

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 Public Company Accounting Board (PCAOB) Action

George Weinbaum's Notice of New Material and Response to the SEC's March 26, 2024 Notice

April 9, 2024

On March 5, 2024, *John Doe v. PCAOB*, 3:24-cv-00254 was filed in Tennessee. I believe some of its allegations are relevant to my case and I apprise you of them. "[T]he Board's disciplinary proceedings deprive Plaintiff of his right to a jury trial in violation of the Sixth and Seventh Amendments to the Constitution; (6) the Board's disciplinary process is systematically biased, secretive, and unfair in violation of the Due Process Clause of the Fifth Amendment to the Constitution and the 'fair procedures' requirement of Sarbanes-Oxley Section 15(a)", page 2. I objected to the PCAOB's 21 claims of being "fair", my July 27, 2023 submission, pages 7-8. I could only object to PCAOB actions **after** they occur. My challenge to the PCAOB's disciplinary proceedings is "as applied".

"The Board is not a 'court' ordained and established by Congress. Rather, ... Congress ordained and established the Board as a private corporation. As such, the **Board has no lawful power to decide cases and controversies, least of all ones to which it is an interested party**'," my emphasis, P 14. There has been no "fair" adjudication of my case. "The objective risk of bias is reflected in the due process maxim that 'no man can be a judge in his own case

and no man is permitted to try cases where he has an interest in the outcome'," *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1905-1906 (2016).

"To the extent the Board exercises any lawful power, that power is and must be exclusively *executive* in nature, not judicial", original italics, P 16. Thus SEC review of PCAOB action is unlike circuit court of appeals review of a district court ruling. SEC review is closer to a trial court proceeding.

"One of the bedrock prerequisites of fairness and due process of law is that adjudicators must not decide their own cases. ... Both the prosecutors and the hearing officer are paid employee-agents hired by the Board ", P 37. I raised this issue before and the PCAOB's 27-0 won-loss record in front of its hearing officers (HOs), appears to show bias.

"In Plaintiff's case and others ... the Board members, after initiating their disciplinary charges, curiously purport to doff their prosecutorial hats and don the robes of impartial appellate judges. ... In adjudicating those appeals, Board members necessarily evaluate and judge not only the decisions and conduct of their own employee-agents ... but also their own prior determination that the charges were likely meretorious", P 40. The SEC is **not** an appellate court. It is part of the executive.

"According to the Board's public website, when sitting as the purportedly impartial appellate adjudicator, the Board in its 22 years of existence has never overruled a hearing officer who ruled in favor of the Board's prosecutorial staff", P 44.

"In addition, prior to the hearing respondents get almost no discovery", P 51. Is the PCAOB subject to *Brady v. Maryland*, 83 S. Ct. 1194 (1963)? Despite PCAOB actions not being criminal, in the interest of fairness, should the PCAOB follow *Brady*?

"In addition to these significant limits on Board respondents' ability to discover evidence to defend themselves, respondents likewise have no access to potentially favorable legal precedents. ... Due to the Star Chamber secrecy provisions of Sarbanes-Oxley, ... respondents and their counsel (not to mention the public at large) are systematically denied the ability to discover and rely upon prior Board and hearing officer adjudications in which other respondents mounted a successful defense on dispositive or nondispositive issues—a critical means by which accused parties have defended themselves since time immemorial", P 53.

I claim the PCAOB uses secrecy to protect itself. Is the Statute of Limitations (SOL) for PCAOB actions a matter of "first impression" after 21 years?

"The Board is not a court of the United States within the meaning of Article III of the Constitution", P 61. Is Mark Dorfman (MBD) a Federal District Court Judge? Was he subject to 28 USC 455 which states in part, "Any justice, judge or magistrate judge of the United States shall disqualify himself in any proceedings in which his impartiality might be questioned. ... He knows that he, ... has ... any other interest that could be substantially affected by the outcome of the proceeding". Could MBD's ruling against the PCAOB affect his position?

