

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4008 / January 27, 2015

Administrative Proc. File No. 3-15925

In the Matter of

MICHAEL S. STEINBERG

ORDER POSTPONING
BRIEFING SCHEDULE

Michael S. Steinberg, a former portfolio manager at Sigma Capital Management, LLC, a New York-based investment adviser, seeks a stay of the briefing schedule in this proceeding. Our rules do not provide for a stay in such circumstances, but they allow for a postponement. As explained below, we have determined that a postponement is appropriate under the circumstances presented in this case.

I.

On October 14, 2014, an administrative law judge issued an initial decision barring Steinberg from the securities industry.¹ The law judge's decision was based on Steinberg's criminal conviction in December 2013, following a jury trial in the United States District Court for the Southern District of New York, for insider trading.² Steinberg appealed his conviction to the United States Court of Appeals for the Second Circuit, which granted his unopposed motion to hold his criminal appeal in abeyance pending a decision in *United States v. Newman*³ based on what he represented to the court to be substantial overlapping factual and legal issues. Our civil

¹ *Michael S. Steinberg*, Initial Decision Release No. 690, 2014 WL 5141532 (Oct. 14, 2014).

² *United States v. Steinberg*, No. 1:12-cr-121 (RJS) (S.D.N.Y. Dec. 18, 2013), *appeal filed*, No. 14-2141 (2d Cir. May 29, 2014). Steinberg was sentenced to a term of 42 months in prison, followed by three years of supervised release. He was also ordered to pay a \$2 million fine and \$365,142.30 in criminal forfeiture.

³ 773 F.3d 438 (2d Cir. 2014). Although the Second Circuit lifted the stay of Steinberg's appeal on the same day that it issued its opinion in *Newman*, on December 19, 2014, Steinberg filed an unopposed motion requesting that the Second Circuit again hold his appeal in abeyance. On December 31, 2014, the Second Circuit granted the motion.

injunctive action against Steinberg in the Southern District of New York is based on the same facts alleged in the criminal case.⁴ The civil action has also been stayed pending a final resolution in the *Newman* appeal.⁵

On November 26, 2014, we issued an order granting Steinberg's petition for review of the law judge's decision and setting forth a briefing schedule.⁶ The time for filing briefs was subsequently extended.⁷

On December 10, 2014, the Second Circuit issued its decision in *Newman*. The Second Circuit held that "in order to sustain a conviction for insider trading, the Government must prove beyond a reasonable doubt that the tippee knew that an insider disclosed confidential information *and* that he did so in exchange for a personal benefit."⁸ Finding that the district court's instruction to the jury was erroneous because it failed to accurately advise the jury of the law, the Second Circuit reversed the convictions of the defendants Todd Newman and Anthony Chiasson and remanded with instructions to dismiss the indictment as it pertains to them with prejudice.

Steinberg cites *Newman* in support of his stay request. He contends that, because the district court judge in his criminal case gave the same instruction to the jury that *Newman* held was erroneous, and because the facts concerning tipper benefit were "necessarily identical" both in his case and in *Newman*, Steinberg would be entitled to the same relief as the defendants in *Newman*. Specifically, Steinberg contends that unless the panel's decision in *Newman* is either vacated or modified, he will be entitled to reversal of his conviction and dismissal of the indictment with prejudice, thereby vitiating the basis for the bar imposed by the law judge. Accordingly, Steinberg requests that we "stay" the current briefing schedule until "(1) the United States Attorney's Office decides whether to petition for rehearing, rehearing en banc, and/or certiorari in *Newman* . . . and (2) any such petitions are finally decided." The Division of Enforcement consents to this request.

II.

Steinberg does not cite to a particular Rule of Practice in support of his stay request. Rule of Practice 401 governs our issuance of stays.⁹ 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

⁴ *SEC v. Steinberg*, No. 13 Civ. 2082 (SAS) (S.D.N.Y. Mar. 29, 2013).

⁵ *SEC v. Steinberg*, No. 13 Civ. 2082 (SAS) (S.D.N.Y. Dec. 22, 2014).

⁶ *Michael S. Steinberg*, Exchange Act Release No. 73700, 2014 WL 6680114 (Nov. 26, 2014).

⁷ *See Michael S. Steinberg*, Exchange Act Release No. 73915, 2014 WL 7271549 (Dec. 22, 2014). After issuance of this extension order, Steinberg requested a further extension. A second extension was granted. *Michael S. Steinberg*, Exchange Act Release No. 74014, 2015 WL 107083 (Jan. 8, 2015).

⁸ *Newman*, 733 F.3d at 442 (emphasis in original).

⁹ 17 C.F.R. § 201.401.

appeals."¹⁰ However, Rule 401(c) is inapplicable here because no such final, appealable order has been entered in this proceeding.¹¹

Although Rule 401 is inapplicable, we will consider Steinberg's request under Rule of Practice 161, which authorizes us to order postponements for "good cause shown."¹² In light of the status of the *Newman* appeal and its likely impact on Steinberg's conviction, the Division's consent to Steinberg's request, and Steinberg's assurance that "[t]he parties will provide the Commission with written updates upon the disposition of these matters," we find that there exists "good cause" to postpone the briefing schedule in this proceeding until the *Newman* appeal is finally resolved. Postponement of the briefing schedule will not prejudice either party and will serve the public interest in administrative efficiency.

Accordingly, IT IS ORDERED that the Commission's November 26, 2014, briefing order and subsequent extension orders be, and they hereby are, postponed until the United States Attorney's Office decides whether to petition for rehearing, rehearing en banc, and/or certiorari, and any such petition is finally resolved.

By the Commission.

Brent J. Fields
Secretary

¹⁰ *Id.*, § 201.401(c).

¹¹ See *Michael J. Markowski*, Order Denying Request for a Stay and Granting Extension of Time for Filing Briefs, Exchange Act Release No. 40748, 1998 WL 960587, at *2 (Dec. 4, 1998) (stating that "[n]either the initial decision of the law judge nor our order scheduling briefing in this proceeding is a Commission order entitling [respondent] to appellate review").

¹² 17 C.F.R. § 201.161(a). In determining whether to grant a postponement, 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, and any other matters justice requires. *Id.* § 201.161(b)(1). Postponements may not exceed 21 days unless we find that a longer period is necessary. *Id.* § 201.161(c)(1). 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 their case." *Id.* § 201.161(b)(1).