

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 79138 / October 21, 2016

Admin. Proc. File No. 3-16430

In the Matter of the Application of  
  
MARK E. LACCETTI, CPA  
  
For Review of Disciplinary Action Taken by the  
  
PCAOB

ORDER TERMINATING  
AUTOMATIC STAY

On September 2, 2016, the Commission sustained disciplinary action taken by the Public Company Accounting Oversight Board (“PCAOB”) against Mark E. Laccetti.<sup>1</sup> The PCAOB found that Laccetti violated its rules in connection with the audit of a foreign issuer’s consolidated financial statements, barred him from associating with a registered public accounting firm (with the right to petition the PCAOB to associate with such a firm after two years), and ordered him to pay an \$85,000 civil money penalty. Laccetti’s application for Commission review triggered an automatic stay of the PCAOB’s sanctions and prevented the PCAOB from reporting the sanctions to the public.<sup>2</sup> The PCAOB now requests that the Commission terminate the automatic stay. Laccetti opposes the motion, arguing that he should “be entitled to maintain the status quo at least until the time to appeal [the Commission’s decision] has run.” We find that, because an application for Commission review triggers the stay and the Commission has completed its review, it is appropriate to lift the automatic stay.

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<sup>1</sup> *Mark E. Laccetti, CPA*, Exchange Act Release No. 78764, 2016 WL 4582401 (Sept. 2, 2016).

<sup>2</sup> *See* 15 U.S.C. § 7215(d)(1)(C), (e)(1) (stating that the PCAOB shall report a disciplinary sanction to the public once any stay on the imposition of such sanction has been lifted and that an application for Commission review of PCAOB disciplinary action shall operate as a stay of such action “unless and until the Commission orders . . . that no such stay shall continue to operate”).

**A. The basis for the automatic stay is Commission review of PCAOB disciplinary action.**

The Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley”) provides for the Commission to have “oversight and enforcement authority over the Board” and for “review by the Commission of final disciplinary sanctions imposed by the Board.”<sup>3</sup> Section 105(e) of Sarbanes-Oxley “govern[s] the extent to which application for . . . review of any final disciplinary action of the Board operates as a stay of such action.”<sup>4</sup> And Section 105(e) provides that an application for Commission review shall operate as a stay, until the Commission orders that no such stay shall continue to operate.<sup>5</sup> Because the Commission’s review of the PCAOB’s disciplinary action triggers the stay and the Commission’s review has concluded, there is no longer a purpose for the automatic stay. Once the Commission found that the PCAOB’s decision met the standards required by Sarbanes-Oxley, the public and the PCAOB became entitled to the prompt execution of the PCAOB’s order.<sup>6</sup> The Commission’s consistent practice has been to lift the automatic stay after affirming a PCAOB disciplinary action.<sup>7</sup> Should Laccetti decide to seek appellate review of the Commission’s decision, the Securities Exchange Act of 1934 provides a separate means for seeking a stay of that decision that Laccetti is free to pursue.<sup>8</sup>

Laccetti contends that keeping the automatic stay in place until the time for him to appeal has run would “maintain the status quo” and be “consistent with the principle that, for some

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<sup>3</sup> 15 U.S.C. § 7217(a), (c)(2); *see generally Free Enter. Fund v. PCAOB*, 561 U.S. 477, 486 (2010) (stating that Sarbanes-Oxley “places the Board under the SEC’s oversight, particularly with respect to the issuance of rules or the imposition of sanctions (both of which are subject to Commission approval and alteration)”).

<sup>4</sup> 15 U.S.C. 7217(c)(2)(A).

<sup>5</sup> 15 U.S.C. 7215(e). This language contemplates that the Commission could, under appropriate circumstances, lift a stay under Section 105(e) prior to the completion of its review, a situation not at issue here.

<sup>6</sup> *See* 15 U.S.C. § 7271(c)(2) (setting forth standard for Commission review of PCAOB disciplinary sanctions).

