

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 93750 / December 10, 2021

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4272 / December 10, 2021

ADMINISTRATIVE PROCEEDING
File No. 3 - 20672

In the Matter of

ALAN C. GREENWELL,
CPA,

Respondent.

**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**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Alan C. Greenwell, CPA (“Respondent”) pursuant to Sections 4C¹ and 21C 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 . . . (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 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 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 (“Order”), as set forth below.

III.

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

SUMMARY

1. This matter involves improper professional conduct and causing violations of the auditor independence rules arising from Ernst & Young, LLP (“EY”), a public accounting firm, performing non-audit services for its audit client Cintas Corporation (“Cintas”) on a contingent fee basis.⁴ EY billed and received payment from Cintas on invoices calculated on a contingent fee basis for tax credit and incentive services (“C&I services”) performed between July 2009 and August 2018. An audit firm is not independent of its audit client if it provides any non-audit services to the audit client for a contingent fee. As a result, EY was not independent of Cintas during that time period, and Cintas filed annual and quarterly reports with the Commission that were not audited or reviewed by an independent public accountant, as required by Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder.

2. Respondent, a certified public accountant, was an EY partner who served as the tax

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.

⁴ *Contingent fee* means . . . any fee established for the sale of a product or the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such product or service. See 17 CFR § 210.2-01(f)(10).

account leader for tax services EY provided to Cintas from 2005 through 2018. Respondent obtained pre-approval from the audit committee of Cintas’s board of directors for EY to perform C&I services for Cintas on a time and materials basis. EY subsequently billed Cintas for that work through invoices calculated on a contingent fee basis between 2009 and August 2018. Respondent failed to investigate red flags. He directed subordinates to execute engagement letters between EY and Cintas that described the method for calculating bills as time and materials, when EY in fact billed Cintas on a contingent fee basis. Respondent also completed audit work papers stating that EY was independent of Cintas. As a result of his conduct, Respondent engaged in improper professional conduct. He caused EY to violate Rule 2-02(b)(1) of Regulation S-X, which, during the relevant period, required an auditor to state whether the audit was made in accordance with generally accepted auditing standards (“GAAS”), and caused Cintas to violate Exchange Act Section 13(a) and Rules 13a-1 and 13a-13, which require the company to file annual and quarterly reports audited and reviewed by an independent public accountant.

RESPONDENT

3. Alan C. Greenwell, age 55, was an EY partner throughout the relevant time period. EY required Greenwell to involuntarily separate in March 2019. Respondent is a certified public accountant (“CPA”) licensed in the states of Illinois, Indiana, Kentucky and Ohio. At all relevant times, Respondent was the tax account leader for tax services EY provided to Cintas, including C&I services, and he also served as an EY team member on the Cintas audit.

OTHER RELEVANT ENTITIES

4. Cintas Corporation is a Washington corporation headquartered in Cincinnati, Ohio. Its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the Nasdaq Global Select Market. Cintas’s fiscal year end is the last day in May. At the time of the conduct described herein, Cintas had reporting obligations under Section 13(a) of the Exchange Act.

5. Ernst & Young LLP, a partnership organized under the laws of Delaware, is a public accounting firm with principal offices in New York, New York. EY has been registered with the Public Company Accounting Oversight Board (“PCAOB”) since 2003. EY has served as the auditor for Cintas since 1968.

FACTS

6. Under the Commission’s auditor independence rules, external accountants are required to be independent—in fact and in appearance—of their audit clients. The Commission’s auditor independence rules set forth a general standard of independence in Rule 2-01(b) of Regulation S-X which, among other things, states that, in determining whether an accountant is independent, the Commission will consider “all relevant circumstances, including all relationships between the accountant and the audit client . . .” Rule 2-01(c)(5) of Regulation S-X provides that “[a]n accountant is not independent if, at any point during the audit and professional engagement period, the accountant provides any service or product to an audit client for a contingent fee ... or

receives a contingent fee ... from an audit client.” EY’s policies and procedures also prohibited billing audit clients on a contingent fee basis.

