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OFFICE OF THE SECRETARY

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: In the Matter of Mohammed Riad and Kevin Timothy Swanson, File No. 3-15141

Dear Mr. Fields

Enclosed please find the original and three copies of the Reply Brief in Support of Motion for a Stay and Certificate of Service for filing with the Securities and Exchange Commission in the above-captioned matter.

Very truly yours,

Richard D. Marshall

Richard D. Marshall

RDM:

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UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
FILE NO. 3-15141

In the Matter of MOHAMMED RIAD AND KEVIN TIMOTHY SWANSON Respondents.	REPLY BRIEF IN SUPPORT OF MOTION TO STAY

Dated: July 5, 2016

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RESPONDENTS HAVE MET THE LEGAL STANDARD FOR GRANTING STAY

The Division of Enforcement (the "Division") agrees with the Respondents, Kevin Timothy Swanson and Mohammed Riad ("Respondents"), on the standard for granting a stay of enforcement of sanctions:

> (1) whether the applicants have shown a strong likelihood that they will prevail on the merits of the appeal; (2) whether the applicants have shown that they will be irreparably harmed if the stay is not granted; (3) whether the granting of a stay would result in substantial harm to other parties; and (4) whether the issuance of a stay would likely serve the public interest.

In re Electronic Transaction Clearing, Inc., Admin. Proc. File No. 3-16285 at *2 (November 26, 2014). The Division also agrees with Respondents that an applicant need not establish all four criteria, nor are they each weighed equally. *Id.* "For example, a stay may be granted where there is a high probability of irreparable harm but a lower probability of success on the merits, or vice versa." *Id.*

I. SUCCESS ON THE MERITS

The Division challenges Respondents for not having presented sufficiently detailed arguments explaining why they expect to prevail on appeal. While it is unnecessary on this motion to present an extensive brief on appeal, Respondents offer the following more fulsome explanation of the strength of their appeal.

A. SERIOUS CONSTITUTIONAL ISSUES

1. *Commission Bias, in Violation of Due Process*

Respondents have challenged the impartiality of the forum in which their case was tried – a challenge that is likely to succeed on appeal. "Disqualification [of a judge] is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified."[1] These obligations apply to the Commissioners.[2]

On December 19, 2012, the Commission issued a single press release simultaneously announcing the *FAMCO* and *Claymore* cases,[3] which ultimately settled, as well as the litigated case against the Respondents. All three cases are based on the same facts and allegations. On December 11, 2015, before briefing had been concluded and oral argument had been scheduled in the case at bar, the three Commissioners who ultimately issued the Opinion in this matter on June 13, 2016 (the "Opinion") approved a release recommending a new Rule 18f-4 governing the use of derivatives by registered investment companies.[4] The *FAMCO* and *Claymore* cases were cited as part of the justification for the new Rule, explained under the bold faced caption: "Need for a New Approach." *Id.* at 32. Within this section, at page 44 of the Proposing Release, the Commission states that "[t]hree relatively recent settled enforcement actions . . . are relevant to our consideration of whether funds' current practices, based on their application of Commission and staff guidance, are consistent with the investor protection purposes and concerns underlying section 18 of the Investment Company Act." The Commission then discusses the *FAMCO* and *Claymore* cases, although they refrained from mentioning the case against the Respondents. *Id.* at 45-46.

This conduct demonstrates impermissible prejudgment and bias in this matter. Last December, the Commissioners effectively asserted that the rules under Section 18(f) under the

[1] *Liteky v. United States*, 510 U.S. 540 (1994).

[2] *Antoniu v. SEC*, 877 F.2d 721 (8th Cir. 1989); *Amos Treat Co. v. SEC*, 306 F.2d 260 (D.C. Cir. 1962).

[3] *In the Matter of Claymore Advisors, LLC*, Investment Company Act Release No. 30308 (Dec. 19, 2012); *In the Matter of Fiduciary Asset Management, LLC*, Investment Company Act Release No. 30309 (Dec. 19, 2012) (settled actions).

[4] *See* Investment Company Act Rel. 31933 (Dec. 11, 2015)(the "Proposing Release").

Investment Company Act need to be modified because current standards under Section 18(f) are insufficient to prevent misconduct exemplified by the actions undertaken by Respondents. The Commissioner's ability to impartially judge Respondents after issuing the Proposing Release was thrown into doubt.

