

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Administrative Proceedings Rulings
Release No. 5349 / December 11, 2017

Administrative Proceeding
File No. 3-17316

In the Matter of

**Longwei Petroleum Investment
Holding Limited**

**Notice to the Parties
and Order on Service**

On November 30, 2017, the Securities and Exchange Commission issued an order ratifying the appointment of its administrative law judges and directing all administrative law judges with pending proceedings to: (1) reconsider the record in each proceeding, including all substantive and procedural actions; (2) allow the parties to file any new evidence that the parties deem relevant to the reexamination of the record by January 5, 2018; (3) determine whether to revise or ratify prior actions; and (4) issue by February 16, 2018, an order on ratification. *Pending Admin. Proc.*, Securities Act of 1933 Release No. 10440, 2017 SEC LEXIS 3724.¹

The Commission also lifted the stay in this proceeding, which was imposed by its May 22, 2017, order following the U.S. Court of Appeals for the Tenth Circuit's decision denying rehearing en banc in *Bandimere v. SEC*, 844 F.3d 1168 (10th Cir. 2016), *reh'g and reh'g en banc denied*, 855 F.3d 1128 (10th Cir. 2017), *petition for cert. filed*, No. 17-475 (U.S. Sept. 29, 2017); see *Longwei Petroleum Inv. Holding*, Admin. Proc. Rulings Release No. 4824, 2017 SEC LEXIS 1511 (ALJ May 23, 2017).

Before this proceeding was stayed, the Division of Enforcement sent the order instituting proceedings (OIP) to a Colorado-state-court-appointed receiver for Respondent. Counsel for the receiver acknowledged receipt of the

¹ The Commission order is online here: <https://www.sec.gov/litigation/opinions/2017/33-10440.pdf>.

OIP, but questioned the Commission's institution of proceedings without permission from the Colorado state court. Nonetheless, the receiver's counsel represented that the receiver has no objection to the suspension or revocation of Respondent's securities pursuant to Section 12(j) of the Securities Exchange Act of 1934. I noted that I would rule on service after the stay was lifted. *Longwei*, 2017 SEC LEXIS 1511, at *3.

The Commission's Rules of Practice permit service on a corporation by delivery of the OIP "to an officer, managing or general agent, or any other agent authorized by appointment or law to receive such notice." 17 C.F.R. § 201.141(a)(2)(ii). The Colorado court's order appointing the receiver grants him broad powers to act in Respondent's stead. For example, it allows him to take possession of all of Respondent's assets to the exclusion of Respondent; "elect new officers, directors, or management" of Respondent's subsidiaries; and take possession of Respondent's offices and change the locks. Decl. of D. Thomas Keltner (Oct. 27, 2016), Ex. B, ¶ 11(a), (b), (d). It further prohibits Respondent and its representatives from "tak[ing] any and all actions . . . as officers . . . or principals . . . except with the permission of the Receiver." *Id.* ¶ 17(c). Significantly, the order authorizes the receiver to "defend . . . proceedings in state, federal or foreign courts now pending and hereafter instituted, as may in his discretion" aid in the protection or "collection and liquidation" of Respondent's assets. *Id.* ¶ 11(s), (t).

It would appear that the receiver effectively controls Respondent, and I am inclined to find that he is the agent authorized by appointment or law to accept service in this proceeding. *See* Colo. Rev. Stat. § 7-114-303(3)(a)(II) (providing that, in the event of judicial dissolution of a corporation, the state court shall describe the powers and duties of the receiver in its appointing order, among which are the powers to "sue and defend in the receiver's own name as receiver of the corporation in all courts"); *cf. Ganabin v. Phelan*, 5 Colo. 83, 84 (1879) (holding that appointment of a receiver for a foreign corporation "displaced the ordinary officers of the corporation," and service upon the receiver was proper). I direct the receiver to file a brief by January 5, 2018, if he would object to such finding. If further briefing is necessary—such as to address the Commission's institution of this proceeding without notifying the Colorado court—a briefing schedule will be set at that time.

By December 20, 2017, the Division shall file a declaration and evidence regarding how service of the OIP was made on the receiver under the Commission's Rules of Practice. *See* 17 C.F.R. § 201.141; Rules of Practice, 60 Fed. Reg. 32738, 32750 (June 23, 1995). Alternatively, the Division may obtain and file a waiver of service under 17 C.F.R. § 201.141(a)(4).

Assuming service has been or will be properly effected, both parties may submit by January 5, 2018, any new evidence they consider relevant to my reexamination of the record pursuant to the Commission's November 30 order. Any party that submits evidence must also file a brief explaining the relevance of its new evidence and how it relates to an action I have taken in this proceeding. Any responsive or opposition brief is due January 19, 2018.

Jason S. Patil
Administrative Law Judge