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ACCOUNTANTS AND LAWYERS BEWARE: THE FUTURE OF SEC RULE 102(e) PROCEEDINGS AFTER *JARKESY*

The Supreme Court's decision in SEC v. Jarkesy *has significantly impacted the SEC's use of its in-house administrative forum, including for Rule 102(e) proceedings against the professionals who appear and practice before it. The SEC is now seeking similar relief in federal court that it traditionally sought through Rule 102(e) proceedings, raising new legal questions and challenges. This article discusses the use of Rule 102(e) and conduct-based injunctions in federal court.*

By Jimmy Fokas and Bari R. Nadworny *

Following the Supreme Court's decision in *SEC v. Jarkesy*, the U.S. Securities and Exchange Commission ("SEC" or the "Commission") has been forced to limit its use of its in-house administrative forum. While *Jarkesy* held that the Seventh Amendment entitles a defendant to a jury trial when the SEC seeks civil penalties for securities fraud, it did not specifically address other types of relief the SEC has traditionally sought through its administrative forum. The SEC has authority under Rule 102(e) of its Rules of Practice to censure, suspend, or bar certain professionals, including lawyers and accountants, from appearing or practicing before it — relief the SEC is only authorized to seek through an administrative proceeding. Yet in light of *Jarkesy*, the SEC has more recently attempted to seek similar relief outside the administrative forum in federal district court. In a handful of actions that do not reference Rule 102(e), with possibly more to come, the SEC has sought a conduct-based injunction, invoking the court's equitable powers, to essentially bar accountants from appearing or practicing before it. This type of relief could also be brought against lawyers. Suspending, and especially barring, a professional from appearing or practicing before the SEC often causes significant personal strife, financial loss, and professional and reputational damage. While the goal of the relief sought is not new for the SEC, the forum in which it is now requesting this relief and the mechanism by which it is being requested are new. Questions remain open as to whether this practice will continue, what standards should and do apply, and whether this will survive likely legal challenges.

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