

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10933 / March 15, 2021

SECURITIES EXCHANGE ACT OF 1934
Release No. 91330 / March 15, 2021

Admin. Proc. File No. 3-16386

In the Matter of

TIMOTHY W. CARNAHAN
AND
CYIOS CORPORATION

ORDER GRANTING RENEWED MOTION FOR EXTENSION OF TIME TO FILE BRIEFS
AND TO ADDUCE ADDITIONAL EVIDENCE

On January 25, 2021, the Commission granted a petition filed by Timothy W. Carnahan on behalf of himself and CYIOS Corporation for review of an administrative law judge's initial decision finding that CYIOS violated, and Carnahan caused CYIOS to violate, Section 17(a)(3) of the Securities Act of 1933, Section 13(a) of the Securities Exchange Act of 1934, and Exchange Act Rules 13a-1 and 13a-13, and that Carnahan violated Exchange Act Rules 13a-14 and 13a-15(c).¹ In that order, the Commission also denied a February 3, 2020 petition for review filed by Jonathan D. Leinwand, an attorney purporting to represent CYIOS.² The Commission did so because it found "no admissible evidence in the record" that Leinwand was authorized to seek review of the initial decision on CYIOS's behalf.³ Leinwand thereafter filed on CYIOS's

¹ *Timothy W. Carnahan*, Exchange Act Release No. 90977, 2021 WL 241875 (Jan. 25, 2021); *see also Tracy J. Anderson, CPA*, Initial Decision Release No. 1394, 2020 WL 260282 (Jan. 10, 2020). We further denied the Division of Enforcement's motion for summary affirmance and scheduled the filing of briefs. *Carnahan*, 2021 WL 241875, at *2. We ordered that Respondents' opening brief in support of their petition for review be filed by February 24, 2021; the Division's brief in opposition by March 26, 2021; and Respondents' reply brief by April 9, 2021. *Id.* Carnahan timely filed an opening brief on February 24, 2021.

² *Carnahan*, 2021 WL 241875, at *1 n.4.

³ *Id.*

behalf an unopposed motion for an extension of time to file briefs in this matter, which the Commission denied in light of its prior disposition of Leinwand's February 3, 2020 petition.⁴

On March 4, 2021, Leinwand filed a motion for reconsideration of that denial. Leinwand attached to the motion a March 13, 2020 Mutual Release and Separation Agreement, signed and notarized by Carnahan, to show that Carnahan resigned from all of his positions with CYIOS and can no longer file a brief on CYIOS's behalf. The documentation accompanying Leinwand's motion indicates that he is now authorized to represent CYIOS in this action.

We construe Leinwand's motion as a renewed motion for an extension of time to file briefs, as well as a motion to adduce additional evidence under Rule of Practice 452. Rule 452 requires that motions to adduce additional evidence show "with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously."⁵ Although Leinwand does not explain why he failed to adduce this evidence in his original motion for an extension of time to file briefs in this matter, we nevertheless determine as a discretionary matter to admit the documents Leinwand seeks to adduce.

Under the circumstances, it also appears appropriate to grant Leinwand's renewed request for an extension of time to file briefs for good cause shown.⁶

Accordingly, it is ORDERED that Jonathan D. Leinwand's renewed motion for an extension of time to file briefs and motion for leave to adduce new evidence are granted. It is further ORDERED that the briefing schedule set forth in our January 25, 2021 order is modified as follows: CYIOS Corporation shall file an opening brief by March 26, 2021; the Division shall file a single brief in response to respondents' respective opening briefs by April 26, 2021; and Timothy W. Carnahan and CYIOS Corporation each may file a reply brief by May 10, 2021.

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

Vanessa A. Countryman
Secretary

⁴ *Timothy W. Carnahan*, Exchange Act Release No. 91224, 2021 WL 763943, at *1 (Feb. 26, 2021).

⁵ 17 C.F.R. § 201.452.

⁶ *See* 17 C.F.R. § 201.161 (stating that parties may seek extensions of time for "good cause shown"); *see also Pending Administrative Proceedings*, Exchange Act Release No. 88415, 2020 WL 1322001, at *1 (Mar. 18, 2020) (stating that, "pending further order of the Commission, all reasonable requests for extensions of time will not be disfavored as stated in Rule 161").