7. Between July 2009 and August 2018, EY audited Cintas’s annual financial statements that the issuer included in filings made with the Commission on Forms 10-K. EY issued an audit report for Cintas’s annual financial statements (included in Forms 10-K), stating that it had conducted its audit of Cintas in accordance with the standards of the PCAOB, which include the requirement that auditors be independent of their audit clients. During this period, EY also reviewed Cintas’s quarterly financial statements that the issuer included in Commission filings on Forms 10-Q.

8. As the tax account leader (“TAL”), Respondent was the EY partner responsible for tax services EY provided to Cintas, including assisting Cintas in obtaining tax credits and incentives from federal, state and local authorities. Respondent knew that the auditor independence rules and EY’s policies and procedures prohibited EY, as the company’s auditor, from providing any services to Cintas on a contingent fee basis.

9. As Cintas’s auditor, EY had to obtain pre-approval from Cintas’s audit committee under Section 10A(h) of the Exchange Act in order to provide non-audit tax services to Cintas. EY’s policies and procedures required that requests for pre-approval of non-audit services to the audit committee comply with PCAOB Rule 3524, which requires written disclosure of a fee structure that complies with the auditor independence rules.

10. EY provided C&I services to Cintas between July 2009 and August 2018. As the TAL, Respondent participated in obtaining pre-approval for these services from Cintas’s audit committee. During this time period, Respondent participated in presentations to Cintas’s audit committee requesting pre-approval for EY to perform these C&I services. Respondent represented to Cintas’s audit committee that EY would bill for C&I services on a time and materials basis.

11. During this time period, Respondent also reviewed and approved for signature EY’s engagement letters with Cintas for the C&I services. These engagement letters similarly represented that EY would bill Cintas for C&I services on a time and materials basis.

12. For example, in April 2016, Respondent participated in a presentation to Cintas’s audit committee to request pre-approval of EY services in connection with certain federal and state employment and hiring-related tax credits. The presentation stated that EY would bill Cintas for the C&I services on a time and materials basis. Cintas’s audit committee pre-approved EY performing these C&I services on a time and materials basis. Subsequently, EY and Cintas executed engagement letters that similarly represented that EY would perform these C&I services on a time and materials basis.

13. Despite EY’s and Respondent’s representations that EY would perform C&I services for Cintas on a time and materials basis, in fact EY improperly billed Cintas for C&I services based on a percentage of the relevant tax credit or incentive secured. Specifically, from July 2009 through August 2018, EY charged, and Cintas paid, fees of approximately—sometimes

exactly—10% of the benefit Cintas received for federal tax credits and 15% of the benefit Cintas received for state and local tax credits resulting from EY’s C&I engagements.

14. For example, from 2009 through 2018, EY assisted Cintas in obtaining certain federal tax credits related to hiring. Initially, EY billed Cintas for this work annually at exactly 10% of the credits Cintas obtained. In later years, EY billed Cintas for this work on a quarterly basis and reconciled the bills at the end of the year so that EY’s annual fees were approximately 10% of the total credits Cintas obtained for that year. Certain EY bills to Cintas summarized the amount of each credit and then stated the applicable charges. It was clear on the face of the invoices that the charges were 10% of the amount of the tax credits.

15. While Respondent did not himself perform any of EY’s C&I services for Cintas, as the TAL, he had overall responsibility for overseeing EY’s tax services engagements with Cintas, including the engagements for C&I services. During the relevant period, Respondent failed to investigate red flags indicating that EY was billing Cintas on a contingent fee basis for C&I services. For example, in February 2016, Respondent received an email from Cintas indicating that, for 2014 and 2015, EY had billed Cintas estimated amounts for federal tax credit work and that a reconciliation would occur once the precise amount of the federal tax credits was known. The email suggested that the final fee would be contingent on the amount of credit Cintas received for the work, which Respondent failed to investigate.

