investors. On July 29, 2019, the City disseminated the Final OS to investors.

44. The Offering Documents contained materially misleading statements and omissions.

45. First, the financial information about the District in the Offering Documents was materially misleading because it provided an inaccurate and

outdated presentation of the District's financial condition at the time of the offering.

46. The City included the District's audited financial statements for fiscal year 2018 in the Offering Documents. By the time of the offering, however, those financial statements were over a year old, and did not reflect the fact that the District was experiencing a cash flow crisis as a result of overspending its 2019 budget.

47. Second, although the Offering Documents included the 2019 cash flow statements showing the $63 million decline in cash, without further disclosure, a reader of the Offering Documents would not understand that the decline was due in substantial part to the District's rapidly increasing deficit and overspending. To the contrary, in light of the stated purpose of the RAN, the more reasonable interpretation was that the decline was due merely to a mismatch in timing of State aid revenue (and would be resolved when the aid was received).

48. Brooks-Harris and Ganci had the ability to request more current and accurate financial information from the District without extraordinary effort. Indeed, the District had previously provided this type of disclosure in other City bond offerings. However, despite their awareness of the District's financial distress, Brooks-Harris and Ganci made no effort to further inquire about the District's financial condition prior to the bond offering.

49. Third, the financial information about the District that was included in the Offering Documents was materially misleading because it contained no disclosure of the District's projected year-end financial results for fiscal year 2019. At the time of the offering, this information was known to the District and was available to the City, Brooks-Harris, CMA and Ganci. The Offering Documents did not disclose that the District's overspending had accelerated, resulting in its increased reliance on the City for cash loans. The Offering Documents also did not

disclose that overspending at this level would likely violate the District's reserve policy.

50. Fourth, the statement in the Offering Documents that "Proceeds of [the] Revenue Anticipation Notes will be used to offset the effects of timing differences between cash receipts and disbursements in the 2019-2020 fiscal year" was materially misleading in light of the omitted information that the issuance of the RAN was prompted by the District's increased overspending and increasing need for cash.

51. As discussed above, the District's need for cash and the decision to issue the notes related, in substantial part, to the District's accelerated overspending on teachers' salaries, resulting in an increasingly large budget deficit. Thus, the RAN was issued not only to address a mismatch of timing between expenditures and the receipt of State aid, as the statement in the Offering Documents indicated, but also to address the District's increasing spending.

52. On July 25, 2019, the City offered and sold the BAN and RAN through a competitive sale. On August 7, 2019, the bond deal closed and the City issued the notes.

V. In September 2019, an External Auditor Revealed the District's Substantial Budget Deficit, Leading to a Ratings Downgrade

53. On September 18, 2019, less than two months following the issuance of the notes, the District's external auditor alerted District management that the District was facing a $30 million budget shortfall for fiscal year 2019.

54. On September 26, 2019, the credit rating agency placed the City's credit ratings on review for possible downgrade, citing reports that the District incurred a nearly $50 million budget shortfall for fiscal year 2019 that "far exceeded [the credit rating agency's] expectations for declines to reserves [or fund balance]," which was $15 million.

55. On October 3, 2019, the City filed a voluntary notice to investors on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access ("EMMA") system of a "discrepancy between financial information provided by the [District] to [the credit rating agency] and the estimated actual information subsequently received."

56. On December 3, 2019, the District's external auditor completed its audit of the District's fiscal year 2019 financial report. The audited financials revealed a $42 million operating deficit, or $27.6 million more in spending than had been budgeted, which consumed all of the District's "reserve policy" fund balance as well as $8.9 million of reserves restricted for other purposes.

57. On December 9, 2019, the rating agency downgraded the City's long-term rating to "A2" and assigned a negative outlook. It also downgraded the City's BAN to "MIG 2" but affirmed the "MIG 1" rating on the RAN based on the agency's rating methodology at the time. In its credit opinion, the rating agency cited the decline in the District's fund balance by $42 million, which was approximately $30 million more than District management had projected during the July 11th ratings call. "There is no clear explanation of how the July 2019 estimate was so far off," the rating agency wrote in its credit opinion.

58. To address the District's budget shortfall, the State of New York granted the District a $35 million loan in May 2020, which is expected to be repaid over 30 years without interest. In exchange for the loan, the State Commissioner of Education appointed a monitor to provide oversight of the District for a three year period beginning in May 2020.

VI. The District's Finances Were Important to Investors

59. As alleged above, by the time of the offering, the District's financial condition had substantially worsened from what was reported in the 2018 financial statements attached to the Offering Documents. This deterioration would have

been important for an investor to consider in deciding whether to purchase the notes, because the District was the largest component of the City's overall budget at the time of the note offering and was the expected source of repayment of the RAN. The deterioration would also have been important for an investor to consider in deciding whether to accept the price and yield being offered by the City, or whether a lower price and higher yield would be necessary to compensate for the increased repayment risk.

60. Also as noted above, the credit rating agency downgraded the City's long-term debt rating and BAN rating upon learning of the District's decline in reserves and liquidity. Thus, the District's finances were important to the City's creditworthiness.

61. The District's financial deterioration and the City's ratings downgrade impacted the City's borrowing costs in subsequent bond offerings. Following the disclosure of the true extent of the District's financial challenges and subsequent ratings downgrade, the City issued a revenue anticipation note in July 2020 that was significantly more expensive to the City than the RAN. For the RAN, the yield on the sale date was 12 basis points below the Municipal Market Analytics Inc. ("MMA") yield for that day. For the July 2020 note (after the disclosure), which was unrated, the yield was 34 basis points above the MMA yield. Thus, the City paid $345,000 more in interest for the 2020 RAN than would have been expected in the absence of the financial distress.

VII. Impact on Investors

62. The materially misleading statements and omissions made by the City, Brooks-Harris, CMA and Ganci were harmful to investors. They concealed the District's true financial condition and concealed that the notes issued by the City had more risk than investors were led to believe. For example, as a result of the

misleading statements and omissions, investors did not know that the District was on track to completely consume its reserves in fiscal year 2019, limiting the District's liquidity and its ability to meet its financial obligations.

63. Investors were forced to rely on outdated information when making their decision to purchase the City's notes at the then-prevailing price and yield. Moreover, investors relied on the City's credit ratings assigned at the time of the note offering, which were based on materially misleading information provided by the City, Brooks-Harris and District staff.

VIII. CMA, Ganci and Tortora Fail to Disclose Material Conflicts of Interests

64. Separate from the allegations regarding CMA and Ganci's failure to disclose the District's financial distress, CMA, Ganci and CMA's other principal Richard Tortora failed to disclose material conflicts of interest to CMA's clients over a period of several years.

65. A municipal advisor has a conflict of interest when its compensation is contingent on the size and/or closing of a client's transaction. The conflict arises because, although the client has an interest in issuing as little debt as possible in order to satisfy its need for capital, the municipal advisor has an interest in increasing the size of the client's debt in order to increase its compensation. Similarly, a conflict of interest arises when compensation is contingent on the closing of a client's transaction, because although the client sometimes has an interest in declining to complete a transaction (such as issuing debt with unfavorable terms), the municipal advisor has an interest in completing the transaction in order to receive its compensation.

66. A conflict arising from a municipal advisor's contingent compensation arrangement is material because a client or prospective client would reasonably consider the information important in making a decision about whether to engage a municipal advisor with a contingent compensation arrangement.

67. A municipal advisor must disclose its material conflicts of interest prior to, or upon engaging, in municipal advisory activities. Disclosure allows the prospective client (1) to make an informed decision about whether to hire the municipal advisor; (2) to be aware of the conflict of interest during the municipal advisory relationship; and (3) to consider the effect of the conflict of interest on any advice the municipal advisor provides the client. Disclosure also allows the client to take, or ask the municipal advisor to take, steps to mitigate the conflict, or to negotiate a different form of compensation.

68. CMA, Ganci, and Tortora failed to disclose to municipal advisory clients, including Rochester and nearly 200 other clients, CMA's material conflicts of interest arising from CMA's compensation arrangements that were contingent on the size and/or closing of the clients' bond offerings.

69. CMA also failed to establish written supervisory procedures requiring the disclosure of all of CMA's material conflicts of interest to its clients, including those arising from CMA's contingent compensation arrangements, until November 2018. Even after the procedures were established, Ganci and Tortora failed to implement or enforce those procedures.

70. For example, the terms of a written agreement dated July 1, 2019 between CMA and an issuer client, and signed on behalf of CMA by Ganci, provided for CMA to receive compensation based on the size and the closing of the issuer's debt issuances. Although the agreement had a section entitled "Required Regulatory Disclosure," CMA failed to disclose to its issuer client in that section or anywhere else in the agreement that the compensation arrangement created conflicts of interest for CMA.

71. From 2017 through 2021, CMA, Ganci, and Tortora failed over 300 times to disclose to CMA's clients in writing that CMA had a material conflict of

interest arising from the fact that its compensation was contingent on the amount of debt issued by the client.

72. During the same period, CMA, Ganci, and Tortora also failed nearly 400 times to disclose in writing to CMA's clients that CMA had a material conflict of interest arising from the fact that CMA would not be compensated for its work if the client's transaction did not close.

73. Finally, during this same period, CMA, Ganci, and Tortora made written representations to clients nearly 300 times, in which they falsely stated that CMA had no undisclosed material conflicts of interest.

74. For example, the terms of a written agreement dated July 6, 2021 between CMA and another issuer and signed on behalf of CMA by Tortora provided for CMA to receive compensation based on the size and the closing of the issuer's debt. CMA did not disclose to this issuer client that this compensation arrangement created conflicts of interest for CMA. On the contrary, CMA falsely stated in the agreement that "[t]o the best of our knowledge and belief, neither CMA nor any registered associated person has any material undisclosed conflict of interest that would impact CMA's ability to service [the issuer]."

FIRST CLAIM FOR RELIEF

Violation of Sections 17(a)(1) and (a)(3) of the Securities Act (against the City, Brooks-Harris, CMA and Ganci)

Fraud in the Offer or Sale of Securities

75. Paragraphs 1 through 74 are hereby re-alleged and are incorporated herein by reference.

76. By reason of the foregoing, the City, Brooks-Harris, CMA, and Ganci directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, knowingly or recklessly employed a device, scheme or artifice to

defraud, and engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchasers.

77. By reason of the foregoing, the City, Brooks-Harris, CMA, and Ganci directly or indirectly violated and unless enjoined will continue to violate Sections 17(a)(1) and (a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(1), 77q(a)(3)].

SECOND CLAIM FOR RELIEF

Violation of Section 17(a)(2) of the Securities Act (against the City and CMA)

Fraud in the Offer or Sale of Securities

78. Paragraphs 1 through 74 are hereby re-alleged and are incorporated herein by reference.

79. By reason of the foregoing, the City and CMA directly and indirectly, acting recklessly or negligently in the offer or sale of securities by use of the mails or the means or instruments of transportation or communication in interstate commerce have obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

80. By reason of the foregoing, the City and CMA directly or indirectly violated and unless enjoined will continue to violate Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)].

THIRD CLAIM FOR RELIEF

Aiding and Abetting Violations of Section 17(a)(2) of the Securities Act (against Brooks-Harris and Ganci)

Fraud in the Offer or Sale of Securities

81. Paragraphs 1 through 74 are hereby re-alleged and are incorporated herein by reference.

82. By reason of the foregoing, the City and CMA violated Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)].

83. Brooks-Harris and Ganci, by their actions described above, knowingly or recklessly provided substantial assistance to the City's violations of Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)].

84. Ganci, by his actions described above, knowingly or recklessly provided substantial assistance to CMA's violations of Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)].

85. By reason of the foregoing, Brooks-Harris and Ganci directly or indirectly have aided and abetted and unless enjoined will continue to aid and abet violations of Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)].

FOURTH CLAIM FOR RELIEF

Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

(against the City and Brooks-Harris)

Fraud in Connection with the Purchase or Sale of Securities

86. Paragraphs 1 through 74 are hereby re-alleged and are incorporated herein by reference.

87. By reason of the foregoing, the City and Brooks-Harris directly or indirectly, by use of the instrumentalities of interstate commerce or of the mails, or of the facilities of a national securities exchange, in connection with the purchase or sale of securities, knowingly or recklessly, have employed a device, scheme, or artifice to defraud; made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices, or courses of business which operates or would operate as a fraud or deceit upon any person.

88. By reason of the foregoing, the City and Brooks-Harris directly or indirectly violated and unless enjoined will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

FIFTH CLAIM FOR RELIEF

Violation of Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) Thereunder (against CMA and Ganci)

Fraud in Connection with the Purchase or Sale of Securities

89. Paragraphs 1 through 74 are hereby re-alleged and are incorporated herein by reference.

90. By reason of the foregoing, CMA and Ganci directly or indirectly, by use of the instrumentalities of interstate commerce or of the mails, or of the facilities of a national securities exchange, in connection with the purchase or sale of securities, knowingly or recklessly, have employed a device, scheme, or artifice to defraud; and engaged in acts, practices, or courses of business which operates or would operate as a fraud or deceit upon any person.

