

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 66260 / January 26, 2012

ACCOUNTING AND AUDITING ENFORCEMENT
Rel. No. 3357 / January 26, 2012

Admin. Proc. File No. 3-14629

In the Matter of
PAUL FREE, CPA

ORDER DENYING A
STAY OR POSTPONEMENT OF
PROCEEDINGS

On November 16, 2011, we issued an order instituting proceedings ("OIP") against Paul Free, a certified public accountant and former Controller and Chief Accounting Officer of Delphi Corporation from 1998 through 2002, pursuant to Commission Rule of Practice 102(e)(3)(i),¹ that temporarily suspended him from appearing or practicing before the Commission as an

¹ Rule of Practice 102(e)(3)(i), 17 C.F.R. § 201.102(e)(3)(i), provides, in pertinent part, that:

(i) The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any . . . accountant . . . who has been by name:

(A) permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder; or

(B) found by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party or found by the Commission in any administrative proceeding to which he or she is a party to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

accountant.² The OIP finds that Free was enjoined on October 31, 2011 by the United States District Court for the Eastern District of Michigan from violating and/or aiding and abetting violations of Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5) of the Securities Exchange Act of 1934 and Rules 10b-5, 12b-20, 13a-1, 13a-13, 13b2-1, and 13b2-2 thereunder.³ The underlying complaint alleged that Free, while Delphi's Controller and Chief Accounting Officer, engaged in conduct that resulted in the Company materially misstating its financial condition and operating results in filings with the Commission, in offering documents, and in other statements to investors. The complaint alleged, for example, that Free, among others, was responsible for Delphi having improperly accounted for and disclosed a payment that it made to its former parent company, pursuant to a settlement agreement.

On December 15, 2011, following our issuance of the OIP, Free filed a document titled, "Motion Pursuant to Rule 401 of the Commission's Rules of Practice for Stay of Rule 102(e) Proceedings." In his motion, Free states that the time for him to appeal the district court's judgment has not yet run. He asserts that he will be entitled to reinstatement to appear and practice before the Commission upon appropriate application to the Commission under Rule 102(e)(5) if he is successful in an appeal of that judgment. Free believes that "[i]t would be an inefficient use of both the Commission's and [his] resources for [him] to petition the Commission now to lift or limit his suspension, and to do so again after the conclusion of an appeal." Free therefore requests, pursuant to Rule 401, that "the 102(e) proceedings against him be stayed pending the outcome of any appeal that he may file."

The Division of Enforcement opposes the motion. The Division asserts that "such a stay would significantly delay the outcome of these proceedings," and Free "fails to show that denial of his motion would substantially prejudice his case." The Division states that, should Free appeal the district court judgment, a resolution may not occur for one to two years and that a delay of the Rule 102(e) proceedings here would be significant and "would not serve the public interest."

Rule 401(c) permits motions for stays by persons aggrieved by a Commission order "who would be entitled to review in a federal court of appeals."⁴ However, Rule 401(c) is inapplicable

² *Paul Free, CPA*, Securities Exchange Act Rel. No. 65759 (Nov. 16, 2011), <http://www.sec.gov/litigation/admin/2011/34-65759.pdf>.

³ *Free*, <http://www.sec.gov/litigation/admin/2011/34-65759.pdf>, at 2.

⁴ 17 C.F.R. § 201.401(c).

here because the Commission has not yet entered a final order, reviewable by an appellate court, that we could consider staying.⁵

Although Rule 401 is inapplicable, we will consider Free's motion as a request for an extension of time, postponement, or adjournment under Rule 161.⁶ That rule provides that "the Commission, at any time, . . . may, for good cause shown . . . postpone or adjourn any hearing" so long as any such postponement or adjournment meets certain requirements.⁷ When deciding whether to grant such a motion, we "adhere to a policy of strongly disfavoring such requests, except in circumstances where the requesting party makes a strong showing that the denial of the request or motion would substantially prejudice" his or her case.⁸ We find that Free has not made the requisite showing under Rule 161.

As we have previously stated, the pendency of an appeal generally is an insufficient basis upon which to prolong a Commission proceeding.⁹ A postponement in these circumstances could delay significantly the outcome of these proceedings. The inefficient use of resources that Free cites in having to petition the Commission twice is a potential inconvenience that does not override the strong public interest in the prompt enforcement of the federal securities laws.¹⁰

⁵ See *Eric S. Butler*, Order Denying a Stay or Postponement of Administrative Proceedings, Admin. Proc. File No. 3-13986 (Mar. 31, 2011), at 3 & n.7 (citing *Michael J. Markowski*, Order Denying Request for a Stay and Granting Extension of Time for Filing Briefs, Exchange Act Rel. No. 4748 (Dec. 4, 1998), 68 SEC Docket 2156, 2159 ("Neither the initial decision of the law judge nor our order scheduling briefing in this proceeding is a Commission order entitling [respondent] to appellate review.")).

⁶ 17 C.F.R. § 201.161. In determining whether to postpone a proceeding under Rule 161, we consider such factors as the length of the proceeding to date, the number of postponements previously granted, the stage of the proceeding at the time of the request for a postponement, the efficient and timely administration of justice, and any other matters justice requires. 17 C.F.R. § 201.161(b)(1).

⁷ *Id.*

⁸ *Id.*

⁹ See *James E. Franklin*, Exchange Act Rel. No. 56649 (Oct. 12, 2007), 91 SEC Docket 2708, 2714 n.15 (stating that "it is well established that a pending appeal does not affect the injunction's status as a basis for this administrative proceeding") (citing cases).

¹⁰ See *Butler*, at 4 n.12 (citing *Jon Edelman*, 52 S.E.C. 789, 790 (1996)).

Under Rule 102(e)(3)(ii), Free could have appealed his temporary suspension within thirty days of being served with the OIP. It does not appear that Free has filed such an appeal. The suspension therefore has become permanent pursuant to Rule 102(e)(3)(ii).¹¹

Accordingly, IT IS ORDERED that Paul Free's request for a stay or postponement of this proceeding be, and hereby is, denied; and

IT IS FURTHER ORDERED that the temporary suspension imposed upon Paul Free has become permanent pursuant to Rule 102(e)(3)(ii).

By the Commission.

Elizabeth M. Murphy
Secretary

¹¹ 17 C.F.R. § 201.102(e)(3)(ii). As Free notes, he may apply to the Commission for reinstatement pursuant to Rule 102(e)(5)(i). *See* 17 C.F.R. § 201.102(e)(5)(i) (stating that an "application for reinstatement of a person permanently suspended or disqualified under paragraph (e)(1) or (e)(3) of this rule may be made at any time").