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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



Admin. Proc. File No.: 3-17936

In the Matter of the Application of
S. BRENT FARHANG, CPA
For Review of Disciplinary Action Taken By The
PUBLIC COMPANY ACCOUNTING
OVERSIGHT BOARD

**REPLY BRIEF OF S. BRENT FARHANG, CPA IN SUPPORT
OF HIS APPLICATION FOR COMMISSION REVIEW**

August 18, 2017

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The PCAOB tries to make the issues here more complicated than they are. There are three issues here, each of which should be decided in Farhang's favor.

Consent to Cooperate

There is no dispute that *Congress* required associated persons to execute written consents to cooperate. Section 102(b)(3), 15 U.S.C. § 7212(b)(3). An associated person is required to execute the written consent to cooperate at the time of their employment with a registered public accounting firm as a condition of the associated person's continued employment. *Id.* The PCAOB claims that there is no statutory string that connects the "consent to cooperate requirement" of Section 102(b)(3) with the non-cooperation penalties of Section 105(b)(3), 15 U.S.C. § 7512(b)(3). But the PCAOB is wrong. By its own terms, the written "consent to cooperate" executed by an associated person pursuant to Section 102(b)(3) directly relates to potential later *investigations* by the PCAOB that could lead, through PCAOB enforcement proceedings, to PCAOB discipline against the associated person, including discipline for noncooperation under Section 105(b)(3). Thus, the consent to cooperate was expressly forward-looking to potential disciplinary action against the associated person for noncooperation under Section 105(b)(3).

It seems obvious on the face of the statute that – when Congress required an associated person to execute a written consent to cooperate with PCAOB investigations that could lead to discipline for noncooperation – that Congress was focused on trying to protect the due process rights of the associated person who might later be accused by the PCAOB of noncooperation. A person who consents in advance to cooperate has less ground to challenge an accusation that he or she failed to cooperate.

If Congress sought to protect (even if inadequately) an associated persons due process rights (by requiring an associated person to consent to cooperate before being sanctioned for noncooperation) that requirement ought not be brushed aside because Congress did not redundantly place that requirement within the confines of Section 105(b)(3). While Congress could have been more clear, that is not the test. Applying settled principles of statutory construction, Farhang could not be sanctioned for failure to cooperate if he never consented to cooperate in the first place. And here, the facts are undisputed. Farhang did not consent. Thus, the Board's Final Decision against Farhang for noncooperation must be set aside.

Due Process / Unconstitutional Conditions

The Commission is well aware of numerous cases currently pending in Courts of Appeal and District Courts around the country that challenge the constitutionality and due process protections afforded in the SEC's administrative proceedings. Those administrative proceedings provide respondents more due process protections than are available to respondents in PCAOB enforcement actions. Additional guidance and decisions from the Courts, including the Supreme Court, is expected.

Here, Farhang challenges the due process protections he is afforded in a PCAOB enforcement action in a manner very similar to the cases involving the SEC that are currently working their way through the Courts. Section 102(b)(3) conditions Farhang's employment with a waiver of due process rights. The PCAOB makes no effort and has made no showing that its processes pass constitutional scrutiny.

Sanctions

The PCAOB complains that Farhang's interpretation of Section 105(b)(3) would require the PCAOB to conduct a "case-by-case" approach to the Act's "lesser sanctions" language. The PCAOB is absolutely right. But in issuing sanctions, or penalties or sentencing, that is what Courts do all the time. The Federal Sentencing Guidelines are not mandatory anymore – even

though they seek to provide guidance and promote uniformity – because the Supreme Court has recognized that judges must consider the unique facts and factors in every case when imposing sentences. If a \$50,000 civil money penalty is more devastating than a bar in the facts of a particular case, then it should not be imposed. Here, Farhang has established his impecunity and inability to pay in the record. *Index to the Record*, Tab 22c (Exhibits 1-12 to Decl. of S. Brent Farhang in Support of Motion for Summary Disposition). On these facts, the civil money penalty is excessive and unjust.

For each of the foregoing reasons, and for those stated in Farhang’s opening brief, the Commission should, in its *de novo* review, vacate the Board’s Final Decision.

DATED: August 18, 2017

Respectfully submitted,

By: Scott Vick/AP

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of August 2017, I caused copies of the following document which was filed via facsimile to 202-772-9324 to be sent to the recipients below via electronic mail:

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