BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.

Admin. Proc. File No. 3-21841

In the Matter of the Application of

AHMED MOHIDIN, CPA, and
GEORGE WEINBAUM, CPA,

For Review of Disciplinary Action Taken By the

PUBLIC COMPANY ACCOUNTING
OVERSIGHT BOARD

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD'S REPLY TO APPLICANT WEINBAUM'S UNTIMELY OPPOSITION TO THE MOTION TO TERMINATE THE STAY IMPOSED BY SECTION 105(e)(1) OF THE SARBANES-OXLEY ACT OF 2002

April 12, 2024

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TABLE OF CONTENTS

I. Introduction 1

II. Argument 2

A. Weinbaum's Opposition to Lifting the Stay Is Meritless 2

1. The Statute and SEC Rule Expressly Authorize the Relief Requested, and the Commission Should Apply the *Davis* Factors in Reaching its Determination on the Question of Whether to Lift the Stay 2

2. Weinbaum Has No Likelihood of Success on the Merits 4

3. Weinbaum Will Not Suffer Irreparable Injury 4

4. Weinbaum's Attempts to Downplay the Public Interest in Lifting the Stay Are Unavailing 6

B. Weinbaum's Opposition is Untimely 8

III. Conclusion 9

TABLE OF AUTHORITIES

Cases

Ahmed Mohidin, CPA, SEC Rel. No. 34-99857, 2024 WL 1284562 (Mar. 27, 2024) 9
Allen Holeman¸ SEC Rel. No. 34-86769, 2019 WL 4044065 (Aug. 26, 2019) 4
Axon Enterprise, Inc. v. FTC, 143 S. Ct. 890 (2023) 4
BDO China Dahua CPA Co., SEC Rel. No. 72753, 2014 WL 3827605 (Aug. 4, 2014) 8
Chi. Bd. Of Trade v. SEC, 883 F.2d 525 (7th Cir. 1989) 8
Christian Klein & Cogburn, *Inc.*, SEC Rel. No. 34-33424, 1994 WL 5037 (Jan. 5, 1994) 6
Colley v. James, 254 F. Supp. 3d 45 (D.D.C. 2017) 5
Davis Accounting Group, P.C., Admin. Proc. File No. 3-14370 (June 14, 2011) ..... passim
Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634 (D.C. Cir. 2008) 8
Dolphin & Bradbury, Inc., SEC Rel. No. 34-54143, 2006 WL 1976000 (July 13, 2006) 8
Edward M. Daspin, SEC Rel. No. 34-98554, 2023 WL 6307096 (Sept. 27, 2023) 9
Heckler v. Chaney, 470 U.S. 821 (1985) 8
Mark E. Laccetti, CPA, SEC Rel. No. 34-79138, 2016 WL 6137057 (Oct. 21, 2016) 2, 3
Paul H. Giles, SEC Rel. No. 34-92177, 2021 WL 2419849 (June 14, 2021) 5
Robbi J. Jones, SEC Rel. No. 34-91045, 2021 WL 396767 (Feb. 2, 2021) 3, 5
Rudolph v. Arthur Andersen & Co., 800 F.2d 1040 (11th Cir. 1986) 7
Schellenbach v. SEC, 989 F.2d 907 (7th Cir. 1993) 8
The Dratel Grp., *Inc.*, SEC Rel. No. 34-72293, 2014 WL 2448896 (June 2, 2014) 5
Thunder Basin Coal Co. v. Reich, 510 U.S. 200 (1994) 4
Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977) 6
Wis. Gas Co. v. FERC, F.2d 669 (D.C. Cir. 1985) 4

Statutes and Regulations

Sarbanes-Oxley Section 101(a), 15 U.S.C. § 7211(a) 6
Sarbanes-Oxley Section 105(e), 15 U.S.C. § 7215(e) 1, 3, 4
SEC Rule of Practice 150, 17 C.F.R. § 201.150 ..... 1, 9
SEC Rule of Practice 151(e)(3), 17 C.F.R. § 201.151(e)(3) 9
SEC Rule of Practice 154(b), 17 C.F.R. §§ 201.154(b) 1, 8

SEC Rule of Practice 160(a), 17 C.F.R. § 201.160(a) 1, 8
SEC Rule of Practice 401(d), 17 C.F.R. § 201.401(d) 3
SEC Rule of Practice 401(e), 17 C.F.R. § 201.401(e) 1, 2