The Opinion addresses this important issue in one brief footnote. There, the Opinion asserts that the case against the Respondents is irrelevant to the proposed Rule 18f-4 because there are no violations of Section 18(f) alleged against the Respondents. This argument does nothing more than suggest that the Proposing Release should never have cited the *FAMCO* and *Claymore* cases at all as "relevant" to the "need for a new approach" because neither of those cases involved alleged violations of Section 18. In fact, the Commissioners saw a connection between the *FAMCO* and *Claymore* cases and the proposed Rule 18f-4, which is precisely why those Cases were prominently discussed in the Proposing Release, and why it is clear that the Commissioners had prejudged Respondents' case.

The footnote also claims that "[t]he 'Commission is the only governmental agency with the statutory authority to institute and dispose of administrative proceedings, which means that disqualification cannot be permitted to prevent the Commission, the only tribunal with the power to act in this matter, from performing its duties.'" This so-called "rule of necessity" has no relevance here, where the Commissioners had no obligation to rely upon the *Claymore* and *FAMCO* cases in arguing for the adoption of Rule 18f-4. There was no "necessity" for the Commission to link the case against the Respondents with the rationale for Rule 18f-4. Once the Commission drew that link, however, the Commissioners should have recused themselves from this case.

2. *Trial before a Judge not Appointed as Required by the Appointments Clause*

Respondents have also moved to dismiss this case because it was tried before an Administrative Law Judge who was not properly appointed, in violation of the Appointments Clause of the United States Constitution, Article II, Section 2. The Appointments Clause creates two classes of officers: principal officers, who are selected by the President with the advice and consent of the Senate, and inferior officers, whom "Congress may allow to be appointed by the President alone, by the heads of departments, or by the Judiciary." *Buckley v. Valeo*, 424 U.S. 1, 132 (1976). The Appointments Clause applies to all agency officers including those whose functions are "predominately quasi judicial and quasi legislative" and regardless of whether the agency officers are "independent of the Executive in their day-to-day operations." *Id.* at 133 (quoting *Humphrey's Executor v. United States*, 295 U.S. 602, 625-26 (1935)). "[A]ny appointee exercising significant authority pursuant to the laws of the United States is an 'Officer of the United States,' and must, therefore, be appointed in the manner prescribed by § 2, cl. 2, of [Article II]." *Freytag v. Commissioner*, 501 U.S. 868 at 881 (1991)(quoting *Buckley*, 424 U.S. at 126) (alteration in the original).

No Court of Appeals has decided whether the SEC's Administrative Law Judges ("ALJs") exercise "significant authority" under the laws of the United States. In *Freytag v. Commissioner*, 501 U.S. 868 (1991), the Supreme Court held that a Special Trial Judge of the Tax Court was an "inferior officer" under Article II, which supports the conclusion that SEC ALJs are also inferior officers. In *Landry v. FDIC*, 204 F.3d 1125 (D.C. Cir. 2000), the Court of Appeals held that an administrative law judge for the FDIC was a mere employee and therefore not subject to the Appointments Clause. Several courts are now wrestling whether the functions performed by SEC ALJs are more akin to the tax court judges in *Freytag* or the FDIC judges in

Landry. There is also litigation about whether *Landry* is even consistent with *Freytag*. In spite of acceptance of Respondents' arguments by several district courts, the Opinion dismisses the issue as governed by *Landry*.

3. *Treatment Different from others Similarly Situated in Violation of the Equal Protection Clause*

Finally, in *Gupta v. SEC*, 11 Civ. 1900 (JSR)(S.D.N.Y. July 11, 2011), Federal District Court Judge Rakoff found that the Commission's decision to proceed against a respondent in an administrative forum, rather than in federal district court, could violate the Equal Protection Clause, citing "*Village of Willowbrook v. Olech*, 528 U.S. 562, 564-66 (2000) (successful equal protection claims [may be] brought by a 'class of one,' where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment)." Here, the institution of this action as an administrative proceeding had the effect of depriving the Respondents and their counsel of adequate time to prepare for trial and to try this action, when adequate time would have been available if this action had been filed in federal district court. This is unfair treatment of the Respondents for which there is no adequate justification. The Opinion addresses this important issue by essentially claiming that Judge Rakoff was wrong in *Gupta* because the selection of the administrative forum is discretionary. The Opinion also argues that the Respondents failed to present sufficient evidence that large, complex cases such as this one are almost never litigated in administrative forums, where tight deadlines and the absence of pretrial discovery are ill suited to fairly litigating such disputes. In fact, the Respondents presented statistics demonstrating that the Commission almost never brings cases of great size and complexity, such as this case, before its ALJs. The near uniqueness of this case in the administrative forum demonstrates Respondents' unequal treatment.