"Upon information and belief, DEI staff issued its latest ABD in the middle of March, with only a two-week compliance deadline, knowing it would cause severe burden and disruption to Plaintiffs during the busiest period of the year for Plaintiffs and most other audit firms and auditors. ... At a minimum, DEI's staff's strategic timing shows little regard for the Board's professed mission to improve audit quality", *John Doe Corporation [JDC] v. PCAOB*, filed in Houston, March 27, 2024, 4:24-cv-1103, or the PCAOB's "fair" procedures. Does this PCAOB conduct potentially interfere with audits to potentially injure investors? Yet the PCAOB claims I am an investor threat. Has the PCAOB any other motions to throw at me? Motions possibly written between March and December 2023 to be released strategically timed to try to

prevent me from exposing the substance of the PCAOB's actions? Do the PCAOB's actions constitute "abuse of process"?

It bothered me why I did not hear from the PCAOB for nine months in 2023, until December. Now I **know** why. The PCAOB sat on its opinion so if I appealed, the appeal would have an April briefing date. Further the PCAOB filed a motion **with a brief due**. Will you SEC commissioners end this PCAOB conduct, or not? I think the PCAOB's conduct in my case and JDC's, is "admissible other acts conduct", for **both** cases, see FRE 404(b)(2). Do I put the PCAOB on trial here? Yes, why not? Where else? Is the SEC interested in this? Is the PCAOB is trying to overwhelm me with activity, to prevent my case's merits being reached? The totality of the PCAOB's conduct reminds me of *Graffam v Burgess*, 117 US 180 (1886), see my May 19, 2023 submission, pages 21-22.

"What is the scheme which has been carried out, and is now sought to be sustained in this court? Nothing more nor less than to keep possession of the complainant's property worth \$10,000, to satisfy a paltry claim of less than \$200", *Graffam*, page 186. A ratio of about 50 to 1, The D&T-MJF MC ratio is about 25,000 to 1. "It is insisted that the proceedings were all conducted according to the forms of law. Some of the most atrocious frauds are committed in that way. Indeed, **the greater the fraud intended, the more particular the parties to it often are to proceed according to the strictest forms of law**", my emphasis, *Graffam*, page 186. "From the cases we have cited we may draw the general conclusion that, if the inadequacy of the price is so gross as to shock the conscience, or if, in addition to gross inadequacy, the purchaser has been guilty of any unfairness, or have taken any undue advantage, ... then the sale will be regarded as fraudulent and void, ... Great inadequacy requires only slight circumstances of unfairness in the conduct of the party benefitted by the same to raise the presumption of fraud", *Graffam*, page 192. 25,000 to one? Is the PCAOB the party benefitted?

On April 1, 2024 I found Commissioner Gensler's statement, "The investing public benefits from the Division of Enforcement's work as a cop on the beat. Last year's fiscal results

demonstrate yet again the Division's effectiveness-- ... in **following the facts and the law wherever they lead** to hold wrongdoers accountable", my emphasis. Even if they lead to the PCAOB itself? Will the SEC don its Jack Webb hats and badges with respect to the PCAOB?

"Rule 15(d) of the Federal Rules of Civil Procedures plainly permits **supplemental amendments to cover events happening after suit**, and it follows, of course, that persons participating in these new events may be added if necessary. Such amendments are well within the **basic aim of the rules to make pleadings a means to achieve an orderly and fair administration of justice**", *Griffin v. School Board of Prince Edward City*, 377 US 218, 227 (1964), my emphasis. Five years from June 8, 2018 was June 8, 2023. Does the PCAOB object to my raising the SOL as a litigant, **not** as an adjudicator? Is the PCAOB interested in the "fair administration of justice"? Or *Alice in Wonderland* justice? Could the SEC circumvent the SOL by filing cases with its Administrative Law Judges instead of in federal district court?

"Federal Rule of Evidence 404(b) provides: 'Other crimes, wrongs, or acts--Evidence of other crimes, wrongs, or acts ... may however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident'," *Huddleston v. US*, 485 US 681, 682 (1988).

