

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3278 / October 30, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16386

In the Matter of

TRACI J. ANDERSON, CPA,
TIMOTHY W. CARNAHAN, AND
CYIOS CORPORATION

ORDER TO SHOW CAUSE AND DIRECTING
SUPPLEMENTAL BRIEFING

At summary disposition, the Division of Enforcement contended—and I concluded—that because an August 2010 PCAOB settlement order barred Traci J. Anderson from associating with a registered public accounting firm, she was also prohibited under Section 105(c)(7)(B) of the Sarbanes-Oxley Act of 2002 (as amended in 2010) from being associated with any issuer in an accountancy or financial management capacity. *See Traci J. Anderson, CPA*, Admin. Proc. Rulings Release No. 2786, 2015 SEC LEXIS 2280, at *8-10 (June 9, 2015). I therefore held that Anderson violated Section 105(c)(7)(B) because she was associated with CYIOS Corporation—an issuer, but not a registered public accounting firm—in an accountancy or financial management capacity without the consent of the PCAOB or the Commission. *Id.* at *8-11, *23.

After I resolved the parties' summary disposition motions, however, the Court of Appeals for the District of Columbia Circuit ruled that it would be impermissibly retroactive to impose certain associational bars authorized by the Dodd-Frank Wall Street Reform and Consumer Protection Act for conduct occurring before the Act's effective date. *Koch v. SEC*, 793 F.3d 147, 157-58 (D.C. Cir. 2015).

Upon reconsideration, I note that the deficient audit work for which the PCAOB barred Anderson was performed between 2007 and 2009. Div. Ex. 5. This conduct occurred before the July 22, 2010, effective date of Dodd-Frank, which amended Section 105(c)(7)(B) to make it unlawful for a person barred from associating with a registered public accounting firm to willfully associate with any issuer in an accountancy or a financial management capacity, without the consent of the PCAOB or the Commission. *See* 15 U.S.C. § 7215(c)(7)(A), (B) (2010); Pub. L. No. 111-203, §§ 4, 982(f), 124 Stat. 1376, 1390, 1929-30 (2010). Prior to Dodd-Frank and throughout the time of Anderson's deficient audit work that formed the basis of the PCAOB order, Section 105(c)(7)(B) did not make such an issuer association unlawful by virtue of being barred from associating with a registered public accounting firm. *Compare* Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, § 105(c)(7), 116 Stat. 745, 763-64 (2002) *with* Dodd-

Frank, Pub. L. No. 111-203, § 982(f), 124 Stat. 1376, 1929-30 (2010). In other words, before July 22, 2010, a registered public accounting firm associational bar carried no collateral consequence under Section 105(c)(7)(B) with respect to associating with issuers not registered as public accounting firms.

I therefore ORDER the Division to SHOW CAUSE why construing Section 105(c)(7)(B) to have prohibited Anderson and CYIOS from their association is not impermissibly retroactive. See *Landgraf v. USI Film Prods.*, 511 U.S. 244 (1994); *Koch*, 793 F.3d at 157-58.

Specifically, the Division's submission should address:

1) “[W]hether Congress has expressly prescribed [Section 105(c)(7)(B)]’s proper [temporal] reach.” *Landgraf*, 511 U.S. at 280.

2) “[W]hether [Section 105(c)(7)(B), if applied to Anderson,] would impair rights [she] possessed when [she] acted, increase [her] liability for past conduct, or impose new duties with respect to transactions already completed.” *Id.*

3) “[W]hether [Section 105(c)(7)(B)] attaches new legal consequences to events completed before its enactment.” *Id.* at 270.

The Division is not limited to these questions and may identify other relevant issues for consideration. The Division's submission is due November 13, 2015. Respondents may file a response to the Division's submission by November 25, 2015.

The parties are also encouraged to address the relevance, if any, of the fact that recent PCAOB settlement orders barring individuals from associating with registered public accounting firms note that “[a]s a consequence of the bar, the provisions of Section 105(c)(7)(B) of [Sarbanes-Oxley] will apply,” whereas the PCAOB order imposed against Anderson included no such language. See, e.g., *David A. Aronson, CPA*, PCAOB Release No. 105-2015-034, at 10 n.25 (Oct. 2, 2015), http://pcaobus.org/Enforcement/Decisions/Documents/David_A_Aronson.pdf.

Cameron Elliot
Administrative Law Judge