

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Administrative Proceedings Rulings
Release No. 5573 / February 6, 2018

Administrative Proceeding
File No. 3-18346

In the Matter of

**Cynthia Holder, CPA,
Jeffrey Wada, CPA,
David Middendorf, CPA,
Thomas Whittle, CPA, and
David Britt, CPA**

Stay Order

On January 22, 2018, the Securities and Exchange Commission issued an order instituting proceedings against Respondents. On January 26, 2018, the United States Attorney for the Southern District of New York moved to stay this proceeding pending the resolution of *United States v. Middendorf*, No. 1:18-cr-36 (S.D.N.Y.), representing that the Division of Enforcement does not object. The U.S. Attorney argues that the continuation of this proceeding will prejudice the criminal prosecution and hinder the enforcement of the securities laws because this proceeding and the criminal case concern the same conduct and evidence. In response, all parties except Jeffrey Wada, CPA, have stated that they do not object. Wada does not object to staying the proceeding, except for the deadline for making the investigative file available for inspection and copying.

A stay is in the public interest, and I will not tailor it as Wada requests. See 17 C.F.R. § 201.210(c)(3). The Commission has recognized that one reason to grant a stay in these circumstances is that “substantial prejudice could result to . . . the pending criminal prosecution . . . from disclosure of the government’s investigative files in th[e] administrative action.” *A.S. Goldmen & Co.*, 54 S.E.C. 349, 352 (1999). Wada (and the other Respondents) will not be prejudiced by not immediately receiving the investigative file because no sanctions or other adverse consequences can be

imposed in this proceeding during the stay; the Division will have to make the investigative file available once the stay is lifted. *See id.* at 352-53.

The U.S. Attorney's motion is GRANTED and this proceeding is STAYED. *See* 17 C.F.R. § 201.210(c)(3). The U.S. Attorney shall file a report regarding the status of the criminal action within seven days of the entry of a final criminal judgment against the last remaining defendant in *Middendorf* or, in any event, no later than August 6, 2018. The status report should state the U.S. Attorney's position on whether the stay remains necessary.

Cameron Elliot
Administrative Law Judge