- . FRE 404(b) "which applies in both civil and criminal cases--generally prohibits the introduction of evidence of extrinsic acts that might adversely reflect on the actor's character, unless that evidence bears upon a relevant issue in the case such as motive, opportunity or knowledge. Extrinsic acts evidence may be critical to the establishment of the truth as to a disputed issue, **especially when that issue involves the actor's state of mind and the only means of ascertaining that mental state is by drawing inferences from conduct**", my emphasis, 685.

The PCAOB must believe George Weinbaum (GW) is a greater capital market threat than a Big Four (BF) firm's leadership. The PCAOB can say anything. "The sum of an eviden-

tiary presentation may well be greater than its constituent part'," 690. Shades of *US v White*, 124 F. 2d 181 (2nd Cir., 1941, Hand, J), my May 19, 2023 submission, page 25.

On March 28, 2024, the PCAOB released 105-2024-014, against PriceWaterhouse-Coopers (PWC) US. The case does not name Issuer A or disclose its market cap, nor PWC's audit fee. No PWC partner was named in the case, despite possibly being ten who might have known of acts impairing PWC's independence with respect to issuer A. The PCAOB ascribes PWC's ignoring its independence problem to a quality control issue. I find this PCAOB holding **PREPOSTEROUS!** There goes that word again. We do not know how much annually PWC expected from the proposed Joint Business Relationship (JBR). The PCAOB says "substantially more". Twice as much? 100 times as much? I find PWC's lack of a "written independence policy" irrelevant. The SEC has Reg S-X. Did PWC need more? Who believes no PWC partner saw the potential problem? Yet the PCAOB wants to bar me from practice for failing to stop Mohidin's being a nuisance. What does MBD think I should have done with Mohidin? When? It seems PWC was "hedging its bets" and wanted to keep Issuer A as an audit client until it was certain the JBR went through. PWC's \$2,750,000 penalty may seem large, but subjecting it to the "George Stewart" ratio, my May 19, 2023 submission, pages 11-12, may be small. If PWC's annual audit fee exceeded \$330,000 ($\$2,750,000 / 8.3333$), I say small.

More grist for the mill: Craig Seigel began my PCAOB odyssey **after** I insisted Adamant restate. PWC began consultation with the independence office **after** the PCAOB's January 2019 inquiry to PWC. Does anyone at the PCAOB believe no PWC partner saw the problem earlier? I conclude the PCAOB's findings with respect to PWC's quality control problems were phrased to avoid the **real** problem: PWC's wanting to retain two revenue streams, JBR

and audit. PWC didn't need any "policies and procedures" to ensure PWC personnel refer to the "authoritative literature" as needed. Are PWC partners professionals, or aren't they? Apparently a PWC tax partner realized the problem about a year before the PCAOB began its inquiry. Do any of you SEC Commissioners believe I am a greater capital market threat than the say ten PWC partners in question?

On March 31, 2024 at 9:35 PM I was "cruising" the SEC's website and found a March 26, 2024 notice. This filing, in part, is in response to that notice. On April 1, 2024, I received a PCAOB e-mail indicating I had five days to respond to its motion and did not respond. On March 27, 2024 at 10:59 AM I sent an e-mail, to delatorrel@pacobus.org, sisulij@pcaobus.org and cappolij@pcaobus.org. I received an eFAP Notice of Filing on March 27, 2024 at 12:06 PM. Supposedly, I also have a response due on April 11, 2024 in addition to one due April 23, 2024. Under these circumstances, is the April 11, 2024 date delayed?

The D.C. Circuit noted in *Lacetti*, "repetition does not equal logic". The PCAOB repeats itself. I repeat myself. I think the SEC should throw this case out, if for no other reason policy considerations. By throwing this case out, the SEC may "encourage" the PCAOB to spend its efforts on the BF, which firms alone are capable of inflicting measurable capital market harm. Commissioner Crenshaw noted the PCAOB was formed to stop "big" accounting fiascos. Even if the Adamant audit was defective, Adamant's market cap was 1 / 32,000,000 of the total at the relevant time. It was a Hester Peircian "foot-fault" of an audit.

