

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 102231 / January 17, 2025

INVESTMENT ADVISERS ACT OF 1940
Release No. 6828 / January 17, 2025

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4560 / January 17, 2025

ADMINISTRATIVE PROCEEDING
File No. 3-22432

In the Matter of

JEFFERY Q. JOHNSON,
CPA

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940, 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 AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Jeffery Q. Johnson, CPA (“Respondent” or “Johnson”) pursuant to Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) Section 4C¹ of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.²

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 have engaged in ... improper professional conduct....

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 him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 203(k) of the Investment Advisers Act of 1940, 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 and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds³ that:

Summary

This proceeding arises out of Respondent’s failure to comply with the Commission’s auditor independence rules. Respondent, as engagement partner at BKD, LLP (“BKD”), violated Regulation S-X’s independence requirements when he audited private fund financial statements that he had previously prepared, thereby causing the funds’ SEC-registered investment adviser to violate Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder (the “Custody Rule”) for the fiscal year 2019. Additionally, Respondent violated a prior Commission order denying him the privilege of appearing or practicing before the Commission as an accountant in February 2020, by signing two consents allowing audit reports he had signed for a private company to be included in registration statements, filed with the Commission, of a company that had acquired the private company. Respondent also violated the prior Commission order by conducting the audits pursuant to the Custody Rule audit exception set forth in Rule 206(4)-2(b)(4) (the “Custody Rule Audits”).

Respondent

1. Respondent is a certified public accountant licensed in Utah since June 15, 2009 and was formerly licensed in Nevada. Respondent is currently a partner with Forvis Mazars, LLP (“Forvis Mazars”), and was previously with FORVIS, LLP (“FORVIS”), Stayner Bates P.C. (“Stayner Bates”) and BKD. Respondent is a resident of Farmington, Utah.

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 . . . 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.

Other Relevant Entities

2. Stayner Bates was a professional corporation based in Salt Lake City, Utah. The firm provided accounting, tax preparation and bookkeeping services. The firm was acquired on June 1, 2019 by BKD.

3. BKD was a Missouri limited liability partnership with its principal place of business in Springfield, Missouri. BKD was registered with the PCAOB as a public accounting firm. Effective June 1, 2022, BKD merged with accounting firm Dixon Hughes Goodman, LLP to form FORVIS.

4. Forvis Mazars is a Delaware limited liability partnership with its principal place of business in Springfield, Missouri. FORVIS was formed in 2022 and resulted from the merger of BKD and Dixon Hughes Goodman, LLP. In 2024, FORVIS changed its name to Forvis Mazars. Effective June 1, 2024, Forvis Mazars purchased the assets of Mazars USA, LLP. Forvis Mazars is registered with the PCAOB.

Facts

The Prior Commission Order

5. On April 8, 2011, the Commission issued an Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the "2011 Order") against Johnson. (*In the Matter of Jeffery Q. Johnson, CPA and Steven E. Hanni, CPA*, Admin. Proc. File No. 3-14334, Exchange Act. Rel. No. 64278 (April 8, 2011)). The 2011 Order found that Johnson, acting as an issuer's ("Issuer") chief financial officer and outside accountant, engaged in improper professional conduct in connection with the Issuer's reporting of inflated revenues and assets, improper reporting of its reserves in Commission filings, and making of other false and misleading disclosures within the meaning of Exchange Act Section 4C and Rule 102(e)(1)(iii) of the Commission's Rules of Practice. The 2011 Order denied Johnson the privilege of appearing or practicing before the Commission as an accountant, with the ability to request that the Commission consider reinstatement after five years. The Commission has not reinstated Johnson's privilege to appear or practice before the Commission.

Custody Rule Audits

6. Between at least January 1, 2019 and December 31, 2019, an SEC-registered investment adviser (the "Adviser") had custody of investor assets invested in two private funds it managed. The Adviser was therefore required to comply with the Custody Rule's annual verification of client assets through a surprise examination of client assets in the Adviser's custody or, where permissible, an annual audit of the private fund's financial statements prepared in accordance with generally accepted accounting principles. To satisfy the Custody Rule

requirements, the Adviser engaged BKD to perform annual audits for the two funds, Fund A and Fund B.

7. Respondent was informed that the Adviser was using the audit reports to satisfy its Custody Rule obligations. In an April 30, 2020 email to Johnson, the Adviser wrote that the firm was an SEC- registered adviser, that the Custody Rule required audits of funds it managed, and that the Custody Rule was the Adviser's reason for having Fund A and Fund B audited. In his response, Johnson acknowledged that information and wrote that BKD would work to finish the audit that week; Fund A's audit report was then issued on May 8, 2020.