Rules

PCAOB Rule 3502 6

PCAOB Auditing Standards

AS 2905, *Subsequent Discovery of Facts Existing at the Date of the Auditor's Report* 7

I. INTRODUCTION

On March 1, 2024, the Public Company Accounting Oversight Board (Board or PCAOB) filed a motion under Section 105(e) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7215(e) (Sarbanes-Oxley), and Rule of Practice 401(e) of the Securities and Exchange Commission (Commission or SEC), 17 C.F.R. § 201.401(e), to lift the stay on the Board's imposition of associational bars and censures on Applicants Ahmed Mohidin, CPA (Mohidin), and George Weinbaum, CPA (Weinbaum), pending Commission review of the Board's disciplinary action. Applicants did not timely file, or otherwise seek any extension of time to file, an opposition to the motion, which was due on March 8, 2024. *See* 17 C.F.R. §§ 201.154(b), 160(a). Instead, Mohidin filed an opposition on March 27, 2024, to which the PCAOB filed a reply on April 1, 2024. On the same day as Mohidin, Weinbaum also apparently tried to file an opposition but never properly served it on the PCAOB in accordance with SEC Rule of Practice 150.[1/]

Weinbaum's contentions in response to the PCAOB's motion, like Mohidin's, are meritless and do nothing to detract from the strong public interest in (1) lifting the stay of sanctions that are the subject of the motion and (2) permitting the Board to publicly report its decisions on its website. Absent effectiveness of the Board-ordered bar from associating with a registered public accounting firm and censure, Weinbaum will continue to pose a high risk of

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[1/] On April 9, 2024, we submitted the additional briefing on the legal standard for lifting the stay that the Commission requested in its March 26, 2024 order according to the briefing schedule in that order. We recounted in footnote 1 of that brief that Weinbaum did not properly serve on the PCAOB his already overdue opposition, dated March 27, 2024, to the PCAOB's motion to lift the stay. He still has not done so. As a result of never having received any electronic copy of Weinbaum's opposition and only receiving a hard copy of the document by U.S. mail shortly before our April 9 filing, and to avoid any further delay due to Weinbaum's failure to serve the opposition in accordance with SEC Rules of Practice, we file this reply now. In this reply, we respond specifically to Weinbaum's opposition, which never directly challenges the legal standard applied in the PCAOB's motion to lift the stay pending appeal to the Commission and in a prior Commission opinion granting such a motion.

harm to investors. Underscoring this risk, he continues to suggest in this appeal that he did nothing wrong, despite contesting none of the Board's factual findings either in his application or his opposition to the motion. Weinbaum's opposition in no way alters the balance of factors cited in the motion that overwhelmingly favor terminating the stay of the non-monetary sanctions.

II. ARGUMENT

A. Weinbaum's Opposition to Lifting the Stay Is Meritless

The contentions in Weinbaum's opposition do not diminish the strong need, in this case, to terminate the statutory stay of the non-monetary sanctions. Of Weinbaum's contentions, two relate to the relief sought by the PCAOB, one relates to his likelihood of success on the merits, two relate to irreparable injury, and three relate to the public interest. We address each below.

1. The Statute and SEC Rule Expressly Authorize the Relief Requested, and the Commission Should Apply the *Davis* Factors in Reaching its Determination on the Question of Whether to Lift the Stay

Weinbaum makes two claims with respect to the relief sought by the PCAOB's motion. First, like Mohidin's opposition (at 2), Weinbaum's opposition erroneously suggests that it is inappropriate to lift the stay now because, in another case, the PCAOB did not move to terminate the statutory stay until "five days after the SEC decision" in that case. Weinbaum Opposition (Weinbaum Opp.) 3 (citing *Mark E. Laccetti, CPA,* SEC Rel. No. 34-79138, 2016 WL 6137057 (Oct. 21, 2016)). As addressed in the PCAOB's motion (at 5-7) and reply (at 2-3) to Mohidin's opposition (Mohidin Opp.), both Sarbanes-Oxley and SEC Rule 401(e) expressly authorize lifting the stay during the pendency of an appeal to the Commission, and the Commission has previously lifted the stay, upon a motion by the PCAOB, in a prior case. *Davis Accounting Group, P.C.*, Admin. Proc. File No. 3-14370 at 4 (June 14, 2011) (granting termination of the automatic stay as to non-monetary sanctions during pendency of the appeal before the

Commission); *available at* https://assets.pcaobus.org/pcaob-dev/docs/default-source/enforcement/adjudicated/documents/davis_sec_3-14370.pdf?sfvrsn=f7439f0b_8 (last visited Apr. 10, 2024) (attached). Contrary to Applicants' suggestion, the Commission's order in *Laccetti* does not indicate any preference whatsoever for the timing of lifting the stay.

