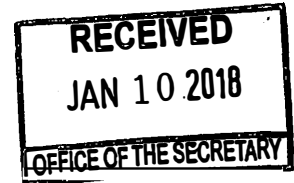


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**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING
File No. 3-15211**



In the Matter of

GREGG C. LORENZO,
FRANCIS V. LORENZO, and
CHARLES VISTA, LLC,

Respondents.

**DIVISION OF ENFORCEMENT'S OPPOSITION TO
RESPONDENT FRANCIS V. LORENZO'S MOTION TO STAY
THE COMMISSION'S ORDER SCHEDULING BRIEFS**

The Division of Enforcement ("Division") respectfully submits this opposition to the motion of Respondent Francis V. Lorenzo ("Lorenzo") for a stay of the Security and Exchange Commission's December 12, 2017 Order Scheduling Briefs in this remanded proceeding ("Scheduling Order"). Lorenzo seeks to stay the Scheduling Order pursuant to Commission Rule of Practice 401(c), pending resolution of his Supreme Court certiorari petition regarding the D.C. Circuit's September 29, 2017 decision in this case, *Lorenzo v. SEC*, 872 F.3d 578 (D.C. Cir. 2017). The Division opposes Lorenzo's stay request because: (1) Lorenzo cannot seek to stay a (non-appealable) scheduling order under Rule 401(c); and (2) in any event, a stay is unwarranted because Lorenzo's certiorari petition is premature.

I. Lorenzo Cannot Seek a Stay Under Commission Rule 401(c)

Commission Rule 401(c) permits motions to stay "a Commission order" by any "any person aggrieved thereby who would be entitled to review in a federal Court of Appeals." Rule

401(c) thus permits stays only of appealable Commission orders, not interlocutory orders such as the Scheduling Order. *See In the Matter of Joseph John Vancook*, SEC Release No. 28644, 2009 WL 605322, *1 (Commission Order, March 10, 2009) (“Rule 401(c) is inapplicable here because the Commission has not yet entered a final order, reviewable by an appellate court, that we could consider staying.”).¹ Indeed, Lorenzo could have petitioned the D.C. Circuit to stay its September 29 remand decision, but he chose not to attempt to demonstrate that he met the standard for issuance of a stay. *See* Fed. R. App. Pro. 41(d)(2) (“A party may move to stay the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court”); *see also* Sup. Ct. R. 23.² Having forfeited that opportunity, Lorenzo should not be permitted now to seek a stay of the Commission’s interlocutory Scheduling Order in this proceeding.

II. Lorenzo’s Certiorari Petition Is Premature

In any event, such a stay would only lead to unnecessary delay, as Lorenzo’s certiorari petition is premature. Like his current stay request, Lorenzo’s certiorari petition is interlocutory, a posture that “alone furnishe[s] sufficient ground for the denial” of the petition by the Supreme Court. *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); Gressman et al., *Supreme Court Practice* 82 (9th ed. 2007) (Supreme Court has “warned that review of a nonfinal order may induce inconvenience, litigation costs, and delay in determining ultimate

¹For this reason, the Commission in *Vancook* found Rule 401(c) inapplicable and, instead, treated respondent’s request as one for “an extension of time, postponement, or adjournment under [Commission] Rule 161.” *Id.* at *2. That Rule, however, likewise does not help Lorenzo, as it would require him to establish that the “denial of the request would substantially prejudice [his] case,” *id.* (which Lorenzo cannot establish here because he will have the opportunity to file a certiorari petition if circumstances warrant that filing).

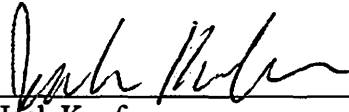
²On November 21, 2017, the D.C. Circuit issued its mandate for its September 29 remand decision, *Lorenzo v. SEC*, 15-1202 (D.C. Cir. Nov. 21, 2017).

justice”): The D.C. Circuit’s September 29, 2017 decision remands the case to the Commission for further determinations regarding sanctions and, thus, is interlocutory. Under these circumstances, granting Lorenzo a stay would only serve to unnecessarily delay this already years-old proceeding.

For the foregoing reasons, the Division respectfully requests that the Commission deny Lorenzo’s request to stay the Scheduling Order.

Respectfully submitted,

Dated: January 9, 2018



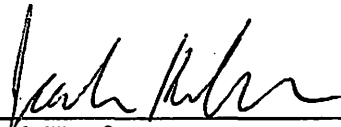
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CERTIFICATE OF SERVICE

I hereby certify that, on this 9th day of January, 2018, I served the foregoing DIVISION OF ENFORCEMENT'S OPPOSITION TO RESPONDENT FRANCIS V. LORENZO'S MOTION TO STAY THE COMMISSION'S ORDER SCHEDULING BRIEFS by email (where indicated) and United Parcel Service on:

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Jack Kaufman