

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 76266 / October 26, 2015

Admin. Proc. File No. 3-16518

In the Matter of the Application of

KABANI & COMPANY, INC., HAMID KABANI, CPA,
MICHAEL DEUTCHMAN, CPA, and KARIM KHAN
MUHAMMAD, CPA

For Review of Disciplinary Action Taken by the
PCAOB

ORDER DENYING MOTION
FOR A PROTECTIVE ORDER

On April 28, 2015, Kabani & Company, Inc., Hamid Kabani, CPA, Michael Deutchman, CPA, and Karim Khan Muhammad, CPA (together, "Applicants"), filed an application for review of disciplinary action taken by the Public Company Accounting Oversight Board ("PCAOB"). After filing their brief in support of that application on July 6, 2015, and a reply brief on August 19, 2015, Applicants filed the instant motion on August 26, 2015, requesting "a protective order sealing all the briefs and everything about and related to these proceedings related to [Applicants'] application for review . . . until such time as the SEC issues its final order." The PCAOB opposes that motion. For the reasons below, we deny Applicants' request for a protective order.

Section 105(b)(5) of the Sarbanes-Oxley Act of 2002 generally provides for confidential and privileged treatment of documents and information in connection with a PCAOB inspection or investigation.¹ Applicants interpret this provision to mean that "PCAOB proceedings must remain confidential until after an adverse ruling by the full U.S. Securities [&] Exchange [Commission]'s review of the sanctions." But the Sarbanes-Oxley Act expressly limits confidential and privileged treatment of PCAOB proceedings "unless and until" such documents and information are "presented in connection with a public proceeding."² We previously have held that Commission review proceedings of PCAOB disciplinary actions are public

¹ 15 U.S.C. § 7215(b)(5)(A).

² *Id.*

proceedings.³ That determination is consistent with the Sarbanes-Oxley Act, which specifies that Commission review proceedings of PCAOB disciplinary actions are governed by Sections 19(d)(2) and 19(e)(1) of the Securities Exchange Act of 1934, "as fully as if the [PCAOB] were a self-regulatory organization."⁴ And it is well established that review proceedings of self-regulatory organizations are public (with limited exceptions not at issue here).⁵

Although "[d]ocuments and testimony introduced in a public hearing are presumed to be public," Rule of Practice 322 allows a party to seek to "limit from disclosure to other parties or to the public documents or testimony that contain confidential information."⁶ A motion for a protective order "shall be granted only upon a finding that the harm resulting from disclosure would outweigh the benefits of disclosure."⁷ Applicants' request for a blanket, retroactive protective order does not meet this standard. They claim that disclosure of the PCAOB's disciplinary action and their appeal of that action will cause them reputational harm. That generalized concern does not outweigh the important public interest in conducting an open administrative proceeding.⁸ Further weighing against Applicants' confidentiality concern is that

³ See *Gately & Assocs., LLC*, Admin. Proc. File No. 3-13535, 2009 WL 6805010, at *1 (Oct. 23, 2009) (holding that review proceedings of a PCAOB disciplinary action were public).

⁴ 15 U.S.C. § 7217(c); see also Commission Rule of Practice 440, 17 C.F.R. § 201.440.

⁵ Rule of Practice 301, 17 C.F.R. § 201.301; see *Dominick A. Alvarez*, Securities Exchange Act Release No. 53231, 2006 WL 328034, at *1 (Feb. 6, 2006) ("The Commission has long underscored the importance of conducting open administrative proceedings that, 'with attendant public scrutiny, have the effect of protecting against the abuse of power by governmental entities.'" (quoting *Disciplinary Proceedings Involving Professionals Appearing or Practicing Before the Commission*, 53 Fed. Reg. 26427, 26428–29 (July 13, 1988))); accord *FCC v. Schreiber*, 381 U.S. 279, 293 (1965) (finding that the FCC's "procedural rule, establishing a presumption in favor of public proceedings, accords with the general policy favoring disclosure of administrative agency proceedings").

⁶ 17 C.F.R. § 201.322(a), (b).

⁷ *Id.* § 201.322(b).

⁸ *Cf. Schreiber*, 381 U.S. at 293 (agreeing that making the FCC's administrative proceedings public "stimulat[es] the flow of information, . . . serve[s] to inform those segments of the public primarily affected by the agency's regulatory policies and . . . induce[s] . . . public acceptance of the results of the investigation"); *Gately & Assocs.*, 2009 WL 6805010, at *1 (finding no circumstances that justified making PCAOB review proceedings non-public); *Joseph John VanCook*, Securities Exchange Act Release No. 58756, 2008 WL 4500339, at *1 (Oct. 8, 2008) (stating that "Commission administrative proceedings, and the documents filed by parties pursuant to those proceedings, generally are accessible to the public unless the circumstances warrant a departure from the norm in accordance with our Rules of Practice"); *Disciplinary Proceedings Involving Professionals Appearing or Practicing Before the Commission*, Exchange Act Release No. 25893, 1988 WL 1000021, at *2–*4, *12 (July 7, 1988) (discussing the

(continued...)

they did not seek a protective order until more than four months after they initiated these review proceedings, and until after they filed their brief in support of their petition for review and their reply brief.⁹

Nevertheless, if Applicants wish to shield specific information in these proceedings from disclosure, they may submit a motion requesting a protective order. That motion should clearly identify which information Applicants seek to protect and should offer an explanation as to why the harm resulting from disclosure would outweigh the benefits of disclosure.¹⁰

Accordingly, it is ORDERED that Applicants' motion for a protective order is DENIED.

By the Commission.

Brent J. Fields
Secretary

(...continued)

"presumption in favor of public proceedings" and the importance of "the public's right of access to the [government's] decisionmaking processes").

⁹ *Cf. Gambale v. Deutsche Bank AG*, 377 F.3d 133, 144 (2d Cir. 2004) (finding party was not entitled to have previously disclosed information sealed because, "however confidential it may have been beforehand, subsequent to publication it was confidential no longer We simply do not have the power, even were we of the mind to use it if we had, to make what has thus become public private again"); *RegScan, Inc. v. Bureau of Nat. Affairs, Inc.*, No. 1:11CV1129 (JCC/JFA), 2012 WL 2994075, at *8 (E.D. Va. July 19, 2012) (finding the fact that information had "been in the public domain for some time—some of them for months" weighed against granting party's motion to place that information under seal).

¹⁰ See Rule of Practice 322, 17 C.F.R. § 201.322.