

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 10225 / September 29, 2016

SECURITIES EXCHANGE ACT OF 1934

Release No. 78990 / September 29, 2016

INVESTMENT ADVISERS ACT OF 1940

Release No. 4541 / September 29, 2016

INVESTMENT COMPANY ACT OF 1940

Release No. 32294 / September 29, 2016

Admin. Proc. File No. 3-15737

In the Matter of

THOMAS C. GONNELLA

ORDER GRANTING PARTIAL STAY

On August 10, 2016, the Commission issued an opinion and order (the “Order”) finding that Thomas C. Gonnella, a proprietary trader at Barclays, violated the antifraud provisions of Section 17(a)(1) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Exchange Act Rule 10b-5(a) and (c) by engaging in prearranged trades in order to convey the false appearance of compliance with Barclays’s aged inventory policy and to avoid nonrefundable charges to his trading profits.<sup>1</sup> The Commission also found that Gonnella aided, abetted, and caused Barclays’s failure to keep accurate books and records in violation of Exchange Act Section 17(a) and Exchange Act Rule 17a-3(a)(2).<sup>2</sup> The Commission barred Gonnella from the securities industry with a right to reapply in five years; entered a cease-and-desist order; and assessed a civil money penalty of \$82,500.<sup>3</sup>

<sup>1</sup> *Thomas C. Gonnella*, Exchange Act Release No. 78532, 2016 WL 4233837, at \*8-10 (Aug. 10, 2016).

<sup>2</sup> *Id.* at \*10-11.

<sup>3</sup> *Id.* at \*12-15.

Gonnella now requests a stay of the \$82,500 civil money penalty pending judicial review. He states that “[n]o later than October 10, 2016 [he] will file a written petition with the U.S. Court of Appeals for the Second Circuit” requesting that the Order be set aside. The Division of Enforcement does not oppose Gonnella’s request.

The party seeking a stay has the burden of establishing that relief is warranted.<sup>4</sup> In determining whether to grant a stay, the Commission considers four factors: (1) whether there is a strong likelihood that the moving party will succeed on the merits of its appeal; (ii) whether the moving party will suffer irreparable harm without a stay; (iii) whether any person will suffer substantial harm as a result of a stay; and (iv) whether a stay is likely to serve the public interest.<sup>5</sup>

Gonnella’s motion for a stay addresses only his likelihood of success on the merits. He argues that he is likely to succeed because Barclays concluded after an internal investigation that it was neither deceived nor defrauded; that he did not act deceptively because he sent emails to third parties that were subject to monitoring by Barclays; that the conduct at issue did not affect his compensation; that he self-reported the conduct to his supervisors; that his conduct did not meet the definition of stock “parking”; and that the Division’s cooperation agreement with the counterparty to his trades violated due process. Because the Commission already rejected each of these arguments,<sup>6</sup> Gonnella has not demonstrated a likelihood of success on appeal.<sup>7</sup>

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.”<sup>8</sup> Under the circumstances, including that the Division does not oppose the stay, and as a matter of discretion, we elect to stay the requirement in the Order that Gonnella pay a civil money penalty pending the filing of a petition for review with a United States Court of Appeals and, upon the timely filing of such a petition, pending the determination of that appeal.

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<sup>4</sup> *Raymond J. Lucia Companies*, Exchange Act Release No. 76241, 2015 WL 6352089, at \*1 (Oct. 22, 2015).

<sup>5</sup> *See id.*

<sup>6</sup> *Gonnella*, 2016 WL 4233837, at \*8 n.32, \*9 n.26; \*10 nn.34 & 35, \*11.

<sup>7</sup> *Mohammed Riad*, Exchange Act Release No. 32174, 2016 WL 3648316, at \*1 n.6 (July 8, 2016) (finding that “respondents failed to establish a strong likelihood of success” because they “merely repeat[ed] arguments that the Commission already considered and rejected”).

<sup>8</sup> *Dennis J. Malouf*, Exchange Act Release No. 78739, 2016 WL 4537671, at \*3 (Aug. 31, 2016).

Accordingly, it is ORDERED that the requirement in the Order that Thomas C. Gonnella pay a civil money penalty of \$82,500 is stayed for sixty days from August 10, 2016 pending the filing of a petition for review with a United States Court of Appeals and, upon the timely filing of such a petition, pending the determination of that 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 J. Fields  
Secretary