

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 77683 / April 21, 2016

ACCOUNTING AND AUDITING ENFORCEMENT ACT  
Release No. 3769 / April 21, 2016

Admin. Proc. File No. 3-17134

In the Matter of  
  
Timothy Quintanilla, CPA

Petition filed: March 25, 2016  
Last brief received: April 1, 2016

ORDER DENYING MOTION TO LIFT TEMPORARY SUSPENSION  
AND DIRECTING THAT A HEARING BE HELD

On February 25, 2016, we instituted administrative proceedings against Timothy Quintanilla, CPA, under Commission Rule of Practice 102(e)(3)(i)(A),<sup>1</sup> and temporarily suspended him from appearing or practicing before the Commission as an accountant (the “Order”), based on his having been enjoined from violating antifraud and related provisions of the federal securities laws.<sup>2</sup> Quintanilla now requests that we lift that suspension for 30 days to give him time to “wind up his public audit practice . . . .” For the reasons discussed below, we deny Quintanilla’s request. We will leave the temporary suspension in place and set the matter down for a hearing before an administrative law judge in accordance with Rule of Practice 102(e)(3)(iii).<sup>3</sup>

<sup>1</sup> 17 C.F.R. § 201.102(e)(3)(i)(A) (“The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.”).

<sup>2</sup> *Timothy Quintanilla, CPA*, Exchange Act Release No. 77231, 2016 WL 738057 (Feb. 25, 2016).

<sup>3</sup> 17 C.F.R. § 201.102(e)(3)(iii) (providing procedure to challenge temporary suspension and authorizing the holding of a related hearing).

## I. Facts

In November 2012, we brought a civil action against Quintanilla alleging that he violated the securities laws by misrepresenting that the 2006 through 2008 financial statements of Electronic Game Card, Inc. (“EGMI”) were audited in accordance with Public Company Accounting Oversight Board (“PCAOB”) standards, and that those statements “present[ed] fairly, in all material respects,” EGMI’s financial position.<sup>4</sup> The civil complaint alleged that Quintanilla and his audit team failed to investigate red flags that would have uncovered fraud in EGMI’s financial statements, and that they failed to audit significant portions of EGMI’s balance sheet.<sup>5</sup> The complaint further alleged that, to conceal their audit failures, employees under Quintanilla’s supervision created and backdated documents for the EGMI audit file shortly before a PCAOB inspection.<sup>6</sup>

On December 4, 2015, Quintanilla consented to entry by the district court of a final judgment permanently enjoining him from future violations of Sections 10(b), 10A(a)(1), and 10A(b)(1) of the Securities Exchange Act of 1934, and Exchange Act Rule 10b-5, and Section 17(a) of the Securities Act of 1933.<sup>7</sup> Based on that injunction, we issued the Order temporarily suspending Quintanilla, and ordered that the temporary suspension become permanent unless Quintanilla filed a petition to lift it within 30 days after service of the Order. The Order further provided that, if Quintanilla filed such a petition, we would “either lift the temporary suspension, or set the matter down for hearing . . . or both.”<sup>8</sup>

On March 25, 2016, Quintanilla filed a petition to lift his temporary suspension. Quintanilla does not challenge our authority to impose the temporary suspension and states that, when he consented to the injunction, he “understood that the SEC would subsequently seek a permanent bar . . . which was agreed to during settlement discussions.” Rather, Quintanilla requests that we lift the temporary suspension for 30 days so that his “issuer client can file [its] quarterly report on Form 10-Q which work [Quintanilla] began performing prior to receiving the Order.” After the 30 day period, Quintanilla states that “the Commission may enter a permanent bar against” him. The Division of Enforcement opposes Quintanilla’s petition asserting, among other things, that Quintanilla’s conduct involved egregious fraud over a three year period and that he has offered no “evidence recognizing his wrongdoing” or “any assurances against future violations.”

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<sup>4</sup> *Quintanilla*, 2016 WL 738057, at \*1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at \*2.

<sup>7</sup> *Id.* at \*1. Quintanilla consented to the judgment without admitting or denying the allegations of the complaint (except as to jurisdiction). Final Judgment, *SEC v. Cole, et al.*, No. 12-cv-8167 (RJS) (S.D.N.Y. Dec. 4, 2015).

