

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3784/April 14, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17180

In the Matter of

ELLIOT R. BERMAN, CPA and
BERMAN & COMPANY, P.A.

ORDER GRANTING EXTENSION

On March 25, 2016, the Securities and Exchange Commission issued an order instituting proceedings (OIP) against Respondents. On April 8, I postponed the hearing in this matter and ordered the parties file a joint prehearing conference statement by April 29. *Elliot R. Berman, CPA*, Admin. Proc. Rulings Release No. 3774, 2016 SEC LEXIS 1302. On April 14, counsel for Respondents submitted a notice of appearance and a motion requesting an extension of Respondents' deadline to answer the OIP. According to the motion, the parties agree that Respondents were served with the OIP on March 25, 2016, and that Respondents' answer is currently due April 15. The motion requests an extension of the answer deadline to May 13, 2016, noting that Respondents' counsel was only recently retained and that counsel for the Division of Enforcement consents.

Under Rule 161(a), a hearing officer "may, for good cause shown," extend any time limits for filing any papers. 17 C.F.R. § 201.161(a). But the hearing officer "should 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 . . . would substantially prejudice their case." 17 C.F.R. § 201.161(b)(1). "In determining whether to grant any requests," I must "consider, in addition to any other relevant factors: (i) [t]he length of the proceeding to date; (ii) [t]he number of postponements, adjournments or extensions already granted; (iii) [t]he stage of the proceedings at the time of the request; (iv) [t]he impact of the request on the hearing officer's ability to complete the proceeding in the time specified by the Commission; and (v) [a]ny other such matters as justice may require." *Id.* (formatting altered). The first three factors weigh in favor of granting the request because the proceeding is at a preliminary stage and there have been no extensions. The fourth factor—my ability to complete the proceeding in the 300-day timeline—weighs against granting the requested extension. While the loss of time is significant, foregoing any further extensions, the adverse impact will be manageable. And because Respondents' counsel was recently retained, it would be in the interest of justice to grant the extension.

The motion for extension is GRANTED. Respondents' answer is due May 13, 2016.

Jason S. Patil
Administrative Law Judge