91. By reason of the foregoing, defendants CMA and Ganci directly or indirectly violated and unless enjoined will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rules 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)].

SIXTH CLAIM FOR RELIEF

Violation of MSRB Rule G-17 (against CMA, Ganci and Tortora)

Engaging in a Deceptive, Dishonest, or Unfair Practice

92. Paragraphs 1 through 74 are hereby re-alleged and are incorporated herein by reference.

93. Defendant CMA is a registered municipal advisor and Defendants Ganci and Tortora are associated persons of CMA.

94. By reason of the foregoing, CMA, Ganci and Tortora have directly and indirectly, in the conduct of their municipal advisory activities, failed to deal fairly with all persons, and have engaged in a deceptive, dishonest or unfair practice, in violation of MSRB Rule G-17.

95. By reason of the foregoing, CMA, Ganci and Tortora violated and unless enjoined will continue to violate MSRB Rule G-17.

SEVENTH CLAIM FOR RELIEF

Violation of MSRB Rule G-42 (against CMA, Ganci and Tortora)

Breach of Duties of Non-Solicitor Municipal Advisor

96. Paragraphs 1 through 74 are hereby re-alleged and are incorporated herein by reference.

97. By reason of the foregoing, CMA and Ganci breached their duty of care to the City of Rochester, and CMA, Ganci and Tortora breached their duty of loyalty to their municipal entity clients.

98. By reason of the foregoing, CMA, Ganci and Tortora violated and unless enjoined will continue to violate MSRB Rule G-42.

EIGHTH CLAIM FOR RELIEF

Violation of MSRB Rule G-42 (against CMA, Ganci and Tortora)

Breach of Duties of Non-Solicitor Municipal Advisor

99. Paragraphs 1 through 74 are hereby re-alleged and are incorporated herein by reference.

100. By reason of the foregoing, CMA, Ganci and Tortora failed to provide their municipal advisory clients full and fair disclosures in writing of all material conflicts of interest.

101. By reason of the foregoing, CMA, Ganci and Tortora violated and unless enjoined will continue to violate MSRB Rule G-42.

NINTH CLAIM FOR RELIEF

Violation of MSRB Rule G-44 (against CMA, Ganci and Tortora)

Supervisory and Compliance Obligations of Municipal Advisors

102. Paragraphs 1 through 74 are hereby re-alleged and are incorporated herein by reference.

103. By reason of the foregoing, CMA, Ganci and Tortora failed to establish, implement, and maintain a system to supervise the municipal advisory activities of the municipal advisor and its associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, including applicable MSRB rules.

104. By reason of the foregoing, CMA, Ganci and Tortora violated and unless enjoined will continue to violate MSRB Rule G-44.

TENTH CLAIM FOR RELIEF

Violation of Section 15B(c)(1) of the Exchange Act (against CMA, Ganci and Tortora)

Breach of Fiduciary Duty

105. Paragraphs 1 through 74 are hereby re-alleged and are incorporated herein by reference.

106. Pursuant to Section 15B(c)(1) of the Exchange Act [15 U.S.C. § 78o-4(c)(1)], a municipal advisor and any person associated with a municipal advisor shall be deemed to have a fiduciary duty to any municipal entity for whom the municipal advisor acts as a municipal advisor, and no municipal advisor may engage in an act, practice or course of business that is not consistent with a municipal advisor's fiduciary duty.

107. Defendant CMA acted as a municipal advisor and Defendants Ganci and Tortora acted as municipal advisors and persons associated with a municipal advisor, as those terms are defined in Sections 15B(e)(4)(A) and 15B(e)(7) of the

Exchange Act [15 U.S.C. §§ 78o-4(e)(4) and (e)(7)]. As such, CMA and Ganci owed a fiduciary duty to the City, and CMA, Ganci and Tortora owed a fiduciary duty to their other municipal entity clients.

108. By reason of the foregoing, CMA, Ganci and Tortora engaged in the acts, practices and courses of business described above, and CMA, Ganci and Tortora breached their fiduciary duty to their municipal entity clients.

109. By reason of the foregoing, CMA, Ganci and Tortora directly or indirectly violated and unless enjoined will continue to violate Section 15B(c)(1) of the Exchange Act [15 U.S.C. § 78o-4(c)(1)].

ELEVENTH CLAIM FOR RELIEF

Violation of Section 15B(c)(1) of the Exchange Act (against CMA, Ganci, and Tortora)

Acts in Contravention of Any Rule of the MSRB

110. Paragraphs 1 through 74 are hereby re-alleged and are incorporated herein by reference.

111. By reason of the foregoing, CMA, Ganci and Tortora violated MSRB Rules G-17, G-42, and G-44.

112. By reason of the foregoing, CMA, Ganci and Tortora acted in contravention of a rule or rules of the MSRB while making use of the mails or any means or instrumentality of interstate commerce to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities.

113. By reason of the foregoing, CMA, Ganci and Tortora violated and unless enjoined will continue to violate Section 15B(c)(1) of the Exchange Act [15 U.S.C. § 78o-4(c)(1)].

TWELFTH CLAIM FOR RELIEF

Alternative Liability

114. Paragraphs 1 through 74 are hereby re-alleged and are incorporated herein by reference.

115. As stated above, the SEC alleges that Brooks-Harris is liable for violations of Sections 17(a)(1) and (a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(1), 77q(a)(3)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. However, to any extent that Brooks-Harris is not found liable for those violations, Brooks-Harris is liable for aiding and abetting the City's violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

116. By reason of the foregoing, the City violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

117. By reason of the foregoing, Brooks-Harris, by her actions described above, knowingly or recklessly provided substantial assistance to the City's violations of Sections 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

118. As stated above, the SEC alleges that CMA and Ganci are liable for violations of Sections 17(a)(1) and (a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(1), 77q(a)(3)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rules 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)]. However, to any extent that CMA and Ganci are not found liable for those violations, CMA and Ganci are liable for aiding and abetting the City's and/or Brooks-Harris's violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]

and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

119. By reason of the foregoing, CMA and Ganci, by their actions described above, knowingly or recklessly provided substantial assistance to the City's and/or Brooks-Harris' violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

120. As stated above, the SEC alleges that Ganci and Tortora violated Section 15B(c)(1) of the Exchange Act [15 U.S.C. § 78o-4(c)(1)] and MSRB Rules G-17, G-42, and G-44. However, to any extent that Ganci and Tortora are not found liable for those violations, Ganci and Tortora are liable for aiding and abetting CMA's violations of Section 15B(c)(1) of the Exchange Act [15 U.S.C. § 78o-4(c)(1)] and MSRB Rules G-17, G-42, and G-44.

121. By reason of the foregoing, Ganci and Tortora knowingly or recklessly provided substantial assistance to CMA's violations of Section 15B(c)(1) of the Exchange Act [15 U.S.C. § 78o-4(c)(1)] and MSRB Rules G-17, G-42, and G-44.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Issue findings of fact and conclusions of law that Defendants violated the federal securities laws and regulations alleged against them in this Complaint.

II.

Issue a judgment permanently restraining and enjoining Defendants from directly or indirectly violating the federal securities laws and regulations alleged against them in this Complaint.

III.

Issue a judgment permanently restraining and enjoining Brooks-Harris from directly, or indirectly, (i) participating in any issuance, purchase, offer, or sale of municipal securities, as defined in Section 3(a)(29) of the Exchange Act [15 U.S.C. § 78c(a)(29)], including but not limited to engaging or communicating with a broker, dealer, municipal securities dealer, municipal advisor, bond insurer, nationally recognized statistical rating organization, investor, issuer or obligated person for purposes of issuing, purchasing, offering, or selling any municipal security; and (ii) participating in the preparation of any materials or information, which Brooks-Harris should reasonably expect to be submitted to the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system in connection with an offering or a continuing disclosure obligation, or which Brooks-Harris should reasonably expect to be provided to investors in connection with any offering (including a private placement) of municipal securities, provided however, that such injunction shall not prevent Brooks-Harris from purchasing or selling municipal securities for her own personal account.

IV.

Order Brooks-Harris to provide a copy of the judgment by email or mail within 10 days of the entry of the judgment to any issuer of municipal securities or obligated person with which Brooks-Harris is employed as of the date of the entry of the judgment.

V.

Order all Defendants to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 78t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

VI.

Order CMA to disgorge its ill-gotten gains it received directly or indirectly, plus prejudgment interest, as a result of the alleged violations pursuant to Sections 21(d)(3), 21(d)(5), and 21(d)(7) of the Exchange Act [15 U.S.C. §§ 78u(d)(3), 78u(d)(5) and 78u(d)(7)].

VII.

Grant such other relief as this Court may deem just and appropriate.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands that this case be tried to a jury.

Dated: June 14, 2022

Respectfully Submitted,

s/ Eugene N. Hansen
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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **vs.** **EVERTON SEWELL,** **Defendant.**	**Case No. 22-cv-6274** **COMPLAINT**

Plaintiff Securities and Exchange Commission ("the Commission") alleges as follows:

SUMMARY OF ALLEGATIONS

1. This matter involves misconduct by Everton Sewell, the former Chief Financial Officer of Rochester City School District (the "District"), in connection with a municipal bond offering by the City of Rochester, New York (the "City") in August 2019.

2. The stated purpose of the bond offering was to (1) provide financing for the District, as well as other City projects, and (2) provide cash flow financing for the District for fiscal year 2020.

3. The District's financial condition was key to the bond offering because the District was the expected source of the repayment of a portion of the bonds, and the District is the largest component of the City's overall budget.

4. Prior to the offering, Sewell knew that the District was facing at least a $25 million budget shortfall for the end of fiscal year 2019. Despite this, Sewell made material misrepresentations and omissions regarding the magnitude of the

budget shortfall to the credit rating agency for the bonds, leading the rating agency to believe the District's significant cash flow decline in fiscal year 2019 and need for cash flow financing in fiscal year 2020 were solely the result of timing of the District's receipt of New York State aid.

5. After outside auditors discovered the extent of the District's budget deficit in the fall of 2019, the credit rating agency ultimately published a downgrade to the City's debt rating.

6. As a result of the conduct described above, Sewell violated Sections 17(a)(1) and 17(a)(3) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 10b-5 thereunder.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, Sections 20(b), 20(d), and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), 77v(a)], and Sections 21(d), 21(e), 21(f) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 78u(f), 78aa].

8. Defendant, directly or indirectly, made use of the means or instrumentalities of interstate commerce or of the mails, in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

9. Venue is proper in this district pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because Sewell resides in the City and the District is located there as well. Furthermore, certain of the transactions, acts, practices, and courses of conduct constituting violations of the federal securities laws occurred within this district.

THE DEFENDANT

10. **Sewell** resides in Rochester, New York. Sewell served as the District's chief financial officer from December 2016 to October 2019. Since December 2019, Sewell has worked as a school business official in New York.

RELEVANT ENTITY

11. **The District** is a New York public school district located in the City of Rochester that serves approximately 30,000 students. It is governed by a seven-member elected Board of Education (the "Board"). The District is dependent upon the City to issue debt and to levy taxes on its behalf. The District operates on a July 1 to June 30 fiscal year.

FACTS

A. The City Sold the Notes in August 2019

12. In August 2019, the City sold a $68,905,000 bond anticipation note ("BAN") and a $50,000,000 revenue anticipation note ("RAN"). Both notes were general obligations of the City, the payment of which was secured by the City's faith and credit.

13. The stated purpose of the BAN was to provide financing for the District, as well as other City projects, and the stated purpose of the RAN was to provide cash flow financing for the District for fiscal year 2020. Because the District was the expected source of the repayment of the RAN and because the District is the largest component of the City's overall budget, the District's financial condition was important to investors in both the RAN and the BAN.

B. The District's Financial Condition Was Deteriorating

14. From December 2016 to October 2019, Sewell was the chief financial officer at the District and was in charge of the District's budget and financial reporting processes. Sewell was the primary communicator of the District's financial information to the Board, the City, and the credit rating agencies.

15. The District's fund balances (differences between assets and liabilities) indicate its ability to address future unexpected financial challenges and are a primary metric used to analyze the District's financial health. Between 2014 and 2018, total fund balance in the District's General Fund declined by over $27 million (from $77,139,826 to $49,636,366) due to recurring operating deficits.

16. The District also had an internal "reserve policy" which required it to preserve a portion of its fund balance to address future unexpected financial challenges. According to its policy, the General Fund was required to maintain committed, assigned and unassigned fund balances (subcategories of total fund balance) between 5% and 15% of operating expenses. Notwithstanding the decline in total fund balance between 2014 and 2018, the District remained within its reserve policy as of the end of fiscal year 2018, and in February 2019, a credit rating agency stated that "fiscal 2019 [wa]s trending positively for both the city and the [District]."

