

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.

SECOND JOINT MOTION TO STAY

The Division of Enforcement (“Division”) and Respondent Edward F. Hackert (“Hackert”) respectfully submit this Second 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 April 11, 2024, the Division and Hackert jointly moved the Commission to stay the administrative proceeding until 30 days after the disposition of the *Jarkesy* case. On April 26, 2024, the Commission granted the parties’ joint motion and ordered that the

administrative proceeding would be postponed until 30 days after the Supreme Court issues its decision in *Jarkesy*.

The Supreme Court issued the *Jarkesy* decision on June 27, 2024. *SEC v. Jarkesy*, 603 U.S. ___ (2024), No. 22-859, slip op. (June 27, 2024).

On July 11, 2024, the District Court approved a schedule proposed by the parties in which Hackert would file an amended complaint in the District Court Action by July 25, 2024, and the parties would submit a joint schedule by August 25, 2024, proposing subsequent deadlines for a response to the amended complaint and the filing of substantive motions. Also on July 11, 2024, the parties in the District Court Action informed the Court that the Division of Enforcement and Hackert had agreed to submit a joint motion to the Commission requesting that the Commission continue the stay of this administrative proceeding until final judgment in the District Court Action.

It is appropriate to stay and postpone this administrative proceeding until final judgment in the District Court Action under the circumstances. The District Court Action raises various constitutional challenges to the administrative proceeding that will need to be resolved before final resolution of the administrative proceeding. The *Jarkesy* decision is instructive on some but not all of the constitutional issues raised. Judicial and administrative efficiency counsel towards staying and postponing this proceeding until those constitutional issues are resolved by the judicial branch. There will be no prejudice resulting from the relief requested: the administrative proceeding has only been pending for approximately six months, there has only been one order of postponement so far, no hearing date is set, and the parties make this request jointly.

Accordingly, based on the unique facts of this matter, the parties jointly and respectfully request that the Commission continue to stay this administrative proceeding until final judgment is issued in the District Court Action. The parties submit that all other time limits set forth in the Rules of Practice should be postponed during consideration of this Second Joint Motion to Stay, and any order extending the stay and postponing the proceeding should be granted *nunc pro tunc* to July 29, 2024 (the date when the current stay ends). The parties each reserve the right to move the Commission for an earlier end to the stay if appropriate.

Dated: July 24, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2024, the foregoing document was filed via eFAP and served on the following by the following means:

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