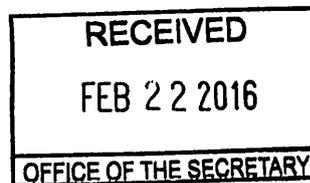


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UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

Administrative Proceeding  
File No. 3-13109



In the Matter of

Gordon Brent Pierce,

Respondent.

DIVISION OF ENFORCEMENT'S  
RESPONSE TO GORDON BRENT  
PIERCE'S MOTION TO AMEND HIS  
MOTION TO VACATE THE  
COMMISSION'S ORDER

Respondent Gordon Brent Pierce ("Pierce") seeks to amend his previously filed Motion to Vacate the Commission's Order ("Motion") in this proceeding ("*Pierce I*") so that he may ask the Commission to *also* vacate its Order in a different, subsequent administrative proceeding, *In the Matter of Gordon Brent Pierce et al.*, S.E.C. Rel. 9555, 2014 WL 896757 (Mar. 7, 2014) ("*Pierce II*"). Pierce sought review of the Commission's Order in *Pierce II* in the United States Court of Appeals for the District of Columbia Circuit, which denied Pierce's petition. *See Pierce v. SEC*, 786 F.3d 1027 (D.C. Cir. 2015). Pierce has subsequently filed a petition for a writ of certiorari with the Supreme Court seeking review of the D.C. Circuit's decision.

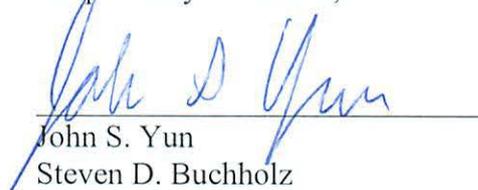
Pierce now requests that the Commission vacate its March 7, 2014 Order in *Pierce II* on the ground that, he claims, "the administrative law judge ("ALJ") who issued the decision against him on which the order is based did not have the authority to preside over the proceedings, as her appointment violated the Appointments Clause of the United States Constitution. U.S. Const. art. II § 2, cl.2." Pierce Mot. to Amend at 1 (Aug. 19, 2015). Pierce did not raise this argument before the ALJ during the administrative proceeding, nor did he raise it in his appeal of the ALJ's initial decision to the Commission (*see Pierce II*, 2014 WL 896757, at \*8-26) or in his request that the Commission reconsider its March 7, 2014 order finding him liable for violating Section 5 of the Securities Act of 1933 (*Pierce II*, S.E.C. Rel. 9584, 2014 WL 1998514 (May 15, 2014)). Pierce also failed to raise the argument when seeking review of the

Commission's order in the D.C. Circuit. *See Pierce*, 786 F.3d 1027. Indeed, the first time he identified the purported legal error was when seeking rehearing and en banc review of the D.C. Circuit panel's decision denying his petition for review. *See Rehearing Pet. 3-4, Pierce v. SEC*, No. 14-1079 (D.C. Cir. July 6, 2015). His argument should therefore be deemed forfeited.

Even assuming that Piece had not forfeited his Article II challenge, he offers no reason why such a challenge would be successful. The Commission has addressed several similar claims that its administrative proceedings violate Article II because the presiding ALJ was not properly appointed—and has rejected them all. *David F. Bandimere*, Exchange Act Release No. 76308, 2015 WL 6575665, at \*19-21 (Oct. 29, 2015); *Timbervest, LLC*, Investment Advisers Act Release No. 4197, 2015 WL 5472520, at \*23-28 (Sept. 17, 2015); *Raymond J. Lucia Cos.*, Exchange Act Release No. 75837, 2015 WL 5172953, at \*21 (Sept. 3, 2015). As the Commission has repeatedly explained, its ALJs are employees, not constitutional officers, and thus they are not subject to Article II's requirements. *Bandimere*, 2015 WL 6575665, at \*19-21. None of *Pierce*'s arguments to the contrary warrant reconsideration of the Commission's decisions in *Bandimere*, *Timbervest*, or *Lucia*.

Dated: February 19, 2016

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I, Janet L. Johnston, hereby certify that an original and three copies of the foregoing DIVISION OF ENFORCEMENT'S RESPONSE TO GORDON BRENT PIERCE'S MOTION TO AMEND HIS MOTION TO VACATE THE COMMISSION'S ORDER were sent by overnight delivery for filing with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549, with a copy transmitted by facsimile to (703) 813-9793 for filing, and that a true and correct copy of the foregoing has been served by overnight delivery on February 19, 2016, on the following persons entitled to notice:

The Honorable Carol Fox Foelak  
Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2557

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