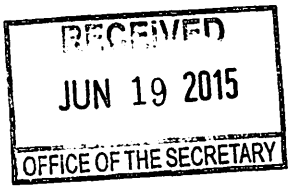
SECURITIES AND EXCHANGE COMMISSION
ADMINISTRATIVE PROCEEDING
File No. 3-16456



In the Matter of

Bama Biotech, et al.,

Respondents.

BRIEF OF ROBERT W. SEIDEN, AS RECEIVER FOR SINO CLEAN ENERGY INC., IN OPPOSITION TO DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

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Preliminary Statement

This matter presents facts that are unusual—if not unique—in jurisprudence under Section 12(j): Deregistration of Sino Clean Energy Inc. ("SCEI") would not only fail to punish SCEI's malfeasant managers, but would *reward* them to the detriment of investors. In particular, deregistration would facilitate the apparent goal of those managers to willfully discontinue their required SEC periodic reporting in order to go private cheaply by driving down the value of SCEI's shares and compelling existing investors to turn over their shares at a steep discount. Equitable interests – both the interests of current investors and the interest of avoiding using the securities laws as a mechanism to reward wrongdoers – thus weigh heavily in favor of denying the SEC's request for deregistration.

Statement of Facts

The relevant facts are undisputed. The facts recited in the Division of Enforcement's brief are accurate. In addition, it appears that the former management of SCEI, including and especially SCEI's former president, secretary, chairman of the board, and director, Baowen Ren, has embarked on a scheme to take full ownership of SCEI. It appears that intentionally causing the deregistration of SCEI in the United States is part of this scheme, as it will further the ability of the former managers (who collectively own just 14% of SCEI's shares) to transform SCEI into a private Chinese company that they can more easily take over at the expense of investors who purchased shares through the securities markets in the United States (who collectively own 86% of SCEI's shares).

In response to the wrongdoing of the former management, on May 12, 2014, a district court in Nevada ordered the appointment of Robert Seiden as Receiver of SCEI (the "Receiver"). This Order directed the Receiver to, among other goals, "maximize value for all shareholders of

the U.S.-listed shares of SCEI." The Receiver has moved aggressively to bring SCEI into compliance with its disclosure requirements. The Receiver has endeavored to recover SCEI's books and records, which are still in the possession of former management and are necessary to resume SCEI's required public disclosures. Unfortunately, Mr. Ren has resisted these efforts and disregarded an order from the Nevada district court to turn over the records. As recently as June 3, 2015, the Receiver filed a motion asking the Nevada district court to hold Mr. Ren in contempt for his failure to cooperate with the Receiver, as ordered by the Court. (Exhibits 1 and 2 to the Supporting Declaration of Jonathan H. Friedman.) This motion is pending.

Argument

I. Because Revocation Would Harm SCEI Investors, Equitable Interests Require Allowing the Continued Registration of SCEI.

Section 12(j) of the Exchange Act provides that the Commission may revoke or suspend the registration of a Company's securities only where it is "necessary or appropriate for the protection of investors." As the Division of Enforcement acknowledges, the caselaw provides that the appropriate sanction "turns on the effect on the investing public, including both current and prospective investors, of the issuer's violations, on the one hand, and the Section 12(j) sanctions on the other hand." Division of Enforcement Brief at 6 (quoting *Gateway Int'l Holdings, Inc.*, Securities Exchange Act Rel. No. 53907, 2006 SEC LEXIS 1288, at *19-20 (May 31, 2006)). In making this assessment, while the prevention of future violations is paramount, "[c]onsideration of . . . equitable factors may also be appropriate." *e-Smart Technologies, Inc.*, 2004 SEC LEXIS 511, at *16 (Mar. 4, 2004).