8. The Adviser discussed Fund B with Respondent in January and February 2020, including whether the Adviser could more cheaply comply with the Custody Rule by having BKD conduct a surprise exam instead of auditing the fund's financials. Respondent explained the likely cost of an audit compared to a surprise exam, and noted for the Adviser that a report must be filed with the SEC if a surprise exam is conducted and no financial statements are provided. The Adviser elected for an audit, and BKD issued an audit report for Fund B on April 27, 2020.

9. As the BKD engagement partner on the fund audits, Respondent was ultimately responsible for the audit engagements and for BKD's audit reports. However, BKD also prepared the financial statements for Fund A and Fund B, and Respondent supervised the preparation of those statements.

10. The Custody Rule, however, requires auditors to comply with the independence standards of Regulation S-X, Rule 2-01(b) and (c). Under this rule, an accountant is not independent if the accountant provides certain bookkeeping or other services related to the accounting records or financial statements unless it is reasonable to conclude that the results of those services will not be subject to audit procedures during the audit of the audit client's financial statements. Respondent was not independent since he was ultimately responsible for both the preparation of the private funds' financial statements and the audits of those same statements.

11. BKD eventually resigned its engagements to audit the Adviser's funds.

The Consents

12. Respondent was the engagement partner on audits involving Company A, a private company, during his time at Stayner Bates and BKD. Respondent audited the financial statements of Company A for the period ended December 31, 2018 ("2018 Audit") while at Stayner Bates, which issued its audit report on March 18, 2019. Similarly, Respondent audited Company A's financial statements for the period ended September 30, 2019 ("2019 Audit") while at BKD, which issued its audit report on January 9, 2020. Respondent signed the audit reports on behalf of Stayner Bates and BKD.

13. At the time BKD issued the 2019 Audit report, Respondent knew that Company A had been acquired by Company B, an SEC reporting issuer. After the issuance of the 2019 Audit report, Respondent learned that Company B planned to file a Form 8-K with the Commission

discussing its acquisition and including the 2018 Audit report and 2019 Audit report. Respondent discussed with Company A that BKD would need to consent before the audit reports could be included in Company B's Form 8-K. Respondent signed off on the Stayner Bates and BKD consents to Company B, allowing the incorporation by reference of the 2018 Audit report and the 2019 Audit report in ten Company B Form S-8 registration statements filed between July 26, 2007 and May 10, 2019, pursuant to a Company B Form 8-K/A filed with the Commission on February 7, 2020.

Violations

14. Section 206(4) of the Advisers Act and Rule 206(4)-2 require investment advisers to maintain client assets with a qualified custodian and require client assets to be verified through an annual surprise examination by an independent public accountant. Rule 206(4)-2(b)(4) states that an investment adviser with custody of a private fund client's assets does not have to be subjected to a surprise exam if the fund's financial statements are audited by an independent PCAOB-registered auditor and timely provided to the limited partners, often referred to as the "audit exception."

15. Rule 206(4)-2(d)(3) provides that, to be considered independent, the auditor must meet the independence standards of Regulation S-X, Rule 2-01(b) and (c). Rule 2-01(b), the general auditor independence standard under Regulation S-X, provides that an auditor lacks independence if it is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, "capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement." Rule 2-01(c) provides a "non-exclusive" list of circumstances that can result in a lack of auditor independence, including, among others, "[m]aintaining or preparing the audit client's accounting records."

16. As a result of the conduct described above, Respondent caused the Adviser to violate Section 206(4) of the Advisers Act and Rule 206(4)-2 when he failed to maintain independence while auditing the financial statements of two of its funds for the year ended December 31, 2019.

17. Based on the foregoing, the Commission finds that Johnson 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.

18. The 2011 Order denied Johnson the privilege of appearing or practicing before the Commission as an accountant. Rule 102(f) of the Commission's Rules of Practice broadly defines "practicing before the Commission" to include "[t]ransacting any business with the Commission" and "[t]he preparation of any statement, opinion or other paper by any . . . accountant . . . filed with the Commission, in any registration statement, notification, application, report or other document with the consent of such . . . accountant."

19. Respondent appeared or practiced as an accountant before the Commission within the meaning of Rule 102(f) by signing consents allowing the Company A 2018 Audit report and the 2019 Audit report he had prepared to be included in Company B's Form 8-K/A and Form S-8 registration statements filed with the Commission.

20. Additionally, Respondent appeared or practiced before the Commission by conducting the Custody Rule audits of Fund A and Fund B.

21. As of the result of the conduct described above, Respondent appeared or practiced before the Commission in violation of the 2011 Order.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 203(k) of the Advisers Act, Respondent Johnson cease and desist from committing or causing any violations and any future violations of Section 206(4) and Rule 206(4)-2 promulgated thereunder.

B. Johnson is denied the privilege of appearing or practicing before the Commission as an accountant.

C. Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$30,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Johnson as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Gary Leung, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 444 S. Flower Street, 9th Floor, Los Angeles, CA 90071.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary