

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6558 / February 15, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-21855

In the Matter of

RAFAEL VARGAS,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Rafael Alberto Vargas Gonzalez, a/k/a Rafael Vargas (“Vargas” or “Respondent”),

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 and the findings contained in Section III, paragraph 2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

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

1. Vargas, 42, is the CEO of Empirex Capital, LLC (“Empirex”), a Florida Limited Liability Company formed in July 2018 with its principal place of business in Miami, Florida. Vargas manages and controls Empirex. Vargas has never been registered with the Commission or any state securities regulator, and has never held any securities licenses. Empirex’s investment offerings have never been registered with the Commission.

2. On September 21, 2023, the Commission filed a complaint against Vargas in SEC v. Empirex Capital, LLC, et al., Civil Action No. 1:23-cv-23627, in the U.S. District Court for the Southern District of Florida. On December 8, 2023, the court entered an order permanently enjoining Vargas by consent, from future violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”); Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; Sections 5(a) and 5(c) of the Securities Act; and Sections 206(1) and (2) of the Advisers Act.

3. The Commission’s complaint alleged, among other things, that from July 2018 through at least March 2023, Vargas and Empirex raised at least \$6.6 million from at least 162 investors in the United States and abroad, by making repeated material misrepresentations and receiving compensation for making investment advisement decisions for those investors. As alleged, the misrepresentations concerned Vargas’s and Empirex’s use of assets obtained from investors, the profitability of Empirex’s trading activities, Empirex’s assets under management, Vargas’s and Empirex’s qualifications to manage investors’ assets and their backgrounds, and the risks of investing with Empirex. The complaint further alleged Vargas misappropriated approximately \$1.8 million and misled investors as to the profitability of their investments by making and facilitating Ponzi-like payments to the investors to mask Empirex’s failure to generate sufficient profits in trading investors’ assets.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act, that Respondent Vargas be, and hereby is barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

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

the basis for the Commission order; and (e) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Vanessa A. Countryman
Secretary