B. MISSTATEMENT OF THE LEGAL STANDARDS APPLICABLE TO DISCLOSURE

The Initial Decision in this matter ("Initial Decision") made no mention of the legal standards governing the disclosure of derivatives trades such as those at issue here. In an effort to correct this obvious defect, the Opinion discusses the disclosure standards, but engages in flawed fact finding and analysis.

Commission Form N-2 sets forth precise parameters that must be applied in determining whether the risk of an investment demands additional disclosure. Specifically, "[i]f a policy limits a particular practice so that no more than five percent of the Registrant's net assets are at risk . . . and does not intend to follow such practice so as to put more than five percent of net assets at risk, *limit the prospectus disclosure about such practice to that necessary to identify the practice*."[5] Based on their extensive research and risk-limiting approach, the Respondents concluded that there was no more than a 0.5 percent chance of a loss of five percent or more of the Fund's assets[6] – a classic "value at risk" measurement as mandated by the Commission. This determination was endorsed by Respondents' expert Prof. Spatt.[7] Even the Division's expert, Professor Harris, admitted that the Commission disclosure standards require a value at risk analysis and that Respondents performed such an analysis.[8]

In spite of the clearness of the Commission's disclosure guidance, the Opinion devotes extensive discussion to other measures of risk, such as notional amount and delta exposure. Whether these measures are superior to value at risk is irrelevant in this case, however, because

[5] *See* U.S. Securities and Exchange Commission Form N-2, Item 8.3, Instruction 4(c).

[6] Tr. 2171:10-2172:25; *id.* at 773:22-774:1.

[7] *See* Spatt Report at 11.

[8] Harris Report at 78.

the Respondents were entitled to follow, and did follow, the Commission's published disclosure guidance.

The Opinion also claims that the Respondents failed to follow their own value at risk calculations. This is a factual issue upon which the Initial Decision did not offer any guidance because it ignored the Respondents' value at risk analysis. In fact, the Respondents consistently adhered to a value at risk analysis with only minor deviations caused by the necessity to perform calculations quickly during a busy trading day and the inability to purchase positions in the precisely desired sizes. The Opinion's reliance on the Respondents' Supplemental Wells Submission, which was not even introduced into evidence at trial, actually contradicts the Opinion and supports the Respondents.

The Opinion also claims that Respondents failed to follow the guidance in Form N-2 because they performed a value at risk analysis with respect to each derivatives trade rather than a value at risk analysis of the entire derivatives "practice." Opinion at 55. No authority is cited for this distinction and no evidence is cited for the claim that a value at risk analysis of the derivatives "practice" would have produced a different result from the trade-by-trade analysis Respondents performed. Moreover, if Form N-2 is so clear in its meaning as the Opinion now claims it is striking that this argument was never asserted by the Division or mentioned in the Initial Decision.

The Initial Decision entirely ignored that the losses at issue in this case occurred in September and October 2008, "the greatest financial crisis since the Great Depression"[9] This further validates the reasonableness of the Respondents' risk analysis and belies any suggestion that the losses suffered in the fall of 2008 were expected. In an effort to address this glaring

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[9] The Financial Crisis Inquiry Report, p. xv (Jan. 2011).

weakness in the Initial Decision, the Opinion makes the striking claims, at page 49, that crises such as the 2008 financial crisis occur every four or five years, so that massive market disruptions should be expected with regularity. This is obviously untrue and is contradicted by many government reports.