17. For fiscal year 2019, the District's adopted budget included the use of $15 million in fund balance to cover operating deficits. However, by November 2018, the District's overspending was accelerating. The bulk of the overspending was to cover teacher salaries. The District experienced a $63 million cash decline during fiscal year 2019 due, in part, to the District's overspending. This was an unusually large decline in cash compared to prior years. To pay expenses, the District increasingly began to rely on the City for short-term loans.

18. Sewell knew as early as June 2019 that the District's fiscal year 2019 budget was going to be overspent by at least $25 million and that this would, in turn, violate the District's reserve policy.

19. Internal reports prepared by Sewell's staff and provided to Sewell in June and July 2019 showed estimated deficits of between $25 million and $50 million. However, Sewell did not inform anyone outside of the District's finance department of the projected budget deficits until late August 2019, after the bonds had been issued.

C. Sewell's Material Misrepresentations and Omissions to the Credit Rating Analyst about the District's Financial Distress

20. Prior to the bond offering, the City requested credit ratings for the bonds, as it typically did with its bond offerings. Credit ratings provide investors with an assessment of the creditworthiness of an issuer or financial instrument. The credit rating analyst typically reviews the financial statements and other relevant information to determine what rating to assign.

21. The rating analyst for the City's bonds relied on the City and the District to provide accurate estimates for how their 2019 fiscal year would end. An important factor in the analyst's rating of the City's debt was whether the City and the District would end the 2019 fiscal year with a decrease in their fund balances or liquidity.

22. On July 11, 2019, Sewell attended a meeting with representatives from the City and the credit rating agency to provide financial information about the District. During the meeting, the rating analyst asked how much fund balance (reserves) the District expected to utilize for the fiscal year 2019. Sewell stated that the District expected to use $15 million in fund balance, which was substantially in line with its adopted budget that was approved by the Board at the

beginning of the fiscal year. Sewell did not disclose that the District's actual expenses were trending significantly higher than the adopted budget.

23. Sewell also misrepresented the reason for the District's $63 million cash decline. When the ratings analyst asked Sewell to explain how the District was predicting using only the budgeted $15 million in fund balance when cash had declined by $63 million, Sewell said the decline was due to accounting treatment and timing issues in the receipt of cash. In fact, as Sewell was aware, the cash decline was due to the District's overspending on salaries, among other things.

24. Based in part on the misleading information provided by Sewell, on July 16, 2019, the credit rating agency assigned its highest short-term rating, "MIG 1," to the BAN and the RAN, and maintained its "Aa3" rating for the City's general obligation debt. In its press release, the rating agency explained its rating to investors, stating that, among other things, the rating was due to the District's "strong liquidity coverage" and "adequate management of cash position, despite recent declines in cash."

25. On July 17, 2019 and July 24, 2019, the City disseminated the POS and the Supplemented POS, respectively, to investors. On July 29, 2019, the City disseminated the Final OS to investors.

26. On July 25, 2019, the City offered and sold the BAN and RAN through a competitive sale. On August 7, 2019, the bond deal closed and the City issued the notes.

27. Sewell misrepresented the District's then-current financial status when he told the credit rating agency that he expected the District to end the 2018-2019 school year substantially in line with its budget despite internal reports to the contrary. Sewell was aware of internal reports showing a significant budget deficit between $25 million and $50 million as of the end of the fiscal year. Sewell ignored those red flags, falsely represented that the District was on track to meet its

2019 budget, and failed to disclose the projected overspending when asked by the credit rating analyst. Sewell knew or was reckless in not knowing that his misstatements and omissions were improper.

D. In September 2019, an External Auditor Revealed the District's Substantial Budget Deficit, Leading to a Ratings Downgrade

28. On September 18, 2019, less than two months following the issuance of the notes, the District's external auditor alerted District management that the District was facing a $30 million budget shortfall for fiscal year 2019.

29. On September 26, 2019, the credit rating agency placed the City's credit ratings on review for possible downgrade, citing reports that the District incurred a nearly $50 million budget shortfall for fiscal year 2019 that "far exceeded [the credit rating agency's] expectations for declines to reserves," which was $15 million.

30. On October 3, 2019, the City filed a voluntary notice to investors on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access ("EMMA") system of a "discrepancy between financial information provided by the [District] to [the credit rating agency] and the estimated actual information subsequently received."

31. On October 10, 2019, Sewell resigned as chief financial officer of the District.

32. On December 3, 2019, the District's external auditor completed its audit of the District's fiscal year 2019 financial report. The audited financials revealed a $42 million operating deficit, or $27.6 million more in spending than had been budgeted, which consumed all of the District's "reserve policy" fund balance as well as $8.9 million of reserves restricted for other purposes.

33. On December 9, 2019, the rating agency downgraded the City's long-term rating to "A2" and assigned a negative outlook. It also downgraded the City's

BAN to "MIG 2" but affirmed the "MIG 1" rating on the RAN based on the agency's rating methodology at the time. In its credit opinion, the rating agency cited the decline in the District's fund balance by $42 million, which was approximately $30 million more than District management had projected during the July 11th ratings call. "There is no clear explanation of how the July 2019 estimate was so far off," the ratings agency wrote in its credit opinion.

34. To address the District's budget shortfall, the State of New York granted the District a $35 million loan in May 2020, which is expected to be repaid over 30 years without interest. In exchange for the loan, the State Commissioner of Education appointed a monitor to provide oversight of the District for a three year period beginning in May 2020.

CLAIM FOR RELIEF

Violation of Sections 17(a)(1) and (a)(3) of the Securities Act

35. Paragraphs 1 through 34 are hereby re-alleged and are incorporated herein by reference

36. By reason of the foregoing, Sewell directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, knowingly or recklessly employed a device, scheme or artifice to defraud, and engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchasers.

37. By reason of the foregoing, Sewell directly or indirectly, violated and unless enjoined will continue to violate, Sections 17(a)(1) and (a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(1), 77q(a)(3)].

Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

38. Paragraphs 1 through 34 are hereby re-alleged and are incorporated herein by reference.

39. By reason of the foregoing, Sewell directly or indirectly, by use of the instrumentalities of interstate commerce or of the mails, or of the facilities of a national securities exchange, in connection with the purchase or sale of securities, knowingly or recklessly, has employed a device, scheme, or artifice to defraud; made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices, or courses of business which operates or would operate as a fraud or deceit upon any person.

40. By reason of the foregoing, Sewell directly or indirectly violated and unless enjoined will again violate 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Issue findings of fact and conclusions of law that Defendant violated Sections 17(a)(1) and (a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(1), 77q(a)(3)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

II.

Issue a judgment permanently restraining and enjoining Defendant and his agents, servants, employees, and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the judgment by personal

service or otherwise, from directly or indirectly violating Sections 17(a)(1) and (a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(1), 77q(a)(3)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

III.

Issue a judgment permanently restraining and enjoining Defendant from directly, or indirectly, (i) participating in any issuance, purchase, offer, or sale of municipal securities, as defined in Section 3(a)(29) of the Exchange Act [15 U.S.C. § 78c(a)(29), including but not limited to engaging or communicating with a broker, dealer, municipal securities dealer, municipal advisor, bond insurer, nationally recognized statistical rating organization, investor, issuer or obligated person for purposes of issuing, purchasing, offering, or selling any municipal security; and (ii) participating in the preparation of any materials or information, which Defendant should reasonably expect to be submitted to the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system in connection with an offering or a continuing disclosure obligation, or which Defendant should reasonably expect to be provided to investors in connection with any offering (including a private placement) of municipal securities, provided however, that such injunction shall not prevent Defendant from purchasing or selling municipal securities for his own personal account.

IV.

Order Defendant to provide a copy of the judgment by email or mail within 10 days of the entry of the judgment to any issuer of municipal securities or obligated person with which Defendant is employed as of the date of the entry of the judgment.

V.

Order Defendant to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 78t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

VI.

Grant such other relief as this Court may deem just and appropriate.

Dated: June 14, 2022

Respectfully Submitted,

s/ Eugene N. Hansen

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Attorneys for Plaintiff
Securities and Exchange Commission

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	**Civil Action No.:**
v.	§	**1:22-cv-00590**
ANTHONY MICHAEL HOLLAND,	§	
Defendant.	§	

COMPLAINT

Plaintiff United States Securities and Exchange Commission (the "SEC") alleges:

SUMMARY

1. This case involves misconduct by Anthony Michael Holland (the "Defendant" or "Holland") the former Chief Administrative Officer and City Secretary for the City of Johnson City, Texas ("City"). In approximately August 2018, Holland created falsified financial statements for the City's fiscal year ended September 30, 2016 and a falsified audit report for those financial statements (together, the "Falsified Documents"). Holland caused the Falsified Documents to be posted to the City's public website and the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access reporting system ("EMMA"), where they were made publicly available to investors in the City's outstanding municipal securities.

2. Holland created the Falsified Documents to prevent discovery of his ongoing embezzlement of City funds. Between 2015 and 2020, Holland stole approximately $1 million from the City, including $107,137 during fiscal year 2016. To hide his theft, Holland delayed

the annual independent audit of the City's 2016 financial statements. By mid-2018, in response to pressure and repeated inquiries about the status of the outstanding audit, Holland created the Falsified Documents by changing dates on the City's 2015 financial statements and audit report. Holland provided the Falsified Documents to the City's mayor and municipal advisor, knowing that the material would be posted to the City's public website and the EMMA system and made available to investors. The Falsified Documents were posted to the EMMA system in June 2019 and were publicly available on that system until late April 2020.

3. The Falsified Documents contained material misrepresentations and omissions about the City's 2016 finances. Among other things, the financial statements understated the City's total revenues by approximately 8%, understated the City's total expenses by approximately 23%, and overstated the City's total outstanding debt by approximately 5%. The financial statements also did not reflect that Holland embezzled $107,137, nearly 5% of the City's total revenues, during fiscal year 2016. The audit report also falsely represented that the City's 2016 financial statements had been audited by an independent auditor.

4. As a result of this conduct, Holland violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

DEFENDANT

5. **Anthony M. Holland**, age 36, is a resident of San Antonio, Texas. Holland has worked for at least fifteen years in administrative positions for several Texas cities and a school district. From 2013 to 2020, Holland served as Chief Administrative Officer and City Secretary for Johnson City, and was responsible for the administration and operation of all municipal departments, projects, and oversight of the City's finances and records. Holland's

responsibilities included directing and maintaining the central accounting system, preparing financial statements, and overseeing preparation of information for annual audits and reviewing audit reports. In December 2021, in a plea agreement with the United States Attorney's Office for the Western District of Texas, Holland pled guilty to one count of Theft from a State or Local Government that Receives Federal Program Funds, in violation of Section 666(a)(1)(A) of Title 18 of the United States Code. The charge is based on Holland's embezzlement of funds from the City.

OTHER RELEVANT ENTITY

6. **City of Johnson City, Texas** is a political subdivision and municipal corporation of the State of Texas, duly organized and existing under the laws of Texas. The City was incorporated in 1902 and is the county seat of Blanco County. The City operates under the mayor-council form of government, and is governed by the mayor and five council members. The City's population was 1,627 as of 2020.

JURISDICTION AND VENUE

7. The SEC brings this action pursuant to authority conferred upon it by Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78(u)(e)].

8. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

9. Venue is proper in this District, because the City is located within this District and the acts constituting violations of the federal securities laws alleged in this Complaint occurred within this District.

10. In connection with the conduct described in this Complaint, Defendant directly or indirectly made use of the means or instrumentalities of interstate commerce, or of the mails.

FACTUAL ALLEGATIONS

Background on the City's Municipal Securities

11. The City issued and sold municipal securities to investors in 2012 and in 2015. In connection with those municipal securities offerings and in compliance with Rule 15c2-12 promulgated under the Exchange Act, the City undertook to provide investors in the City's securities with what is known as "continuing disclosure." Specifically, the City agreed to provide investors with annual audited financial statements. The financial statements were to be provided to investors through the MSRB's EMMA system within six months after the end of the City's fiscal year (September 30). The City's municipal advisor typically received the City's annual audited financial statements from Holland and submitted them to EMMA.

12. During the relevant period, Holland oversaw and managed financial and accounting matters for the City, including oversight of the City's central accounting system and preparation of the City's annual financial statements. Holland was responsible for initiating the audit of the City's financial statements by an independent auditor each year and for providing information to the City's independent auditor in connection with the audit.

Holland Created the Falsified Documents

13. Holland's position with the City gave him access to the City's cash accounts. Between January 2015 and September 2020, Holland stole approximately $1.12 million from the City by directing payments to his personal bank accounts, sometimes using a fictitious corporate name to disguise the transactions. Generally, Holland transferred funds in amounts between $500 and $10,000 approximately one to three times a month from the City's cash account to his

personal bank accounts. He used the stolen funds for personal living expenses. His largest single theft was $302,800 in mid-October 2016, just after the close of the City's 2016 fiscal year. Amounts stolen by Holland for fiscal years ended September 30 were as follows: 2015: $69,759; 2016: $107,137; 2017: $389,497; 2018: $168,002; 2019: $159,562; and 2020: $229,140.

