

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21314

In the Matter of

ALAN J. MARKOWITZ, CPA,

Respondent.

**DIVISION’S UNOPPOSED MOTION FOR EXTENSION OF TIME
FOR THE PARTIES TO FILE STATUS REPORT**

The Division of Enforcement (the “Division”), without opposition from Respondent Alan J. Markowitz (“Markowitz”), respectfully moves for a 7-day extension of time for the parties to file a status report, and states:

1. On February 28, 2023, the Commission issued against Markowitz an Order Instituting Proceedings pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e) of the Commission’s Rules of Practice (“OIP”).

2. On May 30, 2023, Markowitz filed a complaint for declaratory and injunctive relief against the Commission in the U.S. District Court for the Southern District of New York, seeking, among other things, a declaration that the Commission’s administrative proceeding against Markowitz is unconstitutional and an injunction to enjoin the Commission from continuing this proceeding. *See Markowitz v. SEC*, No. 1:23-cv-04495-AT (S.D.N.Y. May 5, 2023) (“District Court Action”).

3. On June 30, 2023, the United States Supreme Court granted the Commission's petition for a writ of certiorari in *SEC v. Jarkesy*, 143 S. Ct. 2688 (Mem) (June 30, 2023). The petition raised three questions regarding the Commission's administrative proceedings:

- a. Whether statutory provisions that empower the Commission to initiate and adjudicate administrative enforcement proceedings seeking civil penalties violate the Seventh Amendment;
- b. Whether statutory provisions that authorize the Commission to choose to enforce the securities laws through an agency adjudication instead of filing a district court action violate the nondelegation doctrine; and
- c. Whether Congress violated Article II by granting for-cause removal protection to administrative law judges in agencies whose heads enjoy for-cause removal protection.

4. Given the nature of the questions, on July 11, 2023, the Division, without opposition from Markowitz, moved to stay this proceeding until after the Supreme Court's disposition of *Jarkesy*. On August 7, 2023, the Commission granted the Division's request and ordered that this proceeding and any previously prescribed deadlines be postponed indefinitely. The Commission also ordered the parties to file, no later than 30 days after the disposition of *Jarkesy*, a status report discussing the impact of *Jarkesy* on this proceeding, if any, and any other relevant matters.

5. The Supreme Court issued the *Jarkesy* decision on June 27, 2024. *SEC v. Jarkesy*, 144 S. Ct. 2117 (2024). Since then, the Division has commenced a process of internal consultation and ongoing conferral with Markowitz's counsel regarding any potential effect of *Jarkesy* on this proceeding and the District Court Action. This process is ongoing.

6. As such, the Division respectfully requests a 7-day extension of time, through and including August 2, 2024, for the parties to file a status report.

7. The parties have conferred and agree to the proposed extension, and recognize that the Commission's indefinite stay of this proceeding is continuing.

WHEREFORE, the Division respectfully moves for a 7-day extension of time for the parties to file a status report.

CERTIFICATE OF CONFERRAL

The undersigned have conferred with counsel for Markowitz who do not oppose the requested relief herein.

Dated: July 26, 2024

Respectfully submitted,



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CERTIFICATE OF SERVICE

Pursuant to Rule 150 of the Commission's Rules of Practice, I hereby certify that on July 26, 2024, the foregoing document was filed using the eFAP system and has been served by email on the following persons entitled to notice:

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