

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10731 / December 5, 2019

SECURITIES EXCHANGE ACT OF 1934
Release No. 87670 / December 5, 2019

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4106 / December 5, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19613

In the Matter of

JATINDAR KAPUR, CPA

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT OF
1933, SECTIONS 4C AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND RULE 102(e) OF THE COMMISSION'S
RULES OF PRACTICE, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Jatindar Kapur, CPA (“Kapur” or “Respondent”) pursuant to Section 8A of the Securities Act of 1933

(“Securities Act”), Sections 4C¹ and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice.²

II.

In anticipation of the institution of these proceedings, Kapur 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 them and the subject matter of these proceedings, which are admitted, Kapur consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act, Sections 4C and 21C of the Exchange Act 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 Kapur’s Offer, the Commission finds³ that:

Summary

1. Respondent Jatindar Kapur was, from April 2008 to April 2014, the Senior Vice President, Finance and Corporate Controller for Hertz Global Holdings, Inc. (“Hertz Holdings”).

2. From at least February 2012 through March 2014, the public filings of Hertz Holdings and its wholly-owned subsidiary The Hertz Corporation (together, “Hertz”) materially overstated pretax income by \$235 million because of accounting errors made in a number of business units, and over multiple reporting periods, as reflected in the Restatement that Hertz filed on July 16, 2015. Among the accounting errors contributing to this total were misstatements

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 by the Commission . . . (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)(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 by the Commission...to 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.

concerning Hertz's accrual for expenses related to "wrecks," the amortization periods for Hertz vehicle licenses and registrations, and an allowance for uncollectible amounts offsetting potential recoveries from third parties ("subrogation" receivables) for rental related damages. Kapur approved accounting methodology changes in each of those areas that contributed to errors that overstated pretax income by approximately \$21 million.

3. Based on the foregoing and the conduct described herein below, Kapur willfully violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder, and willfully aided and abetted and caused Hertz Holdings' violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder, and Hertz Corp.'s violations of Sections 15(d), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 15d-1, 15d-11 and 15d-13 thereunder.

Respondent

4. **Jatindar Kapur** ("Kapur") was, from April 2008 to April 2014, Senior Vice President, Finance and Corporate Controller of Hertz Global Holdings, Inc. His CPA license in Pennsylvania expired in 1990 and has not since been renewed. In his role as Corporate Controller, Kapur, among other things, had substantial responsibility for Hertz's accounting function.

Other Relevant Entities

5. **Hertz Global Holdings, Inc.** ("Hertz Holdings") is a Delaware corporation headquartered in Estero, Florida. Its securities are registered pursuant to Section 12(b) of the Exchange Act. Its common stock trades on the New York Stock Exchange, and Hertz Holdings files periodic reports, including Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder. As of June 30, 2016, Hertz Holdings was spun off from and designated as the accounting successor to a company with the same name, whose securities had also been registered pursuant to Section 12(b) of the Exchange Act.

6. **The Hertz Corporation** ("Hertz Corp.") is a Delaware corporation headquartered in Estero, Florida. It filed registration statements with the Commission on Form S-4 that became effective in February and October 2013. Accordingly, as required by Section 15(d) of the Exchange Act, Hertz Corp. filed periodic reports, including Forms 10-K and 10-Q, respecting fiscal year 2013 pursuant to Section 15(d) of the Exchange Act and related rules thereunder. Hertz Corp. is the wholly-owned operating subsidiary of Hertz Holdings, and it previously was the wholly-owned subsidiary of Hertz Holdings' predecessor.

Facts

7. On July 16, 2015, Hertz restated its financial results for 2012, 2013 and prior periods, including selected data for 2011 (unaudited). Including revisions made in early 2014, the company reduced its previously reported GAAP pretax income by a total of \$235 million. Part of the misstated income resulted from errors made in various accounts that are subject to management

estimate. For years, Hertz's allowance related expenses were understated and income was inflated because Hertz relied on inappropriate estimation methodologies that resulted in inadequate allowances and write-offs. The inappropriate methodologies occurred within a pressured corporate environment where, in certain instances, there was an inappropriate emphasis on meeting internal budgets, business plans, and earnings estimates.

