UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 100165 / May 17, 2024

INVESTMENT ADVISERS ACT OF 1940
Release No. 6607 / May 17, 2024

INVESTMENT COMPANY ACT OF 1940
Release No. 35195 / May 17, 2024

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4502 / May 17, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-21938

In the Matter of **VARUN AGGARWAL, CPA,** **Respondent.**	**ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 4C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, 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 and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Varun Aggarwal ("Respondent") pursuant to Section 4C[1] of the

[1] Section 4C provides, in relevant part, that:

> The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (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.

Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act"), and Rule 102(e)(1)(iii) of the Commission's Rules of Practice [17 C.F.R. 201.102(e)(1)(iii)].[2]

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, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings, and consents to the entry of this Order Instituting Administrative and Cease-And-Desist Proceedings Pursuant to Section 4C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, 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:

Summary

1. These proceedings arise from Respondent's conduct in his role as the head of internal audit and information technology ("IT") for a registered investment adviser, referred to in this Order as "Adviser A," from at least January 2011 through February 2022 (the "Relevant Period"). During the Relevant Period, Respondent engaged in fraudulent conduct involving irregular billing practices that harmed three Real Estate Investment Trusts (REITs) advised by Adviser A (referred to in this Order as "REIT X," "REIT Y," and "REIT Z," or collectively, "the REITs"). Respondent aided and abetted and caused Adviser A to violate federal securities laws and breach its fiduciary duty to the REITs.

2. Specifically, through his role in internal audit and IT, Respondent assisted certain vendors controlled by his friends and family in either overcharging Adviser A for services performed or billing Adviser A for services never performed. In turn, Adviser A passed some of these expenditures on to the REITs pursuant to their advisory agreements.

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[2] Rule 102(e)(1)(iii) provides, in pertinent part, that:

> The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . [t]o have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

[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.

After the invoices were paid, these vendors provided a kickback to Respondent. During the Relevant Period, Respondent knowingly caused the REITs to overpay these vendors approximately $1.8 million.

3. As a result of the conduct described herein, Respondent willfully aided and abetted and caused Adviser A to violate Sections 206(1) and 206(2) of the Advisers Act. Further, Respondent has willfully aided and abetted the violation of provisions of the federal securities laws and the rules and regulations thereunder that provide a basis to impose remedies pursuant to Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

Respondent

4. **Varun Aggarwal**, age 42, resides in Irvine, California. During the Relevant Period, Respondent was employed by a registered investment adviser, referred to in this Order as "Adviser B," and served as Chief Audit Executive and in various other senior roles in compliance and IT for its affiliate, Adviser A. Respondent was a licensed CPA in California, though his license is currently inactive.

Other Relevant Entities

5. **Adviser A** is a registered investment adviser headquartered in California for which Respondent served in executive positions in internal audit, compliance, and IT. It is an investment adviser to the REITs and an affiliate of Adviser B.

6. **Adviser B** is a registered investment adviser headquartered in California and an affiliate of Adviser A.

7. **REIT X** is an investment pool advised by Adviser A.

8. **REIT Y** is an investment pool advised by Adviser A.

9. **REIT Z** is an investment pool advised by Adviser A.

Facts

10. During the Relevant Period, Respondent held several positions at Adviser A, becoming its Director of Internal Audit in 2009 and Chief Audit Executive in 2015, and serving as a compliance officer to the REITs. From approximately 2020 to 2021, Respondent was also Adviser A's head of IT.

11. As part of his duties, Respondent was instrumental in hiring, and approving payments to, internal audit and IT contractors. Respondent exploited his involvement in those processes to hire, and approve payments to, vendors controlled by his friends and family.

12. At least five contracting companies that were controlled by Respondent's friends or family became approved vendors (the "Approved Vendors") of Adviser A, with

the help of Respondent. During the Relevant Period, some of the work the Approved Vendors purportedly conducted included network penetration testing, software development for onboarding new employees, and internal audit and IT consulting.

13. The Approved Vendors either overcharged Adviser A for services performed or billed Adviser A for services never performed. Respondent created some of the fraudulent invoices that the Approved Vendors sent to Adviser A.

14. From 2011 to 2021, the Approved Vendors charged Adviser A and Adviser B nearly $5 million. In turn, Adviser A passed some of these expenditures on to the REITs pursuant to their advisory agreements. According to the REITs' Form 10-K filings for the year ending December 31, 2021, the REITs paid approximately $1.8 million in overcharges or for work never performed. Of this $1.8 million, REIT X disclosed that it overpaid approximately $300,000 to the Approved Vendors between 2016 and 2021; REIT Y disclosed that it overpaid approximately $700,000 to the Approved Vendors between 2011 to 2021; and REIT Z disclosed that it overpaid approximately $800,000 to the Approved Vendors between 2011 and 2021.

15. Respondent knew Adviser A was paying fraudulent invoices from the Approved Vendors and passing some of the expenses on to the REITs. On multiple fraudulent invoices that he approved, Respondent made handwritten notes concerning how Adviser A would allocate the expenses among the REITs.

16. The Approved Vendors then made payments, or kickbacks, to Respondent. Depending on the Approved Vendor and the specific project, Respondent received kickbacks ranging from 33.3% to 95% of the payments that Adviser A or Adviser B made to the Approved Vendors. Since December 22, 2018, Respondent received $1,100,948 in kickbacks attributable to the fraudulent expenses passed on to the REITs.

17. As an employee of Adviser B and the Chief Audit Executive at Adviser A, Respondent was a person associated with an investment adviser for purposes of the Advisers Act.

18. Adviser A owed a fiduciary duty to the REITs, which Respondent knew or was reckless in not knowing he had caused to be breached when he willfully engaged in fraudulent billing practices that harmed the REITs.

19. On August 21, 2023, Respondent pleaded guilty to one count of wire fraud in *United States v. Varun Aggarwal*, No. SA CR 22-173-CJC, in the United States District Court for the Central District of California. The count of the indictment to which Respondent pled guilty alleged, among other things, that Respondent engaged in a scheme to defraud his employer by submitting fictitious invoices from service vendors controlled by his family and friends, when those services were not performed or charging inflated amounts for services that were performed, and Respondent executed the scheme to defraud by means of wire and radio communication in interstate and foreign commerce.

20. As a result of this conviction, Respondent was sentenced to imprisonment in a federal penitentiary and ordered to pay restitution in the amount of $2,729,717.91.

Violations

21. As a result of the conduct described above, Respondent willfully aided and abetted and caused Adviser A to violate Sections 206(1) and 206(2) of the Advisers Act, which prohibits investment advisers from, directly or indirectly, employing any device, scheme, or artifice to defraud, or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon, any client or prospective client.

Findings

22. Based on the foregoing, the Commission finds that Respondent willfully caused, and willfully aided and abetted, Adviser A to violate Sections 206(1) and 206(2) of the Advisers Act.

Disgorgement

23. The disgorgement and prejudgment interest ordered, but deemed satisfied, as described in Section IV.E below, are consistent with equitable principles and do not exceed Respondent's net profits from his violations.

IV.

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

Accordingly, pursuant to Section 4C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, Section 9(b) of the Investment Company Act, and Rule 102(e)(1)(iii) of the Commission's Rules of Practice, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act.

B. Respondent be, and hereby is:

1. barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

2. prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

C. Any reapplication for association by Respondent will be subject to the

applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, compliance with the Commission's Order and payment of any or all of the following: (a) any disgorgement or civil penalties ordered by a Court against the Respondent in any action brought by the Commission; (b) any disgorgement amounts ordered against the Respondent for which the Commission waived payment; (c) any arbitration award related to the conduct that served as the basis for the Commission Order; (d) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission Order; and (e) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission Order.

D. Respondent is denied the privilege of appearing or practicing before the Commission as an accountant.

E. Respondent shall pay disgorgement of $1,100,948 and prejudgment interest of $90,349; however, the disgorgement and prejudgment interest amounts shall be deemed satisfied by Respondent's payment described in Paragraph 20 above.

By the Commission.

Vanessa A. Countryman
Secretary