Second, Weinbaum's citation in his opposition (at 8-9) to four factors used in a 1991 case falls short of providing appropriate guidance for lifting the statutory stay here. To begin with, unlike this matter, that case involved litigants representing private interests in a trademark dispute. In addition, while in some respects the factors cited by Weinbaum bear similarities to the traditional four factors used by the Commission in requests for stays of sanctions, those factors were appropriately modified in *Davis* involving, as here, a motion to lift the automatic stay of sanctions imposed by Sarbanes-Oxley Section 105. *Compare Davis*, Admin. Proc. File No. 3-14370, at 2 (modifying the traditional four-factor test to read: "(1) whether there is a strong likelihood that the applicant will succeed on the merits; (2) whether, absent a stay (or, as here, continuation of the stay), the applicant will suffer irreparable injury; (3) whether a stay will result in substantial harm to the public; and (4) whether a stay will serve the public interest") (citation omitted); *id.* at 3-4 (applying these factors, including concluding that "there does not appear to be a strong likelihood, at this point, that Applicants will succeed on appeal" and that "Applicants" are unlikely "to suffer irreparable harm" by the lifting of the automatic stay), *with Robbi J. Jones*, SEC Rel. No. 34-91045, 2021 WL 396767, *2 (Feb. 2, 2021) (describing the four factors under SEC Rule of Practice 401(d) as "whether the moving party has established that (i) there is a strong likelihood that it will eventually succeed on the merits of the appeal; (ii) it will suffer irreparable harm without a stay; (iii) another party will suffer substantial harm as a result of a stay; and (iv) a stay is likely to serve the public interest"). As further described in our April

9, 2024 brief, the *Davis* factors are appropriately tailored to address the question of whether to lift the automatic stay imposed by Sarbanes-Oxley Section 105(e), balancing factors relevant to Applicants against those pertinent to the public interest.

2. Weinbaum Has No Likelihood of Success on the Merits

As his sole merits argument, Weinbaum again incorrectly claims, as he did in his application, that this action is time-barred because of the "statute of limitations (SOL)." Weinbaum Opp. 2. As addressed in the PCAOB's motion (at 15-16) and reply (at 4) to Mohidin's opposition, both Applicants forfeited this claim. Moreover, their arguments show a fundamental misunderstanding of how to calculate the relevant timespan for such a defense, as illustrated by the very cases they cite. Thus, like Mohidin, Weinbaum is unable to counter the motion's points that he is unlikely to succeed on the merits of his appeal and that the Board's imposition of sanctions is unlikely to be overturned.[2/]

3. Weinbaum Will Not Suffer Irreparable Injury

To establish irreparable injury, Weinbaum "must show an injury that is 'both certain and great' and 'actual and not theoretical.'" *Allen Holeman*¸ SEC Rel. No. 34-86769, 2019 WL 4044065, *1 (Aug. 26, 2019) (quoting *Wis. Gas Co. v. FERC*, F.2d 669, 674 (D.C. Cir. 1985)). Weinbaum's opposition does no such thing. It makes only vague reference to injury by referring,

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[2/] Just after, or potentially as part of, his "statute of limitations" argument, Weinbaum makes an undeveloped argument (Weinbaum Opp. 6-8) that references and quotes extensively from a concurring opinion in *Axon Enterprise, Inc. v. FTC*, 143 S. Ct. 890, 912, 915-918 (2023) (Gorsuch, J., concurring in judgment). The import of Weinbaum's use of these passages is unclear. Neither the majority nor concurring opinions in *Axon* reached the merits of any of the underlying claims involved in the two federal district cases that were on appeal to the Court. *Axon* addressed purely a jurisdictional question of whether the statutory review schemes at issue could displace a federal district court's federal-question jurisdiction over certain constitutional claims. The passages that Weinbaum cites essentially pertain to the concurring Justice's critique of the Court's approach under *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994). The present matter does not involve a jurisdictional question or any action in federal district court.