16. Similarly, in March 2017, Respondent was copied on several emails regarding an EY invoice to Cintas for certain state tax credits. In the emails, EY managers told Cintas that the final invoice would be calculated and sent to the company once Cintas had secured the expected incentives. This suggested that EY’s fees would depend upon the final amount of the tax credits, and Respondent again failed to investigate.

17. During the relevant period, Respondent completed audit work papers certifying that EY complied with applicable auditor independence requirements. Respondent also verbally told Cintas’s audit committee that there were no issues that impacted EY’s independence. As described above, EY was not independent of Cintas. Respondent failed to investigate red flags indicating that EY was performing certain C&I services for Cintas on a contingent fee basis, which violated the auditor independence rules.

18. As a result of the contingent fees, EY was not independent of Cintas between July 2009 and August 2018. Consequently, the Forms 10-K and 10-Q that Cintas filed with the Commission during this period contained financial statements that were not audited or reviewed by an independent public accountant.

VIOLATIONS

19. During the relevant period, Rule 2-02(b)(1) of Regulation S-X required each auditor’s report on a public issuer’s financial statements to state “whether the audit was made in accordance with generally accepted auditing standards.” GAAS includes the auditing standards set forth in PCAOB standards and applicable Commission rules, both of which require an auditor to be

independent of its client.⁵ Circumstances in which an auditor will – and will not – be deemed independent are set forth in Rule 2-01 of Regulation S-X. Rule 2-01(c)(5) of Regulation S-X provides that “[a]n accountant is not independent if, at any point during the audit and professional engagement period, the accountant provides any service or product to an audit client for a contingent fee ... or receives a contingent fee ... from an audit client.” EY stated in its audit report attached to Cintas’s Forms 10-K during the relevant period that EY conducted its audit of Cintas in accordance with the standards of the PCAOB, when it had not.

20. By his conduct described above, Respondent caused EY to violate Rule 2-02(b)(1) of Regulation S-X.

21. Section 13(a) of the Exchange Act and Exchange Act Rule 13a-1 require issuers with equity securities registered under Section 12 to file annual reports with the Commission that include financial statements audited by an independent public accountant. Exchange Act Rule 13a-13 requires issuers with securities to file with the Commission quarterly reports on Form 10-Q. Rule 10-01(d) of Regulation S-X requires the interim financial statements included in a Form 10-Q to be reviewed by an independent public accountant.

22. By his conduct described above, Respondent caused Cintas to violate Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 promulgated thereunder.

23. Section 4C of the Exchange Act and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice, permit the Commission to censure a person or deny a person the privilege of appearing or practicing before it after finding that a person engaged in improper professional conduct. With respect to persons licensed to practice as accountants, “improper professional conduct” includes (1) a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant 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. Rule 102(e)(1)(iv)(B). By his conduct described above, Respondent engaged in “improper professional conduct” within the meaning of Exchange Act Section 4C(a)(2)

⁵ The Commission has stated that for audit reports issued on or after May 24, 2004, the reference in Rule 2-02(b)(1) to GAAS means the standards of the PCAOB and applicable Commission rules, both of which require an auditor to be independent of its client. *See Commission Guidance Regarding the Public Company Accounting Oversight Board’s Auditing and Related Professional Practice Standard No. 1*, Exchange Act Rel. No. 49708, 2004 WL 1439831, at *2 (May 14, 2004); *see also* PCAOB AS 3101 (superseding PCAOB Auditing Standard No. 1 for audits of fiscal years ending on or after December 15, 2017); PCAOB Rule 3520 (“A registered public accounting firm and its associated persons must be independent of the firm’s audit client throughout the audit and professional engagement period.”); PCAOB Auditing Standards, Independence, AU § 220.03 (PCAOB auditor independence standards effective prior to December 31, 2016); PCAOB AS 1005.03 (PCAOB auditor independence standards effective on or after December 31, 2016).

and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

FINDINGS

24. Based on the foregoing, the Commission finds that Respondent caused EY's violations of Rule 2-02(b)(1) of Regulation S-X.