14. In order to avoid detection of his theft, Holland did not initiate the audit of the City's 2016 financial statements after the conclusion of the fiscal year on September 30, 2016. For several months he ignored requests for information from the City's mayor and its municipal advisor about the audit and provided excuses for the lack of audited financial statements.

15. Holland falsely told the mayor and the municipal advisor that he was waiting on financial information from the City's auditor and that he would shortly provide the fiscal year 2016 financial statements and the audit report. In reality, Holland had not even contacted the City's auditor to commence the audit when he made those statements.

16. Holland delayed the audit past the City's March 31, 2017 deadline for submitting the audited financial statements to EMMA. Beginning in January 2018, Holland began to receive requests from the rating agency that rated the City's outstanding securities about the status of the City's fiscal year 2016 audit. Holland continued to delay, and in May 2018, the rating agency withdrew its rating of the City's securities.

17. In July and August 2018, the mayor and the City's municipal advisor were still asking Holland for the 2016 financial statements and audit report. By that point they were also asking for the City's fiscal year 2017 financial statements and audit report, which had been due to be filed in EMMA in March 2018.

18. In response to this pressure, Holland created the Falsified Documents. He took a copy of the City's fiscal year 2015 financial statements and the auditor's audit report for the

2015 financial statements and changed most references to "2015" to "2016". In financial charts which had two year comparisons, he also changed most references to "2014" to "2015."

19. Total assets, total liabilities, total revenues, total expenses, total outstanding debt, and other key figures purportedly for the year ended September 30, 2016 in the falsified 2016 financial statements were the exact same amounts reported for the year ended September 30, 2015 in the City's fiscal year 2015 financial statements and were inaccurate as 2016 figures.

20. Holland edited the 2015 independent auditor report to make it appear as if was the 2016 independent auditor report, in essence, misrepresenting that the fiscal year 2016 financial statements had been audited by the City's independent auditor.

21. On August 15, 2018, Holland emailed the Falsified Documents (the 2016 financial statements and the 2016 audit report) to the mayor, who was not aware of the falsifications and posted the Falsified Documents to the City's public website. On August 20, 2018, Holland also sent the Falsified Documents to the City's municipal advisor. He did not disclose to either that the documents had been falsified. The municipal advisor, who was not aware of the falsifications, uploaded the Falsified Documents to the MSRB's EMMA system in June 2019, at which point the Falsified Documents were available to the public, including investors in the City's securities.

The Falsified Documents Were Materially False and Misleading

22. The Falsified Documents contained materially false and misleading statements and omissions about the City's financial condition and financial statements.

23. In comparison to the City's actual fiscal year 2016 financial statements (which were eventually completed and audited in March 2020), the falsified financial statements

understated the City's total revenues by approximately 8%, understated the City's total expenses by approximately 23%, and overstated the City's total outstanding debt by approximately 5%.

24. The financial statements also did not disclose Holland's embezzlement of $107,137 from the City, representing nearly 5% of the City's total revenues for fiscal year 2016.

25. Further, the financial statements falsely stated that the City was not aware of any subsequent events that would materially impact the financial statements. This was false because Holland embezzled an additional $302,800 less than two weeks after the end of fiscal year 2016.

26. Finally, the falsified audit report was materially false because it stated that the 2016 financial statements had been audited in compliance with generally accepted audit principles, when in fact, they had not been audited at all.

27. The Falsified Documents were available to investors on EMMA from June 2019 until April 28, 2020. During the time the Falsified Documents were available to investors on EMMA, investors engaged in secondary trading in the City's outstanding municipal bonds.

Discovery of the Fraud

28. In mid-February 2020, a financial examiner with a State of Texas entity, which was an investor in the City's 2015 securities, discovered the Falsified Documents that had been posted on EMMA. The investor alerted the City's auditor, which then notified the City about the Falsified Documents and that the fiscal year 2016 financial statements had not yet been audited.

29. After being notified, the City began an investigation. Holland made multiple false statements in connection with that investigation, including creating a false document in an attempt to hide that he had created the Falsified Documents. During the audit of the City's 2017

fiscal year financial statements, Holland also provided the City's auditor with a series of fraudulent documents to hide his embezzlement.

30. Despite Holland's attempts to hide his conduct, in mid-September the auditor discovered Holland's embezzlement and the theft was reported to the police. In September 2020, Holland resigned his position with the City.

31. In December 2021, Holland was criminally charged by the United States Attorney's Office for the Western District of Texas and pled guilty to one count of Theft from a State or Local Government and admitted to stealing over $1 million from the City for his personal benefit.

CLAIM FOR RELIEF
Fraud in Connection with the Purchase or Sale of Securities
Section 10(b) of the Exchange Act and Rule 10b-5 thereunder

32. The SEC incorporates the allegations in paragraphs 1 through 31 as if fully set forth herein.

33. By engaging in the acts and conduct alleged herein, Defendant, directly or indirectly, in connection with the purchase or sale of securities, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange, knowingly or with severe recklessness:

a. employed a device, scheme, or artifice to defraud;

b. made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and,

c. engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit upon any person.

34. Defendant violated and, unless restrained and enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that this Court enter a judgment:

I.

Finding that the Defendant committed the violations alleged in this Complaint.

II.

Permanently enjoining, pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, the Defendant from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

III.

Ordering Defendant to disgorge the ill-gotten gains he received as a result of the violations alleged herein, plus prejudgment interest on that amount.

IV.

Ordering Defendant to pay a civil penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

V.

Permanently restraining and enjoining Defendant from: (i) participating in any issuance, purchase, offer, or sale of municipal securities, including but not limited to engaging or communicating with a broker, dealer, municipal securities dealer, municipal advisor, bond insurer, nationally recognized statistical rating organization, regulatory authority or commission,

investor, issuer or obligated person for purposes of issuing, purchasing, offering, or selling any municipal security; and (ii) participating in the preparation of materials or information, including, without limitation, the preparation of financial statements or projections, which he should reasonably expect to be submitted to the MSRB's EMMA system in connection with an offering or a continuing disclosure obligation, or which he should reasonably expect to be provided to investors in connection with any offering (including a private placement) of municipal securities, provided however, that such injunction shall not prevent Defendant from purchasing or selling municipal securities for his own personal account;

VI.

Ordering Defendant to provide a copy of the Judgment by email or mail within 10 days of the entry of the Judgment to any issuer of municipal securities or obligated person with which Defendant is employed as of the date of the entry of the Judgment.

VII.

Retaining jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VIII.

Granting such other and further relief as this Court deems just and appropriate.

Dated: June 16, 2022.

Respectfully submitted,

/s/William P. Hicks
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JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

SECURITIES AND EXCHANGE COMMISSION

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
William P. Hicks, Esq. and M. Graham Loomis, Esq.
950 E. Paces Ferry Road, NE, Suite 900 - Atlanta GA 30326
404-842-7600 / hicksw@sec.gov; loomism@sec.gov

DEFENDANTS

ANTHONY MICHAEL HOLLAND

County of Residence of First Listed Defendant Bexar
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*
Daniel De La Garza, Esq.
Amber Vazquez, Esq.

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- [x] 1 U.S. Government Plaintiff
- [ ] 3 Federal Question *(U.S. Government Not a Party)*
- [ ] 2 U.S. Government Defendant
- [ ] 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	[ ] 1	[ ] 1	Incorporated *or* Principal Place of Business In This State	[ ] 4	[ ] 4
Citizen of Another State	[ ] 2	[ ] 2	Incorporated *and* Principal Place of Business In Another State	[ ] 5	[ ] 5
Citizen or Subject of a Foreign Country	[ ] 3	[ ] 3	Foreign Nation	[ ] 6	[ ] 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- [ ] 110 Insurance
- [ ] 120 Marine
- [ ] 130 Miller Act
- [ ] 140 Negotiable Instrument
- [ ] 150 Recovery of Overpayment & Enforcement of Judgment
- [ ] 151 Medicare Act
- [ ] 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- [ ] 153 Recovery of Overpayment of Veteran's Benefits
- [ ] 160 Stockholders' Suits
- [ ] 190 Other Contract
- [ ] 195 Contract Product Liability
- [ ] 196 Franchise

TORTS

PERSONAL INJURY
- [ ] 310 Airplane
- [ ] 315 Airplane Product Liability
- [ ] 320 Assault, Libel & Slander
- [ ] 330 Federal Employers' Liability
- [ ] 340 Marine
- [ ] 345 Marine Product Liability
- [ ] 350 Motor Vehicle
- [ ] 355 Motor Vehicle Product Liability
- [ ] 360 Other Personal Injury
- [ ] 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- [ ] 365 Personal Injury - Product Liability
- [ ] 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- [ ] 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- [ ] 370 Other Fraud
- [ ] 371 Truth in Lending
- [ ] 380 Other Personal Property Damage
- [ ] 385 Property Damage Product Liability

REAL PROPERTY
- [ ] 210 Land Condemnation
- [ ] 220 Foreclosure
- [ ] 230 Rent Lease & Ejectment
- [ ] 240 Torts to Land
- [ ] 245 Tort Product Liability
- [ ] 290 All Other Real Property

CIVIL RIGHTS
- [ ] 440 Other Civil Rights
- [ ] 441 Voting
- [ ] 442 Employment
- [ ] 443 Housing/ Accommodations
- [ ] 445 Amer. w/Disabilities - Employment
- [ ] 446 Amer. w/Disabilities - Other
- [ ] 448 Education

PRISONER PETITIONS

Habeas Corpus:
- [ ] 463 Alien Detainee
- [ ] 510 Motions to Vacate Sentence
- [ ] 530 General
- [ ] 535 Death Penalty

Other:
- [ ] 540 Mandamus & Other
- [ ] 550 Civil Rights
- [ ] 555 Prison Condition
- [ ] 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- [ ] 625 Drug Related Seizure of Property 21 USC 881
- [ ] 690 Other

LABOR
- [ ] 710 Fair Labor Standards Act
- [ ] 720 Labor/Management Relations
- [ ] 740 Railway Labor Act
- [ ] 751 Family and Medical Leave Act
- [ ] 790 Other Labor Litigation
- [ ] 791 Employee Retirement Income Security Act

IMMIGRATION
- [ ] 462 Naturalization Application
- [ ] 465 Other Immigration Actions

BANKRUPTCY
- [ ] 422 Appeal 28 USC 158
- [ ] 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- [ ] 820 Copyrights
- [ ] 830 Patent
- [ ] 835 Patent - Abbreviated New Drug Application
- [ ] 840 Trademark
- [ ] 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- [ ] 861 HIA (1395ff)
- [ ] 862 Black Lung (923)
- [ ] 863 DIWC/DIWW (405(g))
- [ ] 864 SSID Title XVI
- [ ] 865 RSI (405(g))

FEDERAL TAX SUITS
- [ ] 870 Taxes (U.S. Plaintiff or Defendant)
- [ ] 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- [ ] 375 False Claims Act
- [ ] 376 Qui Tam (31 USC 3729(a))
- [ ] 400 State Reapportionment
- [ ] 410 Antitrust
- [ ] 430 Banks and Banking
- [ ] 450 Commerce
- [ ] 460 Deportation
- [ ] 470 Racketeer Influenced and Corrupt Organizations
- [ ] 480 Consumer Credit (15 USC 1681 or 1692)
- [ ] 485 Telephone Consumer Protection Act
- [ ] 490 Cable/Sat TV
- [x] 850 Securities/Commodities/ Exchange
- [ ] 890 Other Statutory Actions
- [ ] 891 Agricultural Acts
- [ ] 893 Environmental Matters
- [ ] 895 Freedom of Information Act
- [ ] 896 Arbitration
- [ ] 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- [ ] 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- [x] 1 Original Proceeding
- [ ] 2 Removed from State Court
- [ ] 3 Remanded from Appellate Court
- [ ] 4 Reinstated or Reopened
- [ ] 5 Transferred from Another District *(specify)*
- [ ] 6 Multidistrict Litigation - Transfer
- [ ] 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
Violations of the Securities Exchange Act [15 U.S.C. § 78j(b)]; [15 U.S.C. §§ 78u(d), 78(u)(e) and 78aa]; Rule 10b-5 [17 C.F.R. § 240.10b-5]

Brief description of cause:
Securities Fraud

VII. REQUESTED IN COMPLAINT:

- [ ] CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: [ ] Yes [x] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
6/16/2022

SIGNATURE OF ATTORNEY OF RECORD
William P. Hicks

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. Origin. Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11069 / June 2, 2022

SECURITIES EXCHANGE ACT OF 1934
Release No. 95024 / June 2, 2022

ADMINISTRATIVE PROCEEDING
File No. 3 - 20873

In the Matter of **TOWN OF STERLINGTON, LOUISIANA** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING 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 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against the Town of Sterlington, Louisiana ("Sterlington," the "Town" 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-And-Desist Proceedings Pursuant To Section 8A of the Securities Act Of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, And Imposing A Cease-And-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

1. This matter involves misconduct in the issuance of municipal bonds by Sterlington in 2017 and 2018.

2. On April 27, 2017, Sterlington sold $4 million of water and sewer utility revenue bonds ("2017 Bonds"), and on September 28, 2018, it sold a $1.8 million refunding bond ("2018 Bonds") (collectively, the "Bonds"). The Bonds, which were sold in private placements to investors, were intended to finance development of a water system for the Town and improvements to its existing sewer system. As required by Louisiana law, the Town applied to the Louisiana State Bond Commission ("Bond Commission") for approval of these bond offerings. The Town submitted applications for the 2017 Bonds and 2018 Bonds to the Bond Commission on January 18, 2017 and July 18, 2018, respectively. In support of each application, the Town included false financial projections about the anticipated revenue of the Town's sewer system. The false projections were created by the Town's municipal advisor with the participation and approval of the Town's then-Mayor. The false projections misled the Bond Commission as to the Town's ability to cover its debt service for the proposed Bonds. Bond investors were not informed that the Town had obtained Bond Commission approval of the Bonds based on false projections, and were not informed of the associated risk that the Bonds may not have been duly authorized. In addition, the Town did not disclose to investors in the 2017 Bonds and 2018 Bonds that it had misused over $3 million from earlier bond offerings.