through analogy, to the impact a "practice bar" might have on an attorney. Weinbaum Opp. 3. Yet even assuming some loss by an auditor of public company work, an inability to engage in a particular line of business does not rise to the level of irreparable injury. *See The Dratel Grp.*, *Inc.*, SEC Rel. No. 34-72293, 2014 WL 2448896, *5 (June 2, 2014); *accord Colley v. James*, 254 F. Supp. 3d 45, 69 (D.D.C. 2017) ("the loss of employment income does not necessarily establish irreparable harm–even when the loss is unrecoverable"). Indeed, as noted in the PCAOB's motion (at 17), Weinbaum has other business besides his issuer work. In any event, Weinbaum, like Mohidin, makes no attempt to substantiate any injury, let alone establish that it is both certain and great. *See, e.g., Robbi J. Jones*, 2021 WL 396767, *3 (stating that "[w]ithout submitting evidence about an inability to meet financial obligations or continue in business because of the bars, we cannot find that Applicants have established they will suffer irreparable harm"); *Paul H. Giles*, SEC Rel. No. 34-92177, 2021 WL 2419849, *4 (June 14, 2021) (finding "unspecific, speculative, and unsupported" claim of harm to applicant's business was insufficient to establish irreparable harm) (citation omitted).

Later, Weinbaum's opposition flips the focus from him to the PCAOB to contend that "PCAOB suffers no injury from the [continued] stay." Weinbaum Opp. 9. But the proper focus under *Davis's* second prong is the irreparable injury to the "applicant," *i.e.*, Mohidin and Weinbaum, not to the PCAOB. *Davis*, Admin. Proc. 3-14370, at 2 (stating that factor (2) is "whether, absent . . . continuation of the stay . . . the applicant will suffer irreparable injury") (emphasis added); *id.* at 3-4 (applying that factor in concluding that "Applicants" are unlikely "to suffer irreparable harm" by lifting the automatic stay and that "any detriment that Applicants may incur from lifting the stay is outweighed by the danger that Applicants would pose to the investing public") (emphases added).

This focus makes perfect sense, because the traditional four-factor stay considerations – from which the *Davis* factors are derived – are designed to "balance . . . [the] equities" involved, as revealed through their application to the circumstances of the case. *E.g., Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *see Christian Klein & Cogburn*, *Inc.*, SEC Rel. No. 34-33424, 1994 WL 5037, *1 (Jan. 5, 1994) ("The showings demanded by the four criteria may vary with the equities and circumstances of the particular case."). Given the PCAOB's mandate under Sarbanes-Oxley, it represents the public interest in defending an action before the Commission. *See* Sarbanes-Oxley Section 101(a) (stating that the PCAOB was created "to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports"). The public interest concerns are already embodied in factors (3) and (4) of the four-factor test of *Davis* and of the traditional four-factor test (*see Wash. Metro*., 559 F.2d at 843). To also place the focus on the PCAOB under prong (2), as Weinbaum's argument does, would create an unnecessary imbalance in the factors, leaving any irreparable injury to Applicants unaddressed under the test.

4. Weinbaum's Attempts to Downplay the Public Interest in Lifting the Stay Are Unavailing

Weinbaum's opposition challenges whether the stay will result in harm to the public on three grounds. First, claiming he poses no risk to investors, Weinbaum again repeats his assertion from his application that the PCAOB "found no problems in nine of my audits." Weinbaum Opp. 1; *see* Mohidin Opp. 4. But, as discussed in the PCAOB's motion (at 10-11), even if true, this assertion is irrelevant. This matter involves Weinbaum's violation of PCAOB Rule 3502 by his acts and omissions in permitting Mohidin, a known barred individual, to participate in eight audits or reviews for which Weinbaum was responsible. As the Board stated, "[t]hat Weinbaum

was not charged with any violations of auditing standards in connection with those engagements is beside the point. A bar order . . . serves an important investor-protection safeguard, which [Weinbaum] helped subvert." Index to Record, Record Document 143 at 12. Weinbaum's "lack of assurances against future misconduct" and repeated suggestions that he did nothing wrong in permitting a known-barred individual to participate in audit work highlight the strong need to protect investors from further violations by Weinbaum, as the Board concluded. *Id.* (applying factors based on record to find risk of future harm).

