UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 85321 / March 14, 2019

Admin. Proc. File No. 3-18867

In the Matter of

DANIEL JOSEPH TOUIZER

ORDER DENYING RESPONDENT'S MOTION TO STAY AND GRANTING RESPONDENT'S REQUEST TO FILE HANDWRITTEN SUBMISSIONS

On October 12, 2018, the Commission issued an order instituting administrative proceedings ("OIP") against Daniel Joseph Touizer pursuant to Section 15(b) of the Securities Exchange Act of 1934.[1] The OIP alleged that Touizer had pled guilty to conspiracy to commit mail and wire fraud and instituted proceedings to determine if the allegations were true and what remedial action should be taken against Touizer. Touizer is pro se and currently resides at a federal correctional facility. On December 21, 2018, the Commission received Touizer's motion to stay the administrative proceeding "pending the outcome" of his appeal of his guilty plea to the criminal information that serves as the underlying basis for the Commission's "follow-on" administrative proceeding against him. The Division of Enforcement opposes Touizer's stay request. Touizer has also separately requested permission to file his submissions in this administrative proceeding in handwritten form; the Division does not oppose that request.

Touizer cites Rule of Practice 401(c) to support his stay request. Rule 401(c) permits motions for stays by persons aggrieved by a Commission order "who would be entitled to review in a federal court of appeals."[2] That rule is inapplicable here because the Commission has not yet entered a final order, reviewable by an appellate court, that we could consider staying.[3]

Although Rule 401 is inapplicable, we will consider Touizer's motion as a request for an extension of time, postponement, or adjournment under Rule 161.[4] Rule of Practice 161

---

1 *Daniel Joseph Touizer*, Exchange Act Release No. 84416, 2018 WL 4951797 (Oct. 12, 2018).

2 17 C.F.R. § 201.401(c).

3 *See Paul Free, CPA*, Exchange Act Release No. 66260, 2012 WL 266986, at *2 & n.5 (Jan. 26, 2012).

4 17 C.F.R. § 201.161.

authorizes us to order postponements for "good cause shown."[5] In deciding whether to grant a postponement, we "adhere to a policy of strongly disfavoring such requests, except in circumstances where the requesting party makes a strong showing that the denial of the request or motion would substantially prejudice their case."[6] We believe that Touizer has failed to make the showing of prejudice required to postpone this proceeding.

Touizer argues that he would be prejudiced by a denial of his stay request because, if his appeal succeeds, this would "materially extinguish the allegations set out in the [OIP]." But Exchange Act Section 15(b)(6) permits the Commission to impose sanctions on the basis of a qualifying conviction without regard to whether that conviction is on appeal.[7] The pendency of an appeal is generally an insufficient basis upon which to prolong a Commission proceeding.[8] Such a postponement could delay this proceeding significantly.[9] As a result, once a conviction has been entered, further "challenges in the criminal case do not bear on" follow-on administrative proceedings unless and until those challenges are successful.[10] Nor can Touizer collaterally attack the validity of his conviction in this proceeding.[11]

The Commission has held repeatedly that a pending postconviction motion is not a basis to postpone an administrative proceeding.[12] In *Jon Edelman*, the Commission denied a petition for an emergency stay of a follow-on proceeding while the respondent pursued postconviction

---

5 17 C.F.R. § 201.161(a).

6 17 C.F.R. § 201.161(b).

7 *See* 15 U.S.C. § 78o(b)(6); *Charles Phillip Elliott*, Exchange Act Release No. 31202, 1992 WL 258850, at *3 (Sept. 17, 1992) (follow-on proceedings are "concerned with the factual existence of [respondent's] conviction and its public interest implications," and these warranted a bar under Exchange Act Section 15(b)(6) even though respondent's "conviction is currently on appeal"), *aff'd*, 36 F.3d 86, 87 (11th Cir. 1994) ("Nothing in [Section 15(b)(6)'s] language prevents a bar to be entered if a criminal conviction is on appeal.").

8 *See Free*, 2012 WL 266986, at *2.

9 *See Id.*

10 *David G. Ghysels*, Exchange Act Release No. 62937, 2010 WL 3637005, at *5 n.32 (Sept. 20, 2010), *bars vacated by Kenneth E. Mahaffy, Jr.*, Exchange Act Release No. 68462, 2012 WL 6608201 (Dec. 18, 2012).

