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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15519

In the Matter of

Timbervest, LLC,
Joel Barth Shapiro,
Walter William Anthony Boden, III,
Donald David Zell, Jr.,
and Gordon Jones II,

Respondents.

Walter William Anthony Boden, III's Reply in Support of his Appeal to the Commission

WALTER WILLIAM ANTHONY BODEN, III'S REPLY IN SUPPORT OF HIS APPEAL TO THE COMMISSION

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As discussed in Boden's Appeal to the Commission, the Commission should reverse the Initial Decision of Administrative Law Judge Cameron Elliot rendered on August 20, 2014 (the "Decision"), which improperly found that Boden aided and abetted and caused violations of §§ 206(1) and 206(2) of the Investment Advisers Act even though the evidence shows he acted in good faith and without any improper intent. The Division failed to offer any argument or evidence in response to Boden's Appeal that changes this conclusion.

The Decision found that Boden acted with scienter in connection with his role in negotiating the sale of a property by Timbervest's client, New Forestry, to Chen Timber, and by the subsequent purchase of that property by Timbervest Partners, LP, a fund managed by Timbervest (the "Chen Transactions") and in the receipt of two fees under an advisory agreement he entered into with Timbervest in 2002. These conclusions were incorrect and should be overturned, along with the sanctions imposed against Boden or otherwise enter into any inappropriate agreement with Wooddall.

I. Boden did not act with scienter or negligently with respect to the Chen Transactions.

As explained in Boden's Appeal to the Commission, Boden acted reasonably, and not with scienter or negligently, in negotiating the two Chen Transactions. The Division's *only* argument that Boden acted with scienter is to say that "Boden was the point-man who negotiated both aspects of the transaction[s]."[1] (Div. Br. at 21.) But, as explained in Boden's Appeal to the Commission, and more fully below, Boden negotiated deals that were financially advantageous to each Timbervest client. He negotiated them at different times and under different economic circumstances, which provided each Timbervest client with excellent value that lined up with

[1] It is unclear what the Division means by the two "aspects" of the transactions, but presumably, it means that Boden negotiated both sides of the transactions. Boden has interpreted the Division's statement thusly.

each client's respective investment goals. He did not agree to any parking arrangement or cross trade with Wooddall.

A. Boden negotiated two very favorable deals for his clients.

Boden was responsible for negotiating the sale of Tenneco Core and did so beginning in May or June 2006. (Tr. at 122, 856.) At that time, New Forestry wanted a substantial reduction in its timberland holdings. In fact, it wanted more than $220 million in sales over a three-and-a-half year period. (Div. Ex. 47; Tr. at 102-03, 476.) For those properties that remained in its portfolio, New Forestry wanted only properties that would generate cash flow of 2% per year. (Div. Ex. 47.) Tenneco Core, however, consisted of 75% pulpwood, meaning that the majority of trees were young and would not be income-producing for quite some time. (Tr. at 201, 483-84.) Selling Tenneco Core would therefore fit both of New Forestry's mandates: dispositions for cash and dispositions of properties that would not generate substantial income.

Not only did the sale fit within New Forestry's investment objectives, but Boden was able to negotiate, in the late spring of 2006, the sale at a price that provided excellent value to New Forestry. Timbervest valued properties quarterly, based on a timberland valuation policy approved by New Forestry and its beneficial owners (BellSouth, later AT&T). (Div. Ex. 26; Tr. at 1111-12, 1627, 1605.) At the time, New Forestry's sales mandate was in effect, and the investment guidelines specifically allowed Timbervest to sell any property at 90% of a property's then-current valuation (*i.e.*, carrying value). (Div. Ex. 47.) The $13.45 million sales price of Tenneco Core exceeded Tenneco's carrying value by $1.4 million. (Tr. at 206-07.) The sales price, therefore, was at 111.7% of Tenneco's carrying value—well above the 90% threshold put in place by New Forestry. Moreover, an August 2005 appraisal of the property from the James Sewall & Company (the most recent appraisal available to Timbervest based on

its valuation policy), valued Tenneco Core at $12.13 million. (Resp. Ex. 52; Tr. at 207, 211, 1665.) This appraisal was less than a year old when the sale of Tenneco Core was negotiated, and the final sales price exceeded the independent appraised value by 11%. And importantly, Sewall appraised the bare land component of the property at $438 an acre, whereas the sale to Chen Timber provided New Forestry with $547 an acre for bare land—an increase of almost 25%. (Resp. Ex. 52; Tr. at 200-01, 207, 210.) By any economic measure, the sale of Tenneco Core was an excellent opportunity for New Forestry that fit squarely within the client's investment mandate.

Months later, in November 2006, Boden was also able to negotiate a draft agreement to purchase the property for TVP at a price that was still favorable for TVP based on the changing economic landscape and TVP's investment goals and timelines (which were completely different from New Forestry's). The draft contract came with a no-risk, no-commitment due diligence period to allow time to thoroughly evaluate the economics of the proposed purchase. (Div. Ex. 13.) The data available to Timbervest prior to signing the contract and underwritten during the no-risk due diligence period in the fourth quarter of 2006 and first quarter of 2007 showed the purchase transaction was a good one for TVP. In 2006 and 2007, TVP was looking for properties that would fit its long-term growth investment strategy, and it had little desire for recurring income. (Tr. at 83.) In contrast to New Forestry, TVP, with its long-term growth strategy, was willing to inject capital into the property to spur capital growth—necessary for the future success of Tenneco Core, given its younger timber profile and "big, bulky tracts." (Tr. at 233-34.) And all the economic indicators available to Timbervest leading up to the signing of the contract and during due diligence in the fourth quarter of 2006 and first quarter of 2007 showed the $14.5

million repurchase price to be a good deal for TVP in light of its long-term investment-objectives.

It is undisputed that, by the time of the second transaction, the value of the timber on this property had increased by more than $960,000—making up nearly the entire $1.05 million difference between the price of the sale of Tenneco Core to Chen Timber, LLC and the later purchase of the property by TVP. (*See* Tr. at 200-01.) The timber increased for two reasons: (1) a 5% increase in overall timber volume between October 2006 and February 2007, and (2) prices for pulpwood increased by about $1.50 per ton—a roughly 30% increase in the price of pulpwood. (Tr. at 201.) Because Tenneco Core had approximately 300,000 tons of pulpwood on it, the increase in price for this material, along with the increase in volume of this material on the property, greatly increased the value of the property. (Tr. at 553.) As shown in the chart below, the increase in the value of timber accounted for nearly the entire increase in the purchase price:

Category	**2006 Sale**	**2007 Purchase**	**Differential**
Timber Value (reflecting volume and price increases)	$6,346,104	$7,313,500	$967,397 [+15.24%]
Timber volume (merchantable tons)	582,537(T)	611,934(T)	29,396 [+5%]

Moreover, the small price increase associated with the bare land (approximately $6 per acre) was supported by the fact that, in the fourth quarter of 2006, the nearby Wolf Creek properties—smaller, broken-up tracts also owned by New Forestry and being independently marketed by a third-party broker—were starting to generate offers to purchase small parcels at prices averaging $1,461 per acre. (Div. Ex. 128.) This contemporaneous pricing data provided Timbervest with a clear indication that bare land prices in the smaller tract market were beginning to strengthen when TVP was preparing to offer to purchase the property and

afterwards, during due diligence when Timbervest carefully evaluated the merits of the $14.5 million purchase price.

Other objective data points further justified the higher purchase price. The NCREIF timberland index had an 8.5% increase in value in the fourth quarter of 2006, one of its strongest quarters in history. (Div. Ex. 83; Tr. at 205.) The Respondents have pointed to NCREIF, not as a valuation of Tenneco Core, but rather as independent, additional market data confirming that timber properties experienced substantial appreciation in this time period. The Plum Creek REIT likewise saw a 15% increase in the market value of its publicly traded stock over the same timeframe. (Tr. at 853-54.) TVP's purchase price, by comparison, was less than 8% higher than the price New Forestry received when it sold the property to Chen months earlier.

