

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Admin. Proc. File No. 3-16430

In the Matter of the Application of

MARK E. LACCETTI

For Review of Action Taken by PCAOB

MAY 18 2015

OFFICE OF THE SECRETARY

MOTION AND SUPPORTING BRIEF FOR
SUBMISSION OF ADDITIONAL EVIDENCE

May 15, 2015

GIBSON, DUNN & CRUTCHER LLP

Lawrence J. Zweifach
Darcy C. Harris
200 Park Avenue
New York, N.Y. 10166
Tel: (212) 351-4000
Fax: (212) 351-4035

Michael J. Scanlon
Jacob T. Spencer
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
Tel: (202) 955-8500
Fax: (202) 467-0539

*Attorneys for Respondent-Petitioner
Mark E. Laccetti*

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Pursuant to Rule 452 of the Securities and Exchange Commission's ("Commission") Rules of Practice, Mark E. Laccetti hereby moves to submit additional evidence in connection with this proceeding for Commission review of the Final Decision and Order Imposing Sanctions issued by the Public Company Accounting Oversight Board ("PCAOB" or "Board"). For the reasons discussed below, the Commission should permit the submission and consideration of this additional evidence in connection with its review of the Board's decision.

INTRODUCTION

Mr. Laccetti was subjected to findings of wrongdoing and sanctions in this case on the basis of proceedings before the PCAOB that, among other things, deprived Mr. Laccetti of his right to the assistance of counsel. To aid the Commission's review of the Board's determinations, Mr. Laccetti seeks leave to submit the additional evidence in Exhibits A – E contained on the attach disc. As explained below, this evidence is material to the issues on review and Mr. Laccetti has reasonable grounds for not submitting this evidence previously. In addition, the proffered evidence is narrow in scope and is uncontroversial, as it consists solely of documents authored by the PCAOB's Division of Enforcement and Investigations ("Division") and official transcripts of investigative testimony. Accordingly, the Commission should admit and consider this additional evidence in its review of the Board's decision.

PROFFERED EVIDENCE

Mr. Laccetti submits the following evidence to be considered in connection with this proceeding:

1. Letter from Claudius B. Modesti (Director of the Division of Enforcement and Investigations) to Jonathan A. Roberts, Esq. (Assistant General Counsel of Ernst & Young LLP), dated July 26, 2007, attaching an Order of Formal Investigation in the Matter of Audits and

Reviews of Taro Pharmaceutical Industries Ltd., dated June 29, 2007. Attached hereto as Exhibit A.

2. Letter from Michael Plotnick, Esq. (Assistant Director, Division) to Mark Laccetti, dated July 27, 2007, enclosing an Accounting Board Demand directed to Mr. Laccetti and accompanying documents. Attached hereto as Exhibit B.

3. The transcript of Mr. Laccetti's investigative testimony taken by the Division on November 29, November 30, December 6, and December 7, 2007 and related errata. Attached hereto as Exhibits C1, C2, C3, C4, and C5 (collectively, "Exhibit C").

4. The first nine pages of the transcript of the investigative testimony of Richard P. Miller (retired, former principal of Ernst & Young LLP), taken by the Division on October 16, 2007. Attached hereto as Exhibit D.

5. Facsimile from Michael Plotnick to John Sturc, Esq. (counsel for Mr. Laccetti) dated July 29, 2008, attaching a letter from Mr. Plotnick to Mr. Sturc dated July 29, 2008, regarding the Division's intent to recommend commencement of a disciplinary proceeding against Mr. Laccetti. Attached hereto as Exhibit E.

ARGUMENT

Rule 452 of the Commission's Rules of Practice permits the Commission to allow the submission of additional evidence upon the motion by a party for leave to adduce additional evidence. The moving party must show "with particularity" that "such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously." Rule 452.

I. The Proffered Evidence Is Material.

Mr. Laccetti has applied for Commission review of, among other things, the Board's decision that the Division did not violate Mr. Laccetti's right to the assistance of counsel during

the Division's investigation of this matter.¹ As support for its finding that Mr. Laccetti's right to counsel was not violated, the Board states that "[t]his defense is moot because we need not and do not rely on [Laccetti's] investigative testimony." R.D. 220 at 74. Mr. Laccetti submits Exhibits A, B, C, and E to demonstrate that his investigative testimony featured prominently in the evidence considered by the Board when determining to initiate proceedings against Mr. Laccetti. This evidence is particularly relevant to Mr. Laccetti's argument that the Division's denial of his meaningful right to counsel is not moot and that it tainted the proceeding initiated by the Board.