11 *See, e.g.*, *Joseph P. Galluzzi*, Exchange Act Release No. 46405, 2002 WL 1941502, at *3 (Aug. 23, 2002).

12 *See, e.g.*, *Ira William Scott*, Advisers Act Release No. 1752, 1998 WL 658791, at *2 n.8 (Sept. 15, 1998) ("We need not await the outcome of any postconviction proceeding in order to proceed."); *William F. Lincoln*, Exchange Act Release No. 39629, 1998 WL 80228, at *3 (Feb. 9, 1998) (rejecting argument that follow-on proceeding was "premature" and that the "Commission should wait" until the resolution of a pending appeal of a conviction). .

relief from his underlying conviction, observing that "[t]he public interest demands prompt enforcement of the securities laws, even while other government proceedings are under way. Accordingly, indefinite stays for the purposes of pursuing other relief are inappropriate."[13] So too here. If Touizer's postconviction motion is successful, he may petition the Commission for reconsideration of any remedial action imposed in this proceeding.[14]

Touizer states that he "expects to utilize elements of his appeal brief . . . to prove his innocence and defend this [Commission administrative] proceeding," and that it would be unfair to have to devote his "limited time and resources" to both his criminal appeal and this proceeding. But the fact that Touizer is pursuing an appeal of his conviction while defending this proceeding does not override the strong public interest in the prompt enforcement of the federal securities laws.[15] Because Touizer has not made the "strong showing" of "substantial[] prejudice" required under Rule 161 to override the strong public interest in the prompt enforcement of the federal securities laws,[16] we deny Touizer's request for postponement.

Touizer did not file an answer to the OIP with his motion for a stay. In light of the need to allow time for inbound mail processing at the federal correctional facility where Touizer resides, we direct Touizer to file his answer within 45 days from the date of this order. We remind the parties of their obligation, within fourteen days of service of the answer, to "conduct a prehearing conference, . . . in person or . . . by telephone or other remote means," and to file a statement with the Office of the Secretary as set forth in the OIP.[17]

As for the form of Touizer's pleadings, Rule of Practice 152 requires, among other things, submissions in administrative proceedings to "be typewritten or printed in twelve-point or larger typeface."[18] Touizer claims that he is unable to comply with this requirement, or the other formatting requirements in Rule 152, because of his inability to access word processing and printing resources due to his incarceration. He requests leave to file all of his submissions in this proceeding in handwritten form. The Division does not oppose Touizer's request. Under the circumstances, we have determined that it is appropriate to grant Touizer's request.

Accordingly, it is ORDERED that Daniel Joseph Touizer's request for a stay or postponement of this proceeding is denied; and it is further

---

13 *Jon Edelman*, Exchange Act Release No. 30096, 1996 SEC LEXIS 3560, at *2-3 (May 6, 1996).

14 *See id.* at *3.

15 *See Free*, 2012 WL 266986, at *2 & n.10.

16 17 C.F.R. § 201.161(b); *see Edelman*, 1996 SEC LEXIS 3560, at *3.

17 *Touizer*, 2018 WL 4951797, at *2.

18 17 C.F.R. § 201.152(a)(2).

ORDERED that Touizer shall file his answer in accordance with Rule of Practice 220[19] by delivering it to the proper prison authorities no later than April 29, 2019, for forwarding to the Commission's Office of the Secretary;[20] and it is further

ORDERED that Touizer's request to file his submissions in handwritten form is granted.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Acting Secretary

---

[19] 17 C.F.R. § 201.220(c) (specifying the required contents of an answer); *see also Touizer*, 2018 WL 4951797, at *3 (stating that if Touizer "fails to file the directed answer" he may be deemed in default and the proceedings may be determined against him").

[20] *See Houston v. Lack*, 487 U.S. 266, 266 (1988) (under federal prison mailbox rule, "pro se prisoners' notice of appeal are 'filed' at moment of delivery to prison authorities for forwarding to district court"); *Adams v. United States*, 173 F.3d 1339, 1341 (11th Cir. 1999) (noting that this "mailbox rule [applies] to other filings by pro se prisoners").