

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act of 1934  
Release No. 59874 / May 6, 2009

Admin. Proc. File No. 3-13412

In the Matter of

WILLIAM D. SHOVERS  
c/o Robert E. Forrest  
Kerr, Russell and Weber, PLC  
Detroit Center, Suite 2500  
500 Woodward Avenue  
Detroit, Michigan 48226-3427

ORDER DENYING MOTION TO LIFT TEMPORARY SUSPENSION AND DIRECTING  
HEARING

On March 18, 2009, the Commission issued an Order Instituting Proceedings and Imposing Temporary Suspension ("OIP") 1/ against William D. Shovers pursuant to Commission Rule of Practice 102(e)(3). 2/ Shovers has filed a petition, pursuant to Rule 102(e)(3)(ii),

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1/ William D. Shovers, CPA, Securities Exchange Act Rel. No. 59596 (Mar. 18, 2009), \_\_ SEC Docket \_\_.

2/ Commission Rule of Practice 102(e)(3), 17 C.F.R. § 201.102(e)(3), provides in pertinent part that:

(i) The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any . . . accountant . . . who has been by name:

(A) Permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder; or

(B) Found by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party or found by the Commission in any administrative proceeding to which he or she is a party to have violated (unless

requesting that his temporary suspension be lifted and that the Commission set the matter down for a hearing.

Shovers was Chief Financial Officer of Hayes-Lemmerz International, Inc. ("Hayes") during the period from 1999 through October 2001, and was Chief Accounting Officer during the period from October 2000 through October 2001. <sup>3/</sup> The Commission filed a complaint in the District Court for the Eastern District of Michigan on April 25, 2006 alleging that senior officers and employees of Hayes engaged in a fraudulent scheme to achieve corporate earnings and mask declining operating results, resulting in materially false filings with the Commission in fiscal years 1999 and 2000 and the first fiscal quarter of 2001. <sup>4/</sup> The complaint also alleged that, after discovering the fraudulent accounting scheme, Shovers made affirmative misrepresentations and concealed improper accounting practices from Hayes' independent auditor, audit committee and board of directors. <sup>5/</sup> A jury found that Shovers violated the antifraud, internal control, books and recordkeeping, and disclosure to auditor provisions of the federal securities laws, and aided and abetted Hayes' violations of reporting, recordkeeping, and internal control provisions of the Exchange Act of 1934. <sup>6/</sup>

On December 22, 2008, the District Court entered a final judgment against Shovers <sup>7/</sup> permanently enjoining him from violating Section 10(b) of the Exchange Act and Exchange Act

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the violation was found not to have been willful) or aided and abetted the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

<sup>3/</sup> Shovers, \_\_ SEC Docket at \_\_. The OIP found that Shovers was licensed as a certified public accountant ("CPA") in 1980, and that his license has been expired since 1995. Id.

<sup>4/</sup> Jury Finds Former Hayes Lemmerz International CEO and CFO Liable for Securities Fraud Arising from Accounting Scheme, Litigation Rel. No. 20686 (Aug. 21, 2008).

<sup>5/</sup> Id.

<sup>6/</sup> The jury found that Shovers violated the antifraud provisions in Exchange Act Section 10(b) and Rule 10b-5, and Securities Act Section 17(a)(3); internal control and books and recordkeeping provisions in Exchange Act Section 13(b)(5) and Rule 13b2-1; and the requirements regarding disclosure to auditors in Exchange Act Rule 13b2-2. The jury further found that Shovers aided and abetted Hayes' violations of the issuer reporting, books and recordkeeping, and internal control provisions in Exchange Act Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B); and Rules 12b-20, 13a-1 and 13a-13. Id.

<sup>7/</sup> Court Imposes Civil Penalties, Injunctions and Other Relief Against Former CEO and CFO of Hayes Lemmerz International, Inc., Litigation Rel. No. 2923 (Jan. 23, 2009).

Rule 10b-5; 8/ Section 17(a)(3) of the Securities Act of 1933; 9/ and Exchange Act Section 13(b)(5) and Exchange Act Rules 13b2-1 and 13b2-2. 10/ The final judgment also permanently enjoined Shovers from aiding and abetting violations of Exchange Act Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B), 11/ and Exchange Act Rules 12b-20, 13a-1 and 13a-13. 12/ The final judgment barred Shovers, for a period of five years, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act 13/ or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 14/ and ordered him to pay a civil monetary penalty of \$50,000.

Based on the District Court findings and final judgment, the Commission issued the OIP and temporarily suspended Shovers from appearing or practicing before the Commission. Shovers requests that the temporary suspension be lifted and modified "to a term whose length at most is in conformity and in parallel with the officer and director bar" imposed by the court. Shovers also requests that the Commission set the matter down for a hearing. Shovers argues that the jury did not make specific scienter findings with respect to his conduct, which he contends was limited to "a short period of time." He further characterizes his misconduct as having failed to transmit "what he then viewed as preliminary, incomplete and in some cases erroneous information to the auditors and more fully to the Board of Directors." He argues that the fraudulent conduct originated from a business unit of the company, and cites the results of an 2001 internal investigation.

In support of his petition, Shovers cites his "demonstrated history of confidence and honesty" prior to the matter at issue, and attaches letters attesting to his character and performance. He also cites statements by the district court judge describing him as having "learned [his] lesson" and as among "the least likely . . . to ever get in trouble with the SEC again." He states that he has paid the civil monetary penalty imposed by the court.

The Division of Enforcement has not filed an opposition to Shovers' petition.

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8/ 15 U.S.C. § 78j(b); 17 C.F.R. § 204.10b-5.

9/ 15 U.S.C. § 77(q)(a)(3).

10/ 15 U.S.C. § 78m(b)(5); 17 C.F.R. §§ 240.13b2-1 and 240.13b2-2.

11/ 15 U.S.C. §§ 78m(a), 78(m)(b)(2)(A) and 78(m)(b)(2)(B).

12/ 17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13.

13/ 15 U.S.C. § 78l.

14/ 15 U.S.C. § 78o(d).

Commission Rule of Practice 102(e)(3) permits the Commission to suspend any accountant or other professional or expert who has been permanently enjoined from violating or aiding and abetting the violation of the Federal securities laws or found to have violated or aided and abetted the violation of the Federal securities laws. The findings of the court, which Shovers is precluded from contesting in this proceeding, and the injunction issued against him, justify the continuance of his suspension until it can be determined what, if any, action may be appropriate to protect the Commission's processes. <sup>15/</sup> As provided in Rule 102(e)(3)(iii), we will set the matter down for a public hearing.

Accordingly, IT IS ORDERED that the petition of William D. Shovers to lift or modify the Commission's order of temporary suspension be, and it hereby is, denied; and it is further

ORDERED that this proceeding be set down for public hearings before an administrative law judge in accordance with Rule of Practice 110. As specified in Rule 102(e)(3)(iii), the hearings in this matter shall be expedited in accordance with Rule 500. Therefore, it is

ORDERED that the administrative law judge shall issue an initial decision no later than 210 days from the date of service of this order.

By the Commission.

Elizabeth M. Murphy  
Secretary

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<sup>15/</sup> See Rule of Practice 102(e)(3)(iv), 17 C.F.R. § 201.102(e)(3)(iv) (stating that, in a hearing under Rule 102(3)(3)(ii), the petitioner may not contest any finding made against him or her in the underlying proceeding). We do not believe that Shovers is prejudiced by the temporary suspension given that he has not indicated whether, or in what capacity, he is currently employed, and he has not asserted that he will suffer any harm from a suspension while the proceeding is pending.