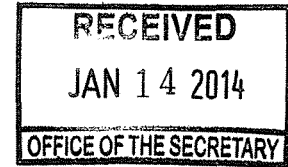


SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15514



ORIGINAL

In the Matter of

DONALD J. ANTHONY, JR.,
FRANK H. CHIAPPONE,
RICHARD D. FELDMANN,
WILLIAM P. GAMELLO,
ANDREW G. GUZZETTI,
WILLIAM F. LEX,
THOMAS E. LIVINGSTON,
BRIAN T. MAYER,
PHILIP S. RABINOVICH, and
RYAN C. ROGERS,

Respondents.

**RESPONDENTS PHILIP S. RABINOVICH, BRIAN T. MAYER, AND
RYAN C. ROGERS'S JOINDER IN THE MOTION OF RESPONDENT WILLIAM F.
LEX FOR LEAVE TO FILE MOTION FOR SUMMARY DISPOSITION**

Respondents Philip S. Rabinovich ("Rabinovich"), Brian T. Mayer ("Mayer"), and Ryan C. Rogers ("Rogers") respectfully submit this joinder in the Motion of Respondent William F. Lex For Leave To File Motion For Summary Disposition (the "Motion").

Rabinovich, Mayer, and Rogers hereby adopt and incorporate by reference all arguments set forth in the Motion and its accompanying exhibit.

As set forth in the Motion, the OIP is based on stale allegations that may not be "entertained" pursuant to a controlling federal statute, 28 U.S.C. § 2462, and the U.S. Supreme Court's unanimous decision in *Gabelli v. SEC*, 133 S. Ct. 1216 (2013). At a minimum, this proceeding should be strictly limited to claims that "first accrued" after September 23, 2008.

Although the OIP and the Division's purported "more definite statement," on their face, establish

the untimeliness of the claims asserted against Rabinovich, Mayer, and Rogers, the Division's witness list, received by email on the evening of Friday, January 10, 2014, further solidifies this point.

The Division has identified eleven investor-witnesses who are expected to offer testimony against Rabinovich, Mayer, and Rogers concerning their investments in McGinn Smith Securities. According to the Division's draft sales charts (the purported "more definite statement"), ten of those witnesses purchased McGinn Smith Securities prior to September 23, 2008, and of those witnesses, half did not purchase a single McGinn Smith Security after such date. Thus, any claims arising out of these transactions "first accrued" more than five years prior to the date the OIP was filed, and they cannot be "entertained." 28 U.S.C. § 2462.¹

The parties have already expended a substantial amount of time and money in defending the untimely, baseless claims against them. With the impending hearing date approaching, these costs will increase exponentially if the hearing is allowed to proceed, or at a minimum, if it is not properly limited to facts and transactions that occurred *after* September 23, 2008. For all of these reasons, and those set forth in the Motion, Rabinovich, Mayer, and Rogers respectfully join in the Motion.

¹ The Division has also identified a witness who is expected to testify solely with regards to "[p]re-2003 alarm note offerings," and a witness who is expected to testify solely to authenticate two exhibits which are communications from October 4, 2007 and January 25, 2008, respectively.

New York, New York
January 13, 2014

SEWARD & KISSEL LLP

By: M. William Munno

M. William Munno
Brian P. Maloney
Michael B. Weitman

One Battery Park Plaza
New York, NY 10004
212-574-1500

*Counsel for Respondents Philip S.
Rabinovich, Brian T. Mayer, and Ryan C.
Rogers*

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