

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

Administrative Proceedings Rulings
Release No. 6626 / July 11, 2019

Administrative Proceeding
File No. 3-16386

In the Matter of

**Traci J. Anderson, CPA,
Timothy W. Carnahan, and
CYIOS Corporation**

**Order Denying Respondents'
Motion for Certification
of Previous Orders
for Interlocutory Review and
Notice Following Final
Prehearing Conference**

Respondents' Motion for Certification of Previous Orders

Respondents Timothy W. Carnahan and CYIOS Corporation submitted to my office a "Petition to the Commission for an Interlocutory Review." I construe this submission as a motion for certification of four previous orders for interlocutory review under Commission Rule of Practice 400(c)(2)¹: the orders of October 18, 2018, and April 24, June 24, and July 2, 2019.² The motion also requests, without supporting argument, that the proceeding be

¹ 17 C.F.R. § 201.400(c)(2). Although the submission's caption suggests that it is a petition to the Commission under Rule 400(a), I am addressing it to the extent Respondents are requesting certification under Rule 400(c). *See* 17 C.F.R. § 201.400(c).

² Mot. at 1, 3; *see Anderson*, Admin. Proc. Rulings Release No. 6620, 2019 SEC LEXIS 1622 (ALJ July 2, 2019); *Anderson*, Admin. Proc. Rulings Release No. 6613, 2019 SEC LEXIS 1482 (ALJ June 24, 2019); *Anderson*, Admin. Proc. Rulings Release No. 6549, 2019 SEC LEXIS 961 (ALJ Apr. 24, 2019); *Anderson*, Admin Proc. Rulings Release No. 6223, 2018 SEC LEXIS 2894 (ALJ Oct. 18, 2018).

stayed and a subpoena be revoked.³ For the reasons that follow, I DENY Respondents' motion.

In the July 2 order, I denied Respondents' motion for reconsideration of a previous denial of a motion to reconsider.⁴ In that order, I noted that the Respondents presented no basis to reconsider the previous denial.⁵ To certify that ruling for interlocutory review, I would have to find that "there is substantial ground for difference of opinion" on a "controlling question of law" in the ruling.⁶ Respondents have shown no basis for saying there is substantial ground for difference of opinion regarding whether Respondents showed a basis to reconsider previous rulings. Accordingly, I deny the portion of the motion seeking certification of the July 2 order.

Insofar as Respondents seek to certify the rulings in the June 24, April 24, or October 18 orders, the motion is denied as untimely. An application for certification must be submitted within five business days of a ruling,⁷ and over two weeks to more than eight months have elapsed since those rulings.

Finally, as noted above, Respondents identify no basis to stay the proceeding or quash the issued subpoena. I decline to afford that relief.

Notice Following Final Prehearing Conference

I held a telephonic prehearing conference yesterday attended by the Division of Enforcement and Carnahan, on behalf of himself and CYIOS. We discussed hearing logistics and confirmed the parties' understanding the hearing will commence at 9:30 a.m. EDT on July 17, 2019, at Securities and Exchange Commission headquarters, Hearing Room 2, 100 F St. NE, Washington, D.C. 20549. I indicated that each party will have the opportunity for a ten minute opening statement and that I might allow for closing statements of no more than ten minutes each, dependent on how the hearing progresses. Carnahan stated that Respondents do not intend to call any witnesses or submit exhibits.

³ Mot. at 5.

⁴ *Anderson*, 2019 SEC LEXIS 1622, at *1–2.

⁵ *Id.*

⁶ 17 C.F.R. § 201.400(c)(2)(i).

⁷ 17 C.F.R. §§ 201.160(a), 400(c)(2).

I also considered the Division’s oral renewal of its request that I take official notice under Commission Rule of Practice 323⁸ of certain trading activity in CYIOS’s stock. I previously declined to take official notice of “CYIOS’s stock trading activity” but provided the Division the opportunity to renew such request after it explained what material facts were to be noticed.⁹ In the prehearing conference, the Division represented that it has a 2015 declaration from a staff member regarding the stock price and trading volume of CYIOS’s stock for seven years preceding the staff member’s search on a reputable public website that maintains historical stock trading information. Given this representation, I indicated that I would grant that portion of the Division’s motion and take official notice of the stock price and trading volume of CYIOS’s stock during the period in the report covered by the staff member’s declaration once the declaration is part of the record.

James E. Grimes
Administrative Law Judge

⁸ 17 C.F.R. § 201.323.

⁹ *Anderson*, Admin. Proc. Rulings Release No. 6622, 2019 SEC LEXIS 1706, at *2–3 (ALJ July 10, 2019).