

ADMINISTRATIVE PROCEEDINGS
FILE NO. 3-13535

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
October 23, 2009

In the Matter of the Application of

GATELY & ASSOCIATES, LLC
and
JAMES P. GATELY, CPA

ORDER DENYING
REQUEST FOR NON-
PUBLIC HEARING

For Review of Disciplinary Action Taken by

PCAOB

Gately & Associates, LLC and James P. Gately, CPA (together, "Respondents"), filed an application for review of disciplinary action taken by the Public Company Accounting Oversight Board ("PCAOB").¹ This is the first appeal to the Commission for review of PCAOB disciplinary action. On July 31, 2009, we issued an order seeking the views of the parties regarding whether these proceedings should be conducted on a non-public basis. Respondents' August 11, 2009 filing argued that our review of the PCAOB disciplinary action should be non-public. The PCAOB has not filed a brief addressing the issue. The Office of the Secretary has kept all documents received in connection with this appeal confidential while the Commission deliberated regarding whether these proceedings should be public.

Section 105(b)(5) of the Sarbanes-Oxley Act of 2002 (the "Act") generally provides for confidential and privileged treatment of documents and information in connection with a PCAOB inspection or investigation "unless and until" such documents and information are "presented in connection with a public proceeding."² We review PCAOB disciplinary actions

¹The PCAOB filed a copy of the index to the record on July 15, 2009 pursuant to Commission Rule of Practice 440(d). 17 C.F.R. § 201.440(d).

²15 U.S.C. § 7215(b)(5)(A).

under Section 107(c) of the Act,³ and our administrative proceedings, with limited exceptions not at issue here, are public unless otherwise ordered.⁴ Respondents have not raised circumstances justifying non-public proceedings, and we conclude that the proceedings should be public.

Although "[d]ocuments and testimony introduced in a public hearing are presumed to be public," Rule of Practice 322 allows a party to seek to "limit from disclosure to other parties or to the public documents or testimony that contain confidential information."⁵ A motion for a protective order "shall be granted only upon a finding that the harm resulting from disclosure would outweigh the benefits of disclosure."⁶ If Respondents wish to protect from disclosure certain information in the record of the disciplinary proceedings, they may submit a request for a protective order. Such motion should clearly identify which information Respondents seek to protect and should offer an explanation as to why the harm resulting from disclosure would outweigh the benefits of disclosure.

Accordingly, it is ORDERED that the proceedings shall be public in accordance with Commission Rule of Practice 301; *provided that* if, within 10 days of the date of this order, Respondents file a motion pursuant to Rule of Practice 322, not exceeding 7,000 words, seeking protection from public disclosure of any information in the record on appeal, the information as to which confidential treatment is sought shall be kept non-public pending Commission determination of such motion.

By the Commission.

Elizabeth M. Murphy
Secretary

³*Id.* § 7217(c); *see also* Commission Rule of Practice 440, 17 C.F.R. § 201.440.

⁴Rule of Practice 301, 17 C.F.R. § 201.301; *see Dominick A. Alvarez*, Securities Exchange Act Rel. No. 53231 (Feb. 6, 2006), 87 SEC Docket 895, 895 ("The Commission has long underscored the importance of conducting open administrative proceedings that, 'with attendant public scrutiny, have the effect of protecting against the abuse of power by governmental entities.'" (quoting *Disciplinary Proceedings Involving Professionals Appearing or Practicing Before the Commission*, 53 Fed. Reg. 26427, 26428-29 (July 13, 1988))).

⁵17 C.F.R. § 201.322(b), (a).

⁶17 C.F.R. § 201.322(b).