Thus, TVP ultimately decided, after the due diligence period had ended, to proceed with its contract and close on the deal in February 2007. (Div. Ex. 18; Tr. at 1423-24.) TVP bought a more valuable standing forest and paid an insignificant premium for the bare land, all while acquiring a quality growth-asset in line with its investment objectives at a price that was fully supported by available market indicators. Had the market indicators not supported the purchase price, TVP would not have gone forward with the purchase and would have received all of its earnest money back, as provided for in the contract. (Div. Ex. 17.) But because the market conditions ultimately supported the offered purchase price, given TVP's underwriting and long-term investment strategy, TVP purchased the property. It did not purchase the property because of any prior agreement, unsupported by economics.

B. Boden adamantly denied agreeing to any sort of parking arrangement or cross trade with Wooddall.

As Boden testified, he did not agree to any sort of parking arrangement or cross trade with Wooddall. It did not happen. And the documentary evidence supports Boden's view.

The September 15, 2006 contract for the sale of Tenneco Core contained a specific provision stating that the contract was not contingent on any other agreement or understanding. (Div. Ex. 11.) When asked about this language at the hearing, Wooddall testified that he believed this language to be accurate, that he could have done anything he wanted to with the property, and that he would have done so if he did not feel that Timbervest was going to buy it back. (Tr. at 863.) Boden adamantly denies any such agreement to repurchase the property at an increase in price of more than $1 million. (Tr. at 184, 207-08, 504-09.) In fact, he testified that, given the downward trend in the property's value during the first half of 2006, it would not have made any economic sense to have an agreement to buy the property back for $14.5 million in the summer of 2006, when the agreement to sell the property to Chen at $13.45 million was reached. (Tr. at 207-08, 232.) Nor would he have agreed on a price eight months in advance of an intended acquisition with no foreknowledge of when or if the weakening market conditions in the area were to change. Agreeing in the summer of 2006 to a $14.5 million repurchase price would have "bake[d] in a loss on acquisition," meaning that TVP would have been agreeing to buy a property for a price that was more than the property's then valuation. (Tr. 208.) And, as Boden testified, in the eleven years he has been at Timbervest he does not "remember a single acquisition we've made, not one time, where it's come in with a loss on acquisition. . . . Not one." (*Id.*) On cross-examination Wooddall testified that during his negotiations with Boden he may have even told Boden that Chen Timber could do whatever it wanted with the property and was not obligated to sell it back to Timbervest. (Tr. at 801-02.) Thus, whether Wooddall believed there was some unenforceable "verbal option," Wooddall telling Boden that he was not obligated to sell the property back to Timbervest reasonably explains why Boden believed he never negotiated any repurchase agreement.

The *only* evidence to the contrary, is Wooddall's memory, from nearly eight years prior, that Boden offered to buy the property back at an increase in price of more than $1 million before selling the property. No documentary evidence corroborates this claim, and as Wooddall acknowledged at the hearing, the documentary evidence, that is, the signed and executed sales contract, specifically stated that there were no other agreements. (Div. Ex. 11.) The Division's use of Wooddall's investigative testimony (which was never admitted into evidence) also falls flat as Wooddall contradicted it in his hearing testimony. So while the Division cites Wooddall's investigative testimony that: "Boden said that, you know, we'll sell you the land. We'll buy it back," it completely ignores that Wooddall repeatedly testified at the hearing that there was no sort of actual agreement between the parties. At the hearing, Wooddall did not testify that Boden promised or guaranteed to repurchase Tenneco Core. He described it as a "verbal option," with no binding effect on either party. (Tr. at 768-69.) As he testified, the day after purchasing the property, he could have done whatever he wanted to with the property. (Tr. at 863.) He could have cut and sold off all the timber on the property. (Tr. at 816.) He was free to sell to anyone he wanted. (Tr. at 758, 815-816.) Wooddall had no obligation to sell the property back to Timbervest. (Tr. at 815-816.) Indeed, he *would have sold it to someone other than Timbervest* if someone offered a strong enough price. (*Id.*) Nor was Timbervest bound to repurchase the property from Wooddall. (Tr. at 859.) There simply was no parking arrangement or cross trade.