The PCAOB exhibits scientism. Even the supposed 40% audit deficiency rate (ADR) is suspect. Suppose the inspectors have a 60-point "protocol". One audit has one problem, thus 98.3% of the audit was fine. Is this audit defective? Another audit has 30 problems, or a

50% ADR. Are these audits equally bad? Is only a "100%" audit acceptable? I do not believe "100%" audits exist. Does the PCAOB weight its ADR by percentages?

I claim the PCAOB reversed the burden of proof. See my April 5, 2022 submission pages 1 and 9. Also my May 19, 2023 submission, page 18 and my July 27, 2023 submission, which the PCAOB claims I needed permission to file, how self-serving, pages 13 and 20. Also a submission I was to file, pages, 14, 15, 30, 31, 50, 63 and 65. Would equity indicate I can file as many pages as MBD's supposed "findings"?

On July 5, 2023 the D.C. Circuit court of appeals issued an order in *Alpine Securities Corporation v. FINRA*. I quote it for you. "Further ordered that the emergency motion for injunction pending appeal be granted and the [FINRA] be enjoined from continuing the expedited enforcement proceeding against Alpine Securities Corporation pending further order of the court. Appellant has satisfied the stringent requirements for an injunction pending appeal", 2.

From Judge Walker's concurring opinion: "But here's the twist: Self-regulatory organizations are not government agencies. They are private organizations responsible for regulating securities brokers", 2-3. Is the PCAOB a federal agency, or not?

"It seeks an injunction pending appeal to block its expulsion from FINRA--the so-called 'corporate death penalty'-- while it argues its case. By granting Alpine's request, the Court preserves the status quo and allows full consideration of Alpine's constitutional argument. We will enjoin agency action when the party seeking the injunction is likely to win on the merits, it will suffer irreparable harm without the injunction, and the equities and public interest favor our intervention. ... Alpine would suffer an irreparable harm without an injunction because the ongoing FINRA enforcement proceedings would put it out of business. Plus, the resolution of claims by an unconstitutionally structured adjudicator is a 'here-and-now' injury that cannot be later reversed", 3, citing *Axon Enterprise v. FTC*, 598 US 175, 191 (2023).

I read MBD's 3 1 /2 day hearing in this case and findings of fact and concluded he was no "impartial" adjudicator. "An injunction would also be equitable and in the public interest. The public interest favors preventing the deprivation of individual rights and abuses of government power. ... If Alpine's constitutional challenge has merit, that is the case here it will be 'subject to an illegitimate proceeding, led by an illegitimate decision maker. .. The interests cutting the other way are not as strong. The public has an interest in timely enforcement against those who violate the law", 4.

Timely? The PCAOB took over five years with this case. I repeat, no matter what the PCAOB says, I believe I did nothing wrong. Also that MBD, knew what his job was, i.e., to sustain the PCAOB's position. Where's the evidence I'm wrong? With a 27-0 record, it appears beyond a reasonable doubt, that PCAOB HOs are **not** impartial.

"It would be odd if the Constitution prohibits Congress from vesting significant executive power in an unappointed and unremovable government administrator but allows Congress to vest such power in an unappointed and unremovable private hearing officer", 7-8. On this reasoning, why would a PCAOB HO have more rights than a FINRA HO? "To so hold could create a constitutional loophole. **It would suggest that Congress was free to fix the constitutional infirmity with the ALJs in *Lucia* simply by moving them outside of the Executive Branch**", my emphasis, 8. Is the SOL different for PCAOB and SEC enforcement actions? "'What cannot be done directly cannot be done indirectly. The Constitution deals with substance, not shadows'," 8. I agree. Or as I say, "One cannot do through another what he cannot do himself".

Very truly yours,

SEC - 4/09/24 - 10



George Weinbaum

CERTIFICATE OF SERVICE

I, George Weinbaum certify that today, April 9, 2024, I mailed three copies of my April 9, 2024 response to the SEC'S March 26, 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 cappolij@pcaob.org. delatorrel@pcaob.org and sisulij@pcaob.org. I also mailed copies to each of them.

The response is ten pages long so needs no index to authorities cited. The word count is 2,934.



George Weinbaum