Here, the equitable factors are unique and overwhelming: Allowing deregistration would harm all current non-insider investors – and, uniquely, reward the wrongdoers – by allowing the former managers (who collectively own just 14% of SCEI's shares) to proceed with their

apparent scheme to intentionally bring about deregistration and take over the entire company to the detriment of all the investors who purchased shares through the securities markets in the United States (who collectively own 86% of SCEI's shares). Allowing the former managers (and 14% owners) to intentionally dissipate the value of SCEI's securities would be contrary to the Receiver's mandate from the Nevada district court to maximize value for all public shareholders of SCEI. The Division of Enforcement has not identified a single case ordering deregistration where deregistration would reward rather than punish the wrongdoers, as would happen if deregistration would be ordered in this case.

Moreover, none of the cases cited by the Division of Enforcement involve a receiver appointed for the protection of investors. Here, in sharp contrast, the Receiver has not only been appointed but has aggressively undertaken good faith efforts to protect potential investors by bringing SCEI into compliance with its disclosure obligations. Although these efforts have been willfully opposed at every turn by Mr. Ren and the other former managers of SCEI, the presence here of a Receiver who is actively protecting the interests of investors renders this case unique and the Division of Enforcement's cases inapplicable.

In the context of these equitable considerations, deregistration is neither desirable nor consistent with the purpose of Section 12(j).

II. Because the Appointment of the Chief ALJ Violates the Appointments Clause of the U.S. Constitution, This Tribunal Cannot Grant the Relief Requested by the SEC.

As a federal district court recently held, proceedings before Administrative Law Judges ("ALJs") violate the Appointments Clause of Article II of the Constitution because ALJs are "not appointed by the President, a court of law, or a department head." *Hill v. SEC*, No. 15-cv-01801, at *34 (N.D. Ga. June 8, 2015).

The Appointments Clause of the U.S. Constitution provides:

> [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper; in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. art. II, § 2, cl. 2. The Supreme Court has explained that "any 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 . . . ." *Freytag v. Comm'r of Internal Revenue*, 501 U.S. 868, 881 (1991). As the district court concluded in *Hill*, SEC ALJs are so-called "inferior officers" for purposes of the Appointments Clause. *Hill*, at *36-41.

The *Hill* Court explained the implication of this classification: "Inferior officers must be appointed by the President, department heads, or courts of law. U.S. Const. art. II § 2, cl. 2. Otherwise, their appointment violates the Appointments Clause." *Id.* at *41. Because ALJs, including the presiding judge in this tribunal, Chief ALJ Brenda Murray, were not appointed by the Commissioners – and thus were not appointed by the President, a department head, or the Judiciary – their appointments were unconstitutional in violation of the Appointments Clause. *See id.* at *42 (holding that, because ALJ "was not appropriately appointed pursuant to Article II, his appointment is likely unconstitutional in violation of the Appointments Clause"). Thus, this tribunal lacks authority to grant the relief requested by the SEC.

Conclusion

For the reasons set forth above, the Receiver respectfully requests that the Commission deny the Division of Enforcement's motion for summary disposition revoking the registration of SCEI's securities.

Dated: June 18, 2015

Respectfully submitted,

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Certificate of Service

I hereby certify that true copies of the SCEI Receiver's Brief in Opposition to the Division of Enforcement's Motion for Summary Disposition, along with the Declaration of Barry J. Mandel in support thereof, were served as follows on June 18, 2015:

By Federal Express (one copy):

The Honorable Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-2557

By Federal Express (two copies):

Thomas Bednar
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June 18, 2015

Via Federal Express

Brent J. Fields
Secretary
Securities and Exchange Commission
Division of Enforcement
100 F. Street, N.E.
Washington, D.C. 20549-6010

Re: In the Matter of Bama Biotech, et al.
Administrative Proceeding File No. 3-16456

Dear Mr. Fields,

Enclosed for filing please find an original and three copies of the Brief of Sino Client Energy Inc. by the Receiver, Robert W. Seiden, along with a supporting Declaration of Jonathan H. Friedman, in the above-captioned matter.

Sincerely,

Jonathan H. Friedman

JHF:cm

cc: Honorable Brenda P. Murray
Chief Administrative Law Judge

Neil Welch, Jr.