Wooddall even called Boden after he testified to say that "there was never a deal in place." (Tr. at 1797.) The Division now contends that this testimony was "dubious" because Respondents did not recall Wooddall to testify. But there was no need to do so. His call to Boden was entirely consistent with what he said in testimony: there was no actual agreement to repurchase the property.

As to the increase in purchase price, Wooddall simply testified: "I think we negotiated it." (Tr. at 770.) Wooddall did not have any specific recollection of negotiating a repurchase price with Boden and his recollection was nothing more than an assumption as to when and whether there were negotiations. (*Id.*) Moreover, Wooddall testified that he met with Boden only twice to negotiate the sale of Tenneco. (Tr. at 811.) On cross-examination, when asked whether there was any discussion of a repurchase price in his first meeting with Boden, Wooddall testified "I don't think the price was discussed." (Tr. at 812-13.) As to the second meeting with Boden, when asked by the Division "did any solidification of the terms happen at the second meeting," Wooddall answered, "I don't recall." (Tr. at 762.) Accordingly, there is simply no evidence to support Wooddall's suggestion that a repurchase price was negotiated prior to the sale.

The entire Decision therefore hinges on crediting Wooddall's memory about a conversation that took place over eight years ago. As Wooddall testified, his recollection of this critical conversation that he had with Boden in 2006 was "much more vague" compared to his recollection of conversations with the Division's attorneys from 2012 that he had trouble recalling at the hearing. (Tr. at 847.)

At bottom, the evidence shows that Boden acted reasonably, not negligently or with scienter, in negotiating two deals for his clients that provided excellent value. He did not agree to any parking arrangement or cross trade. Accordingly, the Commission should reverse the Decision's findings to the contrary.

II. Boden did not act with scienter or negligence with respect to his fee arrangement.

As explained in Boden's Appeal to the Commission, Boden earned his fees under an advisory agreement that was agreed to back in 2002. At the time it was entered into, it is

undisputed that Timbervest disclosed the fee arrangement to the client. He worked in good faith without compensation for approximately twenty months on behalf of New Forestry with the expectation that he would receive a fee if and when properties covered by the agreement actually sold. (Tr. at 448-449.) He was entitled to the fees when he received them. Moreover, he relied on his business partner, Shapiro, who had the relationship with New Forestry's fiduciary, to address the potential conflict raised by the fee agreement after he became a partner in Timbervest in 2004. (Tr. at 622, 625.) In 2005, when ORG became New Forestry's fiduciary, Shapiro discussed the fee with Schwartz—an ORG principal—and while Schwartz has now disavowed what Shapiro told him, there is no evidentiary basis to find Boden acted with scienter or even negligently. (*See, e.g.*, Tr. at 1776-77.)

The Division, however, contends that Boden acted with scienter, for the same four reasons used by the Decision: (1) errors contained in the sales contracts; (2) Boden's lawyer's work in arranging the receipt of the fees; (3) state brokerage licensing statutes of questionable relevance; and (4) Boden's supposed belief that Shapiro had not actually disclosed the fee arrangement to New Forestry's fiduciary. (Div. Br. at 22.) As discussed in Boden's Appeal and again below, none of these reasons shows scienter or negligence, and the Decision's findings to the contrary were in error.

A. Errors in the sales contracts do not establish that Boden acted with scienter.

The Division contends that the sales contracts "contain[ed] misleading descriptions of the supposed services provided by" the LLCs that received Boden's fees. (Div. Br. at 22.) While the Division does not identify what "misleading descriptions" were in the contracts, presumably it is complaining about the fact that the Tenneco Core sales contract lists Fairfax Realty Advisors, LLC as "having acted as a brokerage agent" and the Kentucky property sales contract lists