<sup>7</sup> *See, e.g., S.W. Hatfield, CPA*, Administrative Proceeding File No. 3-14795, 2013 SEC LEXIS 1999, at \*3 (July 11, 2013) (terminating automatic stay after Commission sustained PCAOB’s imposition of sanctions); *R.E. Bassie & Co.*, Accounting and Auditing Enforcement Release No. 3354, 2012 WL 90269, at \*15 (Jan. 10, 2012) (sustaining PCAOB’s sanctions and terminating automatic stay); *Gately & Assocs., LLC*, Exchange Act Release No. 63167, 2010 WL 5092724, at \*1 (Oct. 22, 2010) (terminating automatic stay after Commission sustained PCAOB’s imposition of sanctions).

<sup>8</sup> *See, e.g.,* 15 U.S.C. § 78y(c)(2) (setting forth procedure for seeking a stay of Commission orders pending judicial review); FED. R. APP. P. 18 (setting forth procedure for seeking a stay of administrative agency orders pending judicial review); 17 C.F.R. § 201.401(c) (setting forth procedure for seeking a stay of Commission orders pending judicial review).

purposes, an order or judgment is not final until the time to appeal has run.” But the Commission’s orders necessarily become final *before* the time to appeal has run because, under the Exchange Act, an aggrieved party cannot appeal a Commission decision until *after* it becomes final.<sup>9</sup> And in any case finality is not determinative. Staying a valid administrative judgment is an extraordinary remedy.<sup>10</sup> As such, Sarbanes-Oxley provides the Commission with broad discretion to lift the automatic stay “summarily.”<sup>11</sup> It is appropriate to lift the stay after the Commission has completed the review that triggered the stay and found that the PCAOB’s action satisfied Sarbanes-Oxley’s requirements. Because the Commission determined that the PCAOB imposed the sanctions properly and that decision is public, there is no longer any reason to prevent the PCAOB from reporting its decision to the public or from enforcing those sanctions.

**B. Laccetti provides no justification for maintaining the automatic stay after the Commission’s review of the PCAOB’s disciplinary action has concluded.**

Laccetti provides two main arguments for not lifting the stay until the time to appeal has run. We find neither of them persuasive.

First, Laccetti claims that he would be irreparably harmed by lifting the automatic stay because that would allow the PCAOB to publicly report its sanctions, thus “signaling that the [PCAOB’s] findings and sanctions are final and conclusive, when they may yet be overturned by a court of appeals.”<sup>12</sup> But disciplinary decisions are routinely reported to the public despite the possibility of further review.<sup>13</sup> And the PCAOB’s findings and sanctions in this proceeding are

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<sup>9</sup> 15 U.S.C. § 78y(a)(1); *see also Sathianathan v. SEC*, 304 F. App’x 883, 884 (D.C. Cir. 2008) (stating that, because “Sathianathan did not file a motion for reconsideration, the challenged SEC action was final”); 17 C.F.R. § 201.470 (stating that a “motion for reconsideration shall be filed within 10 days after service of the order complained of”).

<sup>10</sup> *See, e.g., Cuomo v. U.S. Nuclear Regulatory Comm’n*, 772 F.2d 972, 978 (D.C. Cir. 1985) (describing a stay pending appeal as an “extraordinary remedy”); *Busboom Grain Co., Inc. v. ICC*, 830 F.2d 74, 75 (7th Cir. 1987) (stating that “[a] strong presumption of regularity supports any order of an administrative agency; a stay pending judicial review is a rare event and depends on a demonstration that the administrative process misfired”).

<sup>11</sup> 15 U.S.C. § 7215(e)(1) (stating that the Commission may end the automatic stay “summarily”); *see also* 17 C.F.R. § 201.401(e)(2) (stating that “[t]he Commission may lift a stay summarily, without notice and opportunity for hearing”).