The Opinion also makes much of the fact that the Respondents called their strategy a "macro hedging strategy." This was supposedly false because the Commission has articulated a clear and precise definition of the word "hedge." The authority supporting this view is set forth in footnote 48 of the Opinion, where a 1999 concept release and a 1979 adopting release involving brokerage trading totally unrelated to asset management are cited. Strikingly, both quoted passages state that "the application of that term ["hedge"] is largely a matter of custom and practice," hardly proof that the word "hedge" has a precise, well accepted meaning. In fact, the word "hedge" has no precise meaning and can be used, as the Respondents correctly did, to refer to trading that profits when the market declines. In addition, the Opinion ignores the fact that the Respondents called their trading a "macro hedging strategy." A strategy is different from a trade and refers to a pattern of trading. Here, the Respondents used the term macro hedging strategy to refer to trading that was sometimes long and sometimes short, but overall reduced risk. This was in no way misleading.

C. MISTREATMENT OF THE ADVICE OF COUNSEL DEFENSE

The Initial Decision entirely failed to address Respondents' advice of counsel defense because it erroneously asserted that Respondents had not asserted that defense. The Opinion implicitly acknowledges that the Initial Decision was mistaken in failing to address this defense, but then undertakes a review of the defense without any factual determinations in the Initial Decision. This approach leads to a fatal flaw in the Opinion. The entire analysis in the Opinion on the advice of counsel defense is based upon a distinction between advice about whether investments in the derivatives at issue was permissible – which advice was clearly given – and advice about whether investments in the derivatives at issue were adequately disclosed – which advice was supposedly not given. In making this distinction, the Opinion entirely ignores the fact that the lawyer who gave the advice, Thomas Hale of Skadden Arps Slate Meagher & Flom, testified at trial and submitted an affidavit during the investigation stating that when asked about the permissibility of an investment it was always his practice to also comment on whether the disclosures permitted the investment. By missing this key piece of evidence, the Opinion makes the completely incredible claim that, when asked whether the Fund could invest in derivatives, Mr. Hale answered "Yes," but failed to note that such investments were fraudulent because not properly disclosed. No competent lawyer would conduct himself this way and Mr. Hale testified he did not do so.

The Opinion also used this supposed distinction between "permissibility" and "adequacy of disclosure" to minimize the significance of Mr. Hale's conclusion, in late 2008 when all Fund losses were known, that Respondents had not violated the law. At footnote 89, the Opinion claims that when considering whether the Respondents had violated the law, Mr. Hale and the Fund board considered only the question of permissibility and not the question of the adequacy of disclosure. In fact, Mr. Hale, who wrote the Fund prospectus, followed the practice he swore he followed, and which every competent lawyer would follow, of opining on the adequacy of disclosure when opining on permissibility. This is especially damning to the Division's case because it proves that the author of the Fund prospectus believed the prospectus was consistent with the derivative trades at issue.

Even if the Opinion is correct in distinguishing Mr. Hale's advice on the permissibility of the derivatives investments and advice about the adequacy of disclosures, it defies credulity to believe that Respondents would have been aware of this distinction. It is the Respondents good faith belief that Mr. Hale had blessed their conduct that is relevant, not whether Mr. Hale sought to offer useless advice that offered no meaningful guidance to anyone.

Finally, in one of the most remarkably strained arguments in the Opinion, there is a discussion of the fact that a Claymore in-house counsel opined that the description of the derivatives trades at issue as "hedges" was proper. (at n. 47) This advice of counsel was completely ignored in the Initial Decision. The Opinion discusses this advice of counsel but dismisses it, not because it was undisputedly given, but because it should not have been given by the lawyer without more fulsome analysis.[10]

D. CONFUSING AND UNSUPPORTED ANALYSIS OF RESPONDENTS' SCIENTER

The Initial Decision relied upon a legally defective theory of the Respondents' scienter that was based on hindsight bias – because the strategy worked out poorly, the Respondents must have anticipated this result. The Opinion replaces this obviously defective analysis with wholly new fact findings based upon a theory of scienter that is contradicted by the evidence.

In attempting to craft a theory of scienter in this case, there are three immediate obstacles that must be confronted. First, the core fraud theory in this case – that the Respondents failed to boast enough about how well their derivatives strategy was doing before the Financial Crisis – is inherently incredible. Indeed, it is impossible to find fraud cases based on the theory that the respondents were too bashful about their successes. Second, there was no financial motive for

[10] "<u>But Claymore's counsel never evaluated whether the derivative strategies in fact functioned as hedges.</u>" (emphasis added) In fact, whether the Claymore lawyer was incompetent is irrelevant to the advice of counsel defense.