Second, Weinbaum also again suggests that his purported role in having "Adamant restate despite believing that might trigger a PCAOB investigation" lessens the risk he poses to investors. Weinbaum Opp. 1. But of course, that Weinbaum could have committed yet more violations, but did not happen to do so, is not mitigating. As discussed in the PCAOB's motion (at 11), auditors "'have a duty to take reasonable steps to correct misstatements they have discovered in previous financial statements on which they know the public is relying.'" *Rudolph v. Arthur Andersen & Co.*, 800 F.2d 1040, 1043 (11th Cir. 1986) (citation omitted); *see* AS 2905, *Subsequent Discovery of Facts Existing at the Date of the Auditor's Report*. Rather than mitigating, Weinbaum's interactions with Mohidin concerning the Adamant restatement represented especially egregious examples of his misconduct here, involving directly interacting with Mohidin on a substantive audit question, despite knowing Mohidin was barred.

Third, Weinbaum repeats the claim from his application that it is unfair that "[t]he PCAOB did not act against any Deloitte & Touche Leadership Opportunity Committee . . . member" in the 2013 settlement against that firm. Weinbaum Opp. 1. As discussed in the motion (at 9-10), it is well settled that the decision "not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion." *Heckler*

v. Chaney, 470 U.S. 821, 831 (1985); *see Schellenbach v. SEC*, 989 F.2d 907, 912 (7th Cir. 1993) (applying principle in self-regulatory organization matter); *cf. Dolphin & Bradbury, Inc.*, SEC Rel. No. 34-54143, 2006 WL 1976000, *12 (July 13, 2006) (explaining that "[a] refusal to prosecute is a 'classic illustration of a decision committed to agency discretion,' and agency decisions about the best use of staff time are a matter of prosecutorial judgment" (quoting *Chi. Bd. Of Trade v. SEC*, 883 F.2d 525 (7th Cir. 1989)), *aff'd,* 512 F.3d 634 (D.C. Cir. 2008).

Accordingly, Weinbaum, like Mohidin, has failed to alter the balance of factors cited by the PCAOB in its motion to lift the stay. In light of the seriousness of Weinbaum's repeated misconduct in the audits and reviews involved in this case, the Commission will powerfully advance the public interest by lifting the stay on the non-monetary sanctions against him.

B. Weinbaum's Opposition is Untimely

Weinbaum's opposition, like Mohidin's, is untimely and should be rejected for noncompliance with SEC rules. SEC Rule of Practice 154(b) provides that an opposition to a motion "shall be filed within five days after service of the motion." Weinbaum was served with the Board's motion on March 1, 2024. His opposition was therefore due no later than March 8, 2024. *See* 17 C.F.R. § 201.160(a) (time computation rule); *see also BDO China Dahua CPA Co.*, SEC Rel. No. 72753, 2014 WL 3827605, *1 n.2 (Aug. 4, 2014) (explaining that rule).

Weinbaum, however, did not file an opposition during this period or request an extension of time to file. Even if his opposition were filed and served on March 27, 2024, when it is dated, he provides no explanation for his delay in filing his opposition 20 days late. Based on the timing of his attempted submission, Weinbaum appears to have sent it only after the Commission issued an order dated March 26, 2024, served on the parties via the Electronic Filings in Administrative Proceedings system earlier in the day on March 27, 2024, requesting additional briefing on the

statutory stay. *See Ahmed Mohidin, CPA*, SEC Rel. No. 34-99857, 2024 WL 1284562. Indeed, the Commission stated in that order that "[n]either Mohidin nor Weinbaum has responded to the PCAOB's motion." *Id.* at *1. And to this day, as noted (*see* note 1 above and PCAOB's April 9, 2024 brief at 5 n.1), the opposition has not been properly served under SEC Rule of Practice 150.

For the reasons stated in our reply to Mohidin's opposition, the Commission should reject Weinbaum's filing as untimely. *See, e.g., Edward M. Daspin,* SEC Rel. No. 34-98554, 2023 WL 6307096, *1 n.8 (Sept. 27, 2023) (rejecting submission as untimely).[3/]

III. CONCLUSION

For the foregoing reasons, the Board respectfully requests that the Commission reject the meritless contentions in Weinbaum's opposition, or alternatively reject the filing as noncompliant with SEC Rules of Practice, and lift the stay on the bar and censure imposed on him, as on Mohidin, by the Board.

Dated: April 12, 2024

Respectfully submitted,

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[3/] Weinbaum's opposition should also be rejected for failing to conform to the Commission's certification requirements. SEC Rule of Practice 151(e)(3) requires parties filing papers with the Commission to provide certifications stating that sensitive personal information "has been omitted or redacted from the filing." Weinbaum's filing did not include this certification, presenting a "separate and independent ground" for rejecting his filing. *See, e.g., Daspin*, 2023 WL 6307096, *1 n.10.

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