

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17352

In the Matter of

**SAVING2RETIRE, LLC,
AND MARIAN P. YOUNG,**

Respondents.

MOTION TO STAY PROCEEDING

The Division of Enforcement (the “Division”) hereby respectfully moves for a stay of this proceeding, and in support, states as follows:

1. This proceeding was commenced by the filing of an Order Instituting Proceeding on July 19, 2016.
2. On October 19, 2017, following a hearing in this matter, the Court issued its first Initial Decision, and the Respondents petitioned for review. On September 12, 2018, the Chief ALJ issued an order reassigning this proceeding to a different ALJ, and the parties re-litigated the proceedings. On August 26, 2019, the Court issued a second “Initial Decision,” and Respondents again petitioned for review, which was granted. On December 11, 2019, the parties completed briefing. Thereafter, the Commission has issued 10 orders extending time to issue a decision. The current decision deadline is January 9, 2023.
3. On May 18, 2022, the United States Court of Appeals for the Fifth Circuit issued its opinion in *Jarkesy v. SEC*, 34 F.4th 446 (5th Cir. 2022). In *Jarkesy*, the Commission brought an administrative proceeding against respondents for various violations of the securities laws.

An administrative law judge conducted a hearing, and issued an initial decision against the respondents. The respondents appealed to the Commission, which entered an order finding respondents liable and ordering various remedies. The respondents then appealed to the Fifth Circuit, which vacated the Commission’s decision on multiple grounds. *Id.* at 465-66. First, the court held that, because the Commission ordered payment of civil money penalties for securities-law violations “akin to those” prosecuted at common law, the proceeding violated the respondents’ Seventh Amendment right to a jury trial. *Id.* at 457. Second, the court held that in giving the SEC complete discretion over whether to bring such actions in district court or as administrative proceedings, “Congress unconstitutionally delegated legislative power to the SEC by failing to give the SEC an intelligible principle by which to exercise the delegated power.” *Id.* at 459. Finally, the court held that statutory removal restrictions on the Commission’s administrative law judges were unconstitutional, although the court specifically did not address “whether vacating would be appropriate based on that defect alone.” *Id.* at 465-66. To date, no other circuits have entered such rulings or adopted such positions.

4. On October 21, 2022, the Fifth Circuit denied the Commission’s petition for rehearing and rehearing *en banc*. 34 F.4th 644 (5th Cir. 2022). Six judges of the Fifth Circuit voted to permit rehearing, and ten judges voted to deny rehearing. *Id.* at 644. The Fifth Circuit issued the mandate on October 21, 2022.

5. We remain of the view that the three grounds on which the Fifth Circuit vacated the Commission’s *Jarkesy* decision are legally erroneous for the reasons stated by the dissenting panel member and the judges who would have granted rehearing. But for the reasons set forth below we believe that an interim stay of this proceeding is warranted.

6. Respondents in this matter reside in Texas, and under Section 213(a) of the

Investment Advisers Act [15 U.S.C. §80b-13(a)], if the respondent resides in the Fifth Circuit, the respondent has the option of seeking review in the Fifth Circuit of a final order of the Commission.

7. Like *Jarkesy*, the present case involves adjudication by an administrative law judge, the awarding of penalties, and/or the choice to file an administrative proceeding rather than a district court action.

8. The Department of Justice (DOJ), which represents the Commission in the *Jarkesy* litigation, is allowed 90 days from the date the Fifth Circuit denied the Government's rehearing petition to file a petition for a writ of certiorari to the United States Supreme Court. See 28 U.S.C. §2101(c). DOJ is considering whether to do so.

9. If DOJ files such a petition, and if the petition is granted by the Supreme Court, the Court likely would provide clarification of the issues raised in *Jarkesy* that might have significant implications for this proceeding.

10. The Division believes that a stay is warranted and prudent, pending DOJ's decision on whether to file the petition for certiorari, the resolution of any such petition, and any decision by the Supreme Court of the issues in *Jarkesy*, or further order of the Commission.

WHEREFORE, the Division respectfully moves that this proceeding be stayed pending the filing of any petition for certiorari in *Jarkesy*, the resolution of any such petition, and any decision issued by the Supreme Court with regard thereto, or further order of the Commission.

Dated: December 9, 2022

Respectfully submitted,



Jennifer D. Reece
Texas Bar No. 00796242
United States Securities and Exchange Commission
801 Cherry Street, Suite 1900

Fort Worth, Texas 76102
Phone: (817) 978-6442
Fax: (817) 978-4927
reecej@sec.gov

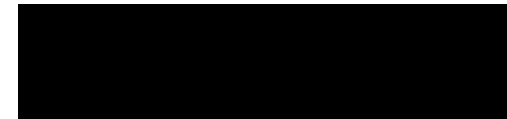
COUNSEL FOR THE
DIVISION OF ENFORCEMENT

CERTIFICATE OF SERVICE

In accordance with Rule 150 of the Commission's Rules of Practice, I hereby certify that true and correct copy of the foregoing document was served on the following persons on December 9, 2022, by the method indicated:

By UPS and email:
Office of Administrative Law Judges
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

By UPS and email (ycgc@comcast.net):
Saving2Retire, LLC
Marian P. Young
11323 Siamese Lane
Sugar Land, TX 77478



Jennifer D. Reece