the Respondents to lie. As the Opinion notes at page eight, "Riad and Swanson were paid a fixed salary and a bonus that was not directly tied to the Fund's performance." Moreover, since the Fund was a closed-end fund, good performance could not attract new investment and thereby increase the advisory fee. This is directly relevant to scienter. As the court said in *S.E.C. v. Steadman*, "[i]f we were to conclude that the [respondents] meant to defraud investors, we would have to believe that they did so for the sheer joy of it rather than for profit."[11] Finally, Mr. Riad invested his own money in the strategies, losing a quarter of his life savings – nearly $1.6 million – because of these personal investments.[12] This fact is directly relevant to Mr. Riad's evaluation of the risk of these investments since a person is assumed to act with care with his or her own money. As the First Circuit has explained, "[w]e cannot ignore the fact that [the defendant] invested money of his own . . .; that belies any known or obvious danger."[13] Other courts have similarly found that investment of one's own money creates an inference against recklessness or negligence.[14]

Faced with these obstacles to establishing the Respondents' scienter, the Opinion offers a new theory of the Respondents' scienter which is contradicted by the evidence and totally

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[11] *S.E.C. v. Steadman*, 967 F.2d 636, 642 (D.C. Cir. 1992).

[12] Opinion at 26.

[13] *Hoffman v. Estabrook Co.*, Inc., 587 F.2d 509, 517 (1st Cir. 1987).

[14] *See, e.g., Cummings et al. v. Paramount Partners, LP, et al.*, 715 F. Supp. 2d 880, 902 (D. Minn. 2010). ("Thompson's argument that any inference of scienter is 'fatally weakened' by the fact that his own money was invested in Paramount presents a relevant counter-inference that is appropriate for this Court to consider"); *In re Intrabiotics Pharmaceuticals, Inc. Sec. Litig.*, No. C 04-02675 JSW, 2006 WL 708594, at *13 (N.D. Cal. Jan. 23, 2006) ("Personally investing their own money near to the time when the company announced it was terminating the trial tends to undermine any inference of scienter with respect to these defendants"); *Branch-Hess Vending Services Employees' Pension Trust v. Guebert*, 751 F. Supp. 1333, 1341 (C.D. Ill. 1990) ("There was no evidence of an actual intent on Guebert's part to mislead the Plaintiffs. Considering that Guebert and his family lost $68,000.00 of their own money in CSI investments, at worst we can conclude that this was a case of "white heart/empty head.").

inconsistent with common sense. The Opinion argues that the Respondents were under enormous pressure to generate high returns to meet the Fund's unrealistic dividend target and therefore concealed the derivative trades – which were used to meet the unrealistic performance target – so that they would not be fired. In other words, fear of being fired drove the Respondents to conceal improper trades that others would have stopped if they had been disclosed.

This theory of scienter suffers from three unsurmountable obstacles. First, with respect to the dividend target, even if that target had been impossibly too high, the target was lowered in July 2008. Yet the Respondents continued to make the derivative trades after that date. In fact, all the derivatives trades prior to July 2008 were in line with the positive analysis of them the Respondents performed. It is only trades beginning in August 2008, after the dividend target was lowered, that caused large losses.

Second, there is simply no evidence of this kind of pressure to perform, pressure so great that fear of being fired was supposedly always in the Respondents' minds. The Division's expert, Professor Harris, stated in his report that "[t]he pressure to perform is extremely intense." Harris Rpt. at p. 53. On cross examination, Professor Harris admitted that he had no factual basis for this assertion and no expertise that would permit him to infer it from the facts. Every FAMCO witness was then asked about the statement, including the Respondents and their supervisors, and every single witness denied that the pressure to perform at FAMCO was extreme. In fact, every witness described the atmosphere as relaxed and collegial. There is no evidence whatsoever to suggest that the Respondents feared losing their jobs if they did not achieve certain performance targets.

