

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

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 6806/January 7, 2021

ADMINISTRATIVE PROCEEDING

File No. 3-18346

In the Matter of

CYNTHIA HOLDER, CPA,	:	
JEFFREY WADA, CPA,	:	ORDER
DAVID MIDDENDORF, CPA,	:	
THOMAS WHITTLE, CPA, and	:	
DAVID BRITT, CPA	:	

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on January 22, 2018, pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e)(1)(ii) and (iii) of the Commission's Rules of Practice. The OIP alleges that Respondents engaged in improper professional conduct related to unauthorized disclosures of confidential information from the Public Company Accounting Oversight Board. On February 6, 2018, the proceeding was stayed pending the resolution of *United States v. Middendorf*, No. 1:18-cr-36 (S.D.N.Y.), a parallel criminal action, on motion of the United States Attorney for the Southern District of New York (United States Attorney). *Cynthia Holder, CPA*, Admin. Proc. Rulings Release No. 5573, 2018 SEC LEXIS 380 (A.L.J.).

Thereafter, the proceeding was stayed: On June 21, 2018, "[i]n light of the Supreme Court's decision in *Lucia v. SEC*," 138 S. Ct. 2044 (2018), the Commission stayed all pending administrative proceedings, including this one; the stay was operative through August 22, 2018. *Pending Admin. Proc.*, Securities Act of 1933 Release Nos. 10510, 2018 SEC LEXIS 1490; 10522, 2018 SEC LEXIS 1774 (July 20, 2018). On August 22, 2018, the Commission ended the stay and ordered a new hearing in each affected proceeding before an administrative law judge who had not previously participated in the proceeding, unless the parties expressly agreed to alternative procedures, including agreeing that the proceeding remain with the previous presiding administrative law judge. *Pending Admin. Proc.*, Securities Act Release No. 10536, 2018 SEC LEXIS 2058, at *2-3. Accordingly, the proceeding was reassigned to the undersigned. *Pending Admin. Proc.*, Admin. Proc. Rulings Release No. 5955, 2018 SEC LEXIS 2264 (C.A.L.J. Sept. 12, 2018). The stay ordered by the previous presiding administrative law judge was continued in effect. *Cynthia Holder, CPA*, Admin. Proc. Rulings Release No. 6137, 2018 SEC LEXIS 2728 (A.L.J. Oct. 3, 2018).

It appears that the parallel criminal proceeding has now concluded, with the judgment as to Thomas Whittle, which occurred on December 4, 2020. *See Middendorf*, ECF Nos. 392, 400, 403, 488, and 498. Accordingly, the United States Attorney should comment, by January 22, 2021, on any need to further continue the stay.

The proceeding has ended as to Respondent Holder, when the Commission accepted her Offer of Settlement. *Cynthia Holder, CPA*, Exchange Act Release No. 87642, 2019 SEC LEXIS 4871 (Nov. 29, 2019). The Commission issued orders of forthwith suspension pursuant to Rule 102(e)(2) as to Respondents Middendorf and Wada following their convictions in late 2019. *David Middendorf, CPA*, Exchange Act No. 87969, 2020 SEC LEXIS 3404 (Jan. 15, 2020); *Jeffrey Wada, CPA*, Exchange Act Release No. 87970, 2020 SEC LEXIS 3478 (Jan. 15, 2020). The parties should comment, by January 27, 2021, on the effect of Respondents Wada's, Middendorf's, Whittle's, and Britt's convictions and Respondents Middendorf's and Wada's orders of suspension, on the issues to be decided in this proceeding.

IT IS SO ORDERED.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge

Served by email on all parties