25. Based on the foregoing, the Commission finds that Respondent caused Cintas's violations of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 promulgated thereunder.

26. Based on the foregoing, the Commission finds that Respondent engaged in "improper professional conduct" within the meaning of Exchange Act Section 4C(a)(2) and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

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, effective immediately, that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Rule 2-02(b)(1) of Regulation S-X, Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 promulgated thereunder.

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

C. After two years from the date of this Order, Respondent may request that the Commission consider Respondent's reinstatement by submitting an application to the attention of the Office of the Chief Accountant.

D. 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, Respondent shall submit a written statement attesting to an undertaking to have Respondent's work reviewed by the independent audit committee of any public company for which Respondent works or in some other manner acceptable to the Commission, as long as Respondent 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.

E. 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, Respondent shall submit a statement prepared by the audit committee(s) with which Respondent will be associated, including the following information:

1. A summary of the responsibilities and duties of the specific audit committee(s) with which Respondent will be associated;
2. A description of Respondent's role on the specific audit committee(s) with which Respondent 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 Respondent's service on the specific audit committee; and
5. A statement noting whether Respondent will be able to act unilaterally on behalf of the Audit Committee as a whole.

F. In support of any application for reinstatement to appear and practice before the Commission as an independent accountant (auditor) before the Commission, Respondent must be associated with a public accounting firm registered with the PCAOB and Respondent shall submit the following additional information:

1. A statement from the public accounting firm (the "Firm") with which Respondent 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 Respondent 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 Respondent will not receive appropriate supervision; and
3. A statement from Respondent indicating that the PCAOB has taken no disciplinary actions against Respondent since seven (7) years prior to the date of the Order other than for the conduct that was the basis for the Order.

G. In support of any application for reinstatement, Respondent shall provide documentation showing that Respondent is currently licensed as a CPA and that Respondent has resolved all other disciplinary issues with any applicable state boards of accountancy. If Respondent is not currently licensed as a CPA, Respondent shall provide documentation showing that Respondent's licensure is dependent upon reinstatement by the Commission.

H. In support of any application for reinstatement, Respondent shall also submit a signed affidavit truthfully stating, under penalty of perjury:

1. That Respondent has complied with the Commission suspension Order, and with any related orders and undertakings, including any orders in these proceedings or any related Commission proceedings, including any orders requiring payment of disgorgement or penalties;
2. That Respondent 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 Respondent, 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 Respondent, 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 Respondent'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 Respondent 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.

I. Respondent shall also provide a detailed description of:

1. Respondent'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 Respondent reported for such work; and
2. Respondent's plans for any future appearance or practice before the Commission.

J. The Commission may conduct its own investigation to determine if the foregoing attestations are accurate.

K. If Respondent provides the documentation and attestations required in this Order and the Commission (1) discovers no contrary information therein, and (2) determines that Respondent truthfully and accurately attested to each of the items required in Respondent's affidavit, and the Commission discovers no information, including under paragraph J, indicating that Respondent has violated a federal securities law, rule or regulation or rule of professional conduct applicable to Respondent since entry of the Order (other than by conduct underlying Respondent's original Rule 102(e) suspension), then, unless the Commission determines that reinstatement would not be in the public interest, the Commission shall reinstate the respondent for cause shown.

L. If Respondent 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 J, the burden shall be on the Respondent to provide an explanation as to the facts and circumstances pertaining to the matter setting forth why Respondent 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 Respondent for cause shown.

M. If the Commission declines to reinstate Respondent pursuant to Paragraphs K and L, it may, at Respondent's request, hold a hearing to determine whether cause has been shown to permit Respondent to resume appearing and practicing before the Commission as an accountant.

N. Respondent shall, within 28 days of the entry of this Order, pay a civil money penalty in the amount of \$15,000.00 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 Alan C. Greenwell 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 Carolyn Welshhans, Division of Enforcement, Securities and Exchange Commission, 100 F St. NE, Washington, DC 20549.

O. 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