3. Through this conduct, Sterlington violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Respondent

4. **Sterlington, Louisiana** is a town with a population of approximately 2600 citizens located in the central northeastern part of the State of Louisiana. It is governed by an elected mayor and a five member board of aldermen.

Other Related Individuals and Entity

5. **Vern A. Breland** ("Breland") is a resident of Columbia, LA. Breland was elected the Town's Mayor in 2006 and resigned from office on October 1, 2018.

[1] 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.

6. **Aaron B. Fletcher** ("Fletcher") is a resident of Frisco, TX. He wholly owns Twin Spires and is its sole employee and director.

7. **Twin Spires Financial LLC** ("Twin Spires") is a Texas company formed in July 2015, with its principal place of business in Frisco, TX. During the relevant period, Twin Spires conducted business as a municipal advisor but was not registered with the Commission.

Facts

8. Beginning in approximately 2015, Sterlington began municipal projects to upgrade its sewer system, purchase the water distribution system for its residents from a third-party, and build a water treatment facility. To fund these projects, Sterlington decided to pursue municipal bond offerings to raise the necessary funds. In June 2015, the Town executed a financial advisory agreement with Twin Spires pursuant to which Twin Spires agreed to provide, among other municipal advisory services for the Town, advice on various forms of debt financing.

9. In April 2017, the Town sold the 2017 Bonds ($4 million Utility Revenue Bonds, which included $3.5 million Utility Revenue Bonds, Series 2017A (Tax Exempt) and $500,000 Taxable Utility Revenue Bonds, Series 2017B). In September 2018, the Town sold the 2018 Bonds ($1.845 million of Wastewater, Water and Sewer Treatment Utilities Revenue Bonds, Series 2018).

Overstatement of Sewer Customer and Revenue Projections In Application to Louisiana State Bond Commission

10. The Louisiana Constitution[2] and state law[3] require political subdivisions, such as Sterlington, to obtain the Bond Commission's written approval before issuing or selling bonds or other obligations. As part of the application, prospective issuers must submit an application to the Bond Commission, which includes certain financial and other information. Certain Bond Commission applications for government units or local political subdivisions require revenue and expense projections through the maturity of the issuer's bond debt obligations.

[2] Louisiana Constitution Article VII, Section 8(B) states, "Approval of Bonds. No bonds or other obligations shall be issued or sold by the state, directly or through any state board, agency, or commission, or by any political subdivision of the state, unless prior written approval of the bond commission is obtained."

[3] La. R.S. 39:1410.60(A) states:

> No parish, municipality, public board, political or public corporation, subdivision, or taxing district, and no road or subroad district, school district, sewerage district, drainage or subdrainage district, levee district, waterworks or subwaterworks district, irrigation district, road lighting district, harbor and terminal district, or any other political subdivision, taxing district, political or public corporation, created under or by the constitution and laws of the state shall have authority to borrow money, incur debt, or to issue bonds, or other evidences of debt, or to levy taxes, or to pledge uncollected taxes or revenues for the payment thereof, where they are authorized by the constitution or laws of the state so to do, without the consent and approval of the State Bond Commission.

11. Prior to issuing the Bonds, Sterlington applied to, and obtained the approval, of the Bond Commission. As discussed below, the Town overstated sewer system customers and revenue projections in both applications. The overstatements were made so that the Town could meet the minimum debt service coverage ratio required for the Bond Commission to approve the bond issuances. Fletcher and Twin Spires prepared the projections. Breland, on behalf of the Town, reviewed and approved the projections and approved the submission of both applications to the Bond Commission. The Bond Commission was unaware of the overstatements when it approved each of the applications and would not have approved the applications if it had been aware of them.

12. In January 2017, Sterlington submitted an application to the Bond Commission, seeking approval to issue the 2017 Bonds. The application included a projection of future sewer system customers and revenues. The Town projected it would have 2,040 sewer customers in 2018 and sewer system revenue of $864,693 in 2018. The customer projection was a 113% increase over Sterlington's actual 2016 sewer customer number and the revenue projection was a 139% increase over its 2016 revenue of $361,772. The 2,040 customer projection for 2018 was not based on an analysis of expected additional sewer customers or sewer revenues in 2018. Fletcher and Twin Spires "backed into" the projection based on the number of customers the Town would need to reach a sewer revenue projection high enough to meet a debt service coverage ratio of at least 1.0. Breland was aware of how Twin Spires and Fletcher calculated the projections.

13. The Town also misrepresented the historical number of sewer customers for 2016 and 2017 in an attempt to smooth out the year-to-year trend of sewer customers so the 2018 projection would appear more realistic. For example, the financial projections in the Bond Commission application represented that the Town had 1,574 sewer customers for 2016. The Town's December 2016 sewer records showed that the Town actually billed only 960 sewer customers.

14. On February 16, 2017, the Bond Commission approved the Town's application to issue the 2017 Bonds. In April 2017, the Town received $4 million in proceeds from the sale of the 2017 Bonds to three investors.

15. In July 2018, Sterlington submitted an application to the Bond Commission seeking approval to issue the 2018 Bonds. That application included similarly overstated projections. The Town projected that, in 2019, it would have 2,204 sewer customers and sewer revenues of $933,293. However, as of December 31, 2017, Sterlington had only 1,034 actual sewer customers and sewer revenue of only $445,107. The 2019 projections were similarly "backed into" to meet the required debt service coverage ratio and were not based on an analysis as to the number of customers or revenue the Town expected to have in 2019.

16. On August 16, 2018, the Bond Commission approved the Town's application to issue the 2018 Bonds. In September 2018, the Town received $1.85 million in proceeds from the sale of a 2018 Bond to one investor.

17. In the closing documents provided to investors in connection with the sale of the 2017 and 2018 Bonds, the Town represented that the Bonds had been approved by the Bond Commission and that the Bonds were validly authorized and issued in accordance with the Louisiana Constitution and applicable laws. These representations were misleading because they did not disclose that the approval by the Bond Commission was based, at least in part, on intentionally overstated projections. The misrepresentations were material because the misrepresentations to the Bond Commission created the risk that the Bonds could be found not to have been validly authorized and issued, which would present a risk to repayment.

Misuse of Proceeds from Previous Bond Issuances

18. Louisiana state law provides that bond proceeds constitute a trust fund to be used exclusively for the purpose for which the bonds are authorized to be issued.[4] Use of bond proceeds for unauthorized purposes is a violation of state law. As discussed below, the Town misused some of the proceeds from a 2015 bond offering. This misuse was not disclosed to investors in the 2017 and 2018 Bonds. Similarly, the Town also misused proceeds from the 2017 Bonds without disclosing this misuse to the 2018 Bond investor.

19. In 2015, Sterlington issued $500,000 of water treatment and utilities revenue bonds and $1.2 million of wastewater and utilities bonds (the "2015 Bonds"). Pursuant to the bond ordinance for the $500,000 bond, the proceeds were to be solely used for the purpose of acquiring, constructing and installing a new water treatment facility with infrastructure improvements, extensions, modifications and additions to the wastewater and sewer treatment system of Sterlington. The bond ordinance for the $1.2 million bonds stated that the purpose for the bond proceeds was for acquiring, constructing and installing improvements, extensions and additions to the wastewater and sewer treatment system.

20. Between January 2016 and August 2017, Breland directed Town employees to spend approximately $432,000 of the 2015 Bond proceeds on expenditures that were contrary to the bond ordinances and other investor disclosures for those bond proceeds. These improper expenditures included over $65,000 on police cars and $205,000 on Sterlington's payroll.

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[4] La. R.S. 39:577 (Public Finance: Application of Proceeds) provides, in relevant part:

> The proceeds of the sale of bonds issued under the provisions of this Sub-part shall constitute a trust fund to be used exclusively for the purpose or purposes for which the bonds are authorized to be issued, but the purchaser of the bonds shall not be obliged to see to the application thereof. In the event that all or part of the proceeds of the sale of such bonds are no longer needed for the purpose for which the bonds were authorized to be issued, the governing authority of the subdivision which has issued such bonds may use the proceeds of the sale of such bonds for a purpose different from that for which the bonds were originally issued, provided that such new purpose is one for which the bonds could have been issued in the original instance and provided further that such proposed action shall have been approved by a majority in number and amount of the qualified property taxpayers voting at an election held in the manner provided by the provisions of this Chapter for authorizing bonds.

21. Sterlington's audited financial statements for the year ended December 31, 2016, included a finding that Sterlington improperly spent $322,280 of the 2015 Bond proceeds. In or about July 2017, the Town's auditor notified the Town of this finding. On August 29, 2017, Breland's response to the finding, on behalf of the Town, was that the Town planned to repay all the funds by December 31, 2017. Sterlington's records show that only $39,800 was repaid by the end of the year and the remaining $282,480 to be repaid never occurred. In addition, from January 1, 2017 through July 31, 2018, Breland directed the misuse of an additional $110,367 from the 2015 Bond proceeds. As a result, Sterlington spent a total of $432,647 on items inconsistent with the stated purposes for the 2015 Bonds.

22. Prior to, and after Sterlington's response to the audit finding, Sterlington, at Breland's direction, also used the proceeds of the 2017 Bonds contrary to the stated purpose in the bond ordinance and other investor disclosures. The stated purpose of the 2017 Bonds was to "[construct] and [acquire] utility improvements, extensions and replacements to the System, including utility improvements to the Issuer's new sports complex and other municipality owned projects, including appurtenant equipment, accessories and additions to such works of public improvement for the Issuer…."

23. Between June 16, 2017 and September 10, 2018, Sterlington, at Breland's direction, spent $2,685,456 of the 2017 Bond proceeds, including $2,176,506 on its sports complex and $362,184 on legal fees. These uses were inconsistent with the stated purposes for the 2017 Bonds.

24. In documents provided to investors in both the 2017 and 2018 Bonds, the Town made representations as to the intended use of bond proceeds. Those representations were misleading in light of the omitted information about the Town's misuse of proceeds from recent bond offerings. The omissions were material because the Bonds were revenue bonds, intended to improve revenue producing water and sewer systems. The revenues from these systems were intended to be the source of repayment for the Bonds. The Town's prior misuse of proceeds presented a risk that the Town would misuse proceeds in the 2017 and 2018 Bonds. The use of proceeds for non-Bond purposes presented a risk to the successful completion and operation of the projects and a risk to repayment.

Legal Discussion

25. Section 10(b) of the Exchange Act and Rule 10b-5(a) promulgated thereunder make it unlawful to "directly or indirectly … employ any device, scheme, or artifice to defraud … in connection with the purchase or sale of any security." 17 C.F.R. § 240.10b-5(a). Section 10(b) of the Exchange Act and Rule 10b-5(b) promulgated thereunder make it unlawful to "directly or indirectly … make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading …in connection with the purchase or sale of any security." 17 C.F.R. § 240.10b-5(b). Section 10(b) of the Exchange Act and Rule 10b-5(c) promulgated thereunder make it unlawful to "directly or indirectly … engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person … in connection with the purchase or sale of any security." 17 C.F.R. § 240.10b-5(c).

26. Section 17(a)(1) of the Securities Act makes it unlawful "in the offer or sale of any securities … directly or indirectly … to employ any device, scheme, or artifice to defraud." 15 U.S.C. § 77q(a)(1). Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities … directly or indirectly … to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2). Section 17(a)(3) of the Securities Act makes it unlawful "in the offer or sale of any securities … directly or indirectly … to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." 15 U.S.C. § 77q(a)(3).

27. A statement or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

28. Violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, as well as violations of Section 17(a)(1) of the Securities Act, require proof of scienter. Aaron v. SEC, 446 U.S. 680, 701-02 (1980). Scienter can be satisfied through recklessness. SEC v. Dain Rauscher, Inc., 254 F.3d 852, 856 (9th Cir. 2001). "Reckless conduct is conduct that consists of a highly unreasonable act, or omission, that is an 'extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.'" Id. Negligence is sufficient to establish violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act. See Aaron, 446 U.S. at 696-97.