8. Among the accounting errors contributing to the restated amounts were misstatements concerning Hertz's accrual for wrecks expense, the amortization periods for Hertz vehicle licenses and registrations, and estimated recoveries for vehicle damage expense, or "subrogation." Kapur approved changes to the models, calculations and/or methodologies for each of those areas that, taken together, contributed to errors that overstated pretax income by approximately \$21 million.

9. First, in late 2012 Kapur approved erroneous accounting methodology changes in the accrual for expenses related to wrecks—cars that were damaged so extensively that they only retained salvage value. Most notably, in October 2012, Kapur approved an accounting methodology change that sharply reduced a key input into the wrecks reserve calculation – the rate by which wrecks were incurred but not reported - from 32% to 3%. The new methodology Kapur approved effectively assumed that a vehicle is not truly a wreck, and thus no reserve must be recognized, until management identifies the vehicle as such. This approach, which was maintained through May 2014, vitiated the function of an accrual for wrecks incurred but not reported, and so significantly understated the wrecks reserve balance during that period. Hertz subsequently identified this as an error and reversed this change in its restatement.

10. Second, in the spring of 2013 Kapur approved an inappropriate extension of the amortization period for the expenses incurred in obtaining licenses and registrations for the Hertz U.S. rental car fleet's vehicles. Although the vast majority of those cars were operated in states that had annual licensing and registration requirements, the extension, first from 12 to 17 months and then from 17 to 18 months, was based on the average holding period in the fleet – in other words, useful life of the car, which is different from license length. The proposal to Kapur and others clearly outlined the \$1.5 million savings that would result from this extended amortization period, but lacked adequate support for the change. Kapur was at least aware of the first extension, and his approval of the second is reflected in a subordinate's email on which he was copied, saying "Jatindar is good with the move from 17 to 18 months. . . ." The proposal approved by Kapur did not include or document any rationale but did highlight that moving to 18 months would improve Hertz's financial results by providing a "one-time pick-up of approx \$700k in April" 2013.

11. After the methodology change was made, several staff members in Hertz's regions, including some of the largest states in Hertz's rental car fleet, noticed it and expressed the view that it made no sense from an accounting perspective. Kapur, despite having been alerted by these staff members to the accounting issue, took inadequate steps to follow up and ensure that the matter was properly addressed. In fact, the erroneous accounting treatment was not changed during 2013. Hertz reversed this change in its restatement.

12. Third, Kapur participated in decisions by operations staff in charge of Hertz's subrogation unit, contrary to Hertz policy and GAAP, to make accounting methodology changes in ways that improved the company's financial results.

13. Subrogation refers to Hertz's claims to rights to offset expenses for vehicle damage during rental periods by recovering money from renters and other third parties, depending on whether there was applicable insurance or credit card coverage and, in some cases, whether the renters purchased the loss damage waiver. Hertz accounted for subrogation by recording income and a receivable for amounts subject to recovery, partially offset by an associated expense and allowance for the possibility that some percentage of those amounts might not be recovered. Amounts ultimately uncollected would be written off against the allowance.

14. FASB Accounting Standards Codification Topic 450, "Contingencies" (ASC 450), provides guidance on the accounting for collectability of receivables. ASC 450-20-25-2 requires the accrual of losses from uncollectible receivables if a loss is probable and the amount of the loss can be reasonably estimated. Hertz's longstanding policy for calculating the allowance was based on a rolling 12-month average, not of collections experience, but of write-offs, divided by monthly billed receivables.

15. During 2013, subrogation staff kept up to \$10 million of aged and largely uncollectible receivables on the company's books, even though Hertz policy recited the GAAP requirement for "an allowance for doubtful accounts if (1) it is probable that a receivable (or portion thereof) is uncollectible, and (2) the amount of loss can be reasonably estimated." Contemporaneous documents indicate that subrogation staff understood company policy to require a 100% reserve for receivables aged over 360 days, because at that point it was probable they were uncollectible, so that the 2013 practice, of which Kapur was made aware no later than April 2013, was a departure from that prior policy. However, Kapur took no corrective action, and the defective methodology remained in place. For the next seven months, subrogation staff wrote off uncollectible receivables only to the extent that doing so fit within company budget targets. This practice, caused by financial performance pressures rather than application of Hertz's accounting policies, resulted in between \$7.7 and \$10.4 million in aged subrogation receivables remaining on Hertz's books from June to October 2013.