Westfield Realty Partners, LLC's fee as being "for services rendered." (Decision at 58 (quoting Div. Ex. 11, Div. Ex. 33).) But there was no evidence that these descriptions were intended to or in fact misled anyone. Indeed, there was no evidence Boden was responsible for these descriptions. Boden testified that he gave the drafters of the contracts *only* the name of the LLC through which he would be receiving his fee and the percentage of the sales price that he was owed. (Tr. at 172-73, 303-04, 353-54.) He was not responsible for any other language in the sales contracts. (Tr. at 172-73, 303-04, 353-54.) Boden testified that, in his years at Timbervest, he rarely became involved in the specifics of contract language or preparation. (Tr. at 131.) Indeed, the sale contract to Chen is not Timbervest's form contract but was instead prepared by Chen's counsel. (Tr. at 366.) Likewise, the contract for the sale of the Kentucky Property was on the counterparty's contract form, not Timbervest's. (Tr. at 367.)

Thus, even if incorrect, there is no reason that the sales contracts show, in any way, that Boden acted with scienter or negligently.

B. Boden's lawyer's actions are not evidence of Boden's state of mind.

The Division next contends that Boden acted with scienter because of the way Boden's lawyer set up the payment structure for the fees and because the fee Boden paid to his lawyer for setting up the LLCs was supposedly "exorbitant." (Div. Br. at 22.)

First, Boden's lawyer's actions are not a basis on which to find that Boden acted with scienter. Boden received his fees through two limited liability companies because his attorney, Ralph Harrison, advised him this would protect his personal assets and limit any potential claim to the fees made by unknown third parties. (Tr. at 585, 622, 625.) The way the LLCs were set up, *i.e.*, their business address and membership, and the way the fees were routed through the LLCs were completely unknown to Boden. (Tr. at 309, 724-26.) There is no evidence to suggest

otherwise. Boden simply hired Harrison to protect the fees from third party claims and he let Harrison take care of the rest. (Tr. at 724-25.) Boden did not know, and had no reason to know, about the details of how the LLCs were set up, organized, managed, or even named. (Tr. at 725.) He did not know how the fees were routed through the LLCs and Harrison's IOLTA account before making their way to an account controlled by him. (Tr. at 309, 725.) The Division's claim that Harrison "creat[ed] a byzantine payment structure bearing all the hallmarks of a money laundering scheme" is nothing more than inflammatory rhetoric. (Div. Br. at 22.) The payment structure was simple—checks were made to the LLCs, Harrison cashed them on behalf of the LLCs, and then issued checks for Boden's personal corporation, which Boden subsequently cashed. (Div. Exs. 1j, 2h.) It certainly was not money laundering: the fees came from a proper source, and taxes were paid by all the Partners on their share of the fees. (Div. Exs. 12b, 36b.) In any event, to find that Boden acted with scienter because his lawyer took actions that he did not know about and had no reason to know about would be ludicrous.

Equally ludicrous would be finding that Boden acted with scienter because he agreed to pay Harrison a 10% contingency fee for his work. (Tr. at 287.) But this fee arrangement does not show scienter. The fee was agreed to long before any payments were made to Boden and before Boden knew whether he would ever receive any compensation under his advisory agreement. (Tr. at 587.) If Boden had never received a fee, Harrison would have received nothing for his legal services. He simply had his attorney working under the same framework as had been established in his own advisory fee agreement—pure contingency work. Harrison therefore willingly bore the risk that all of his efforts and advice would result in no compensation should no sales occur. This is the nature of contingency fee work. Furthermore, a 10% contingency is not unusual given the prior work Harrison had performed for Boden and his family for which he

was not paid at all. Specifically, Harrison testified that he had given Boden advice relating to his prior businesses, had assisted Boden's wife in a rental property dispute with her tenant, and had reviewed documents relating to Boden's investments. (Tr. at 729.) In each of those instances, Harrison was never paid. (*Id.*) The 10% contingency fee was not "exorbitant," as the Division claims, was appropriate under the circumstances and is not indicative of scienter.

