

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97854 / July 7, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-19831

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In the Matter of	:	
	:	ORDER APPROVING PLAN
	:	OF DISTRIBUTION AND
VEREIT, INC.,	:	AUTHORIZING TRANSFER
	:	OF FAIR FUND
Respondent.	:	
_____	:	

On June 23, 2020, the United States Securities and Exchange Commission (the “Commission”) issued an Order Instituting Cease-and-Desist Proceeding Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (the “Order”)¹ against VEREIT, Inc. formerly known as American Realty Capital Properties, Inc. (“ARCP” or “Respondent”), a real estate investment trust (“REIT”), primarily engaged in the business of acquiring, owning, and managing single-tenant commercial real estate properties. By February 2014 ARCP had grown to be the nation’s largest publicly-traded net lease REIT. This proceeding arose from ARCP’s violations of the antifraud and books and records provisions of the federal securities laws. ARCP —acting through its then Chief Financial Officer, Brian S. Block (“Block”), and its then Chief Accounting Officer, Lisa McAlister (the “CAO”) —falsified its reported results and manipulated the Company’s “Adjusted Funds from Operations” or “AFFO,” a key non-GAAP performance metric relied on by ARCP management, investors, and analysts to assess ARCP’s financial performance from at least May 2014 until the Company’s initial disclosure of their misconduct on October 29, 2014. In addition to announcing the preliminary results of its internal investigation which found intentional misconduct, ARCP also announced the resignations of Block and the CAO at the request of the audit committee, and that the Company investigation was ongoing and had been expanded to include fiscal year 2013 because Block and the CAO had key roles in the preparation of such filings. The closing price of ARCP’s stock on the day of this announcement, declined by approximately 19 percent from the prior day’s close.

The Commission ordered the Respondent to pay an \$8,000,000 civil money penalty to the Commission. The Commission also created a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalty paid can be distributed to investors harmed by the Respondent’s conduct described in the Order (the “Vereit Fair Fund”). Respondent ARCP has

¹ Securities Act Rel. No. 10793 (June 23, 2020).

paid in full. The Fair Fund, comprised of the \$8,000,000 paid by the Respondent, has been deposited in a Commission-designed account at the U.S. Department of the Treasury.

Previously, on July 16, 2019, the Commission filed a complaint (the “Complaint”) against AR Capital, LLC (“AR Capital”), Nicholas S. Schorsch (“Schorsch”), and Block (collectively, the “Civil Action Defendants”). As alleged in the Complaint, AR Capital sponsored and externally managed REITs, including ARCP and two publicly held, non-traded REITs: American Realty Capital Trust III, Inc. (“T3”) and American Realty Capital Trust IV, Inc. (“T4”). ARCP completed a merger with T3 in February 2013 and with T4 in January 2014. The Complaint further alleged that contrary to shareholder disclosures, AR Capital, acting through Block and Schorsch, inflated several aspects of incentive fees “that enriched the Defendants at the expense of the REITs and their shareholders, and that Defendants made additional related misstatements in subsequent ARCP public filings with the Commission, including in quarterly and annual reports on Forms 10-K and 10-Q. The Complaint also alleged that Civil Action Defendants’ misleading presentation of agreements—purportedly for purchasing furniture, fixtures, and equipment necessary for the respective T3 or T4-related post-merger operations and reimbursing AR Capital for certain “unreimbursed expenses”—in public filings with the Commission, resulted in the Civil Action Defendants wrongfully obtaining at least \$7.27 million in unsupported compensation. The Complaint alleged the Civil Action Defendants’ actions relating to these agreements also resulted in recording false entries on ARCP’s books and records.

The Division of Enforcement (the “Division”) has concluded that the allegations in the Civil Action’s Complaint and in this Administrative Proceeding both involve an underlying, overarching fraudulent scheme by ARCP acting through Block. Importantly, the initial disclosure of the AFFO fraud (the subject of the Administrative Proceeding settlement) is the same date, October 29, 2014, used in the distribution plan approved by the Court in the Civil Action (the “AR Capital Plan”). This disclosure related to a variety of matters impacted by ARCP’s fraud. Given this confluence of violative conduct, it was not possible to disaggregate the amount of inflation in ARCP’s market price based on each of the impacted matters. Thus, it could not be determined with certainty or specificity what harm each investor incurred. As a result of this uncertainty, the AR Capital Plan seeks to compensate all holders of ARCP securities at the time of the disclosure who purchased or acquired shares at the time of the T3 merger or later, which would include those investors who purchased during the time of the AFFO fraud. Because of this same uncertainty, it is fair and reasonable for the funds collected in the Administrative Proceeding to be distributed through the Civil Action for distribution in accordance with the Court’s approved AR Capital Plan.² Further, a single distribution process is a more efficient use of resources and allows the harmed investors to recover a greater portion of their losses, than would two separate distribution processes.

² This distribution should not be understood to compensate “holders” of securities, which the Commission has traditionally not done. While this plan will result in distributions to investors who purchased ARCP securities before the beginning of the AFFO fraud, it is the Commission staff’s belief that there was one overarching scheme that encompassed both the AR Capital fraud and the AFFO fraud and these funds will be used to compensate victims of that overall scheme, just as the Civil Action funds are currently being used.

On May 31, 2023, the Commission published a Notice of Proposed Plan of Distribution and Opportunity for Comment (the “Notice”)³ pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plan (the “Commission’s Rules”).⁴ The Notice advised interested persons that they could obtain a copy of the proposed plan of distribution (“Proposed Plan”) from the Commission’s public website at <http://www.sec.gov/litigation/fairfundlist.htm> or by submitting a written request to Nancy Chase Burton, United States Securities and Exchange Commission, 100 F. St. NE, Washington, D.C. 20549-5876.

The Notice also advised that all persons desiring to comment on the Proposed Plan could submit their comments, in writing, no later than thirty (30) days from the date of the Notice (1) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street NE, Washington, D.C. 20549-1090; (2) by using the Commission’s Internet comment form (<https://www.sec.gov/litigation/admin.htm>); or by sending an email to rule-comments@sec.gov. The Commission received no negative comments on the Proposed Plan during the comment period.

The Proposed Plan provides for the transfer of the Vereit Fair Fund, plus any accrued interest, less any taxes and fees, to the Civil Action for distribution to harmed investors in accordance with the AR Capital Plan approved by the Court.

The Division, therefore, now requests that the Commission approve the Proposed Plan as published and authorize the transfer of the Vereit Fair Fund, less any taxes and expenses, to the Civil Action for distribution to harmed investors in accordance with the AR Capital Plan approved by the Court.

Accordingly, it is hereby ORDERED that:

- A. Pursuant to Rule 1104 of the Commission’s Rules, 17 C.F.R. § 201.1104, the Proposed Plan is approved, and the approved Plan of Distribution shall be posted simultaneously with this order on the Commission’s website at www.sec.gov; and
- B. In accordance with Rule 1102(a) of the Commission’s Rules, 17 C.F.R. § 201.1102(a), the Commission staff shall transfer the Vereit Fair Fund, plus any accrued interest, less any taxes and fees, to the Civil Action for distribution to harmed investors in accordance with the AR Capital Plan approved by Court.

By the Commission.

Vanessa A. Countryman
Secretary

³ Exchange Act Rel. No. 97625 (May 31, 2023).

⁴ 17 C.F.R. § 201.1103.