United States of America
Before the
Securities and Exchange Commission

Administrative Procedure File 3-21841
In the Matter of the Application of Ahmed Mohiddin and George Weinbaum

For Review of PCAOB Action

George Weinbaum's Response to the PCAOB's Brief and Motion to Terminate Automatic Stay Imposed by Sarbanes-Oxley Act Section 105(e)(1)

March 27, 2024

I request the PCAOB's **evidence** I pose an "substantial" or even small investor threat by auditing SEC registrants. The PCAOB found no problems in nine of my audits. That's a better record than the Big Four's (BF)! The PCAOB had no problem with Adamant's audit, which restatement purportedly triggered the PCAOB investigation of my work. Consider, I had Adamant restate **despite** believing that might trigger a PCAOB investigation. How much more investor "protection" does the SEC want from me?

The PCAOB did **not** act against any Deloitte & Touche Leadership Opportunity Committee (LOC) member, in *D&T,* 105-2013-008 (2013) despite D&T auditing about 26,000 times the market cap (MC) of MJF and Associates. Does this show PCAOB innumeracy? I note the PCAOB employs an attorney who does not know five is more than two. I conclude the term "substantial harm" is just "lawyer talk". PCAOB, produce your calculation separating "substantial" from "insubstantial" harm or admit there is none. The current MC of all SEC registrants is about $51 trillion. Is any fraction of this "insubstantial" by PCAOB standards? Is say $51 million or one millionth "insubtantial"? Should the PCAOB use MC to allocate its enforcement actions (EAs)? Or has the PCAOB's no standards?

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The SEC should ask the PCAOB:

1. Does **any** statute of limitations (SOL) govern PCAOB EAs ?
2. If so, what is it?
3. What triggers the SOL for PCAOB EAs?
4. Does the PCAOB believe I should have told it of the SOL?
5. Does the PCAOB believe it should **not** be subject to the SEC's SOL for EAs?
6. When, it ever should I have asserted a SOL defense?
7. Has this case ever been in front of an Article III court?

The PCAOB began this case June 8, 2018. Should I have asserted the SOL on June 9, 2018? Or would the PCAOB assert I waived a SOL defense **no matter when** raised? Should I have claimed it June 8, 2022, four years after this case started? Had I would the PCAOB say the SOL defense was premature? Does the law require "idle acts"?

On February 2, 2024 the SEC filed a case against Brian Sewell and Rockwell Capital Management, LLC, 1:24cv-00137UNA. Paragraph 83 says the defendants "agreed to toll the statute of limitations applicable to the claims alleged herein during the period from January 2, 2023 through February 2, 2024". The PCAOB never asked me to toll any SOL. Can the SEC "end run" the EA SOL against CPAs by having the PCAOB bring them?

The PCAOB seemingly "hangs its hat" on procedure, **not** substance. I believe the SEC should focus on substance, **not** procedure or form. I claim there was no "trial on the merits" in this case and the PCAOB's hearing, was if anything, a "grand jury proceeding". New York State Court of Appeals Chief Justice Sol Wachtel said the typical grand jury will "indict a ham sandwich". I am a PCAOB "ham sandwich".

When the SEC last upheld a PCAOB action, it was reversed in *Lacetti v. SEC*, 883 F. 3d 724 (D.C., Cir., 2018). I cited *Lacetti* on May 19, 2023, so the PCAOB should know of it. "But the Board maintains (and the Commission agreed) that *Whitman's* analysis is not persuasive because *Whitman* dealt with the APA, not the Board's rules. The Board says its

rules are different. We disagree that the right to counsel guaranteed by the Board's rules **can reasonably be read to be less than the right to counsel guaranteed by the APA**. We find no meaningful distinction between the right to counsel in the APA and the right to counsel in the Boards rules", my emphasis, 727. I believe the DC Circuit would hold the same SOL for PCAOB and SEC EAs. What say you SEC Commissioners?

How does the PCAOB **know** my claims are "not likely to succeed"? Even if the PCAOB believed otherwise, would it say so? The PCAOB's board upholding a PCAOB hearing only means: the PCAOB "ratifies" itself.