Neither Harrison's legal advice nor his fee supports a finding that Boden acted with scienter. Indeed, as Boden has pointed out, Boden voluntarily waived the attorney-client privilege regarding Harrison's work in creating the LLCs and allowed the Division of Enforcement to take Harrison's testimony during the investigative stage of this case, as evidence of his good faith. As the ALJ recognized, this waiver of privilege strongly weighs against any finding of scienter. (Decision at 55.)

C. State licensing requirements do not show scienter.

The Division next contends that Boden's fees were in "violation of Alabama and Kentucky real estate laws" and that that somehow shows that Boden acted with scienter with respect to his fees. (Div. Br. at 22.) This reasoning is substantially flawed. In Georgia, where Boden resided and worked, the real estate licensing statute provides an exception to licensing for persons "who, as owner or through another person engaged by such owner on a full-time basis or as owner of a management company whose principals hold a controlling ownership of such property, provides property management services . . . or otherwise deals with property owned by such persons." O.C.G.A. § 43-40-29(a). Because Mr. Boden worked full-time on behalf of New Forestry, he would have been exempt from even having to be licensed in Georgia. [2]

[2] Interestingly, in its Post-Hearing Brief and its Appeal to the Commission, the Division contended that the fees violated Georgia licensing laws (not just Alabama and Kentucky's, as it now contends). (Division's Post-Hearing Brief at 43.) The Division now apparently concedes that there was no problem under Georgia real estate laws.

Further, there was no evidence that Boden knew or should have known that receiving fees in this manner was improper. Boden was a licensed real estate broker. (Tr. at 49.) Although the two LLCs that received the fees did not hold his license, there is no evidence that Boden did not believe his brokerage license to be effective. Moreover, Boden relied on Harrison to structure the receipt of the fees. (Tr. at 298-99.) If there were an issue with how the fees were received, Boden would have reasonably expected his attorney to alert him to that fact. But there is no evidence that Harrison thought the payment of fees to an unlicensed entity was improper. Although he was a real estate lawyer, there was no evidence or testimony that he had ever had any experience with the brokerage licensing statute or that Boden presented the fee arrangement as a brokerage arrangement. As Boden testified, "we never defined the entity as a broker. It was a limited liability company set up specifically to insulate me and my assets." (Tr. at 390.) In any event, whether Harrison knew or should have known that the fees were improper is completely irrelevant—he is not a respondent in this case. Only if Boden himself knew or should have known that the fee structure was improper is it even remotely relevant. But there is no evidence that Boden had or should have had this knowledge.

In fact, Boden testified that he knew it was illegal for an unlicensed broker to collect a brokerage commission in Georgia. (Tr. at 383-84.) But Boden did not view his payments as brokerage commissions; rather, he viewed them as advisory fees. (Tr. at 386.) They were compensation for the approximately 20 months of otherwise unpaid work that Boden did in good faith on behalf of New Forestry from which New Forestry received direct benefits. And although they were triggered by sales, they were not compensation specifically for the sale but for all the extensive work necessary to create a sales process for New Forestry to accomplish multiple eventual sales for New Forestry. (Tr. at 505-06, 1491, 1771.)

But the licensing question is altogether a red herring. These statutes do not form the basis for an Advisers Act violation. There is no evidence that licensing requirements played any role in anybody's actions in this case.

D. There is no support for a finding that Boden did not believe that Shapiro disclosed the fee arrangement and obtained approval.

Finally, the Division argues, for the first time ever, that Boden "did not believe" that Shapiro had disclosed his fee arrangement to Schwartz and ORG, even if Shapiro told Boden that he had. (Div. Br. at 22.) The Division simply gloms onto the ALJ's erroneous conclusion in this regard. (Decision at 59.) But there is absolutely no basis for either the Division's argument or the ALJ's finding. The Division failed to put forth a single shred of evidence suggesting that Boden did not actually believe that Shapiro had disclosed the fee arrangement to ORG, New Forestry's fiduciary, when it became involved on the account in 2005. Moreover, there is no logic or basis for finding that of Shapiro's three partners, two of them (Jones and Zell) believed his representation that he had obtained Schwartz's consent to the fee arrangement and one of them (Boden) did not, as the ALJ found. The finding is not only illogical but is unsupported by any testimonial or documentary evidence. It does not support a finding of scienter.