Finally, and most importantly, the whole theory that concealment of the derivative trades was necessary because, if disclosed, others would prevent them is contradicted by a basic fact – the derivative trades were disclosed. They were disclosed in numerous Fund filings, board presentations and communications with the Fund adviser, Claymore. Yet never did anyone try to stop the trading. The example of variance swaps is instructive. When the Fund began investing in variance swaps, Claymore noted this fact[15] and drafted a footnote for the Fund's periodic filings explaining how variance swaps work and disclosing a variance swap position held by the Fund. The Respondents reviewed and approved this disclosure. Then, when this periodic filing was sent to the Fund board, the footnote about variance swaps that had been added to the periodic filings was highlighted on the copy of the filing sent to the Fund board as a material change. It defies credibility that having participated in such open and aggressive disclosure to all relevant parties – Claymore, the Fund board and the Fund shareholders – about the Fund's investments in variance swaps the Respondents would fear that saying more could cause the investments to be shut down, thereby costing them their jobs. There was no cover up and no fear that disclosure would cause others to stop supposedly illegal conduct because there was clear and repeated disclosure to everyone – Claymore, the Fund board and the Fund shareholders – that the derivatives trades were occurring.

Finally, the Opinion makes much of the fact that "[i]n an October 3 email to Swanson, Riad wrote: "I decided to be upfront and explain the strategies instead of hiding." Opinion at p. 18. According to the Opinion, this is "a strong indication of their scienter prior to that date." *Id.* at p. 38. The inference seems to be that even thinking about concealing large losses in October 2008 evidences that concealment had occurred in the past and that Respondents had an evil

[15] It is undisputed that Claymore was aware of the variance swaps because, as the Fund's adviser, it had to approve the ISDA agreement that was necessary to execute the trades.

intent. This is straining the limits of credulity to the breaking point, turning an innocent fleeting thought during a moment of crisis into an indictment of years of honest, careful work.

II. IRREPARABLE HARM

The Division claims that Respondents present no evidence that stays are routinely granted when the appeal is from a short bar, but this is not the case. Several cases were cited in Respondents' opening brief that support the availability of a stay when the length of the time out may equal the time for the appeal to be decided. This is, of course, entirely logical and fair. If the appeal is likely not to be decided until the bar expires, success on appeal will provide no relief to the prevailing party. *See In re Electronic Transaction Clearing, Inc.*, Admin. Proc. File No. 3-16285 at *2 (Nov. 26, 2014) ("if Applicants ultimately succeed in their appeal, ordering them to pay the fine and comply with the six-month suspensions now could denigrate the benefits of that success"). This is precisely the definition of irreparable injury – years of a life needlessly lost without a legal basis.

The Division also fails to respond to Respondents' cited case law regarding the fact that an inability to recover from an administrative agency may constitute "irreparable harm." *RJ Reynolds Tobacco v. US Food and Drug Admin.*, 823 F. Supp. 2d 36, 50 (D. D.C. 2011); *see also, Bracco Diagnostics, Inc. v. Shalala*, 963 F. Supp. 20, 29 (D.D.C. 1997). The Division's failure to argue this point is a concession as to its accuracy.

Finally, the Division entirely ignores the fact that, unlike in other cases where the Commission found that a stay was unwarranted because the alleged injury pending appeal was entirely speculative, here there is real immediate injury absent a stay. The CFA Institute has informed Mr. Swanson that it will revoke his CFA designation and publicize this fact because of the Opinion. A stay can prevent this immediate, irreparable injury while the court of appeals considers this case.

III. HARM TO OTHER PARTIES

The Division does not even address the fact that Respondents had unblemished records before this action was commenced and have not been accused, or even investigated, for any wrongdoing in the over three and half years since this action was commenced. There is simply no basis to conclude that the public would be put at risk if the Respondents are not subject to a bar while this appeal is pending.

IV. PUBLIC INTEREST

Neither the Division nor the Respondents argue that the public interest is implicated beyond the "harm to other parties" that is addressed above.

CONCLUSION

For the foregoing reasons, Respondents respectfully urge the Commission to stay the effectiveness of the Order pending judicial review.

July 5, 2016

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CERTIFICATE OF COMPLIANCE WITH RULE 450(d)

I, Richard Marshall, certify that this brief complies with the word limitation set forth in Commission Rule of Practice 450(c), as it contains 4,351 words, excluding the parts of the brief exempted by the Rule.[1]

Richard D. Marshall

[1] 17 C.F.R. §201.450 (c).

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15141

In the Matter of **MOHAMMED RIAD AND KEVIN TIMOTHY SWANSON** **Respondents.**	**CERTIFICATE OF SERVICE**

Richard D. Marshall, an attorney, certifies that on July 5, 2016, he caused true and correct copies of Respondents' Reply Brief in Support of Motion for a Stay to be served by facsimile and by mail on the following:

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