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 MOTION FOR AND BRIEF IN SUPPORT OF TERMINATION OF THE STAY IMPOSED BY SECTION 105(e)(1) OF THE SARBANES-OXLEY ACT OF 2002

March 1, 2024

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I. INTRODUCTION

Pursuant to 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), the Public Company Accounting Oversight Board (Board or PCAOB) requests that the Commission lift the stay on certain sanctions imposed by the Board in this auditor disciplinary proceeding. As pertinent to this motion, the Board issued final orders censuring Applicants Ahmed Mohidin, CPA (Mohidin), and George Weinbaum, CPA (Weinbaum), permanently barring Mohidin from associating with a PCAOB-registered public accounting firm, and barring Weinbaum from so associating with leave to petition to re-associate after five years.[1/] Mohidin and Weinbaum each filed an application for Commission review. The filings have the effect, under Sarbanes-Oxley Section 105(e), of staying the effectiveness of the sanctions and countering the statute's requirement that the Board report the sanctions to the public, unless and until the SEC orders that the stay shall not continue to operate. The Commission has not yet scheduled briefing. Given the risk that Applicants pose to investors, as detailed below, the Board urges the Commission to lift the stay on the censures and bars, in the public interest, either: (i) summarily, in its broad discretion, pursuant to SEC Rule of Practice 401(e)(2), or (ii) pursuant to the expedited process described in SEC Rule of Practice 401(e)(3).

[1/] The Board also imposed civil money penalties on Applicants, but those sanctions are not the subject of the present motion.

II. BACKGROUND AND OVERVIEW

Applicants committed serious violations of fundamental regulatory obligations related to a prior PCAOB order that barred Mohidin from associating with any registered public accounting firm, with the proviso that he could petition to re-associate after one year (Bar Order). In a 92-page initial decision (Initial Decision or ID), the PCAOB Hearing Officer found that Mohidin willfully violated Sarbanes-Oxley Section 105(c)(7)(A) and PCAOB Rules 5000 and 5301(a) when Mohidin, while barred, participated repeatedly for over a year in "numerous audits and reviews" of issuers on behalf of MJF Associates, APC (MJF), a PCAOB-registered firm. *See* Index to the Record, Record Document (RD) 123 at 62, 86. The Initial Decision also found, that Weinbaum, through his acts and omissions as engagement partner on the issuer audits and reviews on which Mohidin participated, violated PCAOB Rule 3502 by recklessly contributing directly and substantially to MJF's violations whereby MJF permitted Mohidin to participate while barred. *Id.* at 11, 70-71. The Initial Decision further found that Mohidin violated PCAOB Rule 5302 when he later petitioned the Board to terminate the Bar Order. In his petition, Mohidin provided false statements to the Board, on which the Board relied in lifting the Bar Order. *Id.* at 70. In ordering sanctions in the public interest, the Initial Decision censured and assessed civil money penalties against Mohidin and Weinbaum, imposed a permanent associational bar on Mohidin, and imposed an associational bar on Weinbaum with leave to petition to terminate the bar after two years. *Id.* at 92-93.

On March 7, 2023, after review of the petitions for Board review and after de novo review of the record in the matter, the Board, pursuant to its rules, summarily affirmed the Initial Decision's findings of liability and scheduled briefing on sanctions as to Mohidin and Weinbaum. *See* RDs 132, 133. In summarily affirming liability, the Board determined that their

petitions "raise[d] no issue warranting further consideration as to . . . liability," observing that neither Mohidin nor Weinbaum took any exception to the extensive findings of fact and that the arguments they did advance regarding liability were insubstantial. RD 132 at 2, 9; RD 133 at 1, 8. In so doing, the Board rejected Mohidin's and Weinbaum's attempts to downplay their misconduct. The Board found the record replete with evidence that Mohidin unlawfully participated in eight audits and reviews for three of MJF's issuer clients. RD 132 at 6 & n.6; RD 133 at 5 & n.5. As the Board explained, Mohidin's actions in these engagements were far from insignificant but instead were "numerous, substantial, and persistent," including communicating directly with issuer and audit personnel about substantive accounting questions, suggesting specific revisions to draft SEC filings, and directing how certain issues should be addressed in the financial statements before filing with the SEC. RD 132 at 12-14. The Board also found that Weinbaum, Mohidin's longtime friend and colleague, was at "the forefront of the misconduct." RD 133 at 13. He engaged directly with Mohidin on substantive issues in the audits and reviews. *Id*. at 6-7, 13. He also sat idly by despite witnessing Mohidin's improper interactions with the issuer and audit personnel in "real time" over emails and designated many of them as important to retain. *Id*. at 10-13.

