

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 97625 / May 31, 2023

ADMINISTRATIVE PROCEEDING

File No. 3-19831

In the Matter of

VEREIT, INC.,

Respondent.

:
:
:
:
:
:
:
:
:
:

**NOTICE OF PROPOSED PLAN
OF DISTRIBUTION AND
OPPORTUNITY FOR COMMENT**

Notice is hereby given, pursuant to Rule 1103 of the United States Securities and Exchange Commission’s (“Commission”) Rules on Fair Fund and Disgorgement Plans (“Commission’s Rules”), 17 C.F.R. § 201.1103, that the Division of Enforcement has submitted to the Commission a proposed plan of distribution (the “Proposed Plan”) for the distribution of monies paid by VEREIT, Inc. formerly known as American Realty Capital Properties, Inc. (“ARCP” or the “Respondent”) in the above-captioned matter.

On June 23, 2020, 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 the Respondent. ARCP was a real estate investment trust (“REIT”), primarily engaged in the business of acquiring, owning, and managing single-tenant commercial real estate properties that by February 2014 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 (the “CFO”), 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

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

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 has paid in full. The Vereit 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.

OPPORTUNITY FOR COMMENT

Pursuant to this Notice, all interested persons are advised that they may obtain a copy of the Proposed Plan from the Commission's public website at <http://www.sec.gov/litigation/fairfundlist.htm>. Interested persons may also obtain a written copy of the Proposed Plan by submitting a written request to Nancy Chase Burton, United States Securities and Exchange Commission, 100 F St. NE, Washington, D.C. 20549. All persons who desire to comment on the Plan may submit their comments, in writing, no later than thirty (30) days from the date of this Notice: (a) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; (b) by using the Commission's Internet comment form (<http://www.sec.gov/litigation/admin.shtml>); or (c) by sending an e-mail to rule-comments@sec.gov.

Comments submitted by email or via the Commission's website should include "Administrative Proceeding File No. 3-19831" in the subject line. Comments received will be publicly available. Persons should submit only information they wish to make publicly available.

THE PROPOSED PLAN

The Proposed Plan provides for the transfer of the Vereit Fair Fund, plus accrued interest, less any taxes and fees, to the related civil action, *Securities and Exchange Commission v. AR Capital, LLC*, No. 19-cv-06603-AT (S.D.N.Y.) (the "Civil Action"), for distribution to harmed investors in accordance with the Court's approved distribution plan.

By the Commission.

Vanessa A. Countryman
Secretary