

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11282 / April 26, 2024

SECURITIES EXCHANGE ACT OF 1934
Release No. 100035 / April 26, 2024

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4499 / April 26, 2024

Admin. Proc. File No. 3-21831

In the Matter of

EDWARD F. HACKERT, CPA

ORDER POSTPONING PROCEEDING

On January 18, 2024, the Securities and Exchange Commission issued an order instituting proceedings (“OIP”) against Edward F. Hackert, CPA, pursuant to Section 8A of the Securities Act of 1933, Sections 4C and 21C of the Securities Exchange Act of 1934, and Commission Rule of Practice 102(e).¹ On February 27, 2024, Hackert filed an action in the U.S. District Court for the Southern District of New York, seeking to enjoin the Commission from continuing this proceeding.²

On April 11, 2024, the parties filed a joint motion before the Commission to stay this proceeding. The parties’ motion notes that, at a conference in the district court action on April 4, 2024, the court, without prejudging the merits of the case, “expressed its view that the Commission should voluntarily stay the administrative proceeding against Hackert until the Supreme Court decides *SEC v. Jarkesy*.”³ In the district court’s view, *Jarkesy* could “impact administrative proceedings before the Commission, including, potentially, the proceeding against Hackert.” Accordingly, the parties’ motion “respectfully request[s] that the Commission stay

¹ *Edward F. Hackert, CPA*, Exchange Act Release No. 99384, 2024 WL 212152 (Jan. 18, 2024); *see also Edward F. Hackert, CPA*, Exchange Act Release No. 99716, 2024 WL 1091204 (Mar. 12, 2024) (amending OIP).

² *Hackert v. SEC*, No. 1:24-cv-01477-NRB (S.D.N.Y.).

³ No. 22-859, 2023 WL 4278448 (June 30, 2023) (cert. granted).

this administrative proceeding until 30 days after the Supreme Court issues its opinion in *Jarkesy*.”

We construe the joint motion to stay as a request for postponement under Commission Rule of Practice 161.⁴ Under the circumstances presented here, we have determined to postpone this proceeding. A federal district court has expressed the view that the Commission should voluntarily stay this specific proceeding. Furthermore, unlike other recent administrative proceedings in which the Commission has denied requests to stay the proceedings pending a decision in *Jarkesy*,⁵ this proceeding was instituted under Section 8A of the Securities Act, which authorizes the Commission to impose civil penalties upon a finding that such relief is appropriate in the public interest.⁶ And the first question presented in *Jarkesy* asks “[w]hether statutory provisions that empower the [Commission] to initiate and adjudicate administrative enforcement proceedings seeking civil penalties violate the Seventh Amendment.” For the same reasons, we also find that a postponement of more than 21 days is necessary.⁷

Accordingly, it is ORDERED that the proceeding is postponed until 30 days after the Supreme Court issues its decision in *Jarkesy*, and that, when the proceeding resumes, the parties

⁴ 17 C.F.R. § 201.161; see *Francis V. Lorenzo*, Exchange Act Release No. 10460, 2018 WL 994316, at *1 (Feb. 21, 2018) (construing motion for stay as request for postponement under Rule of Practice 161). Under Rule 161, the Commission considers, among other things, the length of the proceeding to date; the number of postponements, adjournments, or extensions already granted; the stage of the proceedings at the time of the request; and any other such matters as justice may require.

⁵ See *Michael Sztrom*, Advisers Act Release No. 6518, 2023 WL 9022662 (Dec. 28, 2023); *Eric Christopher Cannon*, Exchange Act Release No. 99249, 2023 WL 9022659 (Dec. 28, 2023).

⁶ *Hackert*, 2024 WL 1091204, at *15; see also 15 U.S.C. § 77h-1(g) (granting the Commission authority to impose civil penalties in cease-and-desist proceedings under certain conditions).

⁷ See Rule of Practice 161(c)(1), 17 C.F.R. § 201.161(c)(1) (“Postponements . . . shall not exceed 21 days unless the Commission . . . sets forth in a written order the reasons why a longer period of time is necessary.”).

shall promptly file a status report discussing the impact of that decision on this proceeding, if any, and any other relevant matters.

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

Vanessa A. Countryman
Secretary