On December 20, 2023, after briefing on sanctions, the Board issued final decisions imposing sanctions in the public interest on Mohidin and Weinbaum. RD 142; RD 143. In its decisions, the Board described their misconduct as repeated, highly culpable, and especially egregious. RD 142 at 5-9; RD 143 at 9-12. The Board stated that Mohidin, a recidivist, violated an important investor-protection safeguard by repeatedly violating the Bar Order; engaged in "'deliberate deception' of a regulatory authority" by providing multiple false statements in seeking termination of the Bar Order; and continued exhibiting "dishonesty and deceit" through

lack of candor in his hearing testimony. RD 142 at 8-9. The Board stated as to Weinbaum that, aside from Mohidin, no other person was more responsible for the Bar Order violations, as "Weinbaum repeatedly abdicated" his role as auditor and engagement partner. RD 143 at 12, 15. In imposing bars on Mohidin and Weinbaum, the Board expressed deep concern about their continued threat to investors, noting that their ongoing association with a PCAOB-registered firm gives them ample opportunity to commit further violations. RD 142 at 10; RD 143 at 12.[2/]

Now on appeal to the Commission, Applicants again contest none of the factual findings in this adjudication. Instead, they rehash many of the same insubstantial arguments thoroughly rejected by the Board and raise a new "statute of limitations" claim that is both forfeited and baseless. Yet most troubling, their applications do nothing to diminish the likelihood of future violations and the continued risk they pose to investors and the PCAOB's regulatory processes. In fact, despite extensive, uncontested findings, Applicants still insist they did nothing wrong.

The need to protect the public from the danger Applicants pose is immediate and compelling. Under these circumstances, with no likelihood of their success on the merits and a serious, continuing risk to the public, the Commission should lift the stay of the sanctions that are the subject of this motion and permit the Board to report its decisions to the public.

[2/] Applicants do not contest Board findings that they remain licensed as certified public accountants (CPAs) and continue to be associated with another PCAOB-registered firm. *See* RD 132 at 2; RD 133 at 2; RD 142 at 4, 10; RD 143 at 4, 12. Mohidin remains licensed in one state and Weinbaum in two states. *See* Ahmed Mohidin and George Weinbaum CPA Search, *available at* https://cpaverify.org/ (last visited Mar. 1, 2024). At the hearing, Applicants testified they were associated with Prager Metis CPAs LLC, while Weinbaum specified that he continues to work with Mohidin for Mohidin's issuer clients. RD 132 at 2; RD 133 at 2. Based on recent filings on the PCAOB's Form AP system – of which the Commission may take official notice under SEC Rule of Practice 323, *see, e.g., Meyers & Assoc., L.P.*, SEC Rel. No. 34-81778, 2017 WL 4335044, *3 n.9 (Sept. 29, 2017) – Mohidin is associated with yet another PCAOB-registered firm, Kreit & Chiu CPA LLP, which lists him as engagement partner on two 2023 issuer audits. *See* Ahmed Mohidin Auditor Search, *available at* https://pcaobus.org/resources/auditorsearch (last visited Mar. 1, 2024).

III. ARGUMENT

Under Sarbanes-Oxley Section 105(e)(1), an application to the SEC for review of any disciplinary sanction imposed by the Board "operate[s] as a stay" on the imposition of such sanction, "unless and until the Commission orders (summarily or after notice and opportunity for hearing on the question of a stay, which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that no such stay shall continue to operate." 15 U.S.C. § 7215(e); *see* 17 C.F.R. § 201.440(c). Pursuant to Section 105(e) and SEC Rule of Practice 401(e), the SEC may lift the stay summarily, or on consideration, which may be expedited, of a motion to lift the stay. Thus, upon application for SEC review of a Board sanction, Section 105(e) preserves, through the stay of the sanction's effectiveness, the status quo at imposition of the sanction until the Commission has the opportunity to consider whether that status quo should prevail. "[O]nce any stay on the imposition of such sanction has been lifted," the Board "shall report the sanction" to the public. Sarbanes-Oxley Sections 105(d)(1) & (d)(1)(C); *see Mark E. Laccetti, CPA*, SEC Rel. No. 34-79138, 2016 WL 6137057, *2 (Oct. 21, 2016) ("the automatic stay . . . not only prevent[s] the PCAOB from enforcing the sanctions; it also prevent[s] the PCAOB from reporting its decision to the public").

SEC Rule of Practice 401(e) sets forth the procedures pertinent here, providing that "[a]ny person aggrieved by a stay of an action by the Board entered in accordance with 15 U.S.C. § 7215(e) for which review has been sought pursuant to [SEC Rule of Practice 440] . . . may make a motion to lift the stay." While "person" is undefined, the term connotes broad meaning. *See Clinton v. City of New York City*, 524 U.S. 417, 428 n.13 (1998) (describing the legal term "person" to often include '"corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals'") (citation omitted). Because the

automatic stay prevents the Board from effectuating its sanctions and reporting its decision in the public interest, the Board constitutes such a "person aggrieved by [the] stay" under SEC Rule 401(e). *See, e.g., Davis Acct. Grp., P.C.*, Admin Proc. File No. 3-14370, at 2 (June 14, 2011) (Corrected Order Partially Lifting Stay), *available at* https://pcaobus.org/Enforcement/Adjudicated/Documents/Davis_SEC_3-14370.pdf (last visited Mar. 1, 2024) (attached) (noting the Board "requests that the Commission lift the stay of the Board's order, which Applicants oppose" and holding that "the request to lift the stay is partially granted"); *S.W. Hatfield, C.P.A.*, SEC Rel. No. 34-699976, 2013 WL 3477090, *1 (July 11, 2013) (terminating stay after Board motion made pursuant to SEC Rule 401(e)); *see also Gregory Evan Goldstein*, SEC Rel. No. 34-689904, 2013 WL 503416, *3-4 (Feb. 11, 2013) (treating self-regulatory organization (SRO) as a "person[ ]" who may oppose a motion for a stay under SEC Rule 401(d)).

The Commission's determination of whether to grant a motion to lift the stay pursuant to its authority under Sarbanes-Oxley Section 105(e) is "based on the factors the Commission previously has considered in evaluating similar requests for stays in connection with [SRO] proceedings." *Davis*, Admin. Proc. File No. 3-14370, at 3. Those factors are: "(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." *Id.* at 2 (citing *Navistar Int'l Corp.*, SEC Rel. No. 34-55304, 2007 WL 505770, *2 (Feb. 13, 2007)); *see Nken v. Holder*, 556 U.S. 418, 434 (2009) (articulating stay standards); *Kabani &*

Co., SEC Rel. No. 34-80403, 2017 WL 1295034, *1 (Apr. 7, 2017). All these factors weigh strongly in favor of lifting the stay here.[3/]

A. Applicants Are Unlikely To Succeed on the Merits.

That Applicants do not contest the extensive findings of fact is not surprising. Mohidin, despite suggesting in his application that the Board erred by "misapplication of [the] facts," *see* Mohidin Application (M.App.) 1, conceded in a sworn declaration before the Board that his conduct during the bar period "did not comply" with the Bar Order and was "improper." RD 142 at 10. Weinbaum also did not contest the factual findings and repeatedly conceded in testimony that Mohidin's conduct – which was reflected in emails that Weinbaum admitted he received – violated the Bar Order. *See* RD 133 at 10; Tr. 547, 554, 575-76, 583, 587, 600-02, 604.[4/] Applicants, nevertheless, repackage flawed mitigation or legal arguments that the Board soundly rejected and, for the first time, lodge an untimely, unsupported claim that the PCAOB's action somehow violates an unspecified statute of limitations. None of the arguments in the applications for review have any – let alone strong – likelihood of success on the merits.

1. Neither the Board nor the Hearing Officer reversed the "burden of production," as both Applicants claim without elaboration. M.App. 1; W.App. 1. Despite their claim, neither Applicant identifies any deficiency in the factual findings. *See* RD 142 at 10; RD 133 at 9; *see also* ID 11. After a de novo review of the record, the Board agreed with the Initial Decision that

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[3/] Additionally, Sarbanes-Oxley "provides the Commission with broad discretion to lift the automatic stay 'summarily.'" *Laccetti*, 2016 WL 6137057, *2 (quoting 15 U.S.C. § 7215(e)(1)); *see* 17 C.F.R. § 201.401(e)(2) (stating "the Commission may lift a stay summarily, without notice and opportunity for hearing"); *see also Allan v. SEC*, 577 F.2d 388, 391 (7th Cir. 1978) ("[a]uthority for the SEC to 'summarily' determine the question of a stay [of New York Stock Exchange action pending appeal] demonstrates the breadth of discretion granted by Congress").

[4/] All transcript (Tr.) citations herein are to the hearing testimony, located at RDs 102-05.

the PCAOB's Division of Enforcement and Investigations proved, by a preponderance of the evidence under PCAOB Rule 5204(a), the violations as alleged. RD 132 at 3, 10; RD 133 at 9, 15. In fact, the record includes "some 25 emails" showing Mohidin communicating with audit and issuer personnel, including Weinbaum, about substantive issues on issuer audits and reviews. RD 132 at 12; RD 133 at 11. Further cementing their liability are their own repeated concessions in testimony that Mohidin's conduct while barred was improper. RD 142 at 10; RD 133 at 10.[5/]

2. The Board also did not "create ex post facto law" (M.App.1; W.App.1) in violation of Article I, Section 10 of the U.S. Constitution. That Clause prohibits applying a law retroactively that "inflicts a greater punishment, than the law annexed to the crime, when committed." *Calder v. Bull*, 3 U.S. (3 Dall.) 386, 390 (1798); *Landgraf v. USI Film Prods., Inc*., 511 U.S. 244, 266 n.19 (1994) ("We have construed [the Ex Post Facto Clause] as applicable only to penal legislation."). Even if the Clause were to apply to PCAOB disciplinary proceedings, which are not criminal proceedings, the Board did not retroactively apply any of the provisions that Mohidin and Weinbaum violated, all of which were in force well before they engaged in their misconduct. *See* RD 133 at 15-16 (citing *Lynne v. Mathis*, 519 U.S. 433, 441 (1997)); *see also* Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745, § 105(c)(7)(A) (July 30, 2002); *Order Approving Proposed Rules Relating to Investigations and Adjudications*, SEC Rel. No. 34-49704, 2004 WL 1439833, *1 (May 14, 2004); *Order Approving Proposed Ethics and Independence Rules Concerning Independence, Tax Services,*

[5/] Even if Mohidin's separate contention that he "did not prepare, sign-off or review any documents in MJF's audit binders" (M.App.2.) were true, his conduct still violated Sarbanes-Oxley 105(c)(7)(A) and PCAOB Rules 5000 and 5301(a). As the Board explained, his "numerous, substantial, and persistent" activities in connection with MJF's audits and reviews amply supported the Board's findings he unlawfully acted as an associated person of MJF, while barred, in violation of those provisions. RD 132 at 6-7, 11-13. Moreover, notwithstanding his contention, the evidence established that he did review certain work papers. *Id.* at 13 & n.13.

and Contingent Fees, SEC Rel. No. 34-53677, 2006 WL 1866513, *2 (Apr. 19, 2006). Applicants' arguments are belied by their own testimony, in which they admitted knowing at the time that Mohidin could not engage in certain activities while barred. RD 132 at 7; RD 133 at 7, 13. Weinbaum also admitted knowing that his own conduct could cause MJF to violate the Bar Order. RD 133 at 16 (citing ID 27, 88; Tr. 527). The Board also did not retroactively apply any new sanctions framework here, as implied by Mohidin's citation to *Peugh v. United States*, 569 U.S. 530 (2013). *See* M.App. 2. The sanctions the Board imposed have been available since Sarbanes-Oxley was promulgated in 2002. *See* 116 Stat. 745, § 105(c)(4)-(5). And the sanctions were not imposed for "penal" purposes, but rather, as explained extensively in the Board's decisions, to protect investors and further the public interest. *See* RD 142 at 8-15; RD 143 at 9-18.[6/]

3. Citing sanctions in a settled order, Applicants seek to relitigate an unfounded suggestion that the Board favors personnel of large firms over small firms, such as MJF. *See* M.App. 2; W.App. 2 (citing *Deloitte & Touche LLP*, PCAOB Rel. No. 105-2013-008 (Oct. 22, 2013) (settled order)). It is well established, however, that "settlements are not precedent." RD 132 at 13 n.11 (citing *S.W. Hatfield, CPA*, SEC Rel. No. 34-73763, 2014 WL 6850921, *6 n.28 (Dec. 5, 2014); RD 143 at 13 (explaining that sanctions in settled cases reflect "pragmatic considerations such as the avoidance of time-and-manpower-consuming adversary proceedings") (citation omitted); *accord United States v. Armour & Co.*, 402 U.S. 673, 681 (1971). That the "Leadership Opportunity Committee" and formerly associated person in *Deloitte* were not party

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[6/] Although Weinbaum raised an inchoate "ex post facto" argument in his petition for Board review, *see* RD 133 at 15-16, which the Board rejected in summarily affirming liability, he failed to further develop this argument in his briefing on sanctions to the extent he considered it relevant to sanctions, as the Board invited. *See* RDs 134, 141.

to the settlement also has no import. Regulatory bodies have "broad prosecutorial discretion in deciding against whom charges should be brought and what those charges should be." *David Adam Egart*, SEC Rel. No. 34-81779, 2017 WL 4335050, *6 & n.28 (Sept. 29, 2017) (FINRA matter) (citations omitted); *see Butz v. Economou*¸ 438 U.S. 478, 515 (1978) ("An agency official, like a prosecutor, may have broad discretion in deciding whether a proceeding should be brought and what sanctions should be sought."). As the Supreme Court has explained, "'[t]he conscious exercise of some selectivity in enforcement is not itself a federal constitutional violation' so long as 'the selection was [not] deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification.'" *United States v. Goodwin*, 457 U.S. 368, 380 n.11 (1982) (citation omitted). Neither Applicant has attempted to show, let alone established, that "his 'prosecution was motivated by improper considerations such as race, religion, or the desire to prevent the exercise of a constitutionally-protected right.'" RD 133 at 15 (quoting *John B. Busacca III*, SEC Rel. No. 34-63312, 2010 WL 3554584, *11 (Nov. 12, 2010) and citing cases)); *see Hibbard, Brown & Co*., SEC Rel. No. 34-35476, 1995 WL 116488, *9 n.67 (Mar. 13, 1995) (rejecting selective prosecution claim based on firm's small size).[7/]

4. Weinbaum's separate assertion that "[t]he PCAOB reviewed **nine** of my audits faulting **none**" is no defense. W.App. 1 (emphasis in original). Even if true, it is irrelevant. He violated PCAOB Rule 3502 by his acts and omissions in permitting Mohidin, a known barred

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[7/] Mohidin also incorrectly asserts that, "[o]n page 11" of its final decision, "PCAOB claims it never offered me a $20,000 fine in its initial offer of settlement." M.App. 2. The Board, in fact, held that his assertion about the $20,000 offer lacked any record support and in any event was meritless. RD 142 at 13-14. The Board, like the Commission, is not bound by the amount requested or discussed in settlement negotiations by its Enforcement staff. *Id.* (citing cases and PCAOB Rule 5205, which requires Board approval of any settlement). The Commission should, moreover, reject Mohidin's post-hoc efforts to introduce emails from his former counsel about a settlement offer, which do not comply with SEC Rule of Practice 452. Specifically, Mohidin has filed no motion nor otherwise shown, "with particularity that such additional evidence is material and that there is reasonable for [his] failure to adduce such evidence previously." 17 C.F.R. § 201.452.