16. The subrogation issue reemerged in late October 2013 when, with Kapur's knowledge, Hertz's senior management team pressed for opportunities to "lower the reserve" in subrogation and other parts of the U.S. rental car business in an effort to close another earnings gap. In response to the gap-closing effort, Hertz staff proposed reducing certain non-subrogation allowances, but recommended a corresponding increase in the subrogation allowance, to alleviate the risk associated with the aged receivables. Staff emphasized to Kapur and others that existing practice had been deviating from "current policy [which] expects a reserve of 100% for receivables aged +360." This again put Kapur on notice that Hertz's subrogation accounts had been inconsistent with GAAP during 2013.

17. After internal review and discussion, the allowance for aged subrogation receivables was increased, but the allowance applied to younger receivables was reduced, leaving the total subrogation reserve in a “steady state,” thus avoiding any negative impact on Hertz’s bottom line. The final methodology ultimately presented to Kapur reserved for receivables more than a year old at the full 100% rate – restoring the old methodology that Kapur was on notice had been ignored during 2013. However, to offset the cost of this change, the proposal lowered other parts of the subrogation reserve in ways that Hertz later determined during the restatement to have been improper.

- First, the proposal reserved for claims referred to attorneys and aged less than 360 days at an arbitrary 50% rate “until we have experience,” thus indicating the proposal lacked any historical basis or support. In fact, however, 2012-13 collection rates by attorneys had thus far been about 3%, indicating that the appropriate reserve rate should have been much higher than 50%.
- Receivables not referred to attorneys and less than a year old were reserved for at a mere 4% rate, thus assuming a 96% recovery rate that was far above the company’s historical average for such collections.
- The proposal reserved for receivables not yet billed at only a 1% rate. The calculation used to determine that rate erroneously ignored the fact that the overall collection rate for unbilled receivables was only 60-70%, dictating a much higher reserve.

18. Despite the obvious flaws in these formulae, which had no basis in GAAP or historical experience, Kapur approved these changes. Moreover, while staff asked Kapur several times about consulting with Hertz’s auditor concerning the proposed accounting methodology changes, Kapur did not do so, and no such consultation occurred.

19. In each of the instances described above, Kapur knowingly or recklessly approved accounting methodology changes that were not in accordance with GAAP.

20. As set forth in the Restatement, and as reflected in the above description of accounting errors, Hertz’s internal control over financial reporting suffered from a series of material weaknesses, including inadequate controls over accounting estimates and changes to accounting policies.

21. In his capacity as Senior Vice President, Finance and Corporate Controller, Kapur was the designated “owner” of accounting-related policies at Hertz and was in position to implement proper internal accounting controls. As Kapur knew, the methodology changes discussed above were implemented without uniform and consistent procedures documenting the reviews and approvals of accrual and amortization methodologies. Not only were changes to and rationales for such methodologies inadequately documented, but, as Kapur knew, at times Hertz’s practices with respect to subrogation accruals did not follow what was understood to be the company’s own prescribed methodology.

Hertz's Restatement

22. On July 16, 2015, based on the results of an accounting review and an internal investigation, Hertz restated its 2011, 2012 and 2013 financial statements. The restatement of applicable accounts due to the three errors discussed above impacted, at least, Hertz Holdings' FY 2012 and FY 2013 Forms 10-K, its Forms 10-Q for the third quarter of 2012 and the first quarter of 2013, and its earnings reports on Forms 8-K for the third and fourth quarters of 2012 and the first and fourth quarters of 2013. They also affected Hertz Corp.'s parallel filing of Forms 10-K, Forms 10-Q and/or earnings reports on Forms 8-K, for the period during which they were required to be filed, from at least February 2013 through March 2014. Kapur was the corporate controller for all the periods restated. Kapur sold shares of Hertz Holdings stock during the relevant period, which he acquired through the exercise of stock options.