The PCAOB claim lifting the stay will cause me no "irreparable injury" is **PREPOS-TEROUS!** Will the PCAOB also claim a CPA's practice bar is no "irreparable injury"? If so, why have a practice bar? Will say Brett Collings (BC), the attorney who does know five is more than two suffer a **greater** "irreparable injury" from being suspended from practice for say five years instead of two?

BC graduated from Georgetown in 2005, so I assume then 22, being born in 1983 and is now 41. Suppose BC intends to practice law until 70, 29 years from now. If barred from practice for two years he will have 27 (29-2) practice years left. He will never get the two "lost years" back. Can the PCAOB not see this? **PREPOSTEROUS!**

On September 2, 2016 the SEC released its 31-page PCAOB *Lacetti* affirmance. The PCAOB moved to terminate Lacetti's stay September 7, 2016, five days **after** the SEC decision. Are the cases "distinguished on the facts"? Is the PCAOB motion to terminate the automatic stay **now** because it believes it will lose this case on the merits and wants to harm me anyway? Am I a greater capital market threat than Lacetti? Was MJF a greater capital market threat than E&Y, which was not even charged in *Lacetti*? **PREPOSTEROUS!**

I believe the PCAOB's case against me was pursued in bad faith. Unequal treatment of small and large firm CPAs was noted by Senator Metcalf **48 years ago** in what I call the "Metcalf Report", see my April 5, 2022 submission, page 10.

"Under the general statute of limitations for civil penalty actions, the SEC has five years to seek such penalties. The question is whether the five-year clock begins to tick when the fraud is complete or when the fraud is discovered. ... As part of such enforcement actions, the SEC may seek civil penalties ... in which case a five-year statute of limitations applies. ... In 2008, the SEC brought a civil enforcement action against Alpert and Gabelli. According to the complaint from 1999 until 2002 Alpert and Gabelli allowed one GGGF investor--Headstart Advisers, Ltd.--to engage in 'market timing' in the fund", *Gabelli v. SEC,* 133 S. Ct. 1216, 1219 (2013). Albert and Gabelli "invoked the five-year statute of limitations in S 2462, pointing out that the complaint alleged market timing until August 2002 but was not filed until April 2008. The District Court agreed and dismissed the SEC's civil penalty claim as time barred. ... This case centers around the meaning of 28 USC S 2462: 'an action for the enforcement of any civil fine, penalty, or forfeiture ... shall not be entertained unless commenced within five years from the date when the claim first accrued',", 1220. "But we have never applied the discovery rule in this context, where the plaintiff is not a defrauded victim seeking recompense, but is instead the Government bringing an enforcement action for civil penalties. Despite the discovery rule's centuries old roots, the Government claims no lower court case before 2008 employing a fraud-based discovery rule in a Government enforcement action for civil penalties", 1221. "And even without filing suit, it can subpoena any documents and witnesses it deems relevant or material to an investigation", 1222. "But this case involves penalties, which go beyond compensation, which are intended to punish,

and label defendants wrongdoers. ... It would leave defendants exposed to Government enforcement action not only for five years after their misdeeds, but for an additional uncertain period into the future. Repose would hinge on speculation about what the Goverment knew, when it knew it, and when it should have known", 1223. Is a bar punitive, or isn't it?

"The ... SEC ... possess authority to investigate violations of federal securities laws and to commence enforcement actions in federal district court if its investigations uncover evidence of wrongdoing", *Kokesh v. SEC,* 137 S. Ct., 1635, 1637-1638 (2017). "Although Congress has since authorized the [SEC] to seek monetary penalties, the [SEC] has continued to seek disgorgement. ... Because SEC disgorgement operates as a penalty under S 2462, any claim for disgorgement in an SEC enforcement action must be commenced within five years of the date the claim accrued. ... Second, SEC disgorgement is imposed for punitive purposes. Sanctions imposed for the purpose of deterring infractions of public laws are inherently punitive because 'deterrence [is] not [a] legitimate nonpunitive governmental objectiv[e]'," 1638. This looks clear to me.