29. As a result of the conduct described above, Sterlington violated Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Respondent's Remedial Efforts

30. In determining to accept the Offer, the Commission considered remedial acts undertaken by the Town relating to improvements to its internal controls and establishment of a financial oversight committee charged with, among other things, overseeing and approving any borrowing or applications for funds, and approving disbursements.

IV.

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

Accordingly, it is hereby ORDERED that, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Sterlington cease and desist from committing or

causing any violations and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

By the Commission.

Vanessa A. Countryman
Secretary

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

SECURITIES AND EXCHANGE COMMISSION,	)	
Plaintiff,	)	Civil Action No.:
v.	)	
VERN A. BRELAND,	)	
Defendant.	)	

COMPLAINT

Plaintiff United States Securities and Exchange Commission (the "SEC") alleges:

SUMMARY OF ALLEGATIONS

1. This Case involves misconduct by Vern A. Breland (the "Defendant" or "Breland"), the former Mayor of the Town of Sterlington, Louisiana (the "Town" or "Sterlington"), in connection with its issuance of municipal bonds in 2017 and 2018.

2. On April 27, 2017, the Town sold $4 million water and sewer utility revenue bonds ("2017 Bonds"), and on September 28, 2018, it sold a $1.8 million refunding bond (refunding two 2015 water and sewer utility revenue bonds) ("2018 Bonds") (collectively, the "Bonds"). The Bonds, which were sold in

private placements to investors, were represented as intended to finance the development of a water system for the Town and improvements to its existing sewer system.

3. As required by Louisiana law, the Town applied to the Louisiana State Bond Commission ("SBC") for its approval of these bond offerings. Upon Breland's approval of each, the Town's applications for the 2017 Bonds and 2018 Bonds were submitted to the SBC on January 18, 2017, and July 18, 2018, respectively.

4. In support of each application, the Town submitted false financial projections about the anticipated revenue of the Town's sewer system. Breland actively participated in and knowingly approved the false projections, which were created by the Town's municipal adviser, Twin Spires Financial, LLC ("Twin Spires") and its owner and sole employee, Aaron Fletcher ("Fletcher"), and misled the SBC as to the Town's ability to cover its debt service for the proposed bonds. Investors in the 2017 Bonds and 2018 Bonds were not informed that the Town had obtained SBC approval of the Bonds based on false projections.

5. In addition, the Town and Breland did not disclose to investors in the 2017 Bonds and 2018 Bonds that the Town, at Breland's direction, misused over $3 million from earlier bond offerings.

6. As a result of this conduct, Breland violated Sections 17(a)(1) and 17(a)(3) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)(1) and (3)]; Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and, aided and abetted the Town's violation of Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)].

DEFENDANT

7. **Vern A. Breland**, age 59, is a resident of Columbia, Louisiana. Breland was elected as the Town's Mayor in 2006 and resigned from office on October 1, 2018. On August 7, 2020, a Louisiana grand jury charged Breland for "malfeasance in office (a felony) between the dates of January 1st, 2017 and including September 30, 2018, willfully and unlawfully perform, refuse or fail to perform his duty as a public officer, contrary to the provisions of R.S. 14:134." The charge is based on the Town's misuse of bond proceeds directed by Breland and the case is still pending.

OTHER RELEVANT INDIVIDUAL AND ENTITIES

8. **Sterlington, Louisiana** is a town with a current population of approximately 2,600 citizens located in the central northeastern part of the State of Louisiana. It is governed by an elected mayor and a five member board of aldermen.

9. **Aaron B. Fletcher** is a resident of Frisco, TX. He wholly owns Twin Spires and is its sole employee and director.

10. **Twin Spires Financial LLC** is a Texas company formed in July 2015, with its principal place of business in Frisco, TX. During the relevant period, Twin Spires conducted business as a municipal advisor but was not registered with the Commission.

JURISDICTION AND VENUE

11. The SEC brings this action pursuant to authority conferred upon it by Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78(u)(e)].

12. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

13. Venue is proper in this District, because Sterlington is located within this District and the acts constituting violations of the federal securities laws alleged in this Complaint occurred within this District.

14. In connection with the conduct described in this Complaint, Defendant directly or indirectly made use of the mails, the means and instrumentalities of interstate commerce, or the means or instruments of transportation or communication in interstate commerce.

FACTUAL ALLEGATIONS

Sterlington Issued 2017 and 2018 Municipal Bonds to Finance Its Sewer and Water Projects

15. Beginning in or about 2015, Breland and the Town began municipal projects to upgrade the Town's existing sewer system, purchase the water distribution system for its residents from a third-party entity (which owned and operated it since 1965), and build a water treatment facility.

16. To fund these projects, Breland and the Town decided to pursue municipal bond offerings to raise the necessary funds. In June 2015, Breland executed a financial advisory agreement between the Town and Twin Spires pursuant to which Twin Spires agreed to provide, among other municipal advisory services for the Town, advice on various forms of debt financing.

17. In April 2017, the Town sold the 2017 Bonds ($4 million Utility Revenue Bonds, which included $3.5 million Utility Revenue Bonds, Series 2017A (Tax Exempt) and $500,000 Taxable Utility Revenue Bonds, Series 2017B). In September 2018, the Town sold the 2018 Bonds ($1.845 million of Wastewater, Water and Sewer Treatment Utilities Revenue Bonds, Series 2018).

Overstatement of Sewer Customer and Revenue Projections In Application to SBC

18. Prior to issuing municipal bonds or incurring any form of debt, Sterlington was required, by the Louisiana Constitution and state law, to obtain

approval of the SBC. As part of the approval process, the SBC requires the applicant to demonstrate that the debt service coverage ratio ("DSCR") for all its outstanding debt (including the proposed debt incurrence) would be at least 1.0 in the year of the highest annual future debt service payment based on projected net income for the next full year subsequent to submission of the application. DSCR is a ratio of net operating income to debt service obligations.

19. In both 2017 and 2018, the Town submitted an application to the SBC supported by, among other items, sewer and water system revenue and expense projections for the next full year, and expected aggregate debt service payments for all outstanding debt secured by sewer and water system revenues (including the proposed bond issuance), which were utilized to calculate the Town's DSCR.

20. The financial projections provided to the SBC included detailed estimates of the Town's revenue and operating expenses for the both the sewer and water systems on an annual basis, and annual expected debt service payments for all the Town's outstanding debt, including the proposed offering. The projections included two prior fiscal years and the current fiscal year of the SBC application and each fiscal year thereafter through the maturity dates of outstanding debt and the proposed offering.

21. The financial projections were prepared by Twin Spires, Fletcher and Breland, and submitted by the Town to the SBC for approval of the 2017 Bonds.

The projections were false and misleading. The projections included an intentionally overstated sewer revenue projection for 2018. The overstated sewer revenue projection allowed Sterlington to falsely exceed a DSCR of 1.0 and obtain SBC approval for the proposed 2017 Bonds.

22. Breland and Fletcher fraudulently projected that the Town would have 2,040 sewer customers in 2018 (and sewer system revenue of $864,693). Breland and Fletcher were aware that the customer projection was more than double Sterlington's then-actual sewer customer number of 960 in 2016 (a 113% increase).

23. Breland and Fletcher plugged the 2,040 projected 2018 sewer customer number to reach the sewer revenue required to meet a DSCR of 1.0. As a result of the overstated projected customer number, the Town's application falsely showed a projected DSCR of 1.02. Fletcher and Breland had no reasonable basis or support for the projection.

24. Breland and Fletcher also took steps to mask the false 2018 projection. They increased the purported number of current sewer customers for 2016 (which were presented to SBC as actual amounts provided for historical purposes) and 2017, in an attempt to smooth out the year-to-year trend of sewer customers so that Fletcher's extremely high 2018 sewer customer projection would appear more realistic. For example, Fletcher's financial projections in the SBC

application represented that the Town had 1,574 sewer customers for 2016. The Town's December 2016 sewer records (the last full month prior to SBC application date of January 2017) showed that the Town actually billed only 960 sewer customers.

25. Breland and Fletcher were aware of the actual historical sewer customer numbers because the Town's sewer clerk repeatedly provided them with the actual number of customers and provided them with reports showing the accurate number of customers. Breland nevertheless participated in, reviewed and approved Fletcher's projections.

26. On February 16, 2017, the SBC approved the Town's 2017 bond offering. The SBC relies on the municipal issuer and its professionals to provide accurate and complete information. The SBC was not aware that the DSCR was based on false and misleading projections and as such, it would not have approved the issuance of the 2017 Bonds.

27. In a private placement on April 27, 2017, the Town sold the 2017 Bonds to two banks and a state lending authority. The total issuance was $4 million.

28. On July 18, 2018, the Town submitted another SBC application based on similar projections for approval of the 2018 Bonds ($1.8 million Wastewater, Water and Sewer Treatment Utilities Revenue Bonds) to refund a 2015 bond

issuance. The 2015 Bonds that were to be refunded were Series A and B, Water Treatment and Utilities Revenue Bond ($500,000) and Wastewater and Sewer Treatment Utilities Revenue Bond ($1.2M) ("2015 Bonds").

29. The SBC application for the 2018 Bonds was initially prepared by Twin Spires and Fletcher. As with the 2017 application, the 2018 application was reviewed and approved by Breland. Breland was aware that the 2018 application also included an overstated sewer system revenue projection similar to the application for the 2017 Bonds. It fraudulently projected, among other items, that Sterlington would have 2,204 sewer customers for 2019 (now the relevant year for the DSCR calculation). This amount, without any support or justification for the increase, was significantly higher than the Town's 1,076 actual sewer customers as of June 30, 2018.

30. The false and misleading projection caused the Town to overstate its 2019 projected sewer system revenue by approximately $300,000. The false projection resulted in a DSCR of 1.1, over the 1.0 necessary for SBC approval. Without the overstated sewer revenue, the DSCR would have been well below 1.0, and the bond issuance would not have received the necessary SBC approval.

31. On August 16, 2018, the SBC approved the bond offering. On September 28, 2018, the Town privately placed the 2018 Bonds with a single bank investor.

Defendant and Sterlington Did Not Disclose that the SBC Approvals Were Based on Fraudulently Overstated Sewer Revenue Projections

32. In connection with the sale of the 2017 Bonds and the 2018 Bonds, each of the investors were informed that Sterlington had, as required by law, obtained SBC approval prior to issuing the Bonds.

33. As part of their process for soliciting investors to purchase the 2017 Bonds, Breland, through Fletcher, sent one of the 2017 Bond investors a copy of the SBC application, which had been submitted by the Town for the 2017 Bonds.

34. In connection with soliciting investor interest in the 2018 Bonds, Breland, through Fletcher, sent the 2018 Bond investor a copy of the 2018 Bond SBC application and affirmatively told the 2018 Bond investor in an email that the "refunding was approved by Bond Commission."

35. In addition, at the closings for both offerings, the Town provided each investor with a copy of the SBC approval certificate, representing that the SBC had approved the Bonds. For the 2017 Bonds, Breland also provided a certification that the Bonds were "authorized by and issued in conformity with the requirements of the Constitution and statutes of the State of Louisiana."

36. These communications and representations to investors about SBC application and SBC approval were misleading because investors were not informed that the SBC applications contained false information and that the SBC

approvals had been obtained based on fraudulently overstated sewer revenue projections.

37. Breland was aware at all relevant times that SBC's approval was based on false financial projections.

Defendant and Sterlington Failed to Disclose Misuse of Proceeds From Previous Bond Issuances

38. Louisiana state law provides that bond proceeds constitute a trust fund to be used exclusively for the purpose for which the bonds are authorized to be issued. Use of bond proceeds for unauthorized purposes is a violation of state law.

39. At Breland's direction, the Town used some of the proceeds from a 2015 bond offering for purposes different from the purposes for which the bonds were authorized. This misuse was not disclosed to investors in the 2017 and 2018 Bonds. Similarly, Breland also directed the Town's misuse of proceeds from the 2017 Bonds without disclosing this misuse to the 2018 Bond investor.

40. In 2015, Sterlington issued $500,000 of water treatment and utilities revenue bonds and $1.2 million of wastewater and utilities bonds (the "2015 Bonds").

41. Pursuant to the bond ordinance for the $500,000 bond, the proceeds were to be solely used for the purpose of acquiring, constructing and installing a new water treatment facility with infrastructure improvements, extensions,

modifications and additions to the wastewater and sewer treatment system of Sterlington.

42. The bond ordinance for the $1.2 million bonds stated that the purpose for the bond proceeds was for acquiring, constructing and installing improvements, extensions and additions to the wastewater and sewer treatment system.

43. Between January 2016 and August 2017, Breland directed Town employees to spend approximately $432,000 of the 2015 Bond proceeds on expenditures that were contrary to the bond ordinances and other investor disclosures for those bond proceeds. These improper expenditures included over $65,000 on police cars and $205,000 on Sterlington's payroll.

