

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 69886 / June 28, 2013

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3469 / June 28, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15191

In the Matter of

BRIAN D. FOX
c/o Box 8076 Stn A
Calgary, Alberta T2H 0H6
Canada

**ORDER DENYING PETITION TO LIFT TEMPORARY
SUSPENSION AND DIRECTING HEARING ON THE PETITION**

I.

Brian D. Fox has petitioned us to lift an order issued pursuant to Rule 102(e)(3) of our Rules of Practice temporarily suspending him from appearing or practicing before the Commission. Fox failed to file his Petition with the Secretary as our Rules of Practice require and the Office of the Secretary only received it after the time period specified by our Rules to challenge the Order had expired. As discussed below, we have determined to waive the requirements of Rules 102(e)(3)(ii) and 151(b), and to treat the Petition as timely filed as of May 31, 2013. We also deny the Petition to lift the suspension and direct that the matter be scheduled for a hearing before an administrative law judge.

II.

On November 2, 2012, the U.S. District Court for the Northern District of Oklahoma entered judgment against Fox, permanently enjoining him from future violations, direct or indirect, of certain provisions of the Securities Exchange Act of 1934 and specified rules thereunder.¹ The Judgment, which Fox has appealed,² further prohibited him from acting as an

¹ *SEC v. Fox*, No. 4:11-CV-0211-CVE-PJC, ECF No. 53 (N.D. Okla. Nov. 2, 2012) (among other things, entering injunction with respect to violations of Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-13, 13b2-1, and 13b2-2 thereunder).

² *See Fox v. SEC*, No. 13-5013 (10th Cir. appeal filed Jan. 31, 2013).

officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or is required to file reports pursuant to Section 15(d) of the Exchange Act. As its basis, the Judgment states that Fox had previously consented to permanent injunctive relief and an officer-and-director bar and that the Court had found his consent valid and enforceable.

On January 29, 2013, we entered an Order Instituting Public Administrative Proceedings and Imposing Temporary Suspension Pursuant to Rule 102(e)(3) of the Commission's Rules of Practice.³ In the Order, we found that Fox had misled the investing public by fraudulently inflating the revenue and assets and fraudulently omitting major liabilities of Powder River Petroleum International, Inc. in its Commission filings, and by making other false and misleading public disclosures. We also found that a court of competent jurisdiction had permanently enjoined Fox from violating the Federal securities laws within the meaning of Rule 102(e)(3)(i)(A) and, in view of this finding, deemed it appropriate and in the public interest that Fox be temporarily suspended from appearing or practicing before the Commission. The Order further provided that Fox could file a petition with the Commission to lift the temporary suspension within thirty days after service of the Order, and that, if he failed to do so, the suspension would become permanent.

Fox subsequently prepared a petition seeking the removal of the temporary suspension or, in the alternative, seeking a hearing with respect to it.⁴ On or before February 28, 2013, the Commission's Fort Worth Regional Office received a service copy of the Petition. An attachment to the Petition states that, in addition to the copy sent to the Fort Worth Regional Office, Fox also planned to deliver a copy to our Headquarters at its general address, with no indication it was otherwise directed to the Secretary as required under our rules. The Office of Secretary did not receive that copy. Instead, the Office first received actual notice and a copy of Fox's Petition from Fort Worth on May 31, 2012, following a routine inquiry from staff in Fort Worth.

III.

Rule 102(e)(3)(ii) of our Rules of Practice provides that any person challenging a temporary suspension from appearing and practicing before the Commission must do so within thirty days after service of the order by "petition[ing] the Commission to lift the temporary suspension."⁵ Under Rule 151(b) of the Rules of Practice, "[f]iling of papers with the Commission shall be made by filing them with the Secretary."⁶ In turn, Rule 151(d) requires that "[p]apers filed with the Commission" by mail "shall be accompanied by a certificate stating,"

³ *Brian D. Fox*, Order Instituting Public Administrative Proceedings and Imposing Temporary Suspension Pursuant to Rule 102(e)(3) of the Commission's Rules of Practice, Exchange Act Release No. 68754, 2013 WL 325332 (Jan. 13, 2013).

