

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 80509 / April 21, 2017

INVESTMENT ADVISERS ACT OF 1940
Release No. 4690 / April 21, 2017

INVESTMENT COMPANY ACT OF 1940
Release No. 32610 / April 21, 2017

Admin. Proc. File No. 3-17184

In the Matter of

CHRISTOPHER M. GIBSON

ORDER DENYING MOTION TO STAY ADMINISTRATIVE PROCEEDING

On March 6, 2017, we granted the petition of Respondent Christopher M. Gibson for review of an administrative law judge’s initial decision. Gibson now requests that the Commission “stay this proceeding pending the issuance of a decision by the Court of Appeals for the District of Columbia Circuit regarding the constitutionality of the appointment” of the Commission’s administrative law judges.¹ The motion is denied.

Because our Rules of Practice contain no specific provision governing a stay of a petition for review of an administrative law judge’s initial decision, we construe Gibson’s motion as a request for a postponement or adjournment under Rule of Practice 161.² We “strongly disfavor[]” such requests unless the “requesting party makes a strong showing” that denial would “substantially prejudice [his] case.”³ A pending appeal—particularly an appeal to which

¹ See *Raymond J. Lucia Co., Inc. v. SEC*, No. 15-1345, Doc. No. 1661665 (D.C. Cir. Feb 16, 2017) (granting petition for en banc rehearing).

² Rule of Practice 161(b)(1), 17 C.F.R. § 201.161(b)(1); see also *John Thomas Capital Mgmt. Grp. LLC*, Exchange Act Release No. 74345, 2015 WL 728006, at *2 (Feb. 20, 2015).

³ Rule of Practice 161(b)(1), 17 C.F.R. § 201.161(b)(1).

Respondent is not a party—is generally “an insufficient basis upon which to prolong a Commission proceeding.”⁴

Gibson has not articulated, nor do we discern, how he would be substantially prejudiced by our ongoing review. The initial decision “cease[d] to have any force or effect” when Gibson filed a timely petition for review.⁵ And it is well-established that the adjudicatory process does not itself constitute irreparable harm, even when the propriety of the proceedings has been called into question.⁶ Constitutional and other claims may be addressed during the course of our review as appropriate,⁷ and if a final Commission decision were adverse to Gibson, it would be subject to judicial review under Section 25(a)(1) of the Securities Exchange Act of 1934.⁸

Accordingly, the motion to stay is DENIED.

By the Commission.

Brent J. Fields
Secretary

⁴ *Paul Free*, Exchange Act Release No. 66260, 2012 WL 266986, at *2 (Jan. 26, 2012).

⁵ *Eric J. Brown*, Securities Act Release No. 3393, 2012 WL 1143573, at *2 (Apr. 5, 2012).

⁶ *John Thomas Capital*, 2015 WL 728006, at *4 & nn.30–35 (collecting cases holding that challenges to a forum on various constitutional grounds should typically be “deferred until the proceeding has come to an end”).

⁷ *Id.* at *3; *see also John Doe Co. v. CFPB*, 849 F.3d 1129, 1134–45 (D.C. Cir. 2017) (per curiam); *Charles L. Hill, Jr.*, Order Denying Motion to Deinstitution Administrative Proceeding, Exchange Act Release No. 79459, 2016 WL 7032731, at *2 (Dec. 2, 2016) (stating that the Commission could review a respondent’s Equal Protection, forum selection and fairness claims as part of its “ordinary review process”).

⁸ 15 U.S.C. § 78y(a)(1) (stating that any person aggrieved by a final order of the Commission may obtain review of the order in the appropriate United States Court of Appeals); *see also Jarquesy v. SEC*, 803 F.3d 9, 28–30 (D.C. Cir. 2015).