

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 93752 / December 10, 2021

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4274 / December 10, 2021

ADMINISTRATIVE PROCEEDING
File No. 3 - 20674

In the Matter of

SCOTT D. CLARK, 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 Scott D. Clark, CPA (“Respondent” or “Clark”) pursuant to 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

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)(iii) 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 aiding and abetting 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.

2. Respondent, a certified public accountant, was Cintas’s Vice President of Corporate Taxation. Throughout the above time period, Respondent approved on behalf of Cintas the payment of invoices for EY C&I services calculated on a contingent fee basis. As a result of his

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . 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.

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).

conduct, Respondent willfully aided and abetted 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. Scott D. Clark, age 61, was a tax manager, tax director, and Vice President of Corporate Taxation for Cintas since 2000 before retiring from the company in 2020. He is registered as a certified public accountant (“CPA”) in the state of Ohio, but does not have a permit to engage in the practice of public accounting. Respondent was responsible for negotiating and approving Cintas’s payment of fees to EY for C&I services.

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.”

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 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.

9. During this period, EY made presentations to Cintas's audit committee to request pre-approval to perform tax services that included assisting Cintas in obtaining credits and incentives from federal, state, and local tax authorities. EY obtained signed engagement letters from Cintas's management regarding these services. The audit committee presentations and signed engagement letters both claimed EY would bill Cintas for C&I services on a time and materials basis. Respondent was aware of the audit committee presentations and reviewed and/or signed the engagement letters.

10. EY provided C&I services to Cintas between July 2009 and August 2018. Respondent was the Cintas Vice President for Corporate Taxation responsible for supervising EY's C&I services. Respondent knew that, as Cintas's auditor, EY was not permitted to provide services to Cintas on a contingent fee basis.

11. Respondent negotiated arrangements by which EY billed Cintas based upon 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. Respondent approved payment of EY invoices to Cintas that contained contingent fees for C&I services. This included supervising other Cintas employees who processed the invoices for payment.

12. 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. EY's bills to Cintas summarized the amount of each credit and then stated the applicable charges. On the face of the invoices, the charges were 10% of the amount of tax credits. Respondent approved each of Cintas's payments for these invoices.

13. As a result of the contingent fees, EY was not independent of Cintas between July 2009 and August 2018, causing 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.

VIOLATIONS

14. 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.

15. By his conduct described above, Respondent willfully⁵ aided and abetted and caused Cintas to violate Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder.

16. Section 4C of the Exchange Act and Rule 102(e)(1)(iii) 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 to any person who is found by the Commission to have willfully violated or willfully aided and abetted the violation of any provisions of the federal securities laws or the rules and regulations thereunder. As a result of the conduct described above, Respondent willfully aided and abetted Cintas's violations of the federal securities laws within the meaning of Exchange Act Section 4C(a)(3) and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

FINDINGS

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

18. Based on the foregoing, the Commission finds that Respondent willfully aided and abetted Cintas's violations of the federal securities laws within the meaning of Section 4C(a)(3) 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 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 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.

⁵ "Willfully" for purposes of imposing relief under Section 102(e) "means no more than the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000).

C. After one year 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 Clark shall, within 14 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 Scott D. Clark 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 Brian O. Quinn, 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