<sup>8</sup> *Quintanilla*, 2016 WL 738057, at \*2.

## II. Discussion

Rule 102(e)(3)(iii) provides that, upon receipt of a timely petition to lift a temporary suspension, “the Commission shall either lift the temporary suspension, or set the matter down for hearing at a time and place designated by the Commission, or both, and, after opportunity for hearing, may censure the petitioner or disqualify the petitioner from appearing or practicing before the Commission for a period of time or permanently.”<sup>9</sup> We have determined to deny Quintanilla’s request to lift the temporary suspension for 30 days, and to instead set the matter down for a hearing. In issuing the Order, we found it “appropriate and in the public interest” to temporarily suspend Quintanilla because he had been permanently enjoined from violating the federal securities laws. Quintanilla has provided no reason to question that conclusion.

Instead, Quintanilla contends that, when he consented to the injunction in district court, he was not advised that the Commission would issue a temporary suspension, and understood that he “would have time to wind up his public audit practice and would receive notice when the Commission initiated its permanent bar proceedings.” But Quintanilla, who continues to be represented by the same counsel who represented him in the district court action,<sup>10</sup> does not explain the basis for his understanding, and, in any event, he was on notice of the Rule 102(e)(3) procedures that we follow in imposing the temporary suspension. Those procedures contemplate entry of a temporary suspension under Rule 102(e)(3)(i) within 90 days of the entry of final judgment.<sup>11</sup> Quintanilla’s asserted reason for lifting the suspension is to provide him time to review an issuer’s 10-Q filing; in light of the serious allegations in the civil complaint and his consent to a final judgment in that proceeding, it would be inappropriate to permit him to do so.<sup>12</sup> Other than stating that he worked on this filing prior to the Order’s entry, he provides no assurances or evidence that his demonstrated inability to properly comply with the securities laws would not impact this issuer or other clients in the remainder of his public audit practice.

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<sup>9</sup> 17 C.F.R. § 201.102(e)(3)(iii).

<sup>10</sup> *SEC v. Cole, et al.*, No. 12-cv-8167 (RJS) (S.D.N.Y.).

<sup>11</sup> *See* 17 C.F.R. § 201.102(e)(3) (“No order of temporary suspension shall be entered by the Commission pursuant to paragraph (e)(3)(i) of this rule more than 90 days after the date on which the final judgment or order entered in a judicial or administrative proceeding described in paragraph (e)(3)(i)(A) or (e)(3)(i)(B) has become effective . . .”). We temporarily suspended Quintanilla 83 days after the final judgment.

<sup>12</sup> In its opposition to Quintanilla’s motion, the Division “respectfully submits that the Commission should . . . issue an order permanently barring him from appearing or practicing before the Commission.” Our rules, however, do not contemplate the imposition of such sanction at this stage, before a hearing has been held and a decision by a law judge issued. *See* Rule 102(e)(3)(iii), 17 C.F.R. § 201.102(e)(3)(iii). We do not mean to suggest any view as to the outcome of this proceeding.

Inconvenience to his ability to wind down his audit practice does not change our view that a temporary suspension remains in the public interest.<sup>13</sup>

Accordingly, IT IS ORDERED that Timothy Quintanilla, CPA's petition to lift the temporary suspension is denied, and that the temporary suspension will remain in effect pending a hearing and decision in this matter; it is further

ORDERED that this proceeding be set down for a public hearing before an administrative law judge in accordance with Commission Rule of Practice 110. As specified in Rule of Practice 102(e)(3)(iii), the hearing shall be expedited in accordance with Rule of Practice 500; and it is further

ORDERED that the administrative law judge shall file an initial decision no later than 210 days from the date of service of this order.

By the Commission.

Brent J. Fields  
Secretary

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<sup>13</sup> *R. Scott Peden, Esq.*, Exchange Act Release No. 75135, 2015 WL 3562620, at \*2 (June 9, 2015) (denying petition to lift temporary suspension and setting matter down for hearing where petitioner had not provided "any basis to question or revisit" the Commission's determination that the temporary suspension was in the public interest under Rule 102(e)(3) because of the permanent injunction entered in district court).