"A 5-year statute of limitations applies to any 'action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise', 1639. "As to the civil monetary penalties, the District Court determined that S 2462's 5-year limitations period precluded any penalties for misappropriation occurring prior to October 27, 2004--that is five years prior to the date the Commission filed the complaint. ... Statutes of limitations 'se[t] a fixed date when exposure to the specified Government enforcement efforts en[d]'," 1641. "The limitations period applies here if SEC disgorgement qualifies as either a fine, penalty, or forfeiture. We hold that SEC disgorgement constitutes a penalty", 1642. "Because disgorgement orders 'go beyond compensation, are intended to punish, and label

defendants wrongdoers' as a consequence of violating public laws. ... they represent a penalty and thus fall within the 5-year statute of limitations", 1645. This case began June 8, 2018, over five years ago.

"The Commerce Department charged Core Laboratories, Inc. (Core) with violating these provisions on various dates, with the last alleged violation occurring on August 1, 1978. [O]n January 26, 1984, the government began this action to enforce it. ... The Court has pointed out before, however, the hazards inherent in attempting to define for all purposes when a 'cause of action' first 'accrues'," *United States v. Core Laboratories*, 759 F. 2d 480, 481 (5th Cir., 1985). "A review of these cases clearly demonstrates that the date of the underlying violation has been accepted without question as the date when the claim first accrued, and, therefore, as the date on which the statute began to run", 482. "The progress of administrative proceedings is largely within the control of the Government. ... A limitations period that began to run only after the government concluded its administrative proceedings would thus amount in practice to little or none", 483. "Further, in none of the S 2462 cases cited above did any court hold the limitations period tolled during administative proceedings", *Core*, 484. PCAOB actions are administrative proceedings.

"At the outset *Thunder Basin* requires litigants and courts to ask whether a comprehensive review process' exists. .. What does that mean"?, *Axon Enterprise Inc. v. FTC*, 143 S. Ct. 890 (2023), Gorsuch concurring, 912. Good question. "While the Court reaches the right result today, its choice of the wrong path matters. ... It also matters because *Thunder Basin's* throw-it-in a-blender approach to jurisdiction imposes serious and needless costs on litigants and lower courts alike, consider some of the facts of Ms. Cochran's case that do not find their way into the court's opinion", Gorsuch concurring, 915. Facts, really.

> "The SEC charges Ms. Cochran with violating 'Rule 2-02(b)(1) of Regulation S-X ... as well as 'aid[ing] and abett[ing] ... Rule 2-02(b)(1) violations.' ... In English, the SEC alleged that Ms. Cochran had failed to complete auditing checklists, leaving certain sections of certain forms 'blank'. ... The agency brought these charges **even though there was 'no evidence' that the incomplete paperwork had resulted in any 'monetary harm to clients or investors'**," my emphasis, Gorsuch concurring, 916. No monetary harm?

"Reportedly, that ALJ made a practice of warning defendants during settlement discussions that he had 'never ruled against the agency's enforcement division'. ... It seems, though, Ms. Cochran didn't take the hint. She refused to settle and sought to represent herself in the hearing that followed", Gorsuch concurring, 916. For the record, Mark Dorfman never said anything like that. "In the end, the ALJ fined Ms. Cochran $22,500 and banned her from practising before the SEC as an accountant for at least five years", Gorsuch concurring, 916. "Ms. Cochran and Axon have already endured multi-year odysseys through the entire federal judicial system--and no judge yet has breathed a word about the merits of their claims. ... Not many possess the perserverance of Ms. Cochran and Axon. ... Agencies like the SEC and FTC combine the functions of investigator, prosecutor, and judge under one roof. They employ relaxed rules of procedure and evidence--rules they make for themselves. ... Meanwhile, some say the FTC has not lost an in-house proceeding in 25 years", Gorsuch concurring, 917. The PCAOB makes its own rules and judges its own cases.