Violations

23. As a result of the conduct described above, the Commission finds that:
- a. Respondent Kapur willfully violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit any person from directly or indirectly obtaining 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 made, not misleading, or engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser, in the offer or sale of securities;
 - b. Respondent Kapur willfully violated Section 13(b)(5) of the Exchange Act, which prohibits any person from knowingly circumventing or failing to implement a system of internal accounting controls or knowingly falsifying any book, record or account described in Section 13(b)(2) of the Exchange Act;
 - c. Respondent Kapur willfully violated Rule 13b2-1, which prohibits any person, directly or indirectly, from falsifying, or causing to be falsified, any book, record or account subject to section 13(b)(2)(A) of the Exchange Act;
 - d. Respondent Kapur willfully aided and abetted and caused Hertz Holdings' violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, which require issuers with securities registered under Section 12 of the Exchange Act to file annual, current, and quarterly reports with the Commission containing such information as the Commission's rules may require and such further material information as may be necessary to make the required statements, in light of the circumstances under which they were made, not misleading;

- e. Respondent Kapur willfully aided and abetted and caused Hertz Corp.'s violations of Section 15(d) of the Exchange Act and Rules 12b-20, 15d-1, 15d-11 and 15d-13 thereunder, which require issuers which have filed a registration statement with the Commission which has become effective pursuant to Section 15(d) of the Exchange Act to file annual, current, and quarterly reports with the Commission containing such information as the Commission's rules may require and such further material information as may be necessary to make the required statements, in light of the circumstances under which they were made, not misleading;
- f. Respondent Kapur willfully aided and abetted and caused Hertz Holdings' and Hertz Corp.'s violations of Section 13(b)(2)(A) of the Exchange Act, which requires issuers with securities registered under Section 12 of the Exchange Act or which are required to file reports pursuant to Section 15(d) of the Exchange Act to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the issuer;
- g. Respondent Kapur willfully aided and abetted and caused Hertz Holdings' and Hertz Corp.'s violations of Section 13(b)(2)(B) of the Exchange Act, which requires issuers with securities registered under Section 12 of the Exchange Act or which are required to file reports pursuant to Section 15(d) of the Exchange Act to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that, among other things, transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP; and
- h. Respondent Kapur willfully violated or willfully aided and abetted violations of the federal securities laws or rules and regulations thereunder pursuant to Section 4C of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Kapur cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, Sections 13(a), 13(b)(2)(A),

13(b)(2)(B), 13(b)(5) and 15(d) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, 13a-13, 13b2-1, 15d-1, 15d-11 and 15d-13 thereunder.

B. Pursuant to Section 4C of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice, Kapur is denied the privilege of appearing or practicing before the Commission as an accountant.

C. After two (2) years from the date of this order, Kapur may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are 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 Securities Exchange Act of 1934). Such an application must satisfy the Commission that Kapur's work in his practice before the Commission as an accountant will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or
2. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934. Such an application will be considered on a facts and circumstances basis with respect to such membership, and the applicant's burden of demonstrating good cause for reinstatement will be particularly high given the role of the audit committee in financial and accounting matters; and/or
3. an independent accountant.

Such an application must satisfy the Commission that:

- (a) Kapur, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;
- (b) Kapur, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that Kapur will not receive appropriate supervision;

- (c) Kapur has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and
- (d) Kapur acknowledges his responsibility, as long as he appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

D. The Commission will consider an application by Kapur to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Kapur's character, integrity professional conduct, or qualifications to appear or practice before the Commission as an accountant. Whether an application demonstrates good cause will be considered on a facts and circumstances basis with due regard for protecting the integrity of the Commission's processes.

E. Respondent Kapur shall, within 30 days of the entry of this Order, pay disgorgement of \$18,610.67, prejudgment interest thereon of \$3,997.64, and a civil money penalty in the amount of \$75,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Exchange Act. If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment of a civil money penalty 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) Kapur may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Kapur 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) Kapur 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 Kapur 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 Sanjay Wadhwa, Senior Associate Regional Director, Division of Enforcement, New York Regional Office, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, New York, NY 10281.

F. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Kapur 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 Kapur's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Kapur 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 Kapur 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 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