44. Sterlington's audited financial statements for the year ended December 31, 2016, included a finding that Sterlington improperly spent $322,280 of the 2015 Bond proceeds. In or about July 2017, the Town's auditor notified the Town of this finding.

45. On August 29, 2017, Breland's response to the finding, on behalf of the Town, was that the Town planned to repay all the funds by December 31, 2017.

46. Sterlington's records show that only $39,800 was repaid by the end of 2017 and the remaining $282,480 was never repaid.

47. From January 1, 2017 through August 29, 2017, Breland directed the misuse of an additional $110,367 from the 2015 Bond proceeds. As a result,

Sterlington spent a total of $432,647 on items inconsistent with the stated purposes for the 2015 Bonds.

48. Prior to, and after Sterlington's response to the audit finding, Sterlington, at Breland's direction, also used the proceeds of the 2017 Bonds contrary to the stated purpose in the bond ordinance and other investor disclosures. The stated purpose of the 2017 Bonds was to "[construct] and [acquire] utility improvements, extensions and replacements to the System, including utility improvements to the Issuer's new sports complex and other municipality owned projects, including appurtenant equipment, accessories and additions to such works of public improvement for the Issuer…."

49. Between June 16, 2017 and September 10, 2018, Sterlington, at Breland's direction, spent $2,685,456 of the 2017 Bond proceeds, including $2,176,506 on projects related to its sports complex that had nothing to do with the sewer or water system, and $362,184 on legal fees. These uses were inconsistent with the stated purposes for the 2017 Bonds.

50. In documents provided to investors in both the 2017 and 2018 Bonds, the Town and Breland made statements as to the intended use of bond proceeds. The Town and Breland failed to disclose their prior and ongoing practice of using bond proceeds in a manner inconsistent with the use disclosed to investors.

51. The Bonds were revenue bonds, intended to improve revenue producing water and sewer systems. The revenues from these systems were described as the source of repayment for the Bonds. The Town's prior practice of misusing proceeds presented a risk that the Town would misuse proceeds in the 2017 and 2018 Bonds. The use of proceeds for non-Bond purposes presented a risk to the successful completion and operation of the projects and a risk to repayment.

FIRST CLAIM FOR RELIEF

Fraud in the Offer or Sale of Securities Section 17(a)(1) of the Securities Act

The SEC incorporates the allegations in paragraphs 1 through 51 as if fully set forth herein.

52. By engaging in the acts and conduct alleged herein, Defendant, directly or indirectly, in the offer or sale of securities, by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, has knowingly or with severe recklessness employed a device, scheme, or artifice to defraud.

53. By the reason of the foregoing, Defendant violated and, unless restrained and enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

SECOND CLAIM FOR RELIEF

Fraud in the Offer or Sale of Securities
Section 17(a)(3) of the Securities Act

The SEC incorporates the allegations in paragraphs 1 through 51 as if fully set forth herein.

54. By engaging in the acts and conduct alleged herein, Defendant, directly or indirectly, in the offer or sale of securities, by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, has knowingly, recklessly, or negligently engaged in a transaction, practice, or course of business which operated or would operate as a fraud or deceit upon the purchaser.

55. By the reason of the foregoing, Defendant violated and, unless restrained and enjoined, will continue to violate Section 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(3)].

THIRD CLAIM FOR RELIEF

Fraud in Connection with the Purchase or Sale of Securities
Section 10(b) of the Exchange Act and Rule 10b-5 thereunder

56 The SEC incorporates the allegations in paragraphs 1 through 51 as if fully set forth herein.

57. By engaging in the acts and conduct alleged herein, Defendant, directly or indirectly, in connection with the purchase or sale of securities, by the use of any

means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange:

a. employed a device, scheme, or artifice to defraud;

b. made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and,

c. engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit upon any person.

58. Defendant knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, Defendant acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

59. By reason of the foregoing, Defendant violated and, unless restrained and enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

FOURTH CLAIM FOR RELIEF

Aiding and Abetting Liability against Breland for Sterlington's Violation of Section 17(a)(2) of the Securities Act

60. The SEC incorporates the allegations in paragraphs 1 through 51 as if fully set forth herein.

61. By the above described conduct, Sterlington, in the offer and sale of securities described herein, by use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, obtained money and property by means of untrue statements of material fact and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

62. By reason of the foregoing, Sterlington violated Section 17(a)(2) of the Securities Act.

63. Breland was aware of, or recklessly disregarded, that Sterlington's conduct was improper and rendered Sterlington substantial assistance in this conduct.

64. By reason of the foregoing, Breland aided and abetted and, unless enjoined will continue to aid and abet, violations of Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)].

RELIEF REQUESTED

WHEREFORE, the SEC respectfully requests that this Court enter a judgment:

I.

Permanently enjoining, pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, the Defendant from violating, directly or indirectly, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

II.

Ordering Defendant to pay a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

III.

Permanently restraining and enjoining Defendant from directly, or indirectly, (i) participating in any issuance, purchase, offer, or sale of municipal securities, including but not limited to engaging or communicating with a broker, dealer, municipal securities dealer, municipal advisor, bond insurer, nationally recognized statistical rating organization, investor, issuer or obligated person for purposes of issuing, purchasing, offering, or selling any municipal security; and (ii) participating in the preparation of any materials or information which Defendant should

reasonably expect to be submitted to the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system in connection with an offering or a continuing disclosure obligation, or which Defendant should reasonably expect to be provided to investors in connection with any offering (including a private placement) of municipal securities, provided however, that such injunction shall not prevent Defendant from purchasing or selling municipal securities for his own personal account.

IV.

Ordering Defendant to provide a copy of the judgment by email or mail within 10 days of the entry of the judgment to any issuer of municipal securities or obligated person with which Defendant is employed as of the date of the entry of the judgment.

V.

Retaining jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VI.

Granting such other and further relief as this Court deems just and appropriate.

Dated: June 2, 2022.

Respectfully submitted,

/s/William P. Hicks
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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. AARON B. FLETCHER and TWIN SPIRES FINANCIAL LLC, Defendants.	)	Civil Action No.:

COMPLAINT

Plaintiff United States Securities and Exchange Commission (the "SEC") alleges:

SUMMARY OF ALLEGATIONS

1. This Case involves the use of fraudulent financial projections by an unregistered municipal adviser, Twin Spires Financial LLC ("Twin Spires") and its sole owner and employee, Aaron B. Fletcher ("Fletcher") (collectively, the "Defendants") in connection with issuance of municipal bonds in 2017 and 2018 by their client, the Town of Sterlington, Louisiana (the "Town" or "Sterlington"). Twin Spires also failed to register as a municipal advisor.

2. On April 27, 2017, the Town sold $4 million water and sewer utility revenue bonds ("2017 Bonds"), and on September 28, 2018, it sold a $1.8 million

refunding bond (refunding two 2015 water and sewer utility revenue bonds) ("2018 Bonds") (collectively, the "Bonds"). The Bonds, which were sold in private placements to investors, were intended to finance development of a water system for the Town and improvements to its existing sewer system.

3. As required by Louisiana law, the Town applied to the Louisiana State Bond Commission ("SBC") for its approval of these bond offerings. The Town's applications for the 2017 Bonds and 2018 Bonds were submitted to the SBC on January 18, 2017 and July 18, 2018, respectively.

4. In support of each application, the Town submitted false financial projections about the anticipated revenue of the Town's sewer system. Vern A. Breland, then the Mayor of the Town, actively participated in and approved the false projections, which were created by the Town's municipal adviser, Twin Spires, through its owner and sole employee, Fletcher, and misled the SBC as to the Town's ability to cover its debt service for the proposed bonds. Investors in the 2017 Bonds and 2018 Bonds were not informed that the Town had obtained SBC approval of the Bonds based on false projections.

5. Twin Spires and Fletcher also provided municipal advisory services to the Town between 2015 and 2018 without being properly registered with the SEC.

6. As a result of this conduct, the Defendants violated Sections 17(a)(1) and 17(a)(3) of the Securities Act of 1933 ("Securities Act"); Sections 10(b) and

15B(c)(1) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder; Municipal Securities Rulemaking Board ("MSRB") Rules G-17and G-42, and aided and abetted Sterlington's violations of Section 17(a)(2) of the Securities Act; and, Twin Spires violated, and Fletcher aided and abetted its violations of, Section 15B(a)(1)(B) of the Exchange Act.

DEFENDANTS

7. **Aaron B. Fletcher** ("Fletcher") is a resident of Frisco, TX. He wholly owns Twin Spires and is its sole employee and director.

8. **Twin Spires Financial LLC** ("Twin Spires") is a Texas company formed in July 2015, with its principal place of business in Frisco, TX. During the relevant period, Twin Spires conducted business as a municipal advisor but was not registered with the Commission.

OTHER RELEVANT INDIVIDUAL AND ENTITY

9. **Vern A. Breland**, age 59, is a resident of Columbia, Louisiana. Breland was elected as the Town's Mayor in 2006 and resigned from office on October 1, 2018. On August 7, 2020, a Louisiana grand jury charged Breland for "malfeasance in office (a felony) between the dates of January 1st, 2017 and including September 30, 2018, willfully and unlawfully perform, refuse or fail to perform his duty as a public officer, contrary to the provisions of R.S. 14:134."

The charge is based on the Town's misuse of bond proceeds directed by Breland and the case is still pending.

10. **Sterlington, Louisiana** is a town with a current population of approximately 2,600 citizens located in the central northeastern part of the State of Louisiana. It is governed by an elected mayor and a five member board of aldermen.

JURISDICTION AND VENUE

11. The SEC brings this action pursuant to authority conferred upon it by Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78(u)(e)].

12. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

13. Venue is proper in this District, because Sterlington is located within this District and the acts constituting violations of the federal securities laws alleged in this Complaint occurred within this District.

14. In connection with the conduct described in this Complaint, Defendants directly or indirectly made use of the mails, the means and instrumentalities of interstate commerce, or the means or instruments of transportation or communication in interstate commerce.

FACTUAL ALLEGATIONS

Sterlington Issued 2017 and 2018 Municipal Bonds to Finance Its Sewer and Water Projects

15. Beginning in or about 2015, Breland and the Town began municipal projects to upgrade the Town's existing sewer system, purchase the water distribution system for its residents from a third-party entity (which owned and operated it since 1965), and build a water treatment facility.

16. To fund these projects, Breland and the Town decided to pursue municipal bond offerings to raise the necessary funds. In June 2015, Breland executed a financial advisory agreement between the Town and Twin Spires pursuant to which Twin Spires agreed to provide, among other municipal advisory services for the Town, advice on various forms of debt financing.

17. In April 2017, the Town sold the 2017 Bonds ($4 million Utility Revenue Bonds, which included $3.5 million Utility Revenue Bonds, Series 2017A (Tax Exempt) and $500,000 Taxable Utility Revenue Bonds, Series 2017B). In September 2018, the Town sold the 2018 Bonds ($1.845 million of Wastewater, Water and Sewer Treatment Utilities Revenue Bonds, Series 2018).

Overstatement of Sewer Customer and Revenue Projections In Application to Louisiana State Bond Commission

18. Prior to issuing municipal bonds or incurring any form of debt, Sterlington was required, by the Louisiana Constitution and state law, to obtain

approval of the SBC. As part of the approval process, the SBC requires the applicant to demonstrate the debt service coverage ratio ("DSCR") for all its outstanding debt (including the proposed debt incurrence) would be at least 1.0 in the year of the highest annual future debt service payment based on projected net income for the next full year subsequent to submission of the application. DSCR is a ratio of net operating income to debt service obligations.

19. In both 2017 and 2018, the Town submitted an application to the SBC supported by, among other items, sewer and water system revenue and expense projections for the next full year, and expected aggregate debt service payments for all outstanding debt secured by sewer and water system revenues (including the proposed bond issuance), which were utilized to calculate the Town's DSCR.

20. The financial projections provided to the SBC included detailed estimates of the Town's revenue and operating expenses for both the sewer and water systems on an annual basis, and annual expected debt service payments for all the Town's outstanding debt, including the proposed offering. The projections included two prior fiscal years and the current fiscal year of the SBC application and each fiscal year thereafter through the maturity dates of outstanding debt and the proposed offering.

21. The financial projections prepared by Twin Spires, Fletcher and Breland, and submitted by the Town to the SBC for approval of the 2017 Bonds, were false and misleading. As discussed below, the projections included an intentionally overstated sewer revenue projection for 2018. The overstated sewer revenue projection allowed Sterlington to falsely exceed a DSCR of 1.0 and obtain SBC approval for the proposed 2017 Bonds.

22. Breland, Fletcher and Twin Spires fraudulently projected that the Town would have 2,040 sewer customers in 2018 (and sewer system revenue of $864,693). They were aware that the customer projection was more than double Sterlington's then-actual sewer customer number of 960 in 2016 (a 113% increase).

23. Breland, Twin Spires and Fletcher fraudulently projected an overstated 2018 sewer customer number of 2040 to reach the sewer revenue required to meet a DSCR of 1.0. As a result of the overstated projected customer number, the Town's application falsely showed a projected DSCR of 1.02. Fletcher had no reasonable basis or support for his projection.

24. Breland and Fletcher also took steps to mask the false 2018 projection. They increased the stated number of customers for 2016 and 2017. Those inflated numbers were presented to SBC as actual amounts provided for historical purposes in an attempt to smooth out the year-to-year trend of sewer

customers so that Fletcher's extremely high 2018 sewer customer projection would appear more realistic. For example, Fletcher's financial projections in the SBC application represented that the Town had 1,574 sewer customers for 2016. The Town's December 2016 sewer records (the last full month prior to SBC application date of January 2017) showed that the Town actually billed only 960 sewer customers.

25. Fletcher (and Twin Spires through Fletcher),and Breland were aware of the actual historical sewer customer numbers because the Town's sewer clerk repeatedly provided them with the actual number of customers and provided them with reports showing the accurate number of customers. Breland participated in, reviewed and approved Fletcher's projections, which both Fletcher and Breland knew were false.

26. On February 16, 2017, the SBC approved the Town's 2017 bond offering. The SBC relies on the municipal issuer and its professionals to provide accurate and complete information. The SBC was not aware that the DSCR was based on false and misleading projections and had it been so aware, it would not have approved the issuance of the 2017 Bonds.

27. In a private placement on April 27, 2017, the Town sold the 2017 Bonds to two banks and a state lending authority; the total issuance was $4 million. Twin Spires was paid $18,000 in advisory fees from the 2017 Bond offering.

28. On July 18, 2018, the Town submitted another SBC application based on similar projections for approval of the 2018 Bonds ($1.8 million Wastewater, Water and Sewer Treatment Utilities Revenue Bonds) to refund a 2015 bond issuance. The 2015 Bonds that were to be refunded were Series A and B, Water Treatment and Utilities Revenue Bond ($500,000) and Wastewater and Sewer Treatment Utilities Revenue Bond ($1.2M) ("2015 Bonds").

29. The SBC application for the 2018 Bonds was initially prepared by Twin Spires and Fletcher. As with the 2017 application, the 2018 application was reviewed and approved by Breland. Twin Spires, Fletcher and Breland were aware that the 2018 application included an overstated sewer system revenue projection similar to the application for the 2017 Bonds.

30. Twin Spires, Fletcher and Breland were aware that the 2018 application fraudulently projected, among other items, that Sterlington would have 2,204 sewer customers for 2019 (now the relevant year for the DSCR calculation). This amount, without any support or justification for the increase, was significantly higher than the Town's 1,076 actual sewer customers as of June 30, 2018.

31. The false and misleading projection caused the Town to overstate its 2019 projected sewer system revenue. The false projection resulted in a DSCR of 1.1, over the 1.0 necessary for SBC approval. Without the overstated sewer

revenue, the DSCR would have been well below 1.0, and the bond issuance would not have received the necessary SBC approval.

32. On August 16, 2018, the SBC approved the bond offering. On September 28, 2018, the Town privately placed the 2018 Bonds with a single bank investor. Twin Spires was paid $8,303 in advisory fees from the 2018 Bond offering.

Defendants, Breland and Sterlington Did Not Disclose that the SBC Approvals Were Based on Fraudulently Overstated Sewer Revenue Projections

33. In connection with the sale of the 2017 Bonds and the 2018 Bonds, each of the investors were informed that Sterlington had, as required by law, obtained SBC approval prior to issuing the Bonds. As part of their process for soliciting investors to purchase the 2017 Bonds, Breland, through Twin Spires and Fletcher, sent one of the 2017 Bond investors a copy of the SBC application, which had been submitted by the Town for the 2017 Bonds. And , in connection with soliciting investor interest in the 2018 Bonds, Breland, through Twin Spires and Fletcher, sent the 2018 Bond investor a copy of the 2018 Bond SBC application and affirmatively told the 2018 Bond investor in an email that the "refunding was approved by Bond Commission."

34. In addition, at the closings for both offerings, the Town provided each investor with a copy of the SBC approval certificate, representing that the SBC had

approved the Bonds. For the 2017 Bonds, Breland also provided a certification that the Bonds were "authorized by and issued in conformity with the requirements of the Constitution and statutes of the State of Louisiana."

35. These communications and representation to investors about SBC application and SBC approval were misleading because investors were not informed that the SBC applications contained false information and that the SBC approvals had been obtained based on fraudulently overstated sewer revenue projections.

Neither Twin Spires nor Fletcher were Registered as a Municipal Advisor as Required

36. During the relevant time period, Twin Spires, through Fletcher, provided advice to Sterlington regarding the issuance of municipal securities (specifically, the 2017 Bonds and 2018 Bonds).

37. Twin Spires and Fletcher specifically advised the Town regarding: the development of a financing plan for improving the sewer system and acquiring and improving the water system; the structure, timing and terms for both the 2017 Bonds and the 2018 Bonds; the preparation of financial projections on behalf of the Town to the SBC for its authorization for the 2017 Bonds and 2018 Bonds; and the negotiation of financing terms with the investors in both the 2017 Bonds and 2018 Bonds.

38. Twin Spires failed to register with the Commission as a municipal

advisor as required.

FIRST CLAIM FOR RELIEF

Fraud in the Offer or Sale of Securities
Sections 17(a)(1) and 17(a)(3) of the Securities Act

39. The SEC incorporates the allegations in paragraphs 1 through 38 as if fully set forth herein.

40. By engaging in the acts and conduct alleged herein, Defendants, directly or indirectly, in the offer or sale of securities, by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, have:

a. knowingly or with severe recklessness employed a device, scheme, or artifice to defraud; and

b. knowingly, recklessly, or negligently engaged in a transaction, practice, or course of business which operated or would operate as a fraud or deceit upon the purchaser.

41. Defendants violated and, unless restrained and enjoined, will continue to violate Sections 17(a)(1) and 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(1) and (3)].

SECOND CLAIM FOR RELIEF

Fraud in Connection with the Purchase or Sale of Securities Section 10(b) of the Exchange Act and Rule 10b-5 thereunder

42. The SEC incorporates the allegations in paragraphs 1 through 38 as if fully set forth herein.

43. By engaging in the acts and conduct alleged herein, Defendants, directly or indirectly, in connection with the purchase or sale of securities, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange:

a. employed a device, scheme, or artifice to defraud;

b. made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and,

c. engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit upon any person.

44. Defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, the defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

45. Defendants violated and, unless restrained and enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

THIRD CLAIM FOR RELIEF

Violations of Section 15B(c)(1) of the Exchange Act by Twin Spires and Fletcher (Breach of Fiduciary Duty)

46. Paragraphs 1 through 38 are hereby re-alleged and are incorporated herein by reference.

47. Pursuant to Section 15B(c)(1) of the Exchange Act, a municipal advisor and any person associated with a municipal advisor shall be deemed to have a fiduciary duty to any municipal entity for whom the municipal advisor acts as a municipal advisor, and no municipal advisor may engage in an act, practice or course of business that is not consistent with a municipal advisor's fiduciary duty.

48. By engaging in the conduct alleged above, Defendant Twin Spires acted as a municipal advisor and Defendant Fletcher acted as a municipal advisor and person associated with a municipal advisor, as those terms are defined in Sections 15B(e)(4)(A) and 15B(e)(7) of the Exchange Act [15 U.S.C. §§ 78o-4(e)(4) and (7)]. As such, Twin Spires and Fletcher owed a fiduciary duty to Sterlington.

49. Defendants engaged in the acts, practices and courses of business described above, and breached their fiduciary duty to Sterlington.

50. By reason of the foregoing, Defendants violated and, unless enjoined will continue to violate, Section 15B(c)(1) of the Exchange Act [15 U.S.C. § 78o-4(c)(1)].

FOURTH CLAIM FOR RELIEF

Violations of Section 15B(a)(1)(B) of the Exchange Act by Twin Spires (Failure to Register as a Municipal Advisor with the Commission)

51. The SEC incorporates the allegations in paragraphs 1 through 38 as if fully set forth herein.

52. Defendant Twin Spires provided advice to or on behalf of a municipal entity or obligated person with respect to the issuance of municipal securities without first being registered with the Commission as a municipal advisor.

53. By reason of the foregoing, Defendant Twin Spires violated and, unless enjoined will continue to violate, Section 15B(a)(1)(B) of the Exchange Act [15 U.S.C. § 78o-4(a)(1)(B)].

FIFTH CLAIM FOR RELIEF

Violations of MSRB Rule G-17 by Fletcher and Twin Spires (Engaging in a Deceptive, Dishonest, or Unfair Practice)

54. The SEC incorporates the allegations in paragraphs 1 through 38 as if fully set forth herein.

55. Defendants Fletcher and Twin Spires, in the conduct of their municipal securities or municipal advisory activities, failed to deal fairly with all persons and engaged in a deceptive, dishonest, or unfair practice or practices.

56. By reason of the forgoing, Defendants Fletcher and Twin Spires violated and, unless enjoined will continue to violate, MSRB Rule G-17.

SIXTH CLAIM FOR RELIEF

Violations of MSRB Rule G-42 by Twin Spires and Fletcher (Breaches of Duties of Non-Solicitor Municipal Advisors)

57. The SEC incorporates the allegations in paragraphs 1 through 38 as if fully set forth herein.

58. Defendants (i) breached their fiduciary duty, duty of loyalty, or duty of care to their municipal entity client; (ii) made material misrepresentations and omissions to the SBC on behalf of their client to obtain approval of the client's municipal bond issuances in 2017 and 2018; and, (iii) made material misrepresentations and omissions to bond investors pertaining to the overstated financial projections they submitted to the SBC to obtain its approval for the proper issuance of their client's 2017 and 2018 bonds in private placement transactions as to which Defendants provided advice.

59. By reason of the forgoing, Defendants violated and, unless enjoined will continue to violate, MSRB Rule G-42.

SEVENTH CLAIM FOR RELIEF

Violations of Section 15B(c)(1) of the Exchange Act by Defendants (Acts in Contravention of Any Rule of the MSRB)

60. The SEC incorporates the allegations in paragraphs 1 through 38 as if fully set forth herein.

61. Defendants violated MSRB Rules G-17 and G-42.

62. Defendants acted in contravention of a rule or rules of the MSRB while making use of the mails or any means or instrumentality of interstate commerce to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities.

63. By reason of the forgoing, Defendants violated and, unless enjoined will continue to violate, Section 15B(c)(1) of the Exchange Act [15 U.S.C. § 78o-4(c)(1)].

EIGHTH CLAIM FOR RELIEF

Aiding and Abetting Liability Against Fletcher for Twin Spires' Violation of Section 15B(a)(1)(B)

64. The SEC incorporates the allegations in paragraphs 1 through 38 as if fully set forth herein.

65. By reason of the foregoing, Twin Spires acted as a municipal adviser without registration and violated Section 15B(a)(1)(B) of the Exchange Act.

66. Fletcher was aware of, or recklessly disregarded, that Twin Spires' conduct was improper and rendered Twin Spires substantial assistance in this conduct.

67. By reason of the foregoing, Fletcher aided and abetted and, unless enjoined will continue to aid and abet, violations of Section 15B(a)(1)(B) of the Exchange Act [15 U.S.C. § 78o-4(a)(1)(B)].

NINTH CLAIM FOR RELIEF
Aiding and Abetting Liability Against Fletcher and Twin Spires for Sterlington's Violation of Section 17(a)(2)

68. The SEC incorporates the allegations in paragraphs 1 through 38 as if fully set forth herein.

69. By the above described conduct, Sterlington, in the offer and sale of securities described herein, by use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, obtained money and property by means of untrue statements of material fact and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

70. By reason of the foregoing, Sterlington violated Section 17(a)(2) of the Exchange Act.

71. Fletcher and Twin Spires were aware of, or recklessly disregarded, that Sterlington's conduct was improper and rendered Sterlington substantial assistance in this conduct.

72. By reason of the foregoing, Fletcher and Twin Spires aided and abetted and, unless enjoined will continue to aid and abet, violations of Section 17(a)(2) of the Exchange Act [15 U.S.C. §77q(a)(2)].

RELIEF REQUESTED

WHEREFORE, the SEC respectfully requests that this Court enter a judgment:

I.

Permanently enjoining, pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, the Defendants from violating, directly or indirectly, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]; Sections 10(b) [15 U.S.C. § 78j(b)], 15B(a)(1)(B) [15 U.S.C. § 78o-4(a)(1)(B)] and 15B(c)(1) [15 U.S.C. § 78o-4(c)(1)] of the Exchange Act and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and, Municipal Rulemaking Board Rules G-17 and G-42.

II.

Ordering Defendants, jointly and severally, to pay disgorgement plus prejudgment interest pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5).

III.

Ordering Defendants, jointly and severally, to pay a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

IV.

Retaining jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

V.

Granting such other and further relief as this Court deems just and appropriate.

Dated: June 2, 2022.

Respectfully submitted,

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