The existing Record in this matter begins with the Order Instituting Disciplinary Proceedings, R.D. 1, and does not include certain evidence related to the investigative process leading up to the decision to initiate proceedings against Mr. Laccetti. Exhibits A, B, C, and E provide important information regarding that investigatory process and the role that Mr. Laccetti's investigative testimony played, including with respect to the Board's decision to initiate proceedings against Mr. Laccetti.

In its further discussion of Mr. Laccetti's right to counsel defense, the Board states that the Division's exclusion of Mr. Laccetti's expert consultant was proper, due to the expert's employment by Mr. Laccetti's firm and the Board's expectation that the Division's staff "be vigilant about not permitting a firm's internal personnel effectively to monitor an investigation by sitting in on testimony of all firm personnel." R.D. 220 at 74, 76 (quoting PCAOB Release No. 2003-015 at A2-18-19). Mr. Laccetti submits Exhibits C and D to identify the individuals who *were* permitted to attend Mr. Laccetti's investigative testimony, as well as the investigative testimony of other firm personnel. This evidence is material to the Commission's review of the

¹ See Application for Commission Review of Determination by the Public Company Accounting Oversight Board, at 2 (Mar. 12, 2015).

Board's purported justification for excluding Mr. Laccetti's expert consultant from his investigative testimony.

Admitting this evidence is in no way controversial or burdensome. All of the proffered evidence is in the possession of the Division (and has been since each document's inception, all prior to August 2008), and the documents are either official transcripts of investigative testimony or documents authored by the Division.

II. There Are Reasonable Grounds for Not Having Adduced Previously the Proffered Evidence.

In its decision, the Board disclaims any reliance on Mr. Laccetti's investigative testimony. *See* R.D. 220 at 74 ("we need not and do not rely on [Mr. Laccetti's] investigative testimony"). As noted above, the Board also concluded that the Division excluded Mr. Laccetti's expert consultant from Mr. Laccetti's investigative testimony because the staff identified the expert's attendance "as inappropriate based on his employment by Ernst & Young" and the Board's expectation that the staff "be vigilant about not permitting a firm's internal personnel effectively to monitor an investigation by sitting in on testimony of all firm personnel." R.D. 220 at 74, 76 (internal quotation and citation omitted). The emphasis on these evolving rationalizations for excluding Mr. Laccetti's expert consultant warrant allowing Mr. Laccetti the opportunity to adduce the proffered evidence. *See In re Ralph W. LeBlanc*, 80 SEC Docket 2207, Release No. 34-48254, 2003 WL 21755845, at *6 n.23 (Jul. 30, 2003) (accepting evidence submitted under Rule 452 where respondent "was not aware of the significance" of the evidence "until the law judge's decision issued").

CONCLUSION

For the reasons set forth above, the Commission should admit and consider the additional evidence offered by Mr. Laccetti.²

May 15, 2015

Respectfully submitted,



GIBSON, DUNN & CRUTCHER LLP

Lawrence J. Zweifach
Darcy C. Harris
200 Park Avenue
New York, N.Y. 10166
Tel: (212) 351-4000
Fax: (212) 351-4035

Michael J. Scanlon
Jacob T. Spencer
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
Tel: (202) 955-8500
Fax: (202) 467-0539

Attorneys for Mark E. Laccetti

² If the Commission does not agree that there are reasonable grounds for Mr. Laccetti's failure to adduce the proffered evidence previously, it should nonetheless exercise its discretion and accept the proffered evidence in order to fully grasp the circumstances of the investigation at issue. *Cf. In re Leslie A. Arouh*, 99 SEC Docket 1094, Release No. 34-62898, 2010 WL 3554584, at *14 n.69 (Sept. 13, 2010) (admitting evidence offered under Rule 452 as an exercise of discretion); *In re Raghavan Sathianathan*, 89 SEC Docket 710, Release No. 34-54722, 2006 WL 3228694, at *7 (Nov. 8, 2006) (same); *In re Enron Corp.*, 81 SEC Docket 3083, Release No. 35-27782, 2003 WL 23023779, at *14 n.70 (Dec. 29, 2003) (same).

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2015, I caused a copy of the foregoing Brief in Support of Application for Commission Review and Motion and Supporting Brief for Submission of Additional Evidence and attached exhibits to be served upon Phoebe W. Brown, Secretary for the Public Company Accounting Oversight Board, via electronic mail at Secretary@pcaobus.org, pursuant to PCAOB Rule 5405(b).


Darcy Harris