"When a case eventually makes it way to an appellate court, judges sometimes defer to the agency's conclusions (especially when it comes to disputed questions of fact). ... Aware, too, that few can outlast or outspend the federal government, agencies sometimes use this as leverage to extract settlement terms they could not lawfully obtain any other way", Gorsuch concurring, 918. Did the PCAOB "extract a settlement" from "Miguel Figueroa (Figueroa) making him a "cooperating witness"? But MBD found Figueroa

credible. So? "Just as her hearing was about to start, her former boss settled his own case and then turned about to testify against Ms. Cochran", Gorsuch Concurring, 916.

A higher authority reconciles PCAOB treatment of me and D&T's LOC. After all, he sat on a high wall. Now Humpty Dumpty (HD), explain please. "'When I use a word', Humpty Dumpty said, in a rather scornful tone, 'it means just what I choose it to mean-neither more nor less.' 'The question is', said Alice, 'whether you can make words mean so many different things'. 'The question is', said Humpty Dumpty, 'which is to be master-that's all'." HD said this 159 years ago. Is it still good law? Yes! Cited at *United States* v. *Meyer*, 5 F. 4th 23 (11th Cir., 2022) footnote 2 and *Lopez v. Gonzalez*, 127 S. Ct. (2006) 625, 630. Thank you Justice Souter. The PCAOB uses words as it chooses.

"Finally, a preliminary injunction that awards the movant substantially all the relief he may be entitled to if he succeeds on the merits is similar to the 'Sentence first-Verdict afterwards' type of procedure parodied in Alice in Wonderland, **which is an anathema to our system of jurisprudence**", *SCFC LLC, Inc. v. Visa USA, Inc.*, 936 F. 2d 1096, 1099 (10th Cir., 1991) *(SCFC)*, my emphasis, affirmed in part at *O Centro Esipirita Beneficiente v. Ashcroft*, 389 F. 3d 973 (10th Cir., 2004). Is a PCAOB hearing in the USA or Wonderland?

Issuing injunctions is like a court considering lifting a stay. "In order to obtain preliminary injunction relief, the moving party must establish: (1) substantial likelihood that the movant will eventually prevail on the merits; (2) a showing that the movant will suffer irreparable injury unless the injunction issues; (3) proof that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) a showing that the injunction, if issued, would not be adverse to the public

interest", *SCFC*, 1098. I believe there is **no** merit to this case, the PCAOB suffers no injury from the stay, absent injury, point three is irrelevant and prohibiting me from practising accounting would **be adverse** to the public interest. By the PCAOB's standards, my audits are "nine for nine". That's better than **any** BF firm! I conclude PCAOB enforcement lawyers **private interest** is **the real interest in this case and lifting the stay.**

"We evaluate NASL's motion under the heightened standard applicable to mandatory preliminary injunctions. NASL has not demonstrated a clear likelihood of success on the merits of its antitrust claim against the USSF under 15 USC **S** 1. Accordingly, we AFFIRM the order of the District Court denying NASL's motion for a preliminary injunction, and we remand the matter for further proceedings on the merits of NASL's claims", *North American Soccer League v. US Soccer Feder.*, 883 F. 3d 32 , 33 (2nd Cir., 2018). "We conclude the NASL has not demonstrated a clear likelihood of success on the merits of the antitrust claim under the **heightened standard applicable to mandatory preliminary injunctions**", my emphasis, 34-35. "Courts refer to preliminary injunctions as prohibitory or mandatory. Prohibitory injunctions maintain the status quo pending resolution of the case, mandatory injunctions alter it", 36. I practice now. The PCAOB's stay lifting motion is analogous to a mandatory injunction.

Relief sought: motion denied, case dismissed.

Very truly yours,

[redacted]

George Weinbaum

CERTIFICATE OF SERVICE

I, George Weinbaum certify that today, March 27, 2024, I mailed three copies of my March 27, 2024 response to the PCAOB's March 1, 2024 Motion in Admin Proc. File 3-21841 to you. I also filed the response by e-mail to https:www.sec.gov/eFAP and cappoliij@pcaob.org. delatorrel@pcaob.org and sisulij@pcaob.org. I also mailed copies to each of them.

The response is nine pages long so needs no index to authorities cited or word count.

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George Weinbaum