Is now the time to seek relief from SEC industry bars and professional suspensions?

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Introduction

Each year, the Securities and Exchange Commission (SEC) permanently bars dozens of individuals from the securities industry, from serving as officers and directors of public issuers, or from participating in penny-stock transactions. It also imposes professional suspensions on attorneys and accountants for various wrongful conduct.

The SEC instituted approximately 1,500 such actions over the last decade, typically based upon the outcome of an SEC action or actions by criminal authorities or other regulators. Although affected individuals may apply for reentry from such bars and reinstatement from professional suspensions, historically, the SEC took extended periods to consider, and the grant of such relief was rare — even to individuals who negotiated express rights to apply to the agency after a certain period as part of a settlement.

Toward the end of 2024, however, the SEC reinstated four suspended accountants to practice in various capacities before the Commission. (The author advised then SEC Chair Gary Gensler on those matters.)

Continuing the trend, in April 2025, the SEC reinstated two additional accountants, while also consenting to the association of a barred investment-adviser representative and lifting a penny-stock bar (which essentially prevents an individual from trading in penny stocks) on another individual.

While the reinstatements of the accountants in 2024 and 2025 were noteworthy because of the increased pace of the grants, the SEC followed the routine process for such applications, described below. The other two 2025 orders were notable because of their substance.

First, in its April 11, 2025, order allowing Roger T. Denha to associate with an investment adviser, the SEC appears to have lowered the threshold for allowing the reentry of barred industry participants by abandoning the "extraordinary circumstances" test it appears to have formerly employed. (This author advised on the test while at the SEC.) Second, the SEC granted Manish Singh relief from a penny-stock bar, a rare occurrence.

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Background on SEC bars and accountant and attorney suspensions

Under the federal securities laws, the SEC may impose industry (i.e., "associational"), officer-and-director ("O&D"), and penny-stock bars for various forms of wrongful conduct. It may also suspend industry participants for less than one year. These bars are intended to be remedial — protecting the public from future harm — rather than punitive.

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Similarly, the SEC may suspend attorneys and accountants from "appearing or practicing" before it pursuant to its Rule of Practice 102(e) for various wrongful conduct or unethical or improper behavior set forth in the Rule. These suspensions may limit attorneys and accountants from working on SEC filings, corporate financial statements, or serving on audit committees. The SEC can impose professional suspensions in settled or litigated administrative proceedings or by summary order (so-called "forthwith" suspensions) depending on the circumstance.

Reentries and readmissions

Other than time-limited O&D bars and associational suspensions (i.e., industry bars of less than one year), which

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automatically dissolve, bars are permanent. Individuals must apply to the SEC under its Rule of Practice 193 for relief from bars — even in the case of "qualified" (so-called "time-limited" bars) that some defendants negotiate in a settlement. These qualified bars are merely express grants of the right to apply to the SEC after a certain period, not an automatic lifting of a bar following that time. Notably, even if granted the right to reassociate in the industry, barred individuals must seek SEC relief from the bar each time they want to change their association (i.e., switch jobs) within the industry.

Nevertheless, there is a benefit to a qualified bar compared to an "unqualified" one permanently barring an individual. In evaluating whether the reentry application of an individual with a qualified bar is in the public interest, the SEC does not consider the original conduct resulting in the bar, provided that the specified time period has elapsed.

The SEC's order in Denha *concluded by saying that "we no longer intend to use the 'extraordinary circumstances' test" in evaluating reentry applications.*

Further, the SEC historically permitted the readmission of individuals with unqualified bars only in "extraordinary circumstances," a view it articulated in an Oct. 15, 2008, order against Victor Teicher. In *In re Teicher*, the SEC stated that a person with an unqualified bar would be unable to establish that it was in the public interest to allow reentry to the securities industry "absent extraordinary circumstances." Neither *Teicher* nor subsequent SEC decisions defined what "extraordinary circumstances" meant.

This statement appeared to add an element to the factors in SEC Rule of Practice 193(c), which only required an applicant to show that reentry was "consistent with the public interest" by addressing factors set forth in Rule 193(d), including remedial efforts by the barred individual, the proposed terms of the reentry, and conduct during the barred period.

With respect to attorneys and accountants denied the privilege of practicing before the SEC, their professional suspensions were likewise permanent with the exception of the 30-day suspensions under Rule 102(e)(3). But 30-day suspensions also become permanent if not challenged. Reinstatement from a professional suspension requires "good cause" shown by the applicant.

Typically, the SEC order imposing the suspension sets forth the requirements for the attorney or accountant to satisfy in an application for reinstatement. Reinstatements may be limited or conditional. For example, the SEC may approve an accountant to practice as a preparer or reviewer of financial statements, but not as a member of an audit committee or an independent accountant.

New trend?

Historically, applications for reentry and reinstatement have taken months or years for the SEC staff to process and, subsequently, for the Commission to consider and vote on the staff recommendations. But the SEC's recent actions granting reentries and reinstatements may indicate a new willingness to act on these applications.

The SEC may be seeking to limit its vulnerability to court challenge of its bars and attorney and accountant suspensions, particularly in light of *SEC v. Jarkesy*, 603 U.S. 109 (2024). To the extent that an SEC bar or professional suspension can be characterized as punitive, as opposed to remedial, it may give rise to a jury-trial right under *Jarkesy*.

Allowing reentries and reinstatements may make them appear more of an equitable-type remedy where a right to a jury did not traditionally attach. This consideration may, in part, explain the four accountant reentries in 2024 and two in 2025, which were straightforward applications of the existing reinstatement process for accountants.

The April 2025 decision in *In re Denha*, concerning a barred investment-adviser representative, demonstrates a new legal approach to associational bars. As noted above, the SEC formerly required individuals with unqualified bars to demonstrate "extraordinary circumstances" to meet the public-interest standard in SEC Rule of Practice 193.

In *Denha*, the SEC stated that its approach may have implied an "additional consideration" not present in Rule 193 that created an "insurmountable hurdle" for reentry. The Commission then stated, "it is in the public interest to allow barred individuals to reenter the industry if their individual circumstances demonstrate rehabilitation and increased risk-controls to prevent recidivism[.]"

The SEC noted that readmissions will encourage other barred individuals to rehabilitate and remediate. The SEC's order in *Denha* concluded by saying that "we no longer intend to use the 'extraordinary circumstances' test" in evaluating reentry applications.

Similarly, in the April 10, 2025, order in *In re Singh*, the Commission granted Singh relief from a penny-stock bar. Singh, who was subject to a penny-stock bar as the result of a 2017 SEC decision involving a paid stock-touting scheme, sought relief in order to start a private medical company and to raise funds through private placements.

Singh applied for relief citing factors the SEC set forth in its 2001 *In re Roger M. Taft* decision. Those factors include the proposed nature of the applicant's participation in the offering of penny stocks. Noting the burdens to Singh's proposed enterprises and measures to ensure compliance with federal securities laws, such as the retention of professionals and a

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compliance consultant, the Commission granted relief from its penny-stock bar, while leaving other remedies from the original 2017 order in place.

These recent grants of reentry and reinstatement applications, as well as the abandonment of the extraordinary-circumstances test, may mean that individuals barred or denied the privilege of practicing before the SEC and their counsel should evaluate whether they meet the standards for reentry or reinstatement and consider applying.

About the author

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