

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

Administrative Proceedings Rulings  
Release No. 5628 / February 26, 2018

Administrative Proceeding  
File No. 3-17316

In the Matter of  
**Longwei Petroleum Investment  
Holding Limited**

**Order Regarding Motion for  
Substitution of Counsel,  
Denying Shareholder Petition,  
and Directing Briefing**

*Motion for Substitution of Counsel*

On February 20, 2018, the Division of Enforcement submitted a motion asking me to issue an order approving its substitution of counsel of record in this proceeding. However, no such order is necessary, as I construe the Division's motion as notices of withdrawal and of appearance, which are effective without any action on my part. *See* 17 C.F.R. § 201.102(d)(2), (4). The Division represents that its original attorney has already resigned from employment with the Securities and Exchange Commission. Therefore, I find good cause to SHORTEN the normal five-day waiting period before a notice of withdrawal is effective, making the withdrawal effective on filing. *See* 17 C.F.R. §§ 201.102(d)(4), .161(a)-(b). The appearance was immediately effective. *See* 17 C.F.R. § 201.102(d)(2).

*Shareholder Petition*

A person identifying himself as an over-two-percent shareholder of Respondent submitted letters dated January 4 and 10, 2018. The shareholder states that he would represent Respondent if the company or its attorneys had not already contacted me. The shareholder claims that Respondent "is under the impression that as a delisted company, they are not required to be current on their financial statements," and therefore requests that Respondent's securities not be revoked.

I DENY the shareholder's petition. I previously found that the court-appointed-receiver for Respondent, C. Randel Lewis, was the appropriate

party for service—being authorized to defend Respondent in court proceedings. *See Longwei Petroleum Inv. Holding Ltd.*, Admin. Proc. Rulings Release No. 5612, 2018 SEC LEXIS 500 (ALJ Feb. 16, 2018); No. 5349, 2017 SEC LEXIS 4008, at \*3-4 (ALJ Dec. 11, 2017); Decl. of D. Thomas Keltner (Oct. 27, 2016), Ex. B, ¶ 11(s), (t). Therefore, the receiver, through his counsel, Fairfield and Woods, P.C., represents Respondent in this proceeding. A shareholder cannot represent a respondent in an administrative proceeding. *See* 17 C.F.R. § 201.102(b) (allowing a corporation to be represented by an attorney or its officers, but making no provision for representation by shareholders). Nevertheless, as discussed below, the issue raised by the shareholder somewhat complicates the resolution of this matter.

### *Order for Additional Briefing*

I deem the receiver's January 5, 2018, letter to be Respondent's answer. The letter admits the material facts of the OIP—that Respondent is delinquent in its periodic filings—and consents to the revocation of Respondent's securities. *See* 17 C.F.R. § 201.220(c).

However, this case presents an unusual fact pattern. The order instituting proceedings (OIP) alleges that Respondent has a class of securities registered with the Commission under Section 12(b) of the Securities Exchange Act of 1934. OIP at 1. Section 12(b) pertains to the registration of securities to be traded on a national securities exchange, whereas Section 12(g) is a more general provision requiring registration if certain conditions are met and also allowing voluntary registration. 15 U.S.C. § 78l(b), (g). On March 22, 2013, NYSE MKT (now known as NYSE American) filed a Form 25 to strike a class of Respondent's securities from listing and/or withdraw its registration on the exchange. Form 25-NSE (Mar. 22, 2013), *available on* EDGAR; *see* 17 C.F.R. § 201.323 (official notice). Assuming that the Form 25 became effective, Respondent's obligation to file periodic reports because of its Section 12(b) registration would have been suspended upon its delisting. 17 C.F.R. § 240.12d2-2(d)(1), (5). Moreover, if the Form 25 withdrew Respondent's Section 12(b) registration, there may be no class of securities remaining under Section 12(b) to revoke. *Id.* § 240.12d2-2(d)(2). The OIP does not allege that Respondent's stock reverted to a prior Section 12(g) registration or that Respondent has any reporting obligations as a result of such prior registration. *Id.* § 240.12d2-2(d)(6).

I therefore ORDER the Division to brief the issues presented here by March 12, 2018. In particular—but not exclusively—the Division should address whether Respondent has reporting obligations as a result of a prior Exchange Act Section 12(g) registration, and if so, whether it must ask the

Commission to amend the OIP's allegations to reflect this fact. Any response to the Division's brief is due by March 26, 2018.

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Jason S. Patil  
Administrative Law Judge