

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21831

In the Matter of

Edward F. Hackert, CPA,

Respondent.

JOINT MOTION TO STAY

The Division of Enforcement (“Division”) and Respondent Edward F. Hackert (“Hackert”) respectfully submit this Joint Motion to Stay for the following reasons:

On January 18, 2024, the Commission issued an order instituting proceedings (“OIP”) against Hackert. On February 5, 2024, the Division filed a motion to amend the OIP and, on March 12, 2024, the Commission issued an amended order instituting proceedings (“AOIP”).

On February 27, 2024, Hackert filed an action in the U.S. District Court for the Southern District of New York (“District Court Action”), seeking, among other things, a declaration that this administrative proceeding is unconstitutional and injunctive relief to enjoin the Commission from continuing this proceeding. *See Hackert v. SEC*, No. 1:24-cv-01477-NRB (S.D.N.Y.), ECF No. 1.

On March 20, 2024, in the District Court Action, Hackert filed a pre-motion letter in anticipation of filing a motion for a preliminary injunction, seeking to stay this administrative proceeding. *See Hackert v. SEC*, No. 1:24-cv-01477-NRB (S.D.N.Y.), ECF No. 14.

On April 4, 2024, the District Court held a pre-motion conference. During the conference, without prejudging the merits of the case in general or of the motion for preliminary injunction in particular, the Court expressed its view that the Commission should voluntarily stay the administrative proceeding against Hackert until the Supreme Court decides *SEC v. Jarkesy*, No. 22-859 (S. Ct.), which, the Court indicated, could impact administrative proceedings before the Commission, including, potentially, the proceeding against Hackert. Thus, in the Court's view, it would be practical for the Commission to stay the administrative proceeding against Hackert until *Jarkesy* has been decided.

The Division and Hackert recognize that in at least two recent matters, the Commission denied joint motions to stay administrative proceedings pending the resolution of *Jarkesy*, where those proceedings did not involve civil penalties and had not been assigned to an administrative law judge. See *Michael Sztrom*, Release No. 6518, 2023 WL 9022662 (Dec. 28, 2023); *Eric Christopher Cannon*, Release No. 99249, 2023 WL 9022659 (Dec. 28, 2023). The *Sztrom* and *Cannon* matters, however, were follow-on proceedings and did not involve requests to stay based on a District Court's comments in parallel litigation pending against the Commission, which is the situation presented here.

Accordingly, based on the unique facts of this matter, the parties jointly and respectfully request that the Commission stay this administrative proceeding until 30 days after the Supreme Court issues its opinion in *Jarkesy*.

Dated: April 11, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2024, the foregoing document was filed via eFAP and served on the following by the following means:

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