III. The sanctions imposed are penal.

Because Boden did not act with scienter or negligence with respect to either the Chen Transactions or his advisory fee agreement, there is no basis for imposing any sanctions against him, and the Decision erred in doing so. The sanctions imposed are also penal and barred by the statute of limitations. The Division completely failed to address Boden's arguments that a cease-and-desist would be penal because it threatens his real estate license and taints him as a "bad actor" under the Dodd-Frank Act. And because the "bad actor" disqualification prevents issuers, affiliated issuers, owners, directors, general partners, managing members, executive and other

officers, promoters and investment managers and its principals, among others, from participating in a Rule 506 offering, the consequences of such a label are severe. 17 C.F.R. §§ 230.506(d)(v)(A), 230.506(d). Moreover, because Regulation D and the Rule 506 exemption are the primary capital offering tools used by all U.S. businesses, irrespective of industry, company type, company size or the amount of the capital raise,[3] the reach of the Rule 506 disqualification is incredibly broad. All of the cases cited by the Division for its proposition that cease-and-desist orders are per se remedial all predate the effective date of this collateral consequence resulting from Dodd-Frank. For all the reasons discussed in Boden's Appeal to the Commission, though, all sanctions imposed against him are penal and barred.

IV. Conclusion

Boden acted in good faith with respect to both the Chen Transactions and his fee arrangement, and there is no basis to find that he acted with scienter or negligently in either situation. In the summer of 2006, he negotiated an excellent deal for New Forestry to accomplish its goal of disposing of properties. He later separately negotiated an excellent deal for TVP to purchase the property, which fulfilled TVP's different investment strategies and ultimately closed in February 2007. He received two fees pursuant to an advisory fee agreement, which was agreed to and disclosed to the client in 2002 and under which he worked diligently and in good faith for two years without compensation. He also had a reasonable basis to believe that his fee arrangement had been re-disclosed to the client's new fiduciary in 2005. The Division failed to

[3] *See* U.S. Securities and Exchange Commission, Capital Raising in the U.S.: An Analysis of Unregistered Offerings Using the Regulation D Exemption, 2009-2012, July, 2013. Capital raised through Regulation D offerings was over $900 billion in 2012; Regulation D offerings occur with far greater frequency than any other offering method; Rule 506 accounts for 99% of amounts sold through Regulation D and is the primary offering tool for smaller entities; From 1999-2012 there were more than 40,000 Rule 506 issuances by non-financial issuers with a median offer size of less than $2 million (and 50% less than $1 million).

put forth any credible evidence or argument to the contrary. The Commission should therefore reverse the Initial Decision's findings against Boden.

This 15th day of December, 2014.

Stephen D. Councill
Julia Blackburn Stone

ROGERS & HARDIN LLP
2700 International Tower, Peachtree Center
229 Peachtree Street, N.E.
Atlanta, GA 30303
Telephone: 404-522-4700
Facsimile: 404-525-2224
scouncill@rh-law.com
jstone@rh-law.com

Counsel for Respondents Timbervest, LLC, Walter William Boden III, Gordon Jones II, Joel Barth Shapiro, and Donald David Zell, Jr.

Nancy R. Grunberg
George Kostolampros

MCKENNA LONG & ALDRIDGE LLP
1900 K Street, N.W.
Washington, D.C. 20006
Telephone: 202-496-7524
Facsimile: 202-496-7756
ngrunberg@mckennalong.com
gkostolampros@mckennalong.com

Counsel for Respondents Walter William Boden III, Gordon Jones II, Joel Barth Shapiro, and Donald David Zell, Jr.

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Certificate of Compliance

CERTIFICATE OF COMPLIANCE

I hereby certify that Walter William Anthony Boden, III's Reply In Support Of His Appeal To The Commission complies with the length limitations of SEC Rule of Practice 450(d). I further certify that this brief was prepared using Microsoft Word 2010 and that the word count for the document is 5,070 words.

This 15th day of December, 2014.

Stephen D. Councill