

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES ACT OF 1933
Release No. 10116 / July 29, 2016

SECURITIES EXCHANGE ACT OF 1934
Release No. 78440 / July 29, 2016

INVESTMENT ADVISERS ACT OF 1940
Release No. 4466 / July 29, 2016

INVESTMENT COMPANY ACT OF 1940
Release No. 32199 / July 29, 2016

Admin. Proc. File No. 3-15003

<p>In the Matter of</p> <p>BERNERD E. YOUNG</p>

PARTIAL STAY ORDER

Bernerd E. Young, proceeding *pro se*, seeks a stay of a Commission order (the “Order”),¹ in which the Commission directed Young to cease and desist from antifraud violations, permanently barred and prohibited Young from associating or acting in the securities industry, and required Young to pay disgorgement of \$591,992.46 (plus interest), and a civil penalty of \$260,000.² The Commission issued the Order based on findings that Young violated antifraud provisions of the securities laws. Young has filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit.³ The court is currently considering whether

¹ *Bernerd E. Young*, Exchange Act Release No. 774421, 2016 WL 1168564 (Mar. 24, 2016).

² Young made his request in a July 11, 2016 letter to staff of the Division of Enforcement in response to a notification that he had a “past due balance of \$1,007,575.84” related to the sanctions set forth in the Order. Young requests a stay of only the monetary sanctions.

³ *Young v. SEC*, No. 16-1149 (D.C. Cir. May 24, 2016).

Young's petition was timely.⁴ Young asks for a stay until the resolution of his petition for review.

The party requesting a stay pending appeal has the burden of establishing that a stay is justified.⁵ The Commission's consideration of such requests is governed by the traditional, four-factor standard—namely, (1) whether the stay applicant has made a strong showing that he or she is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.⁶ Young has not attempted to establish that a stay is justified under this four-factor standard, and therefore has not met his burden.

Nonetheless, the Commission “has at times stayed monetary sanctions pending appeal without reference to the applicant's likelihood of success on the merits” or the other components of the four-factor test.⁷ The Division of Enforcement has not filed an opposition to the stay. Under the circumstances and in our discretion, we elect to stay the monetary components of the Order.

Accordingly, it is ORDERED that the requirements in the Order that Young pay disgorgement (plus prejudgment interest) and a civil money penalty are STAYED pending a determination by the Court of Appeals on the timeliness of his petition for review and, to the extent the petition is found timely, pending the court's determination of Young's appeal and the issuance of the court's mandate. The Order remains effective in all other respects.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Brent Fields
Secretary

⁴ Young filed his response to an order to show cause why the appeal should not be dismissed as untimely on June 24, 2016. *Young v. SEC*, No. 16-1149 (D.C. Cir. June 24, 2016).

⁵ See, e.g., *Raymond J. Lucia Cos.*, Exchange Act Release No. 76241, 2015 WL 6352089, at *1 (Oct. 22, 2015).

⁶ *Id.*

⁷ *Id.* at *1 n.7.