

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10460 / February 21, 2018

SECURITIES EXCHANGE ACT OF 1934
Release No. 82755 / February 21, 2018

Admin. Proc. File No. 3-15211

In the Matter of
FRANCIS V. LORENZO

ORDER DENYING STAY

Francis V. Lorenzo seeks to stay the Commission's December 12, 2017 order scheduling briefs¹ during the pendency of his petition for certiorari to the United States Supreme Court regarding the U.S. Court of Appeals for the D.C. Circuit's recent decision in *Lorenzo v. SEC*.² The Division of Enforcement opposes Lorenzo's motion, which we deny.

Lorenzo cites Commission Rule of Practice 401 for the basis of his stay request, but that rule permits stay motions only by persons aggrieved by a Commission order "who would be entitled to review in a federal court of appeals."³ Rule 401 is therefore inapplicable here because the Commission has not yet entered a final order, reviewable by an appellate court.⁴ We have

¹ *Francis V. Lorenzo*, Securities Exchange Act Release No. 82307, 2017 WL 6349871 (Dec. 12, 2017).

² 872 F.3d 578 (D.C. Cir. 2017), *aff'g in part, remanding in part* Exchange Act Release No. 74836, 2015 WL 1927763 (Apr. 29, 2015), *petition for cert. filed*, No. 17A657 (Jan. 26, 2018).

³ 17 C.F.R. § 201.401(c).

⁴ *Cf. Michael S. Steinberg*, Advisers Act Release No. 4008, 2015 WL 331125, at *1–2 (Jan. 27, 2015) (holding that Commission's order scheduling briefs was not a Commission order entitled to appellate review under Rule 401, but postponing briefing schedule under Rule 161 where, unlike here, the Division did not oppose a postponement).

occasionally construed similar motions as requests for an extension of time, postponement, or adjournment under Rule 161, but Lorenzo has not made the requisite showing under that rule.⁵

Rule 161 provides that “the Commission, at any time, ... may, for good cause shown ... postpone or adjourn any hearing” so long as any such postponement or adjournment meets certain requirements.⁶ In particular, when deciding whether to grant such a motion, we “adhere to a policy of strongly disfavoring such requests, except in circumstances where the requesting party makes a strong showing that the denial of the request or motion would substantially prejudice their case.”⁷ Lorenzo has not met his burden of demonstrating that such circumstances exist here.

Lorenzo claims that “it would be unreasonable to begin litigation under a theory of law that could be overturned by the Supreme Court” and that the resulting “unnecessary expenditure of resources by the Commission and Lorenzo would result in irreparable harm.” But Lorenzo has so far complied with the Commission’s scheduling order, having already filed his opening brief (and waiting until a week before his opening brief was due to the Commission before even seeking a stay). Supreme Court review is also, at best, speculative.⁸ Indeed, because the D.C. Circuit issued its mandate (thereby remanding this matter to the Commission), Lorenzo’s petition for certiorari is interlocutory—a posture that the Supreme Court has said “alone furnishe[s] sufficient ground for the denial” of the petition for certiorari.⁹ And to postpone this matter until the Supreme Court decides Lorenzo’s petition could significantly delay the outcome of this proceeding. We therefore find that Lorenzo’s reasons for postponing the scheduling order are outweighed by “the strong public interest in the prompt enforcement of the federal securities laws.”¹⁰

⁵ Cf. *Joseph John VanCook*, Exchange Act Release No. 59550, 2009 WL 605322, at *2 (Mar. 10, 2009) (construing motion for a stay as a request for an extension of time, postponement, or adjournment); *Michael J. Markowski*, Exchange Act Release No. 40748, 1998 WL 960587, at *3 (Dec. 4, 1998) (same).

⁶ 17 C.F.R. § 201.161(a).

⁷ *Id.*

⁸ Lorenzo writes in his opening brief that it “is submitted without waiving or withdrawing any of the arguments” in his motion for a stay.

⁹ *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916); see also, e.g., *Bhd. Of Locomotive Firemen v. Bangor & Aroostook R.R.*, 389 U.S. 327, 328 (1967) (explaining that, “because the Court of Appeals remanded the case, it is not yet ripe for review by this Court”).

¹⁰ *Lynn Tilton*, Advisers Act Release No. 4735, 2017 WL 3214456, at *2 (July 28, 2017) (denying request for a stay pending Supreme Court’s certiorari decision); cf. *Live365, Inc. v. Copyright Royalty Bd.*, 698 F. Supp. 2d 25, 45 (D.D.C. 2010) (observing that “[t]he Supreme Court has held that “[m]ere litigation expense, even substantial and unrecoverable cost, does not constitute irreparable injury” (quoting *F.T.C. v. Standard Oil Co.*, 449 U.S. 232, 244 (1980)));

(continued...)

Accordingly, it is ORDERED that Francis V. Lorenzo's request for a stay of the Commission's scheduling order is denied.

By the Commission.

Brent J. Fields
Secretary

(...continued)

Paul Free, CPA, Exchange Act Release No. 66260, 2012 WL 266986, at *2 (Jan. 26, 2012) (denying request for a stay or postponement in follow-on proceeding pending respondent's appeal of underlying district court decision).