⁴ *See* Petition Opposing Temporary Order Instituting Public Administrative Proceedings and Imposing Temporary Suspension Pursuant to Rule 102(e)(3) of Commission's Rules of Practice (the "Petition").

⁵ 17 C.F.R. § 201.102(e)(3)(ii); *see also* Rule of Practice 102(e)(3)(iii), 17 C.F.R. § 201.102(e)(3)(iii) (referencing requirement of "the filing of a petition" under Rule 102(e)(3)(ii)).

⁶ 17 C.F.R. § 201.151(b).

among other things, "the mailing address . . . to which service was made" ⁷ In an attachment to his Petition, Fox indicated that he planned to deliver the Petition to the Commission at the Headquarters general address without reference to the Secretary. As noted above, the first notice and copy of the Petition that the Office of the Secretary received was the one forwarded by the Fort Worth Regional Office on May 31, 2013. Because Fox did not file his Petition with the Office of Secretary within thirty days of service of the Order he challenges – indeed, has never properly directed his Petition to the Secretary – we could treat his Petition as never properly filed in a timely manner under our Rules of Practice.

Nonetheless, under the circumstances, we deem it appropriate to waive compliance with Rules 102(e)(3)(ii) and 151(b) to the extent necessary to allow consideration of the Petition. Under Rule 100(c), we may "by order direct, in a particular proceeding, that an alternative procedure shall apply or that compliance with an otherwise applicable rule is unnecessary" based upon our determination "that to do so would serve the interests of justice and not result in prejudice to the parties to the proceeding."⁸ Under the circumstances, including the fact that Fox is acting *pro se* and appears to have made an effort, albeit flawed, to file a copy of the Petition, we find that it would serve the interests of justice and would not prejudice Fox or the Division of Enforcement to waive compliance with Rules 102(e)(3)(ii) and 151(b) to the extent necessary to treat Fox's Petition as timely filed on May 31, 2013, when the Office of the Secretary received it.

We thus address Fox's request that we remove his temporary suspension. Rule 102(e)(3)(i)(a) permits the Commission to suspend any accountant or other professional or expert who has been "[p]ermanently enjoined . . . from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder."⁹ At this stage, it appears that the findings made in the injunctive proceeding and the injunction issued against Fox "justify the continuance of his suspension until it can be determined what, if any, action may be appropriate to protect the Commission's processes."¹⁰ As provided in Rule 102(e)(3)(iii),¹¹ therefore, we will set the matter down for public hearing. We express no opinion as to the merits of Fox's arguments.¹²

Accordingly, IT IS ORDERED that Fox's Petition be treated as, and is, timely filed as of May 31, 2013; it is further

ORDERED that this proceeding be set down for public hearing before an administrative law judge in accordance with Rule of Practice 110. As specified in Rule of Practice

⁷ 17 C.F.R. § 201.151(d).

⁸ 17 C.F.R. § 201.100(c).

⁹ 17 C.F.R. § 201.102(e)(3)(i)(a).

¹⁰ *Williams D. Shovers*, Exchange Act Release No. 59874, 2009 WL 1271170, at *2 (May 6, 2009).

¹¹ 17 C.F.R. § 201.102(e)(3)(iii).

¹² On June 14, 2013, the Division of Enforcement filed a response to Fox's Petition. Such a response is not contemplated by the operative Rule of Practice, 102(e)(3), and, in any event, we did not consider it in reaching this decision.

102(e)(3)(iii), the hearing in this matter shall be expedited in accordance with Rule of Practice 500; it is further

ORDERED that the administrative law judge shall issue an initial decision no later than 210 days from the date of service of this order; and it is further

ORDERED that the temporary suspension of Brian D. Fox, entered on January 29, 2013, remain in effect pending a hearing and decision in this matter.

By the Commission

Elizabeth M. Murphy
Secretary