

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 99857 / March 26, 2024

Admin. Proc. File No. 3-21841

In the Matter of the Application of  
AHMED MOHIDIN, CPA, and GEORGE WEINBAUM, CPA  
For Review of Action Taken by the  
Public Company Accounting Oversight Board

ORDER REQUESTING ADDITIONAL BRIEFS

Ahmed Mohidin, CPA, and George Weinbaum, CPA (together, “Applicants”), each filed an application under Section 107 of the Sarbanes-Oxley Act of 2002 for review of action taken by the Public Company Accounting Oversight Board (“PCAOB”).<sup>1</sup> Pursuant to Section 105(e) of that Act, such an application for review operates as a stay of the disciplinary action imposed by the PCAOB.<sup>2</sup> On March 1, 2024, the PCAOB moved to lift the stay under Section 105(e) and Rule of Practice 401(e), so that the disciplinary action may take effect before the Commission resolves the appeals.<sup>3</sup> Neither Mohidin nor Weinbaum has responded to the PCAOB’s motion.

In its motion, the PCAOB asserts that the same considerations should apply to a motion to lift the stay under Rule 401(e) as those that apply to a motion to stay a self-regulatory organization’s (“SRO”) disciplinary action under Rule 401(d).<sup>4</sup> When considering whether to stay an SRO disciplinary action under Rule 401(d), the Commission has considered whether

<sup>1</sup> 15 U.S.C. § 7217(c)(2).

<sup>2</sup> 15 U.S.C. § 7215(e)(1).

<sup>3</sup> See 15 U.S.C. § 7215(e)(1); Rule of Practice 401(e)(1), 17 C.F.R. § 201.401(e)(1); *cf. S. Brent Farhang, CPA*, Exchange Act Release No. 83494, 2018 WL 3193859, at \*11 (June 21, 2018) (terminating automatic stay when sustaining PCAOB’s underlying disciplinary action).

<sup>4</sup> Compare Rule of Practice 401(e)(1), 17 C.F.R. § 201.401(e)(1) (providing that “[a]ny person aggrieved by a stay of action” by the PCAOB “may make a motion to lift the stay”), with Rule of Practice 401(d)(1), 17 C.F.R. § 201.401(d)(1) (providing that “any person aggrieved” by an action of an SRO may file a “motion for a stay” of the action).

there is a strong likelihood that the applicant will succeed on the merits of the appeal; whether the applicant will suffer irreparable harm without a stay; whether the public or another party will suffer substantial harm as a result of a stay; and whether a stay will serve the public interest.<sup>5</sup> Although, in a prior unpublished order, the Commission once identified the same factors as relevant to resolving a motion to lift a stay of a PCAOB disciplinary action under Rule 401(e),<sup>6</sup> that order did not explain why it did so. Instead, the order merely stated: “It appears appropriate to consider the motion, as the [PCAOB] argues, based on the factors the Commission previously has considered in evaluating similar requests for stays in connection with self-regulatory organization proceedings.”

We would benefit from supplemental briefing on the appropriate legal standard for lifting the stay. Notwithstanding the statement in our prior opinion, it would be particularly helpful for the parties to address whether the factors relevant to consideration of SRO stay motions should also govern in this context. In particular, the parties should address whether extending the Rule 401(d) (SRO) standard to the Rule 401(e) (PCAOB) context would be appropriate given Congress’s express determination that applications for review of PCAOB disciplinary actions should automatically operate as a stay, but applications for review of SRO decisions should not.<sup>7</sup> The parties should also address whether application of the Rule 401(d) standard here would appropriately allocate the burden of proof and persuasion, given that the *PCAOB*—not Applicants—has moved to lift the statutorily imposed stay.<sup>8</sup>

Accordingly, IT IS ORDERED that the PCAOB shall file a supplemental brief on the above issues, including the appropriate standard to apply to its motion to lift the stay, by April 9, 2024. Applicants shall file briefs in opposition to the PCAOB’s motion and supplemental brief by April 23, 2024, and any reply brief shall be filed by April 30, 2024.

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<sup>5</sup> See *Scottsdale Cap. Advisors Corp.*, Exchange Act Release No. 83783, 2018 WL 3738189, at \*2 (Aug. 6, 2018).

<sup>6</sup> See *Davis Acct. Grp., P.C.*, Corrected Order Partially Lifting Stay at 2–3, Admin. Proc. File No. 3-14370 (June 14, 2011).

<sup>7</sup> Compare 15 U.S.C. § 7215(e)(1) (providing that an application for review “shall operate as a stay” of disciplinary action by the PCAOB), with 15 U.S.C. § 78s(d)(2) (providing that an application for review of disciplinary action by an SRO “shall *not* operate as a stay”) (emphasis added).

<sup>8</sup> See generally 5 U.S.C. § 556(d) (providing that “[e]xcept as otherwise provided by statute, the proponent of a[n] . . . order has the burden of proof”); see also *Dir., Office of Workers’ Comp. Programs, Dep’t of Lab. v. Greenwich Collieries*, 512 U.S. 267, 276 (“[W]e understand the APA’s unadorned reference to ‘burden of proof’ to refer to the burden of persuasion.”).

The parties' attention is directed to Rule of Practice 154 regarding motions.<sup>9</sup> Attention is further directed to the e-filing requirements in the Rules of Practice.<sup>10</sup> And we remind the parties that any document filed with the Commission must also be served upon all participants in this proceeding and be accompanied by a certificate of service.<sup>11</sup>

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

Vanessa A. Countryman  
Secretary

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<sup>9</sup> See Rule of Practice 154, 17 C.F.R. § 201.154.

<sup>10</sup> See Rules of Practice 151, 152(a), 17 C.F.R. §§ 201.151, .152(a) (providing procedure for filing papers with the Commission and mandating electronic filing in the form and manner posted on the Commission's website); *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. Parties generally also must certify that they have redacted or omitted sensitive personal information from any filing. Rule of Practice 151(e), 17 C.F.R. § 201.151(e).

<sup>11</sup> See Rule of Practice 150, 17 C.F.R. § 201.150 (requiring parties generally to serve each other with their filings); Rule of Practice 151(d), 17 C.F.R. § 201.151(d) ("Papers filed with the Commission . . . shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service, and the mailing address or email address to which service was made, if not made in person.").