

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 86769 / August 26, 2019

Admin. Proc. File No. 3-18546

In the Matter of the Application of
ALLEN HOLEMAN
For Review of Disciplinary Action Taken by
FINRA

PARTIAL STAY ORDER

On July 31, 2019, the Commission issued an opinion and order sustaining disciplinary action taken by FINRA against Allen Holeman.¹ The Commission found that Holeman willfully failed to timely amend his Uniform Application for Securities Industry Registration or Transfer (“Form U4”) to disclose three federal tax liens in violation of Article V, Section 2(c) of FINRA’s By-Laws, NASD IM-1000-1, and FINRA Rules 1122 and 2010. The Commission also found that Holeman submitted a false Annual Compliance Certification to his member firm employer attesting that he had no unsatisfied liens against him in violation of FINRA Rule 2010. The Commission found further that Holeman was subject to a statutory disqualification under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 because his Form U4 violations were willful and the omitted information was material.² The Commission also sustained the four-month suspension and \$20,000 fine that FINRA imposed as a result of Holeman’s violations.

¹ *Allen Holeman*, Exchange Act Release No. 86523, 2019 WL 3530381 (July 31, 2019).

² 15 U.S.C. § 78c(a)(39)(F).

On August 9, 2019, Holeman filed a motion for a stay “pending judicial review of this matter.”³ Holeman seeks a stay of the sanctions assessed against him and the finding of a statutory disqualification. FINRA did not file a brief in opposition.

The Commission considers the following four factors in determining whether to grant a stay pending judicial review of a Commission order: (i) 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.⁴ The party seeking a stay has the burden of establishing that relief is warranted.⁵ Here, no factor supports a stay.

Holeman’s motion does not establish that a stay is warranted. His only reference to his likelihood of success on the merits of his appeal is his assertions that “the SEC’s opinion is against the weight of the evidence and did not address all of the material issues” and that there “are meritorious grounds that form the basis for an appeal.” Holeman does not explain how the opinion is against the weight of the evidence, identify which issues the opinion failed to address, or indicate what grounds for an appeal he believes are meritorious.

With respect to irreparable harm, Holeman again asserts without supporting evidence or further argument that a stay is necessary “to prevent irreparably injury.” But to establish irreparable harm, Holeman “must show an injury that is ‘both certain and great’ and ‘actual and not theoretical.’”⁶ “A stay ‘will not be granted [based on] something merely feared as liable to occur at some indefinite time.’”⁷ Holeman does not identify what harm he will suffer absent a stay let alone show that the injury is certain and great and actual and not theoretical.

To the extent Holeman believes he will suffer irreparable injury because he will lose his job as a result of the statutory disqualification, we note that this is not necessarily the case. Although generally “no person shall continue to be associated with a FINRA member if such person becomes subject to a disqualification,” a FINRA “member may request discretionary relief from FINRA by submitting a membership continuance application detailing terms of the

³ On August 19, 2019, the Commission received the petition for review that Holeman filed.

⁴ *Dennis J. Malouf*, Exchange Act Release No. 10202, 2016 WL 4537671, at *1 (Aug. 31, 2016).

⁵ *Id.*

⁶ *Richard Allen Riemer, Jr.*, Exchange Act Release No. 82014, 2017 WL 5067462, at *3 (Nov. 3, 2017) (quoting *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)).

⁷ *Id.* (alteration in original) (quoting *Wisconsin Gas*, 758 F.2d at 674).

proposed continued association by the statutorily disqualified individual.”⁸ And “FINRA permits certain individuals subject to statutory disqualification to continue to associate with their employers pending resolution of the employers’ membership continuance applications.”⁹

The remaining two factors, which Holeman does not mention in his motion, also do not support relief. A stay of the finding of a statutory disqualification could endanger investors.¹⁰ Such a stay would allow Holeman to maintain employment in the securities industry “without the protections provided by FINRA’s membership continuance application process, which considers the public interest when weighing whether to allow a proposed association that is otherwise prohibited.”¹¹ The public interest and the risk of harm to others therefore do not support a stay.

Nevertheless, the Commission has granted stays of a short-term suspension where requiring the applicant to serve the suspension during the pendency of his appeal would put him in jeopardy of losing the benefit of a successful appeal.¹² The Commission has also “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.”¹³ Consistent with our granting of stays in similar circumstances, we therefore grant the stay with respect to the four-month suspension and \$20,000 fine imposed by the Commission’s order.

Accordingly, IT IS ORDERED that the Commission's July 31, 2019 order suspending Allen Holeman for four months in all capacities and requiring him to pay a \$20,000 fine is stayed pending consideration of Holeman’s appeal by the court of appeals; and it is further

⁸ *Interactive Brokers LLC*, Exchange Act Release No. 80164, 2017 WL 1035745, at *1-2 (Mar. 6, 2017).

⁹ *Mitchell T. Toland*, Exchange Act Release No. 73664, 2014 WL 6601012, at *2 (Nov. 21, 2014). *See generally* Statutory Disqualification Process, <http://www.finra.org/industry/general-information-finras-eligibility-requirements> (last visited Aug. 19, 2019) (stating that, notwithstanding the general rule that “a person who is subject to disqualification may not associate with a FINRA member in any capacity unless and until approved in an Eligibility Proceeding,” “[a] person who is currently associated with a FINRA member at the time the disqualifying event occurs may be permitted to continue to work in limited circumstances, provided that: the member and the person are in compliance with FINRA Rule 8311; and the member promptly files a MC-400 application” (emphasis omitted)).

¹⁰ *Riemer*, 2017 WL 5067462, at *3.

¹¹ *Id.*

¹² *See, e.g., Michael Earl McCune*, Exchange Act Release No. 77921, 2016 WL 2997935, at *1 (May 25, 2016).

¹³ *Malouf*, 2016 WL 4537671, at 3.

ORDERED that Holeman's motion to stay the finding that he is subject to a statutory disqualification under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 is denied.

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

Vanessa A. Countryman
Secretary