

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933  
Release No. 10330 / March 29, 2017

INVESTMENT ADVISERS ACT OF 1940  
Release No. 4674 / March 29, 2017

INVESTMENT COMPANY ACT OF 1940  
Release No. 32583 / March 29, 2017

Admin. Proc. File No. 3-15574

In the Matter of  
HARDING ADVISORY LLC  
and  
WING F. CHAU

PARTIAL STAY ORDER

Respondents Harding Advisory LLC and Wing F. Chau move for a stay of the Commission's Order Imposing Remedial Sanctions (the "Order")<sup>1</sup> pending resolution of their appeal to the U.S. Court of Appeals for the District of Columbia.<sup>2</sup> That Order barred Chau from association with an investment adviser, broker, dealer, municipal securities dealer, or transfer agent with a right to reapply after five years, revoked Harding's investment adviser registration, and imposed a cease-and-desist order, disgorgement plus prejudgment interest, and civil penalties.<sup>3</sup>

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<sup>1</sup> *Harding Advisory LLC*, Securities Act Release No. 10277, 2017 WL 66592 (Jan. 6, 2017).

<sup>2</sup> Petition for Review, *Harding Advisory LLC v. SEC*, No. 17-1070 (D.C. Cir. Mar. 6, 2017) (Doc. No. 1664837).

<sup>3</sup> 2017 WL 66592, at \*21. The Order also prohibited Chau from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such

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The party requesting a stay pending appeal has the burden of establishing that a stay is justified.<sup>4</sup> Our 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 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.”<sup>5</sup> Because the first two factors are the most critical,<sup>6</sup> an applicant’s failure to demonstrate the requisite likelihood of success or irreparable harm ordinarily will be dispositive of the stay inquiry.<sup>7</sup>

For the reasons stated in the Division of Enforcement’s February 28, 2017 opposition and the government’s March 13, 2017 petition for rehearing in *Bandimere v. SEC*,<sup>8</sup> we conclude that Respondents have not carried their burden on the stay factors. They are not likely to prevail in their appeal to the D.C. Circuit; financial detriment does not amount to irreparable harm; and they have given us no persuasive reason to revisit our determination that they pose a continuing, substantial threat to investors and to the public interest.

Nonetheless, the Commission “has at times stayed monetary sanctions pending appeal without reference to the applicant’s likelihood of success on the merits” or other components of the four-factor test.<sup>9</sup> Therefore, under the circumstances and in our discretion, we elect to stay the monetary components of the Order.

Accordingly, it is ORDERED that Respondents’ stay motion is DENIED. On our own motion and in our discretion, it is further ORDERED that the requirements in the Order that Respondents pay disgorgement and civil money penalties are STAYED until the D.C. Circuit resolves Respondents’ appeal and issues its mandate. On our own motion, we also vacate the

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investment adviser, depositor, or principal underwriter, with a right to reapply after five years. *Id.*

<sup>4</sup> See, e.g., *Nken v. Holder*, 556 U.S. 418, 433-34 (2009); *Steven Altman*, Exchange Act Release No. 63665, 2011 WL 52087, at \*2 (Jan. 6, 2011).

<sup>5</sup> *Nken*, 556 U.S. at 434; *Steven Altman*, 2011 WL 52087, at \*2.

<sup>6</sup> *Nken*, 556 U.S. at 434.

<sup>7</sup> See, e.g., *Winter v. NRDC*, 555 U.S. 7, 22 (2008); *Sherley v. Sebelius*, 644 F.3d 388, 393 (D.C. Cir. 2011); *Raymond J. Lucia Cos.*, Exchange Act Release No. 76241, 2015 WL 6352089, at \*1 (Oct. 22, 2015).

<sup>8</sup> Petition for Rehearing or Rehearing En Banc, *Bandimere v. SEC*, No. 15-9586 (10th Cir. Mar. 13, 2017).

<sup>9</sup> See, e.g., *Larry C. Grossman*, Exchange Act Release No. 79217, 2016 WL 6441565, at \*4 (Nov. 1, 2016); *Lucia*, 2015 WL 6352089, at \*1 & n.7.

Order insofar as it barred Chau from association with a broker, dealer, municipal securities dealer, or transfer agent because the Commission has decided not to seek further review of *Bartko v. SEC*.<sup>10</sup> The Order remains effective in all other respects.

By the Commission.

Brent J. Fields  
Secretary

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<sup>10</sup> 845 F.3d 1217 (D.C. Cir. 2017).