

**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934
Release No. 93749 / December 10, 2021**

**ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4271 / December 10, 2021**

**ADMINISTRATIVE PROCEEDING
File No. 3 - 20671**

**In the Matter of
ADAM D. BERING, ESQ.,
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 Adam Bering (“Respondent”) 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, 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, an attorney, is an EY tax principal. He was the engagement partner for C&I services that EY provided to Cintas from July 2009 through June 2018, although he did not

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).

himself perform the underlying work and relied on others to manage EY’s billing of Cintas for C&I services. By at least 2016, Respondent failed to perform a reasonable inquiry in response to information that EY staff under his supervision were billing Cintas for C&I services on a contingent fee basis. Respondent failed to investigate and halt the practice. As a result of his conduct, Respondent willfully aided and abetted and caused EY’s violation of 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”). Respondent also 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. Adam D. Bering, age 49, is a principal of EY. Bering is an attorney licensed in the state of Ohio. Respondent was the engagement partner for C&I services that EY provided to Cintas from July 2009 through June 2018.

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 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. EY provided C&I services to Cintas between July 2009 and August 2018. In obtaining pre-approval from the audit committee to provide those services, EY represented that it would bill for C&I services on a time and materials basis. EY's engagement letters with Cintas similarly represented that EY would bill for C&I services on a time and materials basis. Respondent was the engagement partner for C&I services for almost the entire period and knew that EY was supposed to bill Cintas on a time and materials basis. As the engagement partner, Respondent was responsible for overseeing the billing of Cintas for C&I services, including supervising staff who prepared EY's bills to Cintas for those services. Respondent knew that the auditor independence rules and EY's policies and procedures prohibited EY from providing audit and review services while also providing any services to Cintas on a contingent fee basis.

10. Notwithstanding representations that EY would bill for C&I services 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.

11. By at least 2016, Respondent became aware of information that EY staff under his supervision were billing Cintas for C&I services on a contingent fee basis. In March 2016, in response to questions he raised to EY staff about Cintas invoices, an EY manager emailed Respondent that “[h]istorically [Cintas] has agreed to pay us fees that reflect the amount of benefit we bring.” In that same email, the EY manager included a chart showing Cintas's tax credits and EY's corresponding fees, which were a percentage of the tax credits. Respondent failed to investigate the information in the email suggesting that a contingent fee arrangement existed between EY and Cintas.

12. In January 2017, Respondent did not respond to an email from an EY manager specifically raising concerns that EY had been invoicing Cintas on a contingent fee basis for C&I services. When the manager followed up during a phone call, Respondent directed the manager to discuss the issue with the person responsible for invoicing Cintas and otherwise failed to perform a reasonable inquiry as to the manager's concerns.

13. 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

14. 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.

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

16. 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.

17. By his conduct described above, Respondent willfully⁶ aided and abetted and caused Cintas to violate Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13

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).

⁶ "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).

promulgated thereunder.

18. 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 after finding that a person willfully violated or willfully aided and abetted the violation of any provisions of the federal securities laws or the rules and regulations thereunder. By his conduct described above, Respondent willfully aided and abetted EY's and 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

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

20. 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.

21. 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 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 attorney.

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 General Counsel.

D. In support of any application for reinstatement to appear and practice before the Commission as an attorney, Respondent shall provide a certificate of good standing from each state bar where Respondent is a member.

E. 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 is not currently suspended or disbarred as an attorney by a court of the United States (or any agency of the United States) or the bar or court of any state, territory, district, commonwealth, or possession;
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;
 - 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; and

- f. has not been subject to disciplinary action by a bar, court or agency of any state for violations of applicable rules of professional conduct, 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 or any criminal law enforcement investigation.
- 6. That Respondent is not the subject of any complaints to, or investigations by, the bar or court of any state, territory, district, commonwealth, or possession, except to the extent that such complaints concern the conduct that was the basis for the Order;
- 7. That Respondent has complied with any and all orders, undertakings, or other remedial, disciplinary, or punitive sanctions resulting from any action taken by the bar or court of any state, territory, district, commonwealth, or possession, or other regulatory body; and
- 8. That Respondent undertakes to notify the Office of General Counsel 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.

F. 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;
- 2. The circumstances under which Respondent's membership in a state bar or any court for which Respondent was a member has lapsed or otherwise is no longer active and an explanation of why for each; and
- 3. Respondent's plans for any future appearance or practice before the Commission.

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

H. 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 G, 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.

I. 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 G, 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.

J. If the Commission declines to reinstate Respondent pursuant to Paragraphs H and I, 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 attorney.

K. Respondent Bering shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$10,000.00 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 Adam D.

Bering 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.

L. 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