<sup>12</sup> *See* 15 U.S.C. § 7215(d)(1) (stating that the PCAOB shall report any disciplinary sanctions to the Commission, state or foreign regulatory authorities, and “the public (once any stay on the imposition of such sanction has been lifted)”).

<sup>13</sup> *See, e.g., Gen. Bond & Share Co.*, Administrative Procedure File No. 3-7666, 1992 SEC LEXIS 3490, at \*3 (May 15, 1992) (denying stay of publication of NASD decision while on appeal because “to grant that extraordinary relief . . . would be disfavored” and because “[t]o keep the public unaware of NASD determinations at this stage would frustrate the public interest that the Securities Exchange Act was designed to foster”).

already public. Laccetti filed his application for review with the Commission approximately 19 months ago, and the Commission's review of PCAOB disciplinary actions are public proceedings.<sup>14</sup> In fact, Laccetti attached the PCAOB's final decision to his application for review, both of which have been available on the Commission's website.<sup>15</sup> The Commission's decision sustaining the PCAOB's findings and sanctions is also public. Once the Commission's review that triggered the automatic stay is complete, allowing the PCAOB to report to the public sanctions that have already been reported publicly does not create any irreparable harm.

Second, Laccetti claims that terminating the stay has "no practical impact in terms of the public interest or the protection of investors." According to him, lifting the stay is not necessary because he "undisputedly does not perform audits for public companies anymore, and has no intention to do so in the future," and maintaining the stay will not impede the PCAOB's "ability to ultimately collect the civil penalty." Laccetti adds that the PCAOB is "not sufficiently 'aggrieved' by the stay" to seek its termination<sup>16</sup> and offers no justification for why "it is suddenly so pressing to lift the stay now instead of in a mere 60 days." But the PCAOB states that its decision, which the Commission has now sustained, discussed the importance of the civil money penalty, in tandem with the associational bar, to "protect against Laccetti's demonstrated capacity for the conduct at issue here," to "impress on him the seriousness of his violations," and to "encourage more rigorous compliance by him and others" with certain fundamental auditing principles.<sup>17</sup> And the automatic stay did not only prevent the PCAOB from enforcing the sanctions; it also prevented the PCAOB from reporting its decision to the public. We agree with the PCAOB that Laccetti "ignores the important benefits to the public that would flow from the Board's reporting of its decision on its own website, where members of the public interested in the PCAOB's activities would naturally look for such matters." The PCAOB decision would inform the public of "precisely what conduct the Board considers to merit discipline, what issues were litigated, and how its enforcement program performed." Laccetti has not established that the PCAOB should continue to be prevented from reporting its decision following the completion of Commission review.

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<sup>14</sup> See, e.g., *Kabani & Co., Inc.*, Exchange Act Release No. 76266, 2015 WL 6447449, at \*1 (Oct. 26, 2015) (holding that Commission's review of a PCAOB disciplinary action was public proceeding); *Gately & Assocs., LLC*, Administrative Procedure File No. 3-13535, 2009 WL 6805010, at \*1 (Oct. 23, 2009) (same); see also, e.g., *Dominick A. Alvarez*, 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 Prof'ls Appearing or Practicing Before the Comm'n*, 53 Fed. Reg. 26427, 26428–29 (July 13, 1988))).

<sup>15</sup> See <https://www.sec.gov/litigation/apdocuments/3-16430-event-1.pdf>.

<sup>16</sup> See 17 C.F.R. § 201.401(e) (stating that "[a]ny person aggrieved" by the automatic stay under Sarbanes-Oxley "may make a motion to lift the stay").

<sup>17</sup> *Laccetti*, slip op. at 94 & 96. Laccetti did not challenge these findings.

Accordingly, it is ORDERED that the automatic stay of the PCAOB's sanctions imposed on Laccetti under Section 105(e) of Sarbanes-Oxley is hereby terminated.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Brent J. Fields  
Secretary