UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Admin. Proc. File No. 3-16430

In the Matter of the Application of

MARK E. LACCETTI

For Review of Action Taken by PCAOB

OPPOSITION TO MOTION TO TERMINATE STAY OF BOARD DISCIPLINARY SANCTION

September 13, 2016

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OPPOSITION TO MOTION TO TERMINATE STAY

Mark E. Laccetti respectfully opposes the motion of the Public Company Accounting Oversight Board ("Board") to lift the automatic stay of the Board's disciplinary sanction against him. Mr. Laccetti requests that the Commission keep the stay in place at least until the time to seek appellate review of the Commission's order has run. Lifting the stay before that date would impose irreparable harm on Mr. Laccetti without furthering the public interest.

Under Section 105(e)(1) of the Sarbanes-Oxley Act of 2002, an "[a]pplication to the Commission for review . . . of any disciplinary sanction of the Board shall operate as a stay of any such disciplinary action, unless and until the Commission orders . . . that no stay shall continue to operate." 15 U.S.C. § 7215(e)(1). Rule of Practice 401(e) allows a "[p]erson aggrieved" by the stay to "make a motion to lift the stay." 17 C.F.R. § 201.401(e)(1). If the stay is lifted, "the Board shall report the sanction to . . . the public." 15 U.S.C. § 7215(d)(1).

Here, the Commission issued an order on September 2, 2016 upholding the Board's disciplinary sanctions: a two-year bar on associating with a registered public accounting firm and an $85,000 civil penalty. Mr. Laccetti has 60 days to seek review of the order in a federal court of appeals. 15 U.S.C. § 78y(a)(1). For four reasons, the Commission should reject the Board's effort to lift the current stay at least until the 60 days to seek appellate review has run:

First, lifting the stay would impose irreparable harm on Mr. Laccetti. If the stay is lifted, the Board must "report the sanction" to "the public"—harming Mr. Laccetti's reputation by signaling that the Board's findings and sanctions are final and conclusive, when they may yet be overturned by a court of appeals. 15 U.S.C. § 7215(d)(1)(C), (2). Mr. Laccetti suffers this harm even if he subsequently obtains a separate stay of the Commission's order pending appeal as provided by the Exchange Act, 15 U.S.C. § 78y(c)(2) (either from the Commission or the court

of appeals). Thus, lifting the stay not only imposes irreparable harm on Mr. Laccetti, but also renders the Exchange Act's additional stay provisions ineffectual.

Second, lifting the stay would not serve the public interest or protect investors. In a normal case, allowing a bar on association to take effect might further those ends. But here, Mr. Laccetti undisputedly does not perform audits for public companies anymore, and has no intention to do so in the future. Indeed, the last audit of a public company on which Mr. Laccetti worked was the 2004 audit of Taro US at issue in these proceedings. R.D. 197 at 15. Thus, allowing the two-year bar to go into effect would have no practical impact in terms of the public interest or the protection of investors.

Third, the Board is not sufficiently "aggrieved" by the stay per Rule of Practice 401(e). The Board offers no argument that keeping the stay intact will impede its ability to ultimately collect the civil penalty from Mr. Laccetti. And, for the reasons noted above, any stake the Board has in furthering the public interest through enforcement of the bar is absent here, where Mr. Laccetti no longer performs audits for public companies. Moreover, the Board offers no justification for why—in a proceeding that has spanned some nine years and in which the Board itself took nearly two years to issue a decision—it is suddenly so pressing to lift the stay now instead of in a mere 60 days. Indeed, the Board offers no justification at all other than that the Commission has lifted the stay in prior cases that do not involve the unique facts here.

Fourth, keeping the stay in place preserves the status quo while the time to appeal runs. That is consistent with the principle that, for some purposes, an order or judgment is not final until the time to appeal has run. *See Riley v. Wooten*, 999 F.2d 802, 806 (5th Cir. 1993). Mr. Laccetti should thus be entitled to maintain the status quo at least until the time to appeal has run.

For these reasons, the Commission should allow the stay to remain in place. The stay should remain in effect at least through the 60-day period prescribed for Mr. Laccetti to decide whether to seek review of the Commission's decision and order. In the event that Mr. Laccetti seeks appellate review, the Commission should allow the stay to remain in effect through the pendency of the appeal.[1]

Respectfully submitted,

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[1] The Board contends that Mr. Laccetti's recourse in the event that he appeals is to seek a stay as provided for elsewhere in the Exchange Act. Mr. Laccetti may separately ask the Commission "to stay the effectiveness of [the order] pending judicial review . . . at any time during which the Commission retains jurisdiction over the proceeding." 17 C.F.R. § 201.401(c); *see also* 15 U.S.C. § 78y(c)(2). And he may also ask the court of appeals for a stay. 15 U.S.C. § 78y(c)(2). But these additional avenues to pursue a stay are not mutually exclusive with the automatic stay provided for in 15 U.S.C. § 7215(e)(1), and the Commission may keep that stay in place during the pendency of the appeal simply by declining to lift it.

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of September, 2016, I caused a copy of the foregoing Opposition to Motion to Terminate Stay of Board Disciplinary Action to be served upon J. Gordon Seymour, Luis de la Torre, and Jodie Dalton Young, counsel for the Public Company Accounting Oversight Board, via hand delivery and electronic mail addressed as follows:

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