individual, to participate in eight audits or reviews for which Weinbaum was responsible. "That 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." RD 143 at 12. Equally irrelevant is Weinbaum's assertion that he "insisted [that one of the issuers in whose audit Mohidin participated during the bar period] restate its financials despite believing it might trigger a PCAOB investigation." W.App. 1. 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*. Weinbaum's interactions with Mohidin regarding that restatement, in fact, represented "one of the more egregious examples of [Mohidin's] participation in an issuer audit that Weinbaum enabled." RD 143 at 14 (citing RD 133 at 6, 11, 13; ID 32-42, 70). Weinbaum directly engaged with Mohidin on that issue, providing him accounting literature and reviewing Mohidin's pressing questions. *Id.* at 7, 14.

5. Weinbaum's application also incorrectly asserts that he never "jeopardized investors," attempting to minimize the severity of his misconduct. W.App.2. The Commission, however, has long held that a violation of a bar order constitutes "very serious misconduct." *Leslie A. Arouh*, SEC Rel. No. 34-62898, 2010 WL 3554584, *13 (Sept. 10, 2010); *see Bruce Zipper*, SEC Rel. No. 34-84334, 2018 WL 4727001, *4 (Oct. 1, 2018) (same); *Kirk A. Knapp*, SEC Rel. No. 34-30391, 1992 WL 40436, *10 (Feb. 21, 1992) (same). While the Board need not prove specific harm to investors, Weinbaum put investors at risk by permitting an unfit auditor to repeatedly work on audits and reviews over which Weinbaum was responsible. RD 143 at 14;

see Hatfield, 2013 WL 3339647, *23 (the appropriate "inquiry is not whether Applicants' failures actually harmed investors" but "whether Applicants' conduct created a risk of such harm"). Weinbaum's "conduct 'indirectly harmed investors by depriving them of an important protection that they should have had under Sarbanes-Oxley and a PCAOB rule." RD 143 at 14 (quoting *R.E. Bassie & Co.*, SEC Rel. No. AE-3354, 2012 WL 90269, *13 (Jan. 10, 2012)).

6. Without elaboration, Weinbaum also incorrectly suggests that civil tort law is relevant to the analysis of contributory misconduct under PCAOB Rule 3502. PCAOB disciplinary proceedings are not private tort actions seeking damages. *See* RD 133 at 14 n.14; *see also Schellenbach v. SEC*, 989 F.2d 907, 913 (7th Cir. 1993) (distinguishing agency enforcement actions from "private damages suits" and stating that "[s]ecurities regulations are designed to protect the general public"). In adopting PCAOB Rule 3502, the Board expressly rejected an effort to engraft aiding and abetting elements (specifically, from private rights of actions) onto PCAOB Rule 3502, which is an ethics standard specific to PCAOB actions. *Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees*, PCAOB Rel. No. 2005-014, at 11 & n.20 (July 26, 2005); *see Order Approving Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees and Notice of Filing*, SEC Rel. No. 34-53677, 2006 WL 1866513 (Apr. 19, 2006). The Board's adopting release clearly identified the elements required to establish a violation of PCAOB Rule 3502, which the Board applied in finding Weinbaum's violation and rejecting his contentions. *See* RD 133 at 11-14.[8/]

[8/] Furthermore, Weinbaum's similar argument before the Board (RD 127 at 12-13) erroneously assumed that he was found liable for directly and substantially contributing to Mohidin's violations. That was not so. *See* RD 133 at 12 n.11. Weinbaum's conduct contributed to MJF's violations of permitting a barred individual to associate with the firm, with Weinbaum playing a "material, facilitating role." *Id.* at 12.

7. Weinbaum's claim that the Hearing Officer "used the wrong standard in assessing . . . sanctions" also fails. App. 1. It is the Board's decision, not the Hearing Officer's, that is the final action subject to Commission review. *Kabani & Co.*, SEC Rel. No. 34-80201, 2017 WL 947229, *8 n.7 (Mar. 10, 2017) ("We review only the Board's decision on appeal."), *aff'd*, 733 F. App'x 918 (9th Cir. 2018) (unpublished). The Board further made clear here that its "review of sanctions is de novo," RD 133 at 17; RD 143 at 11, meaning it would "exercise its own judgement as to the issues properly before it and do so non-deferentially," *ABN AMRO Clearing Chicago LLC,* SEC Rel. No. 34-83849, 2018 WL 3869452, *12 (Aug. 16, 2018). And in determining the sanctions, the Board applied well-established sanctions principles to the particulars of this case. RD 143 at 8-18.

8. The Board did not err in rejecting Weinbaum's argument that the "market capitalizations" of the issuers here somehow precludes it from sanctioning him. W.App. 2. Regardless of the size of the issuer, it is plainly "unlawful" to permit a known barred individual to participate in issuer audit work, Sarbanes-Oxley Section 105(c)(7)(A); PCAOB Rule 5301(b), and Weinbaum's conduct was particularly egregious, affecting eight issuer audits and reviews. Rejecting his argument below, the Board emphasized that "investors in a 'small,' 'simple' issuer, are no more to be deprived of the protection of an audit conducted in accordance with PCAOB standards than those of any other issuer." RD 133 at 16 (quoting *Melissa K. Koeppel, CPA*, PCAOB No. 105-2011-007, at 177 (Dec. 29, 2017)); *see Gregory M. Dearlove, CPA*, SEC Rel. No. 34-57244, 2008 WL 281105, *6 (Jan. 31, 2008) (auditing "standards apply to audits of all sizes and all levels of complexity"). Even on his own terms, the sanctions imposed by the Board

are not disproportionate to the particulars of this case, as the Board drew on numerous case-specific factors including the audit fees that MJF collected, in reaching appropriate sanctions.[9/]

9. Weinbaum forfeited his claim concerning the Hearing Officer's impartiality. W.App. 1. He never raised any such claim before the Hearing Officer, *see* PCAOB Rule 5402(a), nor in his petition for Board review of the Initial Decision, *see* PCAOB Rule 5460(a)(1). It was not until over a year after he filed his petition for Board review – and then only after the Board had sustained the findings of violation – that Weinbaum first raised his claim. *Compare* RD 127 *with* RD 134. PCAOB Rule 5460(a)(1) expressly "requires that petitions for review specify the 'findings and conclusions of the initial decision as to which exception is taken together with the supporting reasons for each exception.'" RD 143 at 19 (quoting RD 133 at 9 n.7). Thus, "a Board order on appeal is appropriately limited to the arguments raised in the petitions." *Id.* (citing *S. Brent Farhang, CPA*, PCAOB File No. 105-2016-001, at 28 n.14 (Mar. 16, 2017) (finding respondent waived arguments not raised in petition for review), *aff'd*, SEC Rel. No. 34-83494, 2018 WL 3193859 (June 21, 2018), and *Ross Mandell*, SEC Rel. No. 34-71668, 2014 WL 907416, *1 n.6 (Mar. 7, 2014) ("deem[ing] any exception to the initial decision not stated in [respondent's] petition for review waived")). Issue exhaustion is a common element of administrative and court proceedings. *See, e.g., Sanchez-Llamas v. Oregon*, 548 U.S. 331, 356 (2006) (citation omitted) ("The consequence of failing to raise a claim for adjudication at the proper time is generally forfeiture of that claim."); *Sims v. Apfel*, 530 U.S. 103, 108 (2000)

[9/] Weinbaum's citation to *Grayscale Investments, LLC v. SEC*, 82 F.4th 1239 (D.C. Cir. 2023), is inapposite. It did not involve, as here, a determination of sanctions in an adjudication. *Grayscale* involved whether to permit the listing of a bitcoin exchange-traded product on NYSE Arca, a securities exchange. Nowhere in *Grayscale* does the court in any way suggest that the "significant market test" applied by the Commission in that context has any relevance to the question of whether "to investigate then sanction CPAs," as Weinbaum contends (W.App. 1).

(citing procedural rule requiring petitioners to "list[ ] the specific issues to be considered on appeal" as a typical example of "an agency's regulations [that] require issue exhaustion in administrative appeals"); *Fleming v. U.S. Dep't of Agric.*, 987 F.3d 1093, 1101 (D.C. Cir. 2021) (similar); *Joseph Forrester Trucking v. Dir., Off. of Workers' Comp.*, 987 F.3d 581, 586 (6th Cir. 2021) ("Whether in proceedings before an administrative body or a court of law, a party customarily forfeits secondary review of issues not properly raised in an underlying phase of the proceeding.") (citing *Hormel v. Helvering*, 312 U.S. 552, 556 (1941)); *Canady v. SEC*, 230 F.3d 362, 362-63 (D.C. Cir. 2000) (upholding conclusion that respondent "waived [a] defense by failing to argue it"). Because Weinbaum bears the burden of proving hearing officer bias and must overcome "the presumption of honesty and integrity in those serving as adjudicators," *Withrow v. Larkin*, 421 U.S. 35, 47 (1975); *see Schweiker v. McClure*, 456 U.S. 188, 195 (1982), it was ever more critical that he timely raise and develop his claim.

10. Lastly, also unavailing is Applicants' newly raised "statute of limitations" defense. *See* W.App. 1, M.App.1 (neither specifying any statute). Although Weinbaum suggests that this defense was only "brought [ ] to mind" by recent news reports on an unrelated case, PCAOB Rule 5421(c) required that he and Mohidin assert affirmative defenses—including "statute of limitations"—in their answers to the order instituting disciplinary proceedings (at which time, both Weinbaum and Mohidin were represented by counsel, *see* RDs 20, 21). Having failed to timely raise this defense (*see* RD 20 at 10; RD 21 at 7; RD 123 at 5-6), Applicants forfeited it. *See, e.g., Laurie Jones Canady*¸ SEC Rel. No. 34-41250, 1999 WL 183600, *12 (Apr. 5, 1999) ("It is well-established that '[r]eliance on a statute of limitations is an affirmative defense and is waived if a party does not raise it in a timely fashion.'") (quoting *Harris v. Dep't of Veterans Affairs*, 126 F.3d 339, 343 (D.C. Cir. 1997), *aff'd*, 230 F.3d 362, 365 (D.C. Cir. 2000); *Dillard v.*

Vill. of Ruidoso Downs, 2003 WL 27385174, *1 (D.N.M. 2003) ("neglect and/or ignorance of the law" did not excuse failure to timely assert "statute of limitations defense"); *see also Merrimac Corp. Secs., Inc.*, SEC Rel. No. 34-86404, 2019 WL 3216542, *25 n.158 (July 17, 2019) (even a *pro se* party "is not exempted from the requirement to present an argument to avoid waiver"). In any event, Weinbaum's reference in his application to the number of "months ago" from the present that, in his view, this case "began" and his assertion that he "had no basis to raise" "statute of limitations" until this appeal (W.App. 1), indicate that Applicants fundamentally misconceive the operation of such a defense, basing it on some improper referent for, or other date than, the commencement of the disciplinary proceeding. *See generally In re Neff*, 505 B.R. 255, 263 (9th Cir. 2014) ("a statute of limitations sets a time limit for bringing an action") (emphasis added).

In sum, none of Applicants' defenses carry any force against the weight of evidence and arguments against them. Therefore, there is no likelihood, strong or otherwise, that they will succeed on the merits.

B. Applicants Will Not Suffer Irreparable Injury.

If the stay on the nonmonetary sanctions is lifted, Applicants will thereupon be censured and barred. As a consequence of the bar, Applicants may not lawfully prepare or issue, or participate in the preparation or issuance of, audit reports with respect to any issuer, broker, or dealer; may not lawfully, "in connection with the preparation or issuance of any audit report," "(i) share in the profits of, or receive compensation in any other form from, any registered public accounting firm, or (ii) participate as an agent on behalf of such a firm in any activity of that firm"; and may not lawfully associate with, at most, any issuer, broker, or dealer in an accountancy or a financial management capacity. *See* Sarbanes-Oxley Sections 102(a) &

105(c)(7), 15 U.S.C. §§ 7212(a) & 7215(c)(7) (originally and as amended); PCAOB Rule 5301(a) & note; PCAOB Rel. No. 2003-015, A2-79 to A2-82 (Sept. 29, 2003). These restrictions do not constitute irreparable injury.

Financial detriment caused by inability to engage in a particular line of business does not rise to the level of irreparable injury warranting a stay. *See, e.g., Kabani,* 2017 WL 1295034, *1; *The Dratel Grp., Inc.*, SEC Rel. No. 34-72293, 2014 WL 2448896, *5 (June 2, 2014) (in denying stay of bar from engaging in business that provided only source of income, finding no irreparable harm); *Atlantis Internet Grp. Corp.*, SEC Rel. No. 34-70620, 2013 WL 5519826, *5 (Oct. 7, 2013) (citing *Harry W. Hunt*, SEC Rel. No. 34-68755, 2013 WL 325333, *4 (Jan. 29, 2013)). "It is . . . well settled that economic loss does not, in and of itself, constitute irreparable harm." *Wisc. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985); *see William Timpinaro*, SEC Rel. No. 34-29927, 1991 WL 288326, *1 (Nov. 12, 1991) ("'The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay, are not enough.'") (quoting *Va. Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958)).

Further undercutting any suggestion of such injury, Applicants' associational bars, by their terms, would not reach auditing- or accounting-related work not involving issuers, brokers, or dealers. Mohidin, in fact, testified that he engaged in such work while the Bar Order was in effect. *See* Tr. 396, 398. Similarly, Weinbaum owns and works for his own accounting firm, George Weinbaum, CPA, which is not registered with the PCAOB. *See* Tr. 501, 629-30 (describing Weinbaum's other accounting work as related to "tax returns," "tax planning," and "bookkeeping").

Any effect on Applicants' reputation from the mere publication of the Board's decision also does not rise to irreparable harm. There is no general right "not to be injured in one's reputation or business prospects" by the fact of an investigation or disciplinary action authorized by Congress. *Hunter v. SEC*, 879 F. Supp. 494, 501 (E.D. Pa. 1995) (citing cases); *Michael A. Rooms*, Admin. Proc. File No. 3-11621, 2004 SEC LEXIS 3158, *5 (Nov. 17, 2004) (in denying stay, concluding that applicant's argument that "the bar imposed on him ha[d] resulted in severe financial loss and damage to his reputation . . . d[id] not rise to the level of irreparable injury"). Any reputational detriment is decidedly outweighed by the public interest in putting investors, issuers, brokers, dealers, and the public at large on notice of the Board's findings. *See, e.g., Associated Sec. Corp. v. SEC*, 283 F.2d 773, 775 (10th Cir. 1960) (stating that the "necessity of protection to the public far outweighs any personal detriment"); *Va. Petroleum Jobbers*, 259 F.2d at 925 ("interests of private litigants must give way to the realization of public purposes").

C. The Stay Is Substantially Harming, and Does Not Serve, the Public Interest.

The last two *Davis* factors—whether there is substantial harm to the public from a stay and whether a stay serves the public interest—also weigh strongly in favor of lifting the stay. This matter involves conduct antithetical to the crucial role auditors play in protecting the public interest and investors, which, absent the lifting of the stay, would be at risk of wrongdoing by two auditors who have repeatedly demonstrated unfitness to audit issuers, brokers, or dealers within the regulatory framework established by Sarbanes-Oxley.

Auditors serve a special "'public watchdog'" function, requiring "complete fidelity to the public trust." *United States v. Arthur Young & Co.*, 465 U.S. 805, 817-18 (1984). They are principal "gatekeepers" to the public securities markets, safeguarding the public interest. *KPMG Peat Marwick LLP*, SEC Rel. No. 34-43862, 2001 WL 47245, *14 n.54 (Jan. 19, 2001). An

auditor's "competence" in serving in such a role means "not just technical skills, but also an accountant's willingness and ability to adhere to professional standards, including standards of honesty and fair dealing." *Amendment to Rule 102(e) of the SEC's Rules of Practice*, SEC Rel. No. 33-7593, 1998 WL 729201, *4 n.25 (Oct. 19, 1998); *see Myron Swartz*, 41 S.E.C. 53, 1961 WL 62209, *5 (May 24, 1961) (stating "to protect the public interest" a "high standard of honesty and professional conduct" is demanded "of accountants").

On multiple levels, Mohidin fell short of these standards, repeatedly failing to comply with the responsibilities of a public auditor and engaging in dishonesty and deceit. On numerous occasions, Mohidin evaded the Bar Order "meant to protect the investing public from auditors, like [him], who have demonstrated an inability or unwillingness to comply with obligations as a public auditor." RD 142 at 8. He "subverted the Board's processes by using false pretenses to secure termination of his bar." *Id.* He reinforced "a pattern of dishonesty and deceit" by giving untruthful testimony. *Id.* And now, despite having belatedly and fleetingly expressed remorse in conceding liability before the Board, he once again suggests he did nothing wrong. As the Board found, Mohidin remains an unacceptable threat to investors, especially given his ongoing association with a registered public accounting firm performing issuer work. *See* note 2 above.

Weinbaum also defied the public trust and his gatekeeping role, when for over a year he allowed his longtime friend and colleague to participate in issuer audits and reviews despite being barred. Weinbaum's acquiescence was particularly serious, highly culpable, and subverted an important investor-protection safeguard, ultimately demonstrating disregard for regulatory authority. Despite uncontested findings, Weinbaum continues to fail to recognize his wrongdoing, provides no assurances against further violations, and is well-positioned to commit yet more misconduct working alongside Mohidin on issuer work. RD 143 at 12.

Applicants' current licensing and associational status are especially troubling. *See* note 2 above. As the Commission has stated in denying stays of sanctions in SRO matters, the securities industry '"presents a great many opportunities for abuse and overreaching, and depends very heavily on the integrity of its participants,"' *Hunt*, 2013 WL 325333, *5 (citation omitted). This principle applies equally to auditors, who, as discussed, play a vital role in the markets. Applicants' current CPA licensing alone is concerning. *See Michael C. Pattison, CPA*¸ SEC Rel. No. 34-67900, 2012 WL 4320146, *10 (Sept. 20, 2012) (rejecting claim that respondent who "remains licensed as a CPA" but was employed by a private company was precluded from opportunities for future violations). Compounding matters is their ongoing association with a registered public accounting firm, which includes working together at the same firm. *See Kabani*, 2017 WL 1295034, *1 ("[a]llowing . . . [respondents] to remain associated persons would give them future opportunities to undermine the PCAOB's processes").

As in *Davis,* "unknowing" investors, issuers, brokers, dealers and "ultimately the markets will continue to be harmed until the stay" here is lifted, at which point the censures and bars would take effect and "the public notified" of the Board's decision. Admin. Proc. File No. 3-14370, at 3. Although this appeal is a public proceeding before the Commission, "important benefits to the public . . . flow from the Board's reporting of its decision[s] on its own website, where members of the public interested in the PCAOB's activities would naturally look for such matters." *Laccetti*¸ 2016 WL 6137057, *2; *see Gen. Bond & Share Co.*, Admin. Proc. File No. 3-7666, 1992 SEC LEXIS 3490, *3 (May 15, 1992) (stating, in rejecting request to stay publication of SRO decision, that "[t]o keep the public unaware of [the SRO's] determinations . . . [while the matter was on appeal in a public proceeding at the SEC] would frustrate the public interest").

Thus, continuing the automatic stay is substantially harming and does not serve the public interest. The four factors, accordingly, strongly weigh in favor of the immediate effectiveness of the censures and bars imposed by the Board and permitting its decisions to be publicly reported.

IV. CONCLUSION

For the foregoing reasons, the Board respectfully requests that the Commission lift the stay on the censures and bars imposed by the Board.

Dated: March 1, 2024

Respectfully submitted,

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OS Received 03/01/2024

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

NOTICE OF APPEARANCE

Pursuant to Rule 102 of the Commission's Rules of Practice, James Cappoli, Luis de la Torre, and Jerome P. Sisul enter their appearances in the above-entitled matter representing the Public Company Accounting Oversight Board and hereby request that notice or other written communication in this proceeding be served upon them at the following mail address and email addresses below:

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