

May 14, 2024

Ernst & Young
ATT: Mr. Robert Franklin Hatch
One Manhattan West, 395 9th Avenue
New York 10001

By email: robert.hatch@ey.com

Dear Mr. Hatch,

Arbor Realty Trust, Inc.

We write to you in your capacity as Auditor of Arbor Realty Trust, Inc. (“**Arbor**”), a position you have held since 2003, and refer to our previous letter to you dated January 8, 2024 (a copy of this letter is attached to this one).

We have recently become aware that Arbor has financed purchases of assets from its own foreclosures with Arbor loans, via off-balance sheet entities run by former Arbor associates, and entirely financed with Arbor equity capital. **This is fraud.**

- Arbor has financed 99% of the “non-controlling interest” equity of an off-balance sheet entity run by a former VP of Arbor, whose investment in the entity was also financed by Arbor. They share an office.
- The off-balance sheet entity acquires foreclosed Arbor properties at an apparent premium.
- **The purchase of the foreclosed properties is financed by an Arbor bridge loan**, supplementary to the off-balance sheet entity’s deposit, also financed by Arbor. **Arbor does not disclose related party transactions of this nature** (the related party being itself).
- **Arbor does not recognize losses on these foreclosures** by financing the sale of foreclosed properties to off-balance sheet entities.
- These transactions allow Arbor to feign arm’s-length transactions with off-balance sheet entities without disclosing conflicts of interest. Arbor retains 100% of the risk involved in these transactions.
- **Arbor has fraudulently overstated the value of its loan book through undisclosed, off-balance sheet, related party transactions.**

The off-balance sheet entity, in this instance, is AWC Real Estate Opportunity Partner I LP (**AWC**), who is in turn controlled by A. Walker & Co, a “minority owned” (1%) and operated.

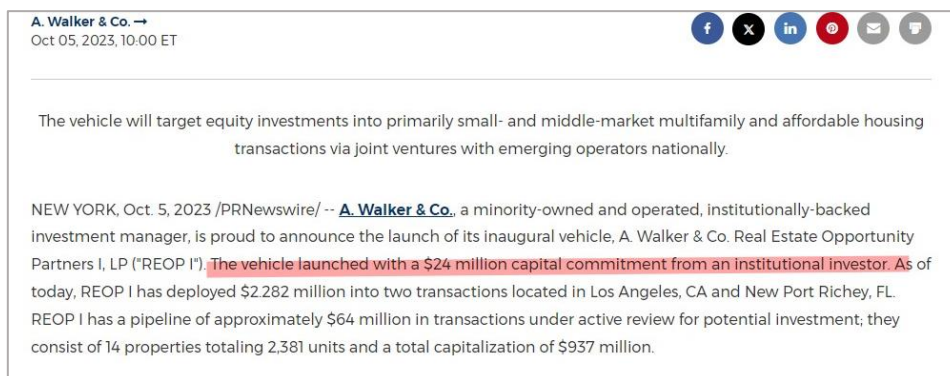


Figure 1 – Austin Walker LinkedIn extract¹

¹ <https://www.prnewswire.com/news-releases/a-walker-co-launches-new-joint-venture-equity-investment-vehicle-301948294.html>



AWC’s institutional backer is Arbor, who owns 99% of the project(s). The remaining 1% is held by the GP of AWC, Austin Walker (a former VP of Arbor) who ‘bought-in’ to the investment (1%) with a \$900k loan from Arbor. Obviously, we note that these investment amounts do not proportionally add up. This also deserves scrutiny.

AWC Real Estate Opportunity Partners I LP (“AWC”). In the fourth quarter of 2023, we committed to a \$24.0 million investment (of which \$13.0 million was funded at December 31, 2023) for an initial 99% noncontrolling interest in a fund whose objective is to make investments in sustainable affordable housing structures, with the intention to bring in additional partners. In addition, we entered into an agreement with the general partner to provide a loan, up to a maximum of \$0.9 million, to fund a portion of their equity contributions. In the fourth quarter of 2023, this fund purchased our equity interest in North Vermont Avenue (described below) at a discount for \$1.3 million, which was recorded as a reduction to our investment in AWC. The remaining capital contribution was used to fund additional qualified purchases.

Figure 2 – Arbor 2023 Annual Report extract

AWC shares an office with Arbor’s New York main office.

2. Principal Place of Business and Contact Information			
Name of Issuer AWC Real Estate Opportunity Partners I LP			
Street Address 1 375 PARK AVENUE, SUITE 3000		Street Address 2	
City NEW YORK	State/Province/Country NEW YORK	ZIP/Postal Code 10152	Phone No. of Issue 646-963-6366
3. Related Persons			
Last Name A. Walker & Co GP, LLC	First Name General Partner	Middle Name	
Street Address 1 375 Park Avenue, Suite 3000		Street Address 2	
City New York	State/Province/Country NEW YORK	ZIP/Postal Code 10152	

General: 800.Arbor.10 | Financing: 833.5

New York

375 Park Avenue, Suite 3000
New York, NY 10152
800.ARBOR.10

Figure 3 – Arbor and AWC addresses

AWC, through a Delaware shell company, bought a Houston Multifamily Portfolio, **Westchase Houston**, with a further \$95.25m “loan” from Arbor Realty.

Arbor had previously foreclosed on the Westchase portfolio, representing one of the largest failures in Jay Gajavelli’s Applesway Group.

Arbor Realty pursues foreclosure of Applesway-linked apartments

Latest case comes on the heels of delinquency on a \$60M loan

Arbor Realty's Ivan Kaufman and The Estates at Westchase (LinkedIn, The Estates at Westchase, Getty)

APR 3, 2024, 1:00 PM

Arbor Realty is set to foreclose on a piece of a Westchase multifamily portfolio linked to Applesway Investment Group after the group became delinquent on a \$60 million loan.

By Brandon Sams

Figure 4 – Arbor Realty pursues foreclosure of Applesway-linked apartments²

² <https://therealdeal.com/texas/houston/2024/04/03/arbor-realty-to-foreclose-on-more-applesway-apartments-in-houston/>



Auditor's Responsibility

Given the above, we reiterate our belief that Arbor's loans have been improperly impaired. If credit models provided by management do not reflect this, then you must further scrutinize this model. We note the following:

ASC 310-10-35-16

A loan is impaired when, based on current information and events, it is probable that a creditor will be unable to collect all amounts due according to the contractual terms of the loan agreement. All amounts due according to the contractual terms means that both the contractual interest payments and the contractual principal payments of a loan will be collected as scheduled in the loan agreement.

ASC 310-10-35-22

When a loan is impaired (see paragraphs 310-10-35-16 through 35-17), a creditor shall measure impairment based on the present value of expected future cash flows discounted at the loan's effective interest rate, except that as a practical expedient, a creditor may measure impairment based on a loan's observable market price, or the fair value of the collateral if the loan is a collateral-dependent loan

Consolidation

We note that AWC and all of its subsidiaries must be consolidated.

ASC 810-10

15-14 A legal entity shall be subject to consolidation under the guidance in the Variable Interest Entities Subsections if, by design, any of the following conditions exist. (The phrase *by design* refers to legal entities that meet the conditions in this paragraph because of the way they are structured. For example, a legal entity under the control of its equity investors that originally was not a VIE does not become one because of operating losses. The design of the legal entity is important in the application of these provisions.) . . .

c. The equity investors as a group also are considered to lack the characteristic in (b)(1) if both of the following conditions are present:

1. The voting rights of some investors are not proportional to their obligations to absorb the expected losses of the legal entity, their rights to receive the expected residual returns of the legal entity, or both.
2. Substantially all of the legal entity's activities (for example, providing financing or buying assets) either involve or are conducted on behalf of an investor that has disproportionately few voting rights. This provision is necessary to prevent a primary beneficiary from avoiding consolidation of a VIE by organizing the legal entity with nonsubstantive voting interests. Activities that involve or are conducted on behalf of the related parties of an investor with disproportionately few voting rights shall be treated as if they involve or are conducted on behalf of that investor. The term *related parties* in this paragraph refers to all parties identified in paragraph 810-10-25-43, except for de facto agents under paragraph 810-10-25-43(d).

For purposes of applying this requirement, reporting entities shall consider each party's obligations to absorb expected losses and rights to receive expected residual returns related to all of that party's interests in the legal entity and not only to its equity investment at risk.

Figure 5 –Deloitte Accounting Research Tool³

It beggars' belief that this structure, established in 2023, was not created for the sole purpose of bailing out Arbor with Arbor's own money. Investors should also be privy to every one of AWC's subsidiaries, their investments, and transactions with Arbor. There are many such transactions.

We further note that Arbor has various investments in equity affiliates in the same industry. These investments deserve immense scrutiny, which we will also participate in, as your office has not appeared to take this matter seriously enough.

³ <https://dart.deloitte.com/USDART/home/codification/broad-transactions/asc810-10/roadmap-consolidation/chapter-5-determining-whether-a-legal/5-4-nonsubstantive-voting-rights>



Viceroy has identified various other transactions, spoken with various whistleblowers, and observed various suspicious transactions at Arbor since we published our report in November 2023.

We firmly believe that you have consistently failed to act, in your capacity as auditor, to assure the financial statements of Arbor are free of material misstatements, and to assure internal reporting controls are up to the standard required of a >\$2b listed entity.

These lapses in judgement on your part will be brought to the attention the PCAOB. We believe Arbor's audit deserves intense scrutiny; a service we believe you are well equipped to perform. We understand your job is not to look for fraud, which is why we have brought it to you on a silver platter.

We remain at your service to field questions or provide documentation which may assist in your audit.

Please do not hesitate to contact us via email at viceroym@viceroymresearch.com.

Yours faithfully

Viceroy Research Team

cc. Mr. Cameron Darden
